



June 7, 2024

Ms. Phoebe W. Brown
Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, DC 20006

Re: Proposing Release on *Firm Reporting* (PCAOB Release No. 2024-003, April 9, 2024; PCAOB Rulemaking Docket Matter No. 055)

Dear Ms. Brown:

The U.S. Chamber of Commerce (“Chamber”) Center for Capital Markets Competitiveness (“CCMC”) appreciates the opportunity to comment on the Public Company Accounting Oversight Board (“PCAOB” or “Board”) proposed rules on *Firm Reporting* (the “Proposal”). The Chamber urges PCAOB to withdraw this proposal.

The Proposal is a mix of more than three dozen requirements for registered audit firms to report to the PCAOB on firm operations, structures, financial performance, and quality controls. The Proposal represents a significant expansion in PCAOB audit firm reporting requirements for all registered audit firms – both active and inactive – with a combination of one-time, annual, and episodic information to be provided to the PCAOB on either a publicly available or confidential basis.

The Proposal claims that the proposed reporting requirements would facilitate informed decision-making and risk assessment by investors, audit committees, and other stakeholders; inform the PCAOB’s inspection, enforcement, and standard-setting activities; increase the standardization and comparability of information provided by registered audit firms; and improve the timeliness of information provided to the PCAOB, investors, audit committees, and other stakeholders.¹

However, these claims are not supported by persuasive evidence or analysis. The required disclosures are not needed by audit committees in their oversight of external audits or by investors for their voting and investment decisions. Further, the PCAOB already has access to necessary information and data to inform and facilitate its oversight activities, including through its registration and inspection processes and other requirements in its rules and standards.

¹ See the Proposal, pages 16 and 17.

Through this proposal, the Board is attempting to bootstrap authority it does not have. The Chamber agrees with dissenting Board Member Ho that mandating information the PCAOB has “no authority or ability to do anything about, could be reasonably construed as a gross overreach and an abuse of regulatory power.”²

We recommend that the PCAOB withdraw and reconsider the Proposal. Any new audit firm reporting requirements should be consistent with the PCAOB’s authority and remit, clearly necessary to carry out its mission, and confined to information incremental to what it now obtains through the registration and inspection processes.

Review of the Proposal

The Proposal includes an expansive set of new reporting requirements most of which apply to *all* registered audit firms, regardless of whether they provide audit services on issuer and/or broker-dealer engagements. The Proposal would:

- Revise annual reporting on Form 2 to require more information about a firm’s network arrangements, leadership and governance structure, fees collected, and client base;
- Implement a new Form 2 requirement for annual (albeit confidential) submission to the PCAOB of financial statements, prepared in accordance with generally accepted accounting principles (“GAAP”), by firms with more than 200 audit reports for issuer audit clients and more than 1,000 personnel during the relevant reporting period;³
- Revise Form 3 special reporting to reduce the timeframe for reporting to the PCAOB from 30 to 14 days (or more promptly as warranted) and expand the scope of special reporting to include (on a confidential basis) events that pose a material risk, or represent a material change, to the firm’s organization, operations, liquidity or financial resources, or provision of audit services;

² See the *Statement on the Firm Reporting Proposal – Are We Regulating the Audit Firms or Driving Out Competition?* by Board Member Christina Ho (April 9, 2024).

³ For years 1 and 2, the Proposal permits firms to provide financial statements that do not conform to GAAP provided they (1) identify the information that is not readily available but required by GAAP and (2) provide notes that would reconcile non-confirming financial statements to the applicable financial reporting framework. See the Proposal, pages 25 and 26. The Proposal does not address how to reconcile these apparently mutually exclusive provisions.

- Material events and matters include, *but would not be limited to*, those that have or are reasonably likely to materially impact the firm’s total revenue; determinations of substantial doubt about the firm’s ability to continue as a going concern; planned or anticipated acquisition of the firm, change in control, or restructuring and planned acquisition or disposition of assets or an interest in an associated entity; entering into or disposing of a material financial arrangement that would affect firm liquidity or financial resources; actual or anticipated non-compliance with loan covenants; material changes in insurance or loss reserves and material changes related to captive insurance or reinsurance policies; material changes in the amount of unfunded pension liabilities; plans that would cause a material change to the firm’s operations or provision of services (e.g., spinoffs or severing a portion of the business for private equity involvement); a new or change in licensure or certifications not identified on Forms 1 or 3; a change in principal executive officer; and any other planned or anticipated material amendments or changes to the firm’s organization, legal structure, or governance.⁴
- Implement new cybersecurity reporting requirements, including reporting to the PCAOB of significant cybersecurity incidents within five business days on a confidential basis and public reporting of a description of a firm’s policies and procedures, if any, to identify, assess, and manage cybersecurity risks; and
- Implement a new Form QCPP, “Update to the Statement of Applicant’s Quality Control Policies and Procedures,”⁵ to update the firm’s quality control policies currently provided in a firm’s Form 1 application for registration.⁶

Concerns

PCAOB Remit and Oversight

⁴ See the Appendix of the Proposal, pages xiii and xiv.

⁵ A rule to implement a new Form QCPP should have been proposed in conjunction with the PCAOB adopting the standard on *Quality Control* (“QC 1000”) on May 13, 2024. Nonetheless, it can be separately proposed by the Board.

⁶ See the Proposal, pages 5 and 6.

PCAOB Authority

In accordance with the Sarbanes-Oxley Act of 2002 (“SOX”) (as amended), the PCAOB oversees the audits of public companies and broker-dealers registered with the Securities and Exchange Commission (“SEC” or “Commission”) to protect investors and further the public interest in the preparation of informative, accurate, and independent audit reports.⁷ As Chair Williams emphasized, the PCAOB serves this mission “by driving audit quality forward” through its registration, standard-setting, inspection, and enforcement activities.⁸

Yet, the Proposal does not “drive audit quality forward,” as it is untethered to audit quality. For example, Board Member Ho emphasized that “... there are no clear and direct linkages between the proposed new reporting requirements and audit quality.”⁹ This disconnection from the PCAOB’s remit and core responsibilities represents a fatal flaw in the Proposal.

The Proposal claims the proposed requirements would facilitate PCAOB monitoring of firms for risks or issues that, individually or taken together with other factors, many affect the ability of firms to conduct quality audits and may potentially affect the broader market for audit services.¹⁰ Rather than focusing on audit quality, the Proposal is focused on registered firms providing information to facilitate PCAOB monitoring of audit firm operations and financial stability. However, SOX does not give the PCAOB authority to tell audit firms how to run their businesses and monitoring audit firm financial stability and market risk is not within the PCAOB’s remit.

SOX does give the PCAOB some authority to require audit firms to provide (disclose) information in audit firm filings with the PCAOB. For example, SOX Section 102(b)(2)(A) through (H) specify the contents of registration applications and updates with the Board. None of the proposed requirements are covered under SOX Sections 102(b)(2)(A) through (G). Section 102(b)(2)(H) provides for “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.”¹¹ Nonetheless, Section 102(b)(2)(H) does not extend to information outside the PCAOB’s remit. As noted by

⁷ See SOX Section 101(a).

⁸ For example, see the *Message from the Chair* in the PCAOB 2023 Annual Report (page 4).

⁹ See the *Statement on the Firm Reporting Proposal – Are We Regulating the Audit Firms or Driving Out Competition?* by Board Member Christina Ho (April 9, 2024).

¹⁰ See the Proposal, page 5.

¹¹ See SOX Section 102(b)(2)(H).

Board Member Ho, the PCAOB's authority for requiring information from audit firms is not "open-ended."¹²

Further, the Chamber agrees with Board Member Ho that "[m]onitoring financial stability of a specific marketplace that could impact broader U.S. financial stability is the role of the Financial Stability Oversight Council ("FSOC") in which the PCAOB is not a member."¹³ Congress did not see the need to bring the PCAOB into the FSOC framework or, for that matter, emphasize that need within the SEC's FSOC role. Congress and the government have not determined that audit firms present systemic risk.

While the PCAOB relies on recommendations in the *Final Report of the Department of the Treasury Advisory Committee on the Auditing Profession* ("ACAP") (October 6, 2008) as a basis for the Proposal, FSOC was created several years after issuance of the ACAP report. Recommendations for the PCAOB to collect information from firms and monitor financial stability or "catastrophic risk" need to be reconsidered and recalibrated through the lens of subsequent events.

Moreover, along with being unconstrained by determinations of PCAOB authority, ACAP recommendations are, by definition, advisory. In addition, as Board Member Ho emphasized, the Proposal "makes no attempt to be transparent about the PCAOB process and criteria for evaluating the firms' level of financial distress."¹⁴

The economic analysis section of the Proposal acknowledges that "[t]he proposed disclosures and confidential reporting are not intended to prevent potential failure of a large firm, but they would provide information to the Board to monitor transient market disruptions that could result until the market establishes a new equilibrium."¹⁵ Burdening all registered audit firms with extensive, on-going reporting requirements, to allow the PCAOB to sit on the sidelines in a "more informed position" in case a significant market event unfolds sometime in the future, involves regulatory overreach and will only lead to questions of "where is (was) the audit regulator?"

The Proposal imposes requirements for audit firms to provide the PCAOB with information outside the PCAOB's remit, which the Board has no authority or ability to act upon – creating reputational risk for the PCAOB. The Proposal is setting up

¹² See the *Statement on the Firm and Engagement Metrics Proposal – Helpful or Harmful to Investors?* by Board Member Christina Ho (April 9, 2024).

¹³ See the *Statement on the Firm Reporting Proposal – Are We Regulating the Audit Firms or Driving Out Competition?* by Board Member Christina Ho (April 9, 2024).

¹⁴ *Ibid.*

¹⁵ See the Proposal, page 68.

expectations that the PCAOB cannot fulfill, while saddling future Board members and staff in the process.

Confidentiality

The Chamber appreciates the Proposal specifies that audit firms provide certain information on a confidential basis, including financial statements from the largest firms, special reporting of material matters and events, and cybersecurity incident information.¹⁶ As discussed, much of this type of information is already provided to the PCAOB through the inspection process.

SOX Section 105(b)(5)(A) provides that all documents and information prepared or received by the Board and deliberations of the Board, its employees, and agents in connection with inspections and investigations shall be both confidential and privileged and “shall not be subject to civil discovery or other legal process.”¹⁷ The Proposal needs to clarify that this provision of SOX applies to any information or data reported to the PCAOB on a confidential basis. The Board must not use rulemaking to circumvent the intent of SOX.

Further, the PCAOB is proposing not to allow firms to request confidential treatment for other required disclosures.¹⁸ The Chamber is concerned that this preclusion is neither fair nor reasonable. SOX recognizes the role of confidential information in registration, inspections, investigations, and disciplinary proceedings, including the importance of the PCAOB maintaining the confidentiality of proprietary, personal, or other information.¹⁹

The PCAOB should allow audit firms to request confidential treatment of the other required public disclosures and evaluate these requests on a case-by-case basis. The PCAOB should not use the Proposal to circumvent SOX or other applicable laws.

Confidentiality and Academic Access to Data

¹⁶ For example, see the Proposal, page 20.

¹⁷ See SOX Section 105(b)(5)(A).

¹⁸ For example, see the Proposal, pages 19 and 20.

¹⁹ For example, see SOX Sections 102(e), 104(f) and 105(b)(5).

Related to confidentiality concerns, the Proposal claims the benefits of the proposed requirements include that the data will “provide valuable information ... for academic research” and “[i]mproved research quality is an important benefit [of the Proposal] because it contributes to the PCAOB’s standard-setting and rulemaking projects.”²⁰ Setting aside that providing data for academic research can hardly be used as a justification for imposing burdensome and problematic reporting requirements on audit firms, the Proposal does not reveal that the PCAOB makes confidential data available to third-party academics for their personal research purposes. The Proposal provides no indication that academic access to PCAOB data will *not* include the confidential data on material events and matters, cyber security incidents, and large firm financial statements.

To explain, the PCAOB has an Academic Fellow Program (“AFP”). Under the AFP, the PCAOB selectively allows designated academics access to confidential PCAOB data for their personal research studies – i.e., the studies are proposed and conducted by individual academics or an academic team working (and co-authoring) with the AFP. To become a PCAOB Academic Fellow and obtain access to confidential PCAOB data, an academic submits a research proposal to the PCAOB. The proposals undergo an internal review process whereby Board-level approval occurs before the PCAOB allows access to confidential data. Working papers developed from the research projects are also subject to internal review and Board-level approval before being made publicly available. None of these internal PCAOB processes have any transparency.²¹

Based on information on its website, the PCAOB has supported over two dozen academic studies giving researchers access to confidential audit firm data from PCAOB inspection findings (including issuer identity and Part II findings) and data provided to the PCAOB by audit firms during the inspection process. For example, confidential firm and engagement level data provided to academics include audit hours, audit partner and engagement quality reviewer hours, realization and profitability data, audit firm internal inspection data, audit firm internal data on partner assignments and partner characteristics, audit firm risk assessments at the engagement level, characteristics of audit engagement teams and members, data on component audits and auditors, audit adjustments and materiality assessments, information about the issuer IT environments over financial reporting, and technology-based audit tools used on issuer engagements.

²⁰ See the Proposal, pages 17 and 68.

²¹ Because of the unknown constraints imposed by the PCAOB and the inability of other researchers to replicate the studies, the research does not comport with what is traditionally viewed as independent research where a funding provider “lets the chips fall where they may.”

The inspected (registered) audit firms that provide these confidential data to the PCAOB have no voice in the use of their data by the PCAOB, the merits of the research projects, or the research findings. The PCAOB does not obtain audit firm approval for use of their confidential data by third parties. While the academic studies may not identify individual audit firms or engagements, studies do focus on small subsets of firms such as Big Four firms, U.S. global network firms (“GNFs”), and larger firms that are not GNFs – not just annually and triennially inspected firms.

The PCAOB’s approach to confidential data in regard to academic access raises questions about whether it comports with SOX and requirements for the treatment of confidential information under the laws and regulations of all relevant foreign jurisdictions. Moreover, the PCAOB should consider whether its own practices conflict with those followed by industry participants, in accordance with professional standards requiring them to ask for consent before sharing information with third parties.²²

While the Chamber supports the importance of independent academic research to inform regulatory policy and activities, the PCAOB’s approach is problematic. It is not tethered to the PCAOB’s mission and it should not be at the expense of violating audit firm confidentiality. The PCAOB’s approach to confidential information should comply with both the letter and spirit of SOX and the laws and regulations of all relevant foreign jurisdictions. Moreover, from the standpoint of both fairness and perception, the PCAOB’s treatment of confidential audit firm data should not be less rigorous than the profession’s approach to confidential client data.²³

Conflict of Laws

Relatedly, the PCAOB should not invoke a blanket provision that prohibits audit firms from ever asserting any conflicts of laws. It is not just a matter of whether the PCAOB does not currently foresee that any extant non-U.S. laws conflict with public disclosure of the proposed information.²⁴ Rather, the crux of the matter is that the PCAOB cannot foresee what laws may be enacted in the future that would present conflicts. PCAOB rules should serve the test of time. Thus, the appropriate approach for the PCAOB to take is not to preclude conflict assertions, but to evaluate them on a case-by-case basis in the unlikely event they occur in the future.

²² See the American Institute of Certified Public Accountants (“AICPA”) Code of Professional Conduct Confidentiality Rule, Section 7216 (2014). Confidential client information, which is any information obtained from a client not available to the public, requires client permission for use by third parties, even if the information is presented in a manner that the specific clients cannot be identified.

²³ This rules out the PCAOB using a “blanket permission” approach requesting each registered and/or inspected audit firm give the PCAOB permission to use firm data for academic research.

²⁴ See the Proposal, pages 21 and 22.

Economic Considerations and Consequences

Need – Overarching Comments

In addition to not comporting with the PCAOB's remit, the Proposal lacks any adequate justification of the need for the large volume of required information. The Proposal provides no information or insights on what, why, or how the PCAOB will use the data or how the data will inform the PCAOB's processes and activities (in accordance with its remit). For example, it is unlikely the PCAOB needs the data for registered but inactive firms and the PCAOB already has access to any relevant and appropriate data for active firms. Why impose such extensive disclosure requirements through rulemaking when the PCAOB can and does request any necessary information through the inspection process?

The Proposal also claims that investors need the proposed disclosures to inform their decisions to vote on shareholder ratification of audit committee (board) appointment of the external auditor and allocate capital.²⁵ These claims are not credible. Regarding the latter, the information publicly disclosed by the proposed requirements is unrelated to companies' value creation activities or gauging shareholder returns on investments.

Further, shareholder ratification of the appointment of the auditor is not statutorily required in the U.S. and in many cases the ratification vote is non-binding; it is rare for shareholders to not ratify the audit committee (board) selection;²⁶ rather, shareholders reasonably rely on audit committees to fulfill their responsibilities and regularly engage with the auditors.²⁷

The proposed public disclosure requirements are not material information for investors – for either their voting or capital allocation decisions. Materiality is a bedrock standard of the U.S. capital markets²⁸ and prevents regulators and others from using disclosures to pursue objectives that may be at odds with investor interests.²⁹ The proposed public disclosure requirements do not meet the threshold criteria for material information in accordance with seminal Supreme Court decisions

²⁵ For example, see the Proposal, page 60.

²⁶ For example, Glass Lewis typically supports voting for auditor ratification "except when we believe the auditor's independence or audit integrity has been compromised." See the Glass Lewis *2024 Benchmark Policy Guidelines – United States* (page 49).

²⁷ See the *Statement on the Firm and Engagement Metrics Proposal – Helpful or Harmful to Investors?* by Board Member Christina Ho (April 9, 2024).

²⁸ For example, see U.S. Chamber of Commerce Center for Capital Markets Competitiveness, *Essential Information: Modernizing Our Corporate Disclosure System* (Winter 2017).

²⁹ See U.S. Chamber of Commerce Center for Capital Markets Competitiveness "Effective, Material Corporate Disclosure Is the Cornerstone of U.S. Capital Markets" by Evan Williams (October 13, 2022).

on materiality.^{30,31} These cases held that a fact is material if “there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote³² and that a fact is material if there is “a substantial likelihood that the ... fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”³³

Claims in the Proposal that audit committees need the proposed public disclosures “to efficiently and effectively compare firms in their appointment and monitoring efforts”³⁴ likewise lack credibility and evidential support. Audit committees are functioning effectively. They are not asking for and do not need the proposed public disclosures to carry out their oversight and monitoring responsibilities.

Audit committees already have both bargaining power and a contractual relationship with their selected audit firm that gives them direct and timely access to any necessary information.³⁵ Audit committees also have access to any relevant peer information for comparisons with their audit firm, including when considering changing/rotating audit firms. These data are available either from publicly available sources,³⁶ including in audit quality and transparency reports by the larger firms, or by requesting any relevant (non-public data) from each potential audit firm.

Need – GAAP Financial Statements

Claims in the Proposal that the PCAOB needs audit firms to furnish GAAP financial statements are not credible either. It is noteworthy that SOX does not specify that audit firms (even larger audit firms) provide the PCAOB with any financial statements – let alone those prepared under a particular reporting framework. The silence of SOX on this matter should be given weight, as Congress could have required such disclosures but chose not to.

Otherwise, while setting aside that the PCAOB does not have the authority to tell audit firms how to run their businesses or monitor systemic risk, the PCAOB

³⁰ See *TSC Industries Inc. v Northway Inc.*, 426 U.S. 438, 449 (1976).

³¹ See *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988).

³² *Supra* Fn. 30

³³ *Supra* Fn. 31

³⁴ See the Proposal, page 60.

³⁵ For example, see the *Statement on the Firm and Engagement Metrics Proposal – Helpful or Harmful to Investors?* by Board Member Christina Ho (April 9, 2024).

³⁶ Under its rules and standards, the PCAOB already requires registered audit firms to disclose a large amount of firm and engagement level data annually or otherwise (some of which is in accordance with SOX Section 102). Reporting occurs on various forms that are publicly available on the PCAOB website (such as Form 2, Form 3, and Form AP), while critical audit matters (“CAMs”) are included in the auditor’s report. In addition, the PCAOB publishes inspection reports for annually and triennially inspected audit firms with engagement level data and disclosures.

already has access to financial statement-related information from the larger audit firms. The Proposal acknowledges PCAOB staff have “requested and received through the inspection process, financial statements for the U.S. global network firms (GNFs) to understand changes at these firms that may affect audit quality or the provision of audit services.”^{37, 38}

The Proposal explains that U.S. GNFs compile financial statements on a non-GAAP or modified GAAP basis using accrual accounting.³⁹ These financial statements reflect the way the firms run their businesses and, therefore, are more appropriate and useful for the PCAOB than general-purpose GAAP financial statements focused on investors (i.e., to the extent that audit firm financial statements are appropriate and useful for PCAOB oversight at all).

The Proposal notes that U.S. GNFs full financial statements do not provide any disaggregated information at the service line level (i.e., assurance, tax, and consulting).⁴⁰ The Proposal requires larger audit firms to provide GAAP financial statements (balance sheet, income statement, and cash flow statement) that:

... should delineate by service line (i.e., audit services, other accounting services, tax services, and non-audit services subject to PCAOB oversight). ... For example, firms should consult applicable financial reporting requirements when delineating financial information by service line for rules on segment reporting.⁴¹

This is a confusing requirement – it is not clear if the PCAOB appreciates that audit firms do not meet the definition of public entities as defined in the Financial Standards Board (“FASB”) Accounting Standards Codification (“Codification”) Master Glossary. Therefore, *Segment Reporting Topic 280* in U.S. GAAP does not apply to audit firms. For the PCAOB, as the audit firm regulator, not to grasp this point is troubling.

Perhaps the Proposal intends that the larger audit firm financial statements comport with *Segment Reporting Topic 280* anyway. If so, this is problematic because *Segment Reporting Topic 280* specifies that disclosures for reportable segments

³⁷ See the Proposal, page 49.

³⁸ The proposed requirement for GAAP financial statements is also rendered irrelevant by the proposed requirements for confidential reporting of material events and matters, which cover a wide swath of activities to be reported to the PCAOB within short timeframes rather than annually. Nonetheless, consistent with previous discussions, the PCAOB already has access to appropriate data on material events and matters and not all the proposed data requirements comport with the PCAOB's remit.

³⁹ See the Proposal, page 49.

⁴⁰ Ibid.

⁴¹ See the Appendix to the Proposal, page ii.

largely reflect amounts in accordance with those used by, or regularly provided to, the chief operating decision maker (“CODM”). For audit firms, the amounts provided to CODMs are non-GAAP and, as previously noted, could be provided by firms to the PCAOB through the inspection process (if any such request comports with the PCAOB’s authority and remit).

In summary, the PCAOB does not have the authority to tell audit firms how to run their businesses or monitor systemic risk, although these appear to be the rationale for the proposed requirement for GAAP financial statements. Further, the proposed requirement for larger audit firms to provide GAAP financial statements to the PCAOB are unrealistic, unnecessary, and unworkable.

Burdensome and Costly Reporting Requirements

The proposed reporting requirements are burdensome and costly – and these costs will have ripple effects through the capital markets, including through increased audit fees. Yet, the Proposal provides no quantification of the costs of the increased reporting requirements or the estimated reporting and recordkeeping costs. The Chamber shares Board Member Ho’s concerns about this lack of data and evidential support.⁴² The Proposal is fatally flawed in this regard.

Adhering to the principles of the Paperwork Reduction Act of 1950 (“PRA”) is a best practice for a model regulatory organization.⁴³ As described by Board Member Ho, the PRA is designed to reduce the paperwork burden the federal government imposes on private businesses and “not overwhelm them with unnecessary or duplicative requests for information” and to ensure that the data collected are “accurate, helpful, and a good fit for its proposed use.”⁴⁴

The Proposal includes a discussion of how the PCAOB “worked around” the PRA requirements. For example, the PCAOB staff “considered a survey of firms to directly collect data regarding burden hours and decided to include a question in the Proposal instead.”⁴⁵ This approach is hardly an appropriate substitute. As subsequently discussed, the PCAOB is inundating stakeholders with requests for comments on proposed rules and standards under short comment periods during

⁴² See the *Statement on the Firm Reporting Proposal – Are We Regulating the Audit Firms or Driving Out Competition?* by Board Member Christina Ho (April 9, 2024).

⁴³ In 2013, the PCAOB sought to be a model regulatory organization according to *Our Vision* on the PCAOB website. Further, the PRA provisions apply to the SEC, which must approve PCAOB standards and rules before they can go into effect, in accordance with SOX.

⁴⁴ See the *Statement on the Firm Reporting Proposal – Are We Regulating the Audit Firms or Driving Out Competition?* by Board Member Christina Ho (April 9, 2024).

⁴⁵ See the Proposal, page 80.

otherwise demanding and challenging times. Few registered audit firms have the time and resources to comment on PCAOB proposals – particularly smaller and inactive audit firms.

The economic analysis for the Proposal is fatally flawed in not obtaining the necessary evidence – both quantitative and qualitative – to fully understand and consider the costs and consequences of the proposed requirements prior to advancing them for public comment.

Reduced Competition

The Chamber is very concerned about the consequences of the Proposal for competition in the market for audit services, including the smaller audit firm market that serves smaller issuers and broker-dealers, along with private companies that plan to engage in public offerings. As of December 31, 2023, about 1,600 audit firms were registered with the PCAOB, of which about 570 were active – i.e., these firms signed opinions for issuers, broker-dealers, or both – and another 74 played a substantial role in such audits.⁴⁶

The proposed requirements burden *all* registered audit firms with additional reporting, both active and inactive firms. As a result, the Proposal reduces incentives for smaller audit firms to register with the PCAOB and/or maintain their registration, for inactive firms to become active, and for active firms to stay active. As recognized by Board Member Ho, the economic analysis in the Proposal fails to adequately address these concerns,⁴⁷ including the effects on initial public offerings and going private activities.

The SEC has various rule requirements and proposed rules for the use of PCAOB registered and inspected audit firms that apply to other than issuers and broker-dealers.⁴⁸ However, the PCAOB fails to consider the consequences of the Proposal on these segments of the market and the ability of non-issuers/non-broker-dealers to engage the required audit firms and comply with the rules the SEC imposes on these entities.

The Chamber's concerns about competitive effects of the Proposal also extend to the large firm market for audit services. The proposed requirements for larger audit

⁴⁶ See the Proposal, page 45.

⁴⁷ See the *Statement on the Firm Reporting Proposal – Are We Regulating the Audit Firms or Driving Out Competition?* by Board Member Christina Ho (April 9, 2024).

⁴⁸ For example, see the SEC Final Rules on *Private Fund Advisers: Documentation of Registered Investment Advisers Compliance Reviews* (S7-03-22, IA-6382; August 23, 2023) and the SEC Proposed Rule on *Safeguarding Advisory Client Assets* (88 Fed. Reg. 14,672-14,792; March 9, 2023).

firms to provide GAAP financial statements to the PCAOB are costly and will reduce incentives for larger audit firms to take on issuer audit engagements – to avoid exceeding the specified 200 audit report threshold – and grow their practices – to avoid exceeding the threshold of 1,000 personnel.

The Proposal fails to adequately consider the effects of the proposed requirements on competition and concentration in both the larger and smaller segments of the audit market.

Other Consequences

The Proposal continues the Board’s standard-setting and rulemaking activities that focus on auditor accountability and facilitate inspection findings, regulatory enforcement, and actions by plaintiff attorneys in securities litigation. Accordingly, the Proposal exacerbates audit firm litigation and reputation risks and costs, which likewise need adequate consideration and analysis.

For example, the Proposal presents a myriad of circumstances for “foot faults” in adhering to the proposed requirements, including those related to the timing of filing the proposed information. These “foot faults” could easily be used by the PCAOB to cull out inactive audit firms from PCAOB registration or preclude them from becoming active, in addition to serving as a basis of enforcement against active firms.

Further, the Proposal moves the PCAOB farther down the path of contributing to a regulatory environment that undermines the attractiveness of public company auditing, specifically, and the accounting profession, generally. As such, the Proposal will exacerbate staffing challenges for both audit firms and preparers – not just in the near-term, but down the road. These consequences also need adequate consideration and analysis.

Other Matters

The Proposal continues the Board’s push of an aggressive rulemaking and standard-setting agenda on a “one-off” basis with unrealistically condensed comment periods and without any holistic considerations, including considerations related to logical sequence, interactions, compounding effects, and effective dates.

The Proposal represents a confluence of all these issues, which are particularly acute considering the Proposal vis-à-vis the PCAOB’s *Quality Control* (“QC 1000”) standard-setting activities. Some proposed reporting requirements duplicate those proposed in QC 1000, while others are inconsistent with those in QC 1000 as

proposed. To add to the confusion, the PCAOB adopted a final QC 1000 standard on May 13, 2024, more than a month after issuing the Proposal for public comment. Commenters now must reconsider the Proposal based on the adopted QC 1000 standard, which has a final release that runs to 465 pages.⁴⁹

This is an unreasonable and burdensome approach to standard-setting by the PCAOB. A disclosure proposal that interacts to such an extent with QC 1000 should follow the finalization (and implementation) of QC 1000 not precede it.⁵⁰

The Board continues to fail to address a larger issue as to the effective dates of its proposals. Similar to most other standard-setting and rulemaking proposals in the last few years, the PCAOB is proposing an effective date in the year after the year in which SEC approval of a final rule is obtained. Clustering effective dates for multiple proposals in this fashion is unreasonable and unworkable. The PCAOB should take a holistic approach to considering effective dates for its proposals. Consistent with its mission to “grow audit quality,” the Board should be supporting smooth and effective implementation of new rules and standards – not undermining the ability of firms to do so.

Further, the Board’s aggressive standard-setting and rulemaking agenda is also overwhelming stakeholders with short comment periods, in addition to the clustering and sequencing problems. PCAOB proposals are lengthy and complex. For example, the Proposal consists of 107 pages of text with comments due in 60-days and it was issued in conjunction with another proposal consisting of 237 pages of text with a similar comment period.⁵¹

Adding to the burden of commenters, in addition to QC 1000, the PCAOB adopted another standard – *General Responsibilities of the Auditor* (“AS 1000”) – on May 13, 2024. The SEC will publish both QC 1000 and AS 1000 for public comment. Given all these considerations, the PCAOB comment period for the Proposal is inadequate and reduces the likelihood that the PCAOB will receive the breadth and depth of necessary comments.

An appendix provides additional insights on these issues. The appendix reveals that the PCAOB has proposed eight standards or rules since November 2022. While the pages of text for commenters to review varies from 35 to 394 pages, all the

⁴⁹ As reported in the appendix, the Form 19b-4 for QC 1000 filed with the SEC on May 24, 2024 runs to 2,801 pages.

⁵⁰ See the *Statement on the Firm Reporting Proposal – Are We Regulating the Audit Firms or Driving Out Competition?* by Board Member Christina Ho (April 9, 2024).

⁵¹ See the Proposal on *Firm and Engagement Metrics* (April 9, 2024).

proposals involve complex matters that require time to consider. Yet, comment periods are short – only 45 to 75 days (without considering holidays).

In addition, the appendix shows that the SEC likewise allows very short periods for comments on adopted PCAOB standards and rules before SEC approval. For the two standards approved by the SEC since June 2022, comment periods were three weeks from publication in the Federal Register and 30 to 40 days from Board adoption. While the SEC approval process faces time constraints, it also gives the appearance of being perfunctory and a rubber stamp. The PCAOB and SEC should work together to ensure that commenters have adequate time to review and comment on PCAOB adopted standards and rules before the SEC finalizes them.⁵²

The Board and the SEC should heed the warning on the pace of rulemaking from the SEC’s Inspector General, who found in a recent report that speed was prioritized over substance at the SEC, depriving even the Commission’s own staff of the time needed to develop thoughtful, properly tailored rule proposals. The report from the SEC’s Inspector General highlighted concerns from managers in numerous SEC divisions that the Commission’s “more aggressive [rulemaking] agenda” has “limit[ed] the time available for staff research and analysis.”⁵³ The staff has not “received as much feedback during the rulemaking process, either as a result of shortened timelines during the drafting process or because of shortened public comment periods.”⁵⁴ The staff has also been rendered shorthanded, and thus has been “relying on detailees, in some cases with little or no experience in rulemaking.”⁵⁵ The SEC and PCAOB should proceed at a more manageable pace that ensures stakeholders are able to provide the input needed by the Board and Commission, and which gives both the time required to do their important jobs properly.

Recommendations and Concluding Remarks

The Proposal is inconsistent with the PCAOB’s authority and not tethered to its mission to maintain and improve audit quality. The Proposal imposes costly, burdensome, unnecessary, and unreasonable disclosure requirements on all registered audit firms. Further, the Proposal does not meet the threshold requirements for economic analysis and consideration of need, benefits, costs, consequences, and alternatives. The Proposal represents regulatory overreach.

⁵² For example, the PCAOB could delay in filing a Form 19b-4 with the SEC to give stakeholders adequate time to read and consider the adopted standards and allow an informed basis for providing comments to the SEC. See the letter from the CAQ to the PCAOB on *Proposing Releases Firm and Engagement Metrics and Firm Reporting* dated May 22, 2024.

⁵³ The Inspector General’s Statement on the SEC’s Management and Performance Challenges 3 (Oct. 13, 2022), <https://www.sec.gov/files/inspector-generals-statement-sec-mgmt-and-perf-challenges-october-2022.pdf>.

⁵⁴ *Id.*

⁵⁵ *Id.*

Ms. Phoebe W. Brown
June 7, 2024
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The Chamber strongly recommends that the Board withdraw the Proposal and reconsider it. Any new audit firm reporting requirements should be consistent with the PCAOB's authority and remit, clearly necessary to carry out its mission, and confined to information incremental to what it now obtains through the registration, inspection, standard-setting, and enforcement processes.

Thank you for your consideration and we stand ready to discuss these matters with you further.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

Appendix

Overview of PCAOB Standard-Setting and Rulemaking Proposals and Adopted
Standards and Rules from June 2022 to May 2024

Amendments Relating to the Supervision of Audits Involving Other Auditors and Dividing Responsibility for the Audit with Another Accounting Firm (Docket 042)
(June 21, 2022) Adopted by the Board (185 pages)
(July 1, 2022) Published for comment in the Federal Register
(July 22, 2022) SEC comment period ended
(August 12, 2022) SEC approved

Amendments effective for audits of financial statements for fiscal years ending on or after December 15, 2024 and include audits of EGC's and broker-dealers.

Auditing Standard Related to Confirmation and Related Amendments to PCAOB Standards (Docket 028)

(December 20, 2022) Proposed standard for public comment with comments due by February 20, 2023 (87 pages); the Proposal was preceded by a concept release in 2009 and a proposal in 2010
(September 28, 2023) Adopted by the Board (114 pages)
(October 17, 2023) Published for comment in the Federal Register
(November 7, 2023) SEC comment period ended
(December 1, 2023) SEC approved

Amendments effective for audits of financial statements for fiscal years ending on or after June 15, 2025 and include audits of EGC's.

Quality Control ("QC 1000") (Docket 046)

(November 18, 2022) Proposed standard for public comment with comments due by February 1, 2023 (394 pages); the Proposal was preceded by a concept release in 2019
(May 13, 2024) Adopted by PCAOB (465 pages)
(May 24, 2024) Form 19b-4 filed with the SEC by the PCAOB (2,801 pages)

Subject to SEC approval, the new standard and related amendments will take effect on December 15, 2025.

General Responsibilities of the Auditor in Conducting an Audit (Docket 049)

(March 28, 2023) Proposed standard for public comment with comments due by May 30, 2023 (112 pages)
(May 13, 2024) Adopted by PCAOB (138 pages)

(May 24, 2024) Form 19b-4 filed with the SEC by the PCAOB (869 pages)

Subject to SEC approval, the new standard and related amendments will take effect for audits of financial statements for fiscal years beginning on or after December 15, 2024. For smaller firms, the amendment relating to the documentation completion date will take effect for audits of financial statements for fiscal years beginning on or after December 15, 2025.

Amendments to PCAOB Auditing Standards Related to a Company's Noncompliance with Laws and Regulations ("NOCLAR") (Docket 051)

(June 6, 2023) Proposed standard for public comment with comments due by August 7, 2023 (146 pages)

(February 26, 2024) PCAOB announced it will host a virtual roundtable on NOCLAR on March 6, 2024 and reopened the comment period to March 18, 2024

Proposed Amendments Related to Aspects of Designing and Performing Audit Procedures that Involve Technology-Assisted Analysis in Electronic Form (Docket 052)

(June 26, 2023) Proposed standard for public comment with comments due by August 28, 2023 (59 pages)

Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability (Docket 053)

(September 19, 2023) Proposed rule for public comment with comments due by November 3, 2023 (35 pages)

Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration (Docket 054)

(February 27, 2024) Proposed rule for public comment with comments due by April 12, 2024 (67 pages)

Firm and Engagement Metrics (Docket 041)

(April 9, 2024) Proposed rule for public comment with comments due by June 7, 2024 (237 pages); the proposal was preceded by a concept release in 2015 on *Audit Quality Indicators*

Firm Reporting (Docket 055)

(April 9, 2024) Proposed rule for public comment with comments due by June 7, 2024 (107 pages)