August 21, 2026

Via Electronic Mail (comments@pcaobus.org)

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

Re: Request for Public Comment on PCAOB Standard Setting, PCAOB Release No. 2026-005

Dear Members of the Board:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the Public Company Accounting Oversight Board's (the "PCAOB" or the "Board") Request for Public Comment on PCAOB Standard Setting, PCAOB Release No. 2026-005 (June 23, 2026) (the "Standard Setting RFC"). This letter focuses on Questions 22 through 24 of the Standard Setting RFC, which ask whether and how the Board should revise AS 6101, Letters for Underwriters and Certain Other Requesting Parties, to accommodate the proposal by the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") to permit reporting companies to elect semiannual reporting on new Form 10-S in lieu of quarterly reporting on Form 10-Q (the "SEC Proposal").

With input from SIFMA's Primary Markets Committee, which consists of broker-dealers acting as underwriters, initial purchasers, placement agents, and dealers in registered and unregistered securities offerings, SIFMA submitted a comment letter to the SEC on July 6, 2026 addressing the practical effects of the SEC Proposal on the capital-raising process (the "SIFMA SEC Letter"). A copy of that letter is attached for your reference. The SIFMA SEC Letter particularly focused on customary due diligence and comfort letter practice.[2] We are submitting this letter to the PCAOB to carry that discussion forward into the standard-setting process the Board has now opened, and we incorporate the SIFMA SEC Letter by reference.

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] *See* Letter from Joseph P. Corcoran, Managing Director and Associate General Counsel, SIFMA, to Vanessa A. Countryman, Secretary, SEC, Re: Semiannual Reporting, Release Nos. 33-11414; 34-105368; IC-36140; File No. S7-2026-15 (July 6, 2026) (the "SIFMA SEC Letter").

As explained in the SIFMA SEC Letter, the customary comfort letter that underwriters obtain from an issuer's independent accountants is not a matter of convention; it is a direct outgrowth of the due diligence framework created by Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended, and, indirectly, by Rule 10b-5 under the Securities Exchange Act of 1934, as amended. AS 6101 governs the availability of that comfort, and its provisions, particularly the 135-day threshold in paragraph .46 and the requirement in paragraph .37 that negative assurance be tied to an AS 4105 review, were calibrated to a reporting cadence built around one annual audit and three interim reviews per year. If a company elects semiannual reporting, that cadence is cut in half, and, absent revision, AS 6101 could leave underwriters participating in offerings for semiannual filers unable to obtain conventional comfort for roughly half of each fiscal year. We appreciate that the Board has recognized this issue and has posed Questions 22 through 24 to solicit views on how AS 6101 might be adapted.

Consistent with the Board's stated interest in stakeholder views at this stage of its process, our comments below are offered at a high level. We do not propose specific standard text. Rather, our goal is to help frame the issues and open a dialogue with the Board and staff of the Office of the Chief Auditor as the PCAOB considers whether and how to move forward, recognizing that the appropriate scope and mechanics of any amendment will benefit from further study, economic analysis, and engagement with preparers, auditors, and underwriters.

I. Question 22 — Whether the Negative Assurance Provisions of AS 6101 Should be Amended

Question 22 asks whether AS 6101's negative assurance provisions should be amended in light of the SEC's proposed revisions to the age-of-financial-statements rules.[3] In SIFMA's view, the answer is yes. The 135-day period in AS 6101 ¶.46 was not derived from first principles about how much time can safely elapse before an accountant's negative assurance becomes unreliable; it reflects, as a practical matter, the spacing between quarterly reviews under the current reporting regime. Under that regime, a company that files a Form 10-Q roughly every 90 days is, for nearly the entire year, within 135 days of its most recent review. Semiannual reporting breaks that alignment. As illustrated in the SIFMA SEC Letter, a calendar-year semiannual filer would fall outside the 135-day window for roughly six months of each year — from approximately mid-November until its Form 10-K is filed, and again from approximately mid-May until its Form 10-S is filed — unless it voluntarily obtains an interim review it would otherwise no longer be required to undertake.

Leaving AS 6101 unchanged would not preserve the status quo for semiannual filers; it would effectively withdraw the comfort-letter mechanism from them for a substantial part of the year, because the standard's timing assumption no longer matches their reporting cadence. That outcome would sit uneasily next to the Commission's stated objective of reducing reporting burdens without impairing capital formation or investor protection, because it is underwriters' practical ability to

[3] *See* Request for Public Comment, PCAOB Standard Setting, PCAOB Release No. 2026-005, at 16 (June 23, 2026) (the "Standard Setting RFC"), Question 22.

obtain comfort — not the age-of-financial-statements rules alone — that determines whether an issuer can access the markets.[4] Changing this delicate balance would put the underwriters in the position of choosing to proceed without comfort and bear the resulting increased liability risk or declining to proceed without that comfort and thereby putting the issuers in a position where they lose access to the capital markets for a substantial period of time.

We therefore support the Board pursuing targeted, conforming amendments to AS 6101 in tandem with the SEC's rulemaking, so that AS 6101 and the underlying periodic reporting framework move forward together rather than in sequence. We would not view this as an occasion for a broader reconsideration of AS 6101 as a whole. AS 6101 has functioned well for decades, and a narrow amendment addressing the semiannual-reporting scenario should be sufficient.

II. Question 23 — Potential Approaches to Revising the Negative Assurance Window

Question 23 asks whether the Board should, for example, permit negative assurance as of a date subsequent to the most recent audited or reviewed period and prior to the issuer's next required filing date, rather than relying on the existing fixed 135-day threshold, and whether that approach could give rise to unintended consequences.[5] Before turning to that specific mechanical question, we think it is worth stepping back to examine what negative assurance actually is and what an AS 4105 review actually involves, because we believe those two concepts — more than the particular number of days chosen — should drive how the Board recalibrates AS 6101 for semiannual filers.

A. What negative assurance actually promises

AS 6101 itself defines negative assurance, in footnote 10 to paragraph .12, as a statement by accountants that, as a result of performing specified procedures, nothing came to their attention that caused them to believe that specified matters do not meet a specified standard.[6] Negative assurance is also given on whether, during a specified period following the date of the latest financial statements, there has been any change in capital stock, increase in long-term debt or any decrease in other specified financial statement items.[7]

Negative assurance is therefore not a certification that the underlying financial information is correct; it is a report on the results of specific, agreed-upon procedures, whose value depends entirely on what those procedures were and how current they were as of the relevant date. AS 6101 is explicit elsewhere that the accountant's comments "would not necessarily reveal matters of significance," and that the accountant makes no representation regarding the sufficiency of the

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[4] We also note that certain parties such as outside lawyers condition their deliverables upon receipt of a comfort letter, the lack of which would deprive underwriters of customary and meaningful deliverables that help establish a diligence defense.

[5] *See* Standard Setting RFC, Question 23.

[6] *See* AS 6101 ¶.12 n.10.

[7] *See* paragraphs .45 through .53 of AS 6101.

procedures for the underwriter's purposes. In other words, the reliability of a comfort letter turns on the specific work performed, not on a label attached to that work.

B. What the substance of a review actually entails

It follows that it is worth asking what an AS 4105 review, the procedure AS 6101 currently treats as the gateway to negative assurance, actually consists of. AS 4105 describes a review of interim financial information as consisting principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters, and states that a review is substantially less in scope than an audit and does not provide a basis for expressing an opinion.[8] Unlike an audit, a review does not contemplate tests of accounting records through inspection, observation, confirmation, or the corroboration of management's responses through other evidence; the analytical procedures involved are ordinarily less precise than those used in an audit, and the accountant is not ordinarily required to corroborate what company officials tell them.[9] A review is, in short, principally an exercise in reading current financial information and asking informed questions about it.

C. The formal "review" label may be too strong a requirement for the underlying procedures in AS 6101

Under AS 6101 ¶.37, accountants may comment in the form of negative assurance on interim financial information only when they have conducted a review in accordance with AS 4105; absent such a review, they are limited to reporting procedures performed and findings obtained, regardless of what procedures they actually undertook.[10] A review is, in substance, a bundle of analytical procedures and inquiries, procedures an accountant is fully capable of performing on updated interim financial information at other times, and does perform as part of many other engagements. However, the current framework effectively conditions the availability of negative assurance on whether that bundle of procedures happened to be packaged as a formal, SEC-filing-linked "review" within the 135-day window, rather than on whether the accountant in fact has a reasonably current basis, drawn from comparable procedures, for the comments being requested. It also turns on whether the issuer prepares full financial statements, as would be included in a Form 10-Q or rather selected financial information, as is often included in a voluntary earnings press release or Form 8-K.

D. A question for the Board: should eligibility for negative assurance travel with the "review" label, or with the underlying procedures?

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[8] *See* AS 4105, Reviews of Interim Financial Information, ¶¶.02, .15.

[9] *See* AS 4105 ¶.07 which states "A review consists principally of performing analytical procedures and making inquiries of persons responsible for financial and accounting matters, and does not contemplate (a) tests of accounting records through inspection, observation, or confirmation; (b) tests of controls to evaluate their effectiveness; (c) obtaining corroborating evidence in response to inquiries; or (d) performing certain other procedures ordinarily performed in an audit."

[10] *See* AS 6101 ¶.37.

This distinction matters directly for semiannual filers. Under semiannual reporting, there might simply be fewer occasions on which a formal AS 4105 review takes place. We would encourage the Board to consider, at a conceptual level, whether AS 6101 should continue to gate the availability of negative assurance on whether a formal AS 4105 review occurred within a fixed period, or whether it would be more appropriate to gate the availability of negative assurance on whether the accountant has, as of a reasonably current date, actually performed analytical procedures and made inquiries of a character comparable to those performed in a review.

We recognize this reframing raises its own questions that the Board would need to work through, including: (1) what quality-control, documentation, and independence requirements should attach to review-like procedures that are not part of a formal AS 4105 engagement; (2) whether such procedures could only be performed on the same interim financial information an issuer would otherwise have filed in a Form 10-Q, or could be performed on other current internal financial information such as voluntary quarterly earnings releases or similar disclosures (*see* also our comments on Question 24 below); and (3) whether decoupling negative assurance from the formal review label could create inconsistency or unpredictability that the current bright-line approach avoids. We do not think these questions have obvious answers, and we raise the reframing not to suggest a specific mechanism, but because we believe it better identifies what is actually driving the comfort-letter gap for semiannual filers: not the age of the issuer's financial statements as such, but whether the accountant has recently performed procedures of the kind a review consists of.

E. If the Board instead adjusts the timing threshold, a "next required filing date" approach merits consideration

If the Board determines that it is preferable to retain the existing structure, with eligibility governed by a formal AS 4105 review, we think tying that period to the issuer's own reporting calendar (i.e., the period until the issuer's next required filing) is a more durable approach than replacing 135 days with a different fixed number. A "next required filing date" approach would apply appropriately to each issuer based on its own reporting cadence which may change and would align with the SEC's decision to allow issuers to choose, and change, their own reporting cadence.

F. Coordination with the SEC's rulemaking timeline

As noted in the SIFMA SEC Letter, we have recommended to the Commission that it not finalize the SEC Proposal, or at least not make it effective, until the PCAOB has adopted or clarified standards that permit customary comfort for semiannual filers.[11] We reiterate that recommendation here from the PCAOB side of the coordination: whichever conceptual approach the Board pursues in response to Question 23, we would encourage the Board to align its effective date and transition period with the SEC's own rulemaking timeline, so that market participants are not left, even temporarily, in a period where semiannual reporting is permitted but conforming standards for the provision of customary comfort are not yet in place.

[11] *See* SIFMA SEC Letter at 6–7.

III. Question 24 — Circumstances That Should Limit the Auditor's Ability to Provide Negative Assurance

Question 24 asks whether there are circumstances that should limit an auditor's ability to provide negative assurance as of a date up to the issuer's next required reporting date, and, if so, whether and how those circumstances should be addressed in the standard.[12] We think this is the right question to ask before finalizing any relaxation of the current 135-day limit, and we offer the following observations at a similarly high level.

A. The value of negative assurance depends on the accountant having something current to read

As the SIFMA SEC Letter observes, AS 6101's subsequent-changes procedures depend on the accountant reading the issuer's available interim financial statements and accounting records as of the relevant cutoff date; where no such interim financial information exists, the accountant is limited to reporting procedures performed and cannot give negative assurance.[13] Simply lengthening the permissible window, without more, would not solve this dependency: an accountant asked to give comfort eight or nine months after the last review would still need something current to read. We would encourage the Board to consider, as part of any revision, whether it should be made explicit that negative assurance beyond the traditional window is contingent on the accountant's having read and compared appropriately current internal financial information, consistent with existing practice under AS 6101 ¶¶.45–.53, rather than leaving that expectation implicit.

B. Possible role of voluntary quarterly information

Many semiannual filers are likely to continue preparing some form of internal or voluntarily disclosed quarterly financial information, whether for their own management purposes, at the request of underwriters, or to meet investor and analyst expectations. As noted above, we would encourage the Board to consider whether, and on what basis, an accountant's reading of such voluntarily prepared quarterly information, without requiring a full AS 4105 review of it, could appropriately support negative assurance for offerings occurring later than the 135 day period currently contained in AS 6101 . We recognize this raises questions about the appropriate level of procedures and about consistency with the existing distinction in AS 6101 between reviewed and unreviewed interim information, and we do not propose a specific answer; we simply think it is an avenue worth exploring, in coordination with the Commission's own consideration of how unreviewed earnings releases furnished, but not filed, on Form 8-K should be treated.

C. Any new limitations should remain workable in practice

Finally, we would encourage the Board to be mindful that whatever circumstances or conditions it identifies in response to Question 24 should be capable of being applied predictably by

[12] *See* Standard Setting RFC, Question 24.

[13] *See* AS 6101 ¶.37.

accountants and understood by underwriters and issuers in advance of an offering. Much of the value of the current AS 6101 framework lies in its relative predictability: issuers, underwriters, and accountants generally know, well before a transaction is contemplated, whether comfort of a particular kind will be available. We would encourage the Board to preserve that predictability as it considers new conditions or limitations, so that semiannual filers and their underwriters can plan offerings with reasonable confidence.

IV. Additional High-Level Observations

Beyond the specific questions posed, SIFMA offers three additional high-level observations for the Board's consideration as it moves this project forward. We consider it essential that any outcome not create a scenario where underwriters are put in a position where they are exposed to potential securities law liability without the risk mitigation benefits of the receipt of customary comfort or issuers are put in the position of having to delay access to capital markets, or forgo electing semiannual reporting, because their auditors cannot provide customary comfort.

A. Scope of amendments

We continue to believe, as expressed in the SIFMA SEC Letter, that the changes needed to preserve customary comfort for semiannual filers are properly characterized as narrow and conforming, rather than as a broader reexamination of AS 6101. We would not want the Board's consideration of Questions 22 through 24 to become a vehicle for reopening other aspects of the standard that are unrelated to the semiannual-reporting scenario.

B. Engagement with preparers, auditors, and underwriters

Given the practical, transaction-level nature of comfort letter practice, we would encourage the Board and its staff to engage directly with practitioners — including the accounting firms that issue comfort letters and the underwriters' counsel who negotiate them — before finalizing any amendment. SIFMA and its members would welcome the opportunity to participate in that dialogue, including through roundtables, outreach sessions, or informal consultation with the Office of the Chief Auditor.

V. Conclusion

SIFMA appreciates the Board's attention to the interaction between the SEC Proposal and PCAOB auditing standards, and we welcome the opportunity this Standard Setting RFC provides to begin a dialogue on how AS 6101 might be adapted for a semiannual-reporting environment. We have intentionally kept our comments at a conceptual level at this stage, and we would welcome the opportunity to work with the Board and its staff on the technical details of any proposal as this project develops, consistent with the recommendations in the SIFMA SEC Letter that the Commission and the PCAOB coordinate closely on this issue.

If you have any questions or would like to discuss these comments further, please contact Joe Corcoran at (jcorcoran@sifma.org), or SIFMA's outside counsel on this letter, Eddie Best (ebest@willkie.com) at Willkie Farr & Gallagher LLP.

Sincerely,

Joseph P. Corcoran

Joseph P. Corcoran
Managing Director and Associate General Counsel, SIFMA

cc:
Erica Y. Williams, Chairperson
Christina Ho, Board Member
George R. Botic, Board Member
Kara M. Stein, Board Member
Barbara Vanich, Chief Auditor, Office of the Chief Auditor
Dima Andriyenko, Deputy Chief Auditor, Office of the Chief Auditor
Mark Saltzburg, Senior Special Counsel, Division of Corporation Finance
Ryan Milne, Associate Chief Accountant, Division of Corporation Finance

July 6, 2026

Via Electronic Mail (rule-comment@sec.gov)

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Semiannual Reporting, Release Nos. 33-11414; 34-105368; IC-36140; File No. S7-2026-15

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the proposal of the U.S. Securities and Exchange Commission (the "Commission" or "SEC") to amend Rules 13a-13 and 15d-13 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to permit reporting companies to elect to file semiannual reports on new Form 10-S in lieu of quarterly reports on Form 10-Q (the "Proposal").[2] The Proposal would also create a new Form 10-S, amend Regulation S-X to revise the rules governing the age of financial statements, and make conforming and technical amendments to numerous rules and forms that reference quarterly reporting.

One of SIFMA's committees, the Primary Markets Committee, consists of broker-dealers that act as underwriters, initial purchasers, placement agents, and dealers in the registered and unregistered securities offerings through which companies raise capital. In this letter, our comments focus on the practical effects the Proposal would have on the capital-raising process — in particular, on the customary due diligence and "comfort letter" practices on which the orderly execution of securities offerings depends — and identify a limited number of technical changes that we believe are necessary to ensure that the Proposal does not unintentionally impair capital formation, reduce the information available to investors, or increase potential securities law

[1] SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] *See Semiannual Reporting*, Release Nos. 33-11414, 34-105368, IC-36140, 39-2563; File No. S7-2026-15 (May 5, 2026), 91 FR 24968 (May 7, 2026) (the "Proposing Release" or "Proposal").

liability for our members. SIFMA AMG is submitting a separate letter that addresses SIFMA AMG members' views on the Proposal from an investor perspective as well as from a research analyst coverage and secondary market trading perspective.[3]

I. Introduction and Executive Summary

SIFMA supports efficient public capital markets and the Commission's objective of reducing unnecessary reporting burdens while preserving investor protection and capital formation.

From an underwriting perspective, SIFMA's concern is that the Proposal, as drafted, could unintentionally impair capital raising if semiannual filers cannot provide underwriters[4] and investors with customary comfort, current financial information, and diligence support at the time of an offering. Under existing professional standards, an underwriter's ability to obtain a customary comfort letter — and, with it, important support for the statutory due diligence defense — is tied to the existence of a recent audit or interim review by the issuer's independent accountants.[5] Because under the Proposal a semiannual filer would, by definition, have its interim financial information reviewed only twice a year, an issuer that has not voluntarily obtained a quarterly review could be unable to have its independent accountants provide customary comfort for significant periods of time of each fiscal year. The Commission itself recognizes this tension and requests comment on whether changes to Public Company Accounting Oversight Board ("PCAOB") standards are needed.[6] Without corresponding action by the PCAOB to adapt its

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[3] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms that manage more than 50% of global AUM. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

[4] For ease of reading, as used in this comment letter, the term "underwriters" refers to broker-dealers acting as financial intermediaries in SEC registered offerings (in which the broker-dealers are often referred to as "underwriters") for which liability under Section 11 of the Securities Act of 1933, as amended (the "Securities Act"), and Securities Act Section 12(a)(2) may attach and in "Rule 144A" and other non-registered primary offerings (in which the broker-dealers act as "initial purchasers" or "dealers") to which liability under Rule 10b-5 may attach.

[5] 15 U.S.C. § 77k. Securities Act Section 11 imposes liability for material misstatements in, or omissions from, a registration statement. Underwriters may establish a "due diligence" defense under Section 11(b)(3) by showing that, after reasonable investigation, they had reasonable ground to believe and did believe that the statements were true and not misleading. *See also* 15 U.S.C. § 77l(a)(2) Securities Act Section 12(a)(2) imposes liability for material untrue statement in, or omissions from, a prospectus. Underwriters may avoid liability by showing that they did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. Exchange Act Rule 10b-5 makes unlawful any material misstatements or omissions in connection with the purchase or sale of any security. While there is no explicit statutory due diligence defense to a claim under Rule 10b-5, "due diligence" can be used to rebut the existence of scienter or recklessness which is a judicially required element of Rule 10b-5. 17 CFR § 240.10b-5.

[6] *See Proposing Release, supra* note 2, Request for Comment No. 27 (asking whether, "to comport with semiannual reporting," changes are needed to AS 6101 "to permit independent public accountants to provide comfort letters expressing negative assurance on changes subsequent to the date and period of the latest financial statements").

auditing standards, and without clarifying guidance from the Commission concerning the mechanics of offerings by semiannual filers, the Proposal risks creating a two-tier public market in which companies that elect semiannual reporting face significant practical barriers for almost six months of a given year to accessing the capital markets opportunistically.

Accordingly, to the extent the Commission moves forward with the Proposal, SIFMA respectfully recommends that the Commission:

- coordinate with the PCAOB and other relevant parties (e.g., the American Institute of Certified Public Accountants) before adoption, and not finalize the rule — or at least not make it effective — until a workable comfort-letter framework is in place for semiannual filers;

- provide offering-specific guidance confirming how semiannual filers can conduct shelf takedowns, "at-the-market" ("ATM") and other continuous-offering programs, and other SEC registered and exempt capital-markets transactions without reducing customary diligence protections;

- preserve the current liability framework for voluntary quarterly earnings releases so that semiannual filers are not discouraged from continuing to provide quarterly information to the market;

- confirm that earnings releases furnished on Form 8-K can satisfy the "generally available" earnings-statement requirement under Section 11(a) of the Securities Act and Rule 158; and

- coordinate implementation with the national securities exchanges, banking regulators, and other authorities whose rules continue to reference quarterly reporting.

II. <u>Overview of the Proposal</u>

The Proposal would amend Exchange Act Rules 13a-13 and 15d-13 to allow a reporting company to elect to file one semiannual report on new Form 10-S, in lieu of quarterly reports on Form 10-Q, for the first three quarters of each fiscal year.[7] Form 10-S would require substantially the same narrative and financial disclosures as Form 10-Q but would cover a six-month fiscal period; the semiannual financial statements would be prepared in accordance with U.S. GAAP and reviewed by an independent accountant, though not audited.[8] A semiannual filer would have the

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[7] *See* 17 CFR § 240.13a-13 and 17 CFR § 240.15d-13. Under the current rules, reporting companies file three quarterly reports on Form 10-Q each fiscal year, with the fourth fiscal quarter subsumed within the annual report on Form 10-K.

[8] *See Proposing Release, supra* note 2. Form 10-S would require substantially the same narrative and financial disclosures as Form 10-Q but cover a six-month period.

same filing deadline as a quarterly filer — 40 or 45 days after the end of the period, depending on filer status.[9]

A reporting company would elect semiannual reporting by marking a check box on the cover page of its annual report on Form 10-K (or, for a newly public company, on the applicable Securities Act or Exchange Act registration statement), and would be required to renew that election each year.[10] The Proposal would also amend Regulation S-X to revise and consolidate the rules governing the age of financial statements so that a semiannual filer's financial statements are not treated as "stale" under requirements built around a quarterly cadence.[11]

From the perspective of the capital-raising process, three features of the Proposal warrant particular attention: (i) interim financial information would be prepared and reviewed only semiannually rather than quarterly; (ii) for much of the year, the most recent reviewed interim period could be more than four months old at the time an issuer seeks to access the capital markets; and (iii) the interaction of these changes with existing auditing standards, earnings-release practice, and the federal securities-law liability framework is not fully addressed in the Proposal. The balance of this letter addresses each in turn.

III. SIFMA's Principal Concern from an Underwriting Perspective: Preservation of Customary Comfort-Letter Practice

Securities offerings in the United States depend on a well-developed market practice in which underwriters conduct a reasonable investigation of the issuer and obtain a comfort letter from the issuer's independent accountants. That practice is not a mere convention; it is a direct consequence of the liability provisions of federal securities laws. Section 11 of the Securities Act imposes liability on underwriters for material misstatements in, or omissions from, a registration statement, subject to a "due diligence" defense available to an underwriter that, after reasonable investigation, had reasonable grounds to believe, and did believe, that the registration statement was accurate.[12] Section 12(a)(2) imposes liability on any person who offers or sells a security by means of a prospectus who "shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known" of the alleged untruth or omission of a material fact.[13] While there is no explicit statutory due diligence defense to a claim under Exchange Act

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[9] *See* Form 10-Q, General Instruction A.1 (large accelerated and accelerated filers must file within 40 days, and all other reporting companies within 45 days, after the end of the fiscal quarter). The Proposing Release would provide the same 40- or 45-day deadlines for Form 10-S, measured from the end of the first semiannual period.

[10] *See Proposing Release, supra* note 2 (a reporting company would elect semiannual reporting by marking a check box on the cover page of its Form 10-K (or, for newly public companies, the applicable registration statement), and would be required to make the election again each year).

[11] *See Proposing Release, supra* note 2 (proposing to amend Regulation S-X to revise the requirements governing the age of financial statements so that the financial statements of semiannual filers are not treated as "stale" under rules built along a quarterly framework, and to consolidate the age-of-financial-statements requirements in a single rule). *Cf.* 17 CFR § 210.3-12.

[12] Section 11(b)(3)(A) of the Securities Act, 15 U.S.C. § 77k(b)(3)(A).

[13] Section 12(a)(2) of the Securities Act, 15 U.S.C. § 77l(a)(2).

Rule 10b-5, a due diligence defense can be used to rebut an allegation of scienter or recklessness, which is a central element of 10b-5 liability.[14]

Comfort letters[15] are a central component of the reasonable investigation that underwriters undertake to establish the due diligence defense under the securities laws for financial information not itself required to be certified.[16]

The availability of customary comfort is governed by PCAOB Auditing Standard 6101. Under AS 6101 (*Letters for Underwriters and Certain Other Requesting Parties)*, when an accountant has not conducted a review of interim financial information in accordance with AS 4105 (*Reviews of Interim Financial Information*), the accountant may not comment in the form of negative assurance and is instead limited to reporting the procedures performed and findings obtained.[17] Even where a review has been performed, AS 6101 permits negative assurance as to subsequent changes in specified financial-statement items only "as of a date less than 135 days from the end of the most recent period for which the accountants have performed an audit or a review."[18]

These standards were calibrated to a quarterly-reporting regime, in which three AS 4105 reviews occur each fiscal year, creating regular review touchpoints approximately 90 days apart. This cadence ensures that, throughout the year, underwriters can generally obtain comfort from an issuer's independent auditors that falls within the 135-day window. For a company accessing the market on, for example, December of a given year, a third-quarter Form 10-Q reviewed as of September 30 would be available, and the accountant's comfort letter would cover the period from September 30 to the closing of the offering — a window well within 135 days.

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[14] 17 CFR § 210.10b-5. *See In re Software Toolworks, Inc. Securities Litigation,* 789 F. Supp. 1489 (N.D. Cal. 1992), aff'd in part, rev'd in part, 38 F.3d 1078 (9th Cir. 1994). ("As the Court previously found, the Underwriters carried out a reasonable investigation on all aspects of Toolworks . . . Their actions with respect to these alleged misrepresentation or omissions cannot be considered reckless.")

[15] *See PCAOB Auditing Standard 6101, Letters for Underwriters and Certain Other Requesting Parties*. As the Commission notes, comfort letters provide "negative assurance" — a statement that nothing came to the accountant's attention that caused it to believe the unaudited financial information is not fairly presented. *See Proposing Release, supra* note 2, at n.90.

[16] *See*, *Phillips v. Kidder, Peabody & Co.*, 933 F. Supp. 303, 323 (S.D.N.Y. 1996) (mem. op.), *aff'd*, 108 F.3d 1370 (2d Cir. 1997) (the underwriters "relied in large part on the cold comfort letters provided by Arthur Andersen"); and *In re WorldCom, Inc. Securities Litigation*, 346 F. Supp. 2d 628, 683–84 (S.D.N.Y. 2004) ("[i]n assessing the reasonableness of the investigation, [the underwriters'] receipt of the comfort letters will be important evidence, but it is insufficient by itself to establish the defense.")

[17] *See PCAOB Auditing Standard 6101,* ¶ *.37* (providing that when accountants have not conducted a review in accordance with AS 4105, they may not comment in the form of negative assurance)*; PCAOB Auditing Standard 4105, Reviews of Interim Financial Information*. *See also Proposing Release, supra* note 2, at n.92.

[18] *See* PCAOB Auditing Standard 6101, ¶ .46 (permitting negative assurance as to subsequent changes in specified financial statement items only as of a date less than 135 days from the end of the most recent period for which the accountants have performed an audit or a review); *See also Proposing Release, supra* note 2, at n.93.

Under semiannual reporting, that would no longer be the case. If a company elects semiannual reporting, the only AS 4105 review during the fiscal year occurs at mid-year, covering the six-month period ending, for a calendar-year company, on June 30. Form 10-S is due by August 9 (for large accelerated and accelerated filers) or August 14 (for other filers) following that period end.[19] Any offering that prices or closes more than 134 days after June 30 (i.e., any offering pricing or closing after approximately November 12) falls outside the window during which an accountant can provide negative assurance pursuant to current AS 6101, absent an additional AS 4105 review or an audit.[20] A similar problem would arise for offerings which occur more than 134 days after the end of the fiscal year. Thus, for the approximately six months each year (in the case of calendar year companies, from May 14 (134 days after December 31) until approximately August 15 (when the Form 10-S is filed) and from November 11 (134 days after June 30) until approximately February 15 or later (when the Form 10-K is filed)), a semiannual filer seeking to execute an offering would be unable to obtain conventional comfort with respect to its most recent financial information.[21] In the absence of customary comfort, investment banks would face substantial Section 11, Section 12 and Rule 10b-5 exposure and potentially be unwilling to serve as underwriters. The result is that, absent action by the PCAOB or the Commission, semiannual filers could be effectively unable to access the public or public-style private markets for a meaningful portion of each year or could be forced to incur the very quarterly review costs the Proposal is intended to eliminate. A rule that effectively forecloses conventional comfort for nearly six months out of the year would impose a significant structural disadvantage on any company that elects semiannual reporting and that also seeks to be an active capital markets participant or wants the flexibility to readily access the capital markets during favorable market windows.

The Commission expressly recognizes this issue. In Request for Comment No. 27, the Commission asks whether underwriters' requests for comfort letters would lead semiannual filers to continue to retain accountants to conduct quarterly reviews, and whether changes to AS 6101 are needed "to permit independent public accountants to provide comfort letters expressing negative assurance on changes subsequent to the date and period of the latest financial statements."[22] SIFMA believes this question goes to the heart of whether the Proposal will, in practice, facilitate or impede capital formation.

Moreover, revising the 135-day limitation, while necessary, would not by itself be sufficient to preserve customary comfort. A typical comfort letter includes "negative assurance" regarding changes in specified financial-statement items (for example, changes in net sales, in total or per-share income, or in long-term debt) since the date of the most recent reviewed or audited financial statements. Under AS 6101, accountants provide negative assurance for changes post-period end by reading and comparing the issuer's internal interim financial statements and

[19] *Proposing Release*, *supra* note 2, at 54.

[20] PCAOB AS 6101. The 135-day limitation runs from the end of the most recently *reviewed* period, not from the filing date of Form 10-S. Accordingly, for a calendar-year semiannual filer with a June 30 first-period end, the window closes on approximately November 12.

[21] The auditors would be able to give a comfort letter beginning on the date the 10-K is filed.

[22] *Proposing Release*, *supra* note 2, at 41.

underlying accounting records as of the relevant cut-off date.[23] In practice, where a company does not prepare interim financial statements for the relevant period (e.g., internal monthly financial statements), the accountants will be unable to provide this negative assurance.

This dependency on interim financial statements is particularly significant for semiannual filers. A company that elects semiannual reporting but continues to release only selected quarterly financial metrics without preparing the complete interim financial statements that underlie a comfort letter may still be unable to obtain negative assurance on subsequent changes, even if the 135-day constraint were eliminated. The relief needed to preserve customary comfort therefore extends beyond the timing limitation in AS 6101 ¶ .46: it also requires either that semiannual filers continue to prepare interim financial statements sufficient to support negative-assurance procedures, or that the Commission and the PCAOB identify an alternative basis on which accountants may provide comfort on the quarterly metrics that semiannual filers choose to disclose. SIFMA encourages the Commission and the PCAOB to address this practical dependency directly, so that the comfort-letter framework for semiannual filers is workable in fact and not merely in form.

SIFMA therefore recommends that the Commission not finalize the Proposal or, at a minimum, not make it effective, until the PCAOB has adopted or clarified standards that permit underwriters to obtain customary comfort in a semiannual-reporting environment. We would encourage the Commission and the PCAOB to consider, among other approaches, whether AS 6101 should be revised to permit an accountant to provide negative assurance based on interim financial information contained in a quarterly earnings release or similar disclosure, without requiring a full AS 4105 review of that information, and to revisit the 135-day limit as applied to semiannual filers. SIFMA and its members would welcome the opportunity to work with the Commission and the PCAOB on the technical aspects of any such changes.

IV. Due Diligence During Interim Periods

Beyond the comfort letter issue, semiannual reporting would affect underwriters' ability to conduct due diligence on changes in an issuer's business and financial condition during interim periods. The periodic reporting cadence is itself an important diligence input: quarterly reports give underwriters a regular, independently reviewed, and publicly available baseline against which to assess developments since the last audited or reviewed period. This is a particularly acute concern for companies in rapidly changing industries, undergoing significant operational transformation, or that are in the process of integrating acquisitions. With only semiannual reports, underwriters would have fewer such reference points and would need to rely more heavily on management representations and issuer prepared information. Auditors' review

[23] *See* PCAOB Auditing Standard 6101, ¶¶ .46–.50. The customary "subsequent changes" procedures contemplate that the accountants read the issuer's available interim financial statements and accounting records and make inquiries of company officials as of the cut-off date. Where no interim financial statements (such as internal monthly financial statements) exist for the comparison period, the accountants are limited to reporting the procedures performed and the findings obtained and cannot express negative assurance. *See also id.* ¶ .37.

of issuer financial statements serves as a critical step in the diligence process given their expertise in this area; expertise that the underwriters do not possess.

SIFMA recommends that the Commission address these issues in any final rule or accompanying guidance, and whether and under what circumstances a semiannual filer could voluntarily furnish quarterly financial information via Form 8-K to address information asymmetry without triggering the "filed" status consequences discussed in Section VI below.

V. Capital Formation and Offering Execution

Companies, both public and private, frequently access the capital markets opportunistically, launching offerings during narrow and sometimes unpredictable market windows. The ability to execute quickly depends on the issuer being "offering ready," including the availability of current financial information and customary comfort. Shelf takedowns under Rule 415, and in particular ATM and other continuous-offering programs, are especially sensitive to the absence of quarterly comfort, because they contemplate sales throughout the year on the strength of continuously available diligence support.[24] We note in this regard the Commission's recent registered offering reform proposal that would increase the availability of shelf registration statements to a broader category of issuers.[25]

For companies that are frequent issuers under Rule 415, this could mean that, for nearly six months of each fiscal year, the company cannot execute a takedown from its shelf without either (i) commissioning a voluntary quarterly audit review, (ii) waiting for the next Form 10-S or Form 10-K, or (iii) pressuring underwriters to proceed without conventional comfort — none of which is a satisfactory option. ATM programs are particularly implicated. Under an ATM equity distribution agreement, a company may sell shares into the market on an ongoing basis pursuant to a prospectus supplement linked to an effective shelf registration statement. Underwriters and sales agents acting under ATM agreements customarily receive comfort letters on a periodic or per-trade basis, and the ability to obtain ongoing comfort is often a condition precedent to the sales agent's obligation to sell. If a semiannual filer maintains an ATM program, the sales agent may be unwilling to sell after the 135-day comfort window closes following the last AS 4105 review or audit.

If a semiannual filer must, as a practical matter, obtain a voluntary quarterly review, prepare additional financial statements, or wait until its next Form 10-S or Form 10-K before launching an offering, the Proposal may impair rather than facilitate capital formation. Such issuers would face delays, execution risks, and the same recurring review costs that the Proposal is designed to remove. The proposed amendments to the Regulation S-X age-of-financial-statements rules would helpfully reduce the risk that a semiannual filer's financial statements are deemed

[24] *See* 17 CFR § 230.415 (shelf registration); 17 CFR § 230.405 (defining "well-known seasoned issuer"). ATM programs and other continuous offerings are conducted as takedowns off effective shelf registration statements and depend on the continuous availability of customary diligence support, including comfort letters.

[25] *See Registered Offering Reform*, Release Nos. 33-11418, 34-105513; File No. S7-2026-17 (May 19, 2026), 91 FR 31022 (May 26, 2026).

"stale" for registration statement purposes,[26] but those amendments do not address the separate comfort-letter constraint, which is a function of professional auditing standards rather than the age-of-financial-statements rules.

One area where additional staff guidance will likely be required is how to prepare pro forma financial information for companies with different reporting cadences. The Division of Corporation Finance Financial Reporting Manual provides guidance on preparing pro forma information in special situations,[27] including for companies with different fiscal years[28] and for acquisitions of foreign private issuers that report only six month interim financial information, but does not provide guidance for domestic companies with different reporting cadences.

SIFMA recommends that the Commission provide clear guidance on how semiannual filers can conduct the full range of customary capital-markets transactions — including shelf takedowns, marketed and overnight registered offerings, Rule 144A offerings, ATM and other continuous-offering programs, acquisition financings, and liability-management transactions involving the issuance of a new security — without losing customary diligence protections. To the extent any such transaction would, under the Proposal, require a voluntary interim review by an issuer's independent accountants, the Commission should make that expectation explicit so that issuers, auditors, and underwriters can plan accordingly. Finally, SIFMA recommends that the staff of the Commission provide guidance on the preparation of pro forma and other financial disclosure in the context of the combination of issuers with different reporting cadences.

VI. <u>Earnings Releases and the Liability Framework</u>

Many semiannual filers would likely continue to issue quarterly earnings releases, whether due to investor and analyst expectations, contractual obligations, index or data-vendor requirements, or established market practice. Voluntary quarterly disclosure of this kind benefits the market, and the framework governing it should not be structured in a way that discourages it.

Under current rules, an Item 2.02 earnings release is "furnished" rather than "filed," and is therefore not subject to Exchange Act Section 18 liability and is not automatically incorporated by reference into Securities Act registration statements.[29] The Proposing Release asks whether, for semiannual filers, Item 2.02 Form 8-K submissions should instead be "filed" — subjecting them to Section 18 (and potentially Securities Act Section 11 and Rule 10b-5) liability — and whether first- and third-quarter earnings-release information should be required to be reviewed by an

[26] While these staleness rules do not technically apply to Rule 144A and other exempt offerings, underwriters typically look to SEC rules for guidance on many issues, including the age of financial statements and thus these staleness concerns are relevant in those contexts as well.

[27] *See* Section 3300 of the Division of Corporation Finance Financial Reporting Manual.

[28] *See* Section 3301.1 of the Division of Corporation Finance Financial Reporting Manual.

[29] Item 2.02 of Form 8-K governs the disclosure of results of operations and financial condition. Information furnished under Item 2.02 is generally "furnished" rather than "filed," and therefore is not subject to Exchange Act Section 18 liability and is not automatically incorporated by reference into Securities Act registration statements. *See* Form 8-K, Item 2.02; 15 U.S.C. § 78r.

independent accountant.[30] SIFMA appreciates the investor-protection rationale for these questions, but cautions that mandatory "filed" status could discourage semiannual filers from voluntarily issuing quarterly earnings releases at all as it exposes them and their underwriters to liability without any corresponding comfort letter benefit, thereby reducing rather than increasing the information available to the market. Moreover, many earnings releases contain earnings guidance which neither the issuer nor its underwriters would want "filed" and subject to the liability provisions of Exchange Act Section 18 (and potentially Securities Act Section 11 and Rule 10b-5) liability.

Mandatory "filed" status would also compound the comfort-letter problem described in Part III. Filing an earnings release does not cause the underlying interim financial information to have been reviewed under AS 4105; absent such a review, the issuer's accountants still could not provide negative assurance on that information, even though investors and underwriters might now place greater weight on it.

SIFMA recommends that the Commission confirm, in any final rule or accompanying guidance, that semiannual filers may continue to furnish quarterly earnings releases on Form 8-K under Item 2.02 on a "furnished" basis, and that such voluntary quarterly disclosure does not trigger filing obligations under Rules 13a-13 or 15d-13. SIFMA further recommends that the Commission not finalize the Proposal until the PCAOB clarifies that such quarterly earnings releases or voluntary quarterly financial disclosures may be used as the basis for negative assurance in a comfort letter under AS 6101 without requiring those disclosures to be "filed" with the Commission.

VII. <u>Section 11(a) and Rule 158</u>

Section 11(a) of the Securities Act imposes strict liability on issuers, and potential liability on underwriters, for material misstatements and omissions in registration statements. Section 11(e) creates an affirmative defense for issuers and certain other persons in actions brought more than one year after the effective date of a registration statement, conditioned on the issuer having "made generally available to its security holders an earnings statement" covering the twelve-month period beginning after the effective date of the registration statement.[31] Rule 158 under the Securities Act provides that an annual report on Form 10-K, or a quarterly report on Form 10-Q containing the relevant twelve-month period, satisfies the "made generally available" requirement for purposes of this defense.[32] Underwriters of securities being issued by a semiannual filer would thus potentially have to wait an additional three months before being able to take advantage of the benefits afforded by Rule 158.

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[30] *See Proposing Release, supra* note 2, Requests for Comment Nos. 19 and 20 (asking whether Item 2.02 Form 8-K submissions should be "filed" rather than "furnished" for semiannual filers, and whether first- and third-quarter earnings release financial information should be reviewed by an independent public accountant).

[31] Section 11(a) of the Securities Act, 15 U.S.C. § 77k(a).

[32] Rule 158 under the Securities Act, 17 C.F.R. § 230.158.

Moreover, the interplay between Section 11(a), Rule 158, and semiannual reporting is unclear. As noted above, Rule 158 provides that the Section 11(a) earnings statement requirement will be met if the information is contained in one report or any combination of reports either on (i) Form 10-K, Form 10-Q, Form 8-K, or in the annual report to security holders pursuant to Rule 14a-3 under the Exchange Act, or (ii) on Form 20-F, Form 40-F, or Form 6-K.[33] While the Proposal would amend Rule 158 to add references to Form 10-S,[34] which is helpful, SIFMA recommends that the Commission go further and confirm that information contained in an earnings release <u>furnished</u> on Form 8-K satisfies the requirements of Rule 158 to qualify to make an earnings statement "generally available" for purposes of Section 11(a). Rule 158 currently provides that information contained in a <u>filed</u> Form 8-K satisfies the requirements of Rule 158 but also expressly permits a registrant to "use other methods" to make an earnings statement generally available; making explicit that <u>furnished</u> Forms 8-K would preserve the existing burden-shift mechanics without requiring issuers to alter their disclosure practices.

VIII. <u>Coordination With Other Regulatory Regimes</u>

Quarterly financial reporting is embedded in a wide range of legal and contractual regimes beyond the Commission's periodic-reporting rules. The rules of the national securities exchanges[35] and the reporting requirements of banking regulators[36] frequently reference quarterly periods or require the delivery of quarterly financial information. If the Commission adopts optional semiannual reporting without coordinated changes to these regimes, semiannual filers may remain subject to de facto quarterly information obligations, again undercutting the intended cost savings. The Commission acknowledges part of this concern in asking whether changes to exchange rules are necessary.[37]

SIFMA recommends that, before any compliance date, the Commission coordinate implementation with the national securities exchanges, the PCAOB, the banking regulators, and other relevant authorities, so that the various regimes that reference quarterly reporting are addressed in a consistent and orderly manner.

* * *

SIFMA supports efforts to improve the efficiency of the public-company reporting framework and appreciates the Commission's ongoing commitment to evaluating ways to reduce

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[33] 17 CFR § 230.158(a)(2)

[34] *See Proposing Release, supra* note 2 (proposing to amend Rule 158 to add references to Form 10-S).

[35] *See, e.g.*, NYSE Listed Company Manual § 203.01 (requiring prompt disclosure of material information), § 802.01E (treating failure to timely file a Form 10-Q as a listing delinquency); Nasdaq Listing Rule 5250(b) (periodic reporting obligations of listed companies).

[36] *See, e.g.*, 12 C.F.R. § 16.6 (requiring incorporation of Forms 10-Q into offering documents for certain bank-issued debt securities, commonly issued in reliance on an exemption provided in Securities Act Section 3(a)(2)).

[37] *See Proposing Release, supra* note 2, Request for Comment No. 29 (asking whether changes to the rules of securities exchanges are necessary or appropriate to effectuate semiannual reporting).

unnecessary regulatory burdens. However, investor protection and capital formation require a semiannual reporting regime that functions effectively in practice.

To the extent the Commission moves forward with the Proposal, SIFMA urges the Commission to:

1. **Condition effectiveness on PCAOB action.** Make the final rule effective only after the PCAOB has adopted or clarified standards permitting customary negative assurance in registered offerings by semiannual filers, including through the use of voluntary quarterly earnings releases or similar disclosures as a basis for providing negative assurance comfort.

2. **Clarify earnings release treatment.** Confirm that quarterly earnings releases by semiannual filers may be furnished on Form 8-K without triggering filing obligations or the liability consequences of "filed" status.

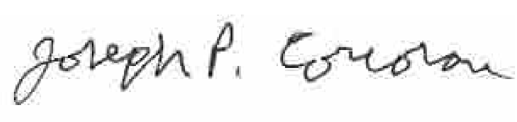
3. **Amend Rule 158.** Expressly provide that voluntary quarterly earnings releases furnished on Form 8-K, satisfy the Section 11(a) "made generally available" requirement for purposes of the limitations-period defense.

4. **Coordinate with other regulators.** Engage with the PCAOB, national securities exchanges, banking regulators, and other relevant authorities, and condition the compliance date of any final rule on the satisfactory completion of that coordination.

Without these safeguards, the Proposal could reduce the availability of standardized public financial information while simultaneously leaving active capital markets issuers subject to de facto quarterly-review costs — thereby undercutting both the intended cost savings and the Commission's capital formation goals.

SIFMA greatly appreciates the Commission's consideration of these comments, and to the extent the Commission moves forward with the Proposal, would welcome the opportunity to work with the Commission and the PCAOB on the technical amendments discussed above. If you have any questions or would like to discuss these comments further, please contact Joe Corcoran at (jcorcoran@sifma.org), or SIFMA's outside counsel on this letter, Eddie Best (EBest@willkie.com) at Willkie Farr & Gallagher LLP.

Sincerely,



Joseph P. Corcoran
Managing Director and Associate General Counsel, SIFMA

cc: The Honorable Paul S. Atkins, Chairman
The Honorable Hester M. Pierce, Commissioner
The Honorable Mark T. Uyeda, Commissioner
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