



December 20, 2024

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

Re: Securities and Exchange Commission Notice of Filing of PCAOB Proposed Rules on *Firm Reporting* (Release No. 34-101723; File No. PCAOB-2024-07) (November 25, 2024)

Dear Ms. Countryman:

The U.S. Chamber of Commerce (“Chamber”) Center for Capital Markets Competitiveness respectfully submits comments on the Notice of Filing of the Public Company Accounting Oversight Board (“PCAOB” or “Board”) Proposed Rules on *Firm Reporting* (“Proposed Rules” or “adopting release”). The Proposed Rules represent a significant expansion in firm disclosure requirements by imposing reporting to the PCAOB on firm operations, governance and network structures, financial performance, quality controls, and certain events. We believe the Securities and Exchange Commission (“SEC”) should not approve the Proposed Rules because of a lack of proper due process, a failure to improve audit quality and a lack of consideration of investor protection, competition and capital formation.

The Proposed Rules focus on audit firm disclosures and do not update or modernize the PCAOB’s interim auditing standards or otherwise revise auditor performance standards with an objective of improving audit quality. Both active and inactive registered audit firms are subject to the Proposed Rules with a combination of one-time, annual, and episodic reporting.

Updating requirements for audit firm reporting to the PCAOB can be a reasonable response to an evolving environment if such requirements are necessary and appropriate for the protection of investors and will promote efficiency, competition, and capital formation. Any such rulemaking needs to be within the PCAOB’s remit and authority; involve ironclad due process; and reflect robust economic analysis.¹

¹ For the importance of ironclad due process and robust economic analysis, see the remarks on SEC rulemaking by former Chair Mary Shapiro during the SEC Historical Society 90th Anniversary of the SEC Celebration Program and the letter to PCAOB Chair Erica Y. Williams from the U.S. Chamber of Commerce Center for Capital Markets Competitiveness dated August 20, 2024.

Unfortunately, conditions for sound rulemaking have not been followed in this instance. The PCAOB rushed to adopt these transformative and controversial rules without appropriate consideration of comments, adequate economic analysis, and respect for due process. Despite attempts to address some issues raised in the comment process substantive issues remain.

The SEC also rushed due process and ignored options to give stakeholders sufficient time to participate in a robust comment process.² The SEC submitted the Proposed Rules to the Federal Register within two business days of Board adoption and allowed only a few weeks for comments (i.e., twenty-one days from publication in the Federal Register). Other factors likewise reinforce the need for an extended comment period.

The Proposed Rules involve complicated legal issues and other matters that require adequate time to consider. The PCAOB adopted the Proposed Rules just before the Thanksgiving holiday and the SEC comment period ends the day after Christmas. The short SEC comment period also coincides with a time-constrained period for stakeholders, given other year-end financial reporting and audit-related demands during December. Further, the PCAOB adopted the Proposed Rules together with others on *Firm and Engagement Metrics* and the SEC submitted both rulemakings to the Federal Register the same day,³ which challenges stakeholders with overlapping comment periods on two significant PCAOB rulemakings.

The SEC's approach to due process regarding this rule risks signaling that the agency is not interested in receiving comments and relegating the requisite notice and comment process to a check-the-box exercise. The approach also risks contravening the SEC's responsibilities for objective and independent oversight of the PCAOB, as required by the Sarbanes-Oxley Act of 2002 ("SOX").

The rushed approach to finalize rulemaking is also counter to views expressed by members of the U.S. Congress.⁴ Any final order by the Commission approving the Proposed Rules is likely subject to the requirements of the Congressional Review Act, which can be used to address "midnight rulemaking."

² See the Letter to the SEC from the Center for Audit Quality ("CAQ") on *Firm Reporting* and *Firm and Engagement Metrics* dated November 22, 2024.

³ See the SEC Notice of Filing of PCAOB Proposed Rules on *Firm and Engagement Metrics and Related Amendments to PCAOB Standards* (Release No. 34-101724; File No. PCAOB-2024-06) (November 25, 2024).

⁴ See letters from Representative French Hill and Senator Tim Scott. Available at: [Scott Letter on Rulemaking and Nominations; e559a2dd-e8c4-4f98-85e3-29ebf0ad06.pdf](https://www.frenchhill.com/wp-content/uploads/2024/11/Scott-Letter-on-Rulemaking-and-Nominations-e559a2dd-e8c4-4f98-85e3-29ebf0ad06.pdf).

Flaws with the Proposed Rules and the process for finalizing them cannot be corrected by the PCAOB submitting a comment letter to the SEC or cured with additional work, including economic analysis, by SEC staff.⁵ The only solution is for the Commission to disapprove the Proposed Rules and return them to the PCAOB for reconsideration.

The constrained time-period for submitting comments to the SEC precludes a comprehensive consideration of the Proposed Rules, but we write to the Commission to underscore the Chamber’s concerns:

- The Proposed Rules reflect revisions to the audit firm reporting requirements proposed for comment in April 2024. Even so, the Board did not re-expose the Proposed Rules for public comment or use a supplemental request for comment. The failure to do so upends traditional PCAOB practices and sound due process. There should be no sense of urgency – particularly for rulemaking that represents a significant and costly expansion in audit firm reporting (both publicly and confidentially) to the PCAOB. Getting it right is more important than getting it done.
- The adopting release is not a logical outgrowth of the comment file and many of the issues raised were ignored. The adopting release relies extensively on PCAOB beliefs.⁶
- The Proposed Rules are not fit for purpose. The adopting release inappropriately dismisses substantive legal-related analyses explaining that the Proposed Rules are outside the PCAOB’s remit, exceed its authority under the Sarbanes-Oxley Act of 2002 (“SOX”), and circumvent the confidentiality and privilege provisions in SOX. The adopting release fails to give appropriate consideration and due weight to feedback on these matters. Further, it is doubtful that the Proposed Rules can pass muster under the recent Fifth Circuit Appeals Court decision in *Alliance for Fair Board Recruitment et al. v. SEC*.⁷
- The adopting release fails to appropriately consider feedback on the need for and benefits of the Proposed Rules. As Board Member Ho emphasized in

⁵ Further, the flaws in the Proposed Rules cannot be cured through subsequent PCAOB guidance or pre-committing to a post-implementation review sometime in the future.

⁶ For example, the 177 pages of narrative text use the terms “we” (“the Board”) “believe” (“do not believe” or “also believe”) 177 times.

⁷ See *Alliance for Fair Board Recruitment; National Center for Public Policy Research v. Securities and Exchange Commission*, U.S. Court of Appeals Fifth Circuit (Case No. 21-60626), filed December 11, 2024.

voting against the Proposed Rules and challenging the premise that investors, audit committees, and the PCAOB need the disclosures: “The [current] PCAOB believes that no reporting burden is too great for public company audit firms to bear even if: (1) the benefits are speculative; and (2) there are no direct linkages to improving audit quality.”⁸

- The adopting release inappropriately waves away feedback that the PCAOB already has access to most of the required information through its existing processes, including inspections, and any rulemaking should be incremental to what it now obtains. The adopting release inappropriately dismisses current audit firm reporting, in part, by tethering the Proposed Rules to and overstating the need for and benefits of standardized, comparable, and time-mandated audit firm reporting.
- SOX puts guard-rails on access to audit firm information furnished to the PCAOB, including information furnished as part of inspection and investigation activities. For example, SOX precludes such information from civil discovery or other legal process. The adopting release ignores these concerns.
- The economic analysis is fatally flawed in not appropriately considering the costs and consequences of the Proposed Rules. For example, while devoting only two paragraphs to concerns that the Proposed Rules create significant litigation and reputation risks for audit firms, the adopting release states:

*We agree that plaintiff lawyers could seek to use some of the required disclosures to support their cases ... and encourage some frivolous lawsuits, [nonetheless] we believe that the threat of litigation and reputational risk could largely contribute positively to audit quality because the threat will create an incentive for firms to provide high quality audits. Indeed, we believe the threat of litigation and reputational damage could help drive more competition on audit quality ...*⁹

This stunning analysis turns costs and consequences into benefits, fails to consider competition or capital formation. It also calls into question the understanding of how the PCAOB or SEC understands what the definition of audit quality is.

⁸ See the Statement by Board Member Ho on the *Firm Reporting Adopting Release – Extremism in the Name of Investor Protection* dated November 21, 2024.

⁹ See the Proposed Rules, page 164.

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- The economic analysis inappropriately dismisses feedback that the costly and burdensome reporting requirements will cause audit firms, including smaller firms, to deregister (or choose not to register with the PCAOB) and, in turn, will reduce competition in the market for public company audits.
- The adopting release fails to consider the consequences of audit firms reporting information outside the PCAOB's remit, which the Board has no authority or ability to act upon, including information for assessing catastrophic risks. The Proposed Rules create reputational risks for the PCAOB and burden future boards with the consequences.

Concluding Remarks

The Proposed Rules mandating expansive audit firm reporting to the PCAOB represent problematic due processes. The Proposed Rules are unrelated to the PCAOB's investor protection mission focused on improving audit quality and continue to be ensnared in thorny legal questions on remit and authority. Consequently, the Proposed Rules are not fit for purpose.

The Proposed Rules burden all registered audit firms with extensive, on-going reporting requirements. Further, the economic analysis fails to even-handedly assess feedback on need, benefits, costs, and consequences and falls far short of demonstrating that the Proposed Rules are necessary or appropriate for the protection of investors and will promote efficiency, competition, and capital formation.

The SEC should disapprove the Proposed Rules and return them to the PCAOB for reconsideration.

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

Sincerely,



Tom Quadman
Senior Vice President
Economic Policy
U.S. Chamber of Commerce