



April 15, 2024

Ms. Phoebe W. Brown  
Secretary  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington, D.C. 20006-2803

Re: *Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration* (PCAOB Release No. 2024-001, February 27, 2024; PCAOB Rulemaking Docket Matter No. 054)

Dear Ms. Brown:

The **U.S. Chamber of Commerce** (“**Chamber**”) Center for Capital Markets Competitiveness appreciates the opportunity to comment on the Public Company **Accounting Oversight Board** (“**PCAOB**” or “**Board**”) Exposure Draft on *Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration* (**the “Proposal”**).

The Proposal involves a new rule, Rule 2400,<sup>1</sup> with a general prohibition on false or misleading statements concerning a **firm’s PCAOB registration status** – including **the extent of the PCAOB’s oversight of the firm** – when marketing or otherwise holding out the firm to clients, potential clients, or the public; a non-exclusive set of circumstances that violate the general prohibition; and a provision to allow the Board to consider any prior false or misleading statements when reviewing applications for registration.<sup>2</sup> The non-exclusive set of circumstances that would violate the general provision pertain to endorsements; statements by registered firms not currently subject to PCAOB oversight; and statements in conjunction with services not subject to PCAOB oversight in **auditors’ reports for clients other than issuers or broker-dealers** and when withdrawal requests are pending.

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<sup>1</sup> To complement proposed Rule 2400, the Proposal also includes an amendment to PCAOB Form 3, *Special Reporting Form*, to require a registered firm to notify the PCAOB within thirty days of the first time it issues an audit report for an issuer or broker-dealer (or plays a substantial role with respect to such an audit) if it has not issued an audit report (or played a substantial role) for three years or more.

<sup>2</sup> The Proposal also amends PCAOB Rule 2107, *Withdrawal from Registration*, whereby the failure to file annual reports and pay annual fees for at least two consecutive reporting years would be considered a constructive request for withdrawal from registration.

While the Proposal is characterized as providing “practical solutions to some practical problems” regarding PCAOB registration and oversight,<sup>3</sup> the Proposal is also part of the Board’s goal to strengthen PCAOB enforcement.<sup>4</sup> Consistent with this goal, the Proposal emphasizes that violations of the general provision would provide a basis for PCAOB inspection findings and, where appropriate, enforcement actions.<sup>5</sup>

Given these objectives and its broad sweep, proposed Rule 2400 raises issues of intent and consequences that the Chamber strongly encourages the Board to consider. We discuss these matters below, along with some additional issues related to economic analysis.

## Discussion

### *Intent and Consequences*

The Chamber appreciates the intent of proposed Rule 2400 is to address instances of registered audit firms making false or misleading statements about their registration status or the meaning of PCAOB registration and oversight. Nonetheless, the general provision on false or misleading statements is very broad and states:

*When marketing or otherwise holding out a registered public accounting firm to a client, potential client, or the public, the firm and its associated persons must not make any untrue statement of material fact or omit stating a material fact necessary to make the statements made not misleading, concerning the firm’s PCAOB registration status, including the extent of the PCAOB’s oversight of the firm’s services.<sup>6</sup>*

The Proposal explains that “marketing” encompasses all commercial statements in any medium (including spoken communications) by a registered public accounting firm or its associated persons that are made to the general public or directed to a particular (or potential) client or group of clients. For example, marketing includes **communications on a firm’s website, in blogs or podcasts or otherwise** online, in newspapers, on the radio or television – along with communications disseminated in person, over the phone, through email, in electronic presentations, or the mail. In addition, “**otherwise holding out**” statements could be displayed on a **firm’s website, letterhead, business cards, brochures, flyers, posters, other firm-produced materials, social media profiles, or trade booth displays.<sup>7</sup>**

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<sup>3</sup> See *Statement on Preventing False or Misleading Statements Concerning PCAOB Registration and Oversight, and Constructive Requests to Withdraw from Registration* by Board Member Kara M. Stein (February 27, 2024).

<sup>4</sup> See the *PCAOB Strategic Plan 2022-2026*, page 13.

<sup>5</sup> See the Proposal, page 11.

<sup>6</sup> See the Proposal, page A-1.

<sup>7</sup> See the Proposal, page 12.

The Chamber appreciates that the general provision of Rule 2400 includes a materiality threshold and the Proposal states that minor errors would not be sanctionable.<sup>8</sup> Nonetheless, with its broad sweep as proposed, Rule 2400 opens-up additional avenues for PCAOB inspection deficiencies and enforcement actions. Thus, the Proposal adds to the Chamber's previously expressed concerns about the Board's shift to focusing on inspection findings and enforcement and how this focus exacerbates audit firm staffing challenges and undermines the attractiveness of public company auditing, specifically, and the accounting profession, generally.<sup>9</sup>

Matters of intent also arise because of uncertainties about how Rule 2400 would be interpreted by the PCAOB across the myriad of circumstances involving oral and written "marketing" and "holding out" communications by audit firms and associated persons. Further, the Proposal emphasizes that silence is an option.<sup>10</sup> Yet, the general provision not only prohibits "untrue statements," but "omissions." In addition, based on the wording of the non-exclusive set of circumstances in Rule 2400, both "stating" and "implying" PCAOB endorsement or oversight in any communication would violate the general provision.

Relatedly, the Proposal does not appear to appreciate the full range of circumstances and issues that will occur because regulators (such as the Securities and Exchange Commission ("SEC")) require the use of PCAOB registered audit firms, PCAOB registered and inspected audit firms, and/or PCAOB auditing standards or that PCAOB auditing standards are used voluntarily in audits other than for issuers or broker-dealers. While the Proposal provides clarifying discussions for a few circumstances,<sup>11</sup> there are many others not discussed in the Proposal. For example, Rule 2400 will create questions of intent related to standard "statements" in extant auditor reports for non-issuers where the SEC requires PCAOB auditor reports.<sup>12</sup>

The Chamber recommends the PCAOB work with the SEC, other regulators, and audit firms to develop a more fulsome understanding of the circumstances under which PCAOB registered audit firms, registered and inspected audit firms, and PCAOB auditing standards are required or used and reconsider the Proposal in light of these findings.

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<sup>8</sup> See the Proposal, page 11.

<sup>9</sup> For example, see the letters to the PCAOB from the U.S. Chamber of Commerce Center for Capital Markets Competitiveness on the *Draft 2022-2026 Strategic Plan* dated August 16, 2022; *A Firm's System of Quality Control and Other Proposed Amendments to PCAOB Standards, Rules and Forms* dated February 1, 2023; *Proposed Auditing Standard – General Responsibilities of the Auditor in Conducting an Audit* dated June 5, 2023; *Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations* dated August 2, 2023; and *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability* dated November 7, 2023.

<sup>10</sup> See the Proposal, pages 17, 19, and 22.

<sup>11</sup> See the Proposal, page 6 (on the SEC Advisers Act Custody Rule for use of PCAOB registered and inspected audit firms), page 17 (on the Securities Investor Protection Commission rule for agreed-upon-procedures under PCAOB auditing standards), and page 23 (on voluntary filers with the Commission under some circumstances).

<sup>12</sup> Examples of these situations occur in the context of auditors' reports in Form 10s, in confidential registration statements, filed to satisfy Rule 2-05, and for targets in SPAC transactions.

## *Economic Analysis*

The Proposal also provides context for considering broader issues of concentration in the market for issuer and broker-dealer audits, including the decline in the number of PCAOB registered and inspected audit firms and the challenges faced, particularly by smaller (triennially inspected) audit firms. For example, based on information available on the PCAOB website, from December 31, 2017 to December 31, 2023,<sup>13</sup> the number of firms providing audit reports for issuers declined from 535 to 448 and for broker-dealers from 478 to 283. These numbers exclude audit firms that played a substantial role in such audits, which totaled 89 as of December 31, 2023.

The Chamber appreciates the “housekeeping”<sup>14</sup> aspects of the Proposal and the importance of precluding “free riding” on PCAOB registration status. Nonetheless, the Board needs to consider the effects of the PCAOB’s regulatory burden (including from the Board’s recent standard-setting, rulemaking, inspection, and enforcement activities) on audit firm deregistrations and the declining number of firms willing to conduct issuer and broker-dealer audits.

Relatedly, the numbers above do not break out firms that audit *both* issuers and broker-dealers (or play a substantial role in such audits). The numbers above double count these firms and, therefore, do not provide a count of unique “active” firms.<sup>15</sup> It is helpful that the Proposal discloses 725 as the number of active audit firms at December 31, 2023 (i.e., the number of unique firms auditing issuers and broker-dealers or playing a substantial role in such audits). This baseline number is not available on the PCAOB website.

The Chamber recommends that the PCAOB transparently disclose this type of information on its website, at least annually on December 31.<sup>16</sup> These disclosures should be in a consistent and comparable format to provide useful time-series data for assessing baselines for and consequences of proposed standards and rules and post-implementation impacts.

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<sup>13</sup> These numbers are based on the PCAOB’s December 31, 2017 Annual Report (i.e., the last annual report in which this information was disclosed) and the PCAOB website Registration page at December 31, 2023 (which is periodically updated and not “evergreen,” so numbers at prior points in time are not available).

<sup>14</sup> See *Statement on the Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration* by Board Member Christina Ho (February 27, 2024).

<sup>15</sup> To illustrate, adding 448, 283, and 89 totals 820 audit firms at December 31, 2023, not 725 for active firms disclosed in the Proposal.

<sup>16</sup> One suggestion is to disclose a breakdown of the number of audit firms that provide audit reports for (A1) only issuers, (A2) only broker-dealers, and (A3) both issuers and broker-dealers; the number of audit firms that play a substantial role in audits of (B1) only issuers, (B2) only broker-dealers, and (B3) both issuers and broker-dealers; (C) the number of active audit firms; and (D) the number of registered audit firms. Further, it would be helpful to have breakdowns of categories (A) through (C) by the number of annually versus triennially inspected firms, categories (A) through (D) by the number of U.S. and non-U.S. audit firms, and categories (A) through (D) by the number of global network firms (“GNFs”) and non-GNFs.

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