CAQ

December 26, 2024
By email: rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SECURITIES AND EXCHANGE COMMISSION [Release No. 34-101723; File No. PCAOB 2024-07] Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Firm Reporting

Dear Office of the Secretary:

The Center for Audit Quality (CAQ) is a nonpartisan public policy organization serving as the voice of US public company auditors and matters related to the audits of public companies. The CAQ promotes high quality performance by US public company auditors; convenes capital market stakeholders to advance the discussion of critical issues affecting audit quality, US public company reporting, and investor trust in the capital markets; and using independent research and analyses, champions policies and standards that bolster and support the effectiveness and responsiveness of US public company auditors and audits to dynamic market conditions. This letter represents the observations of the CAQ based upon feedback and discussions with certain of our member firms, but not necessarily the views of any specific firm, individual, or CAQ Governing Board member.

The CAQ appreciates the opportunity to share our views and provide input on the amendments to the annual and special reporting requirements for audit firms (collectively, the "final rules" or “Firm Reporting”) adopted by the Public Company Accounting Oversight Board (PCAOB or the Board) on November 21, 2024 (File No. PCAOB 2024-07) and filed with the Securities and Exchange Commission (SEC or Commission) on November 22, 2024, in Release No. 34-101723.

For reasons described below, it is not in the public interest for the SEC to approve these final rules, nor would doing so further the protection of investors.

In this letter, we communicate our comments and concerns regarding the Board’s lack of sufficient due process.[1] We also reiterate numerous overarching concerns we have previously and continuously raised

[1] This includes the insufficient process that has arisen due to the unmistakable effort to have the final rules approved by the Commission prior to January 20, 2025.

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with Firm Reporting since first proposed by the Board, but that were not adequately addressed in the final rules approved by the Board.

Since the CAQ's inception, we have consistently supported the Board's efforts to modernize existing auditing standards and have played an active role in providing feedback via comment letters and dialogue with the PCAOB staff. Once new standards or rules are adopted, we have worked closely with the PCAOB staff and public company auditors to support their efficient and effective implementation. We believe that these cooperative efforts through time have enhanced overall audit quality and ultimately investor protection.

During the past year or so, however, we have highlighted significant concerns that we and numerous other stakeholders have regarding the Board's rulemaking and standard-setting process, in which rules and standards are proposed and adopted before adequate public input is gathered and considered. This concern is not new and was shared by former Board member Duane DesParte in a 2023 public statement on a Board proposal, "Stepping back, this project is one of 14 on our ambitious standard-setting agenda . . . I am increasingly concerned we are establishing new auditor obligations and incrementally imposing new auditor responsibilities in ways that will significantly expand the scope and cost of audits, and fundamentally alter the role of auditors *without a full and transparent vetting of the implications, including a comprehensive understanding of the overall cost-benefit ramifications* [emphasis added]."[2] Moreover, the adopting release for the final rules acknowledges the CAQ's audit committee survey that found 76% of respondents are concerned about the cumulative impact of PCAOB standard-setting and rulemaking on audit quality. However, the Firm Reporting adopting release does not sufficiently explain how the PCAOB has addressed this comment or concern outside of phasing implementation for certain requirements for certain firms.[3]

Overarching Concern Regarding Lack of Proper Due Process

As stated in our November 22, 2024 letter to the Commission, the Board's haste to adopt its final rules on Firm and Engagement Metrics and Firm Reporting and submit them to the Commission for approval[4] has not allowed ample time for the Board and its staff to sufficiently address the many serious comments

[2] See statement from Duane DesParte.

[3] The adopting release stated that, "Consistent with the long-standing practice based on PCAOB staff guidance for economic analysis, the Board's economic analysis for each rulemaking considers the incremental benefits and costs for each specific rule." (PCAOB Release 2024-13, page 115) However, the adopting release did not address the concern of stakeholders about the cumulative impact all of the Board's efforts could have on audit quality, which was the focus both of our previously expressed concern and of the survey question cited in the adopting release.

[4] At a time when the SEC staff are preparing for a change in leadership at the agency with Commissioner Lizarraga and Chair Gensler's departures so close to when the SEC will be required to take action on these rules.

and concerns communicated in the comment letter process. Moreover, the comment letter period provided for the final rules falls during year-end financial reporting as well as the holiday season,[5] making it difficult (if not impossible) for many stakeholders such as auditors and preparers to comment. We agree with PCAOB Board member Christina Ho's observation that "never in the history of the PCAOB has the Board rushed to adopt new standards and rules in the middle of a historic transition to new SEC leadership, *let alone adopt standards and rules that are not ready* [emphasis added]."[6]

In addition to the above overarching concerns, we strongly encourage the Commission to consider the following specific concerns in its evaluation of the final rules:

The PCAOB has not adequately addressed comments received on the Firm Reporting proposal.
In our June 7th comment letter, we strongly recommended that:

> *[T]he Board perform further economic analysis to inform its way forward with respect to policy choices in its rulemaking. Deeper analysis will likely reveal that the benefits to investors and other stakeholders will not justify the costs to aggregate and prepare these disclosures. Additional analysis will also enable the Board to evaluate valid alternatives that will be less costly and more beneficial while better minimizing unintended consequences (such as individuals without sufficient context reaching inappropriate conclusions regarding audit quality). In undertaking this analysis, we encourage the Board to consider the cumulative impacts and costs of other pending PCAOB proposals and consider how those other provisions interact with (and possibly duplicate) each other.*

To aid the Board in this analysis, on August 1, 2024, the CAQ submitted to the PCAOB a supplemental letter providing the Board with input gleaned from two surveys – one of 250 audit committee members and one of 100 investors – which gathered data and highlighted five key findings:

1. More research is necessary to establish whether evidence supports the need for and benefits of proposed metrics.
2. Audit committees and many investors already have the information they need.
3. Any reporting should be voluntary.
4. Any changes to the PCAOB's standards should promote auditor-audit committee discussion.

[5] Indeed, it is noteworthy we are filing this comment letter on the comment deadline date of December 26th, in the middle of the holiday season.
[6] See Statement on the Firm & Engagement Metrics Adopting Release - Will This Unusually Rushed Auditing Standard Suffer the Same Fate of the Auditing Standard 2? | PCAOB

5. A majority of investors and audit committee members are of the view that the PCAOB's auditing standards and rules have kept pace with change and require only targeted updating.

While the final rules refer to this study, these key findings were not mentioned. Rather, the Board selectively referred only to certain aspects of the surveys without explaining how they considered the need to conduct additional research in order to demonstrate the desirability, decision usefulness or cost effectiveness of the data to be required. For example, the Board notes that "results of the surveys conducted of institutional investors and audit committee members, and discussed in Section IV.A.2, affirm that institutional investor respondents, and audit committee member respondents to a lesser degree, do utilize Form 2 and Form 3 information available on the PCAOB website."[7] The PCAOB's note of this one fact does nothing to explain 1) how investors are utilizing Form 2 and Form 3 information, and 2) whether the required disclosures will enhance investors' decision making capabilities and 3) whether the benefit to investors exceeds the substantial costs to gather, aggregate and report the required disclosures. Rather, the Board referred to unidentified "investor-related" groups who supported the need or usefulness of the proposed reporting requirements without further explaining whether those were the views of real investors or unidentified "special interest" investor advocates. Moreover, the Board did not quantify their own benefits and costs of using the disclosures required by the final rules to enhance their oversight activities.[8]

In its rush to finalize the rules, the Board failed to responsibly conduct this research or adequately consider feedback provided by the public in the comment letter process.[9] Doing so would have revealed that the

[7] See page 122 of PCAOB Release 2024-13.

[8] For example, the PCAOB's 2025 budget includes approximately $18 million dollars for IT Expense and IT Capital Expenditures. What portion of this spend relates to building IT systems that can support collecting, summarizing, and using the information reported as a result of these final rules?

[9] The final rules include the phrase "we believe" nearly 200 times.

> For example, "*We believe* that improvements to the reporting requirements should be made to facilitate more public disclosure about aspects of registered firms' operations that could impact firms' ability to conduct quality audits, and that such disclosure will be informative and useful to investors, audit committees, and other stakeholders when evaluating audit firms and the audits of public companies. *We further believe* [emphasis added] that the reporting requirements we are adopting will enhance investor confidence in public company audits and, therefore, in financial reporting…Specifically, *we believe* [emphasis added] that more disclosure about registered firms will (1) facilitate monitoring of firms for risks or issues that, individually or taken together with other factors, may affect the ability of firms to conduct quality audits and may potentially affect the broader market for audit services; (2) facilitate analysis and

regulatory reporting burden exacted by the final rules comes at a cost that outweighs its benefits. The costs come not only in the monetary form of aggregating and submitting additional data (the usefulness of which is yet to be established), it also comes in the form of distracting public company auditors in firms of all sizes who already work hard to "do the right thing" by planning and executing quality audits. This comes at a time when the profession is already challenged to attract and maintain the necessary talent to perform high quality audits. Time spent focusing on complying with increased regulatory reporting burdens (with unproven benefits in terms of either audit quality or investor protection) is a distraction and stands to ultimately hinder audit quality. Before the rule is finalized and these unintended consequences result, the Board should reconsider the rules by evaluating public input and performing a robust analysis of the usefulness of the data to be collected, its benefits to stakeholders and whether those benefits outweigh the costs to public companies and their investors.

In responding to commenters' concerns about the litigation risks the required disclosures could create, the Board stated, "While the required disclosures may not be as clearly linked to legal liability as audit deficiencies and could encourage some frivolous lawsuits, 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, a criterion that one of the commenters urged us to consider."[10] This response ignores the legal concerns raised by commenters, and we find it unpersuasive and concerning that the Board would perceive that the threat of frivolous lawsuits might benefit competition and audit quality as a result of the final rules.

Overreach of jurisdictional authority.

Several of the reporting requirements the Board seeks to impose have little relationship with the PCAOB's enumerated powers under the Sarbanes-Oxley Act of 2002, as amended (SOX), a point that was addressed by Board member Ho in her dissents from the original Board Proposal and the final rules. Since the Board has not adequately addressed this comment, the Commission will need to complete its own evaluation as to whether the PCAOB has the statutory authority to require certain aspects of the reporting.

> planning related to the PCAOB's inspection program; (3) identify circumstances or events that may warrant or inform enforcement investigations; and (4) inform the PCAOB's standard-setting process." (See page 5 of PCAOB Release 2024-13) [emphasis added].

"We believe" is not evidence-based standard-setting, and it remains unclear if or how the disclosure requirements in the final rules are useful to investors, audit committees, and other stakeholders.

[10] See page 164 of PCAOB Release 2024-13.

In the adopting release of the final rules, the Board identifies SOX Section 102 (primarily 102(d)) as the principal basis on which it has proceeded.[11] Section 102(d) requires registered audit firms periodically to update the information contained in their registration applications and "to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2)."[12] Subsection (b)(2), in turn, states that firms applying for registration with the Board must submit to the Board certain identified information, as well as "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."[13] The Board asserts that the residual clause in subsection (b)(2)(H) gives it a "broa[d] mandate" to promulgate any reporting requirements that it deems necessary or appropriate to serve the public interest or protect investors.[14]

But as the Board itself recognizes, the authority conferred by the residual clause is "not unbounded."[15] Even where an agency has some "flexibility" in promulgating regulations, the agency must still be sure that it is acting within the "limits" Congress placed on that authority.[16] In this year's *Loper Bright* decision—which postdated the Board's original proposal on Firm Reporting—the Supreme Court called upon lower courts to continue "polic[ing] the outer statutory boundaries" of agency authority.[17] *Loper Bright* thus reaffirmed the need to identify and apply constraints on agency authority.

The residual clause, while arguably granting the Board the power to request *some* information beyond the categories explicitly enumerated in Section 102(b)(2), also imposes several constraints on that grant. An agency "may not rely on a 'necessary and appropriate' clause to claim implicitly delegated authority beyond its regulatory lane or inconsistent with statutory limitations or directives."[18] Accordingly, "statutory reference" to the adoption of regulations that are 'necessary or appropriate' does not give an agency 'authority to act, as it [sees] fit, without any other statutory authority."[19] Similarly, phrases such as "public interest" and "protection of investors" do not confer "a broad license" on agencies "to promote the

[11] See pages 23 and 27 PCAOB Release 2024-13.
[12] 15 U.S.C. § 7212(d).
[13] Ibid. § 7212(b)(2)(H).
[14] See page 23 of PCAOB Release 2024-13.
[15] Ibid., page 27.
[16] *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263 (2024) (citation omitted).
[17] Ibid. at 2268.
[18] *Loper Bright Enters. v. Raimondo*, 45 F.4th 359, 368 (D.C. Cir. 2022), *vacated and remanded on other grounds*, 144 S. Ct. 2244.
[19] *N.Y. Stock Exch. LLC v. SEC*, 962 F.3d 541, 554-55 (D.C. Cir. 2020) (interpreting Exchange Act section 23, which grants the SEC "power to make such rules and regulations as may be necessary or appropriate to implement the provisions" of the Exchange Act).

general public welfare," but rather "take [their] meaning from the purposes of the regulatory legislation."[20] The Board's authority under Section 102(b)(2)(H), then, "must be read with 'some concept of the [Board's] relevant domain' in mind."[21] And the words "such other information" place yet additional limits on the Board's authority. Under established precedent, "general words" that "follow specific words in a statutory enumeration" should be "construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words."[22]

Applying these principles to Section 102(b)(2), the Board's authority to require the provision of "other" information under subsection (b)(2)(H) is limited to information of the type enumerated in subsections (b)(2)(A) through (b)(2)(G), which includes the names of clients, annual fees, other financial information, quality control policies, the names of accountants, criminal or civil proceedings, and instances of accounting disagreements.[23] That list does not suggest that Congress contemplated the disclosure of most of the detailed information called for by the final rules and does not contemplate the PCAOB requesting information to assess the stability or solvency of auditing firms akin to that collected by a prudential regulator, including where the PCAOB would be requiring significant changes in the manner in which a firm tracks and collates information it relies upon to manage its business under its partnership agreement. As a result, we remain concerned that aspects of the reporting called for under the final rules are not adequately supported by SOX.

In response, the Board claims it can require reporting of any information "related to a registered firm's broader operations," even if that information is not "related specifically to issuer or broker-dealer audits," pointing among other things to Section 102(b)(2).[24] But the statutory scheme, which regulates audits of issuers and broker-dealers,[25] does not support that broad claim of authority. The Board appears to have recognized this point to some extent in that the adopting release eliminates certain requirements related to non-issuer client fees. However, it appears that the Board continues to rely on the items in Section 102(b)(2) to require the reporting of non-enumerated items. Yet, if anything, that specific grant of

[20] *NAACP v. FPC*, 425 U.S. 662, 669 (1976); *see also, e.g.*, *Bus. Roundtable v. SEC*, 905 F.2d 406, 413 (D.C. Cir. 1990) ("'public interest' is never an unbounded term . . . broad 'public interest' mandates must be limited to the purposes Congress had in mind when it enacted [the] legislation") (alteration in original) (internal quotations omitted).
[21] *Chamber of Comm. v. SEC*, 412 F.3d 133, 139-40 (D.C. Cir. 2005).
[22] *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001) (internal quotations omitted); *see also, e.g.*, *Bus. Roundtable*, 905 F.2d at 413 ("[T]he general standard at the end of [a] list should be construed to embrace only issues similar to the specific ones.").
[23] *See* 15 U.S.C. § 7212(b)(2)(A)-(G).
[24] See page 28 of PCAOB Release 2024-13.
[25] *See generally* 15 U.S.C. §§ 7211 et seq.

authority in the Section 102(b)(2) list strongly suggests that Congress did not grant the PCAOB broad authority to collect other unrelated information from registered firms.[26]

The Board also asserts that, in response to comments, it "modified" several reporting requirements in other ways "to more firmly link [those requirements] to aspects of the firms' operations that may influence the conduct of audits overseen by the [Board]."[27] Although we are encouraged by the Board's efforts to narrow the reporting requirements, the final rule still lacks sufficient information to explain how its requirements fit within the Board's authority. For example, the final rule requires firms to report any "agreement[s] or other arrangement[s] that would cause a material change to the firm's ownership, operations, governance, or provision of services."[28] Disclosure of internal corporate developments may not have any direct impact on a firm's issuer and broker-dealer audit practice, and Section 102 lacks any indication that Congress contemplated its grant of authority to the PCAOB to be so expansive.

The Board also invokes Sections 101(c)(5) and 101(g)(1) as "ancillary authority" for its final rules.[29] But it does not appear that either of these provisions authorizes the reporting requirements. Section 101(c)(5) grants the Board authority only to "perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest."[30] This provision does not appear to grant the Board the authority to engage in rulemaking—the only mention of "rule[s]" in this provision is in reference to the *Commission's* authority, not the Board's.[31]

Even if Section 101(c)(5) does give the Board rulemaking authority, it is a well-established rule of statutory interpretation that "the specific governs the general," and "[t]hat is particularly true where … 'Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific

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[26] *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citation omitted).

[27] See pages 28-29 of PCAOB Release 2024-13.

[28] Ibid., page 71.

[29] Ibid., page 26.

[30] 15 U.S.C. § 7211(c)(5).

[31] Where "Congress includes particular language in one section of a statute but omits it in another"—let alone omits that language in another part of the same provision—courts "'presum[e]' that Congress intended a difference in meaning." *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (citation omitted).

solutions.'"[32] Consequently, a general provision like Section 101(c)(5) cannot give the Board any more power to promulgate reporting requirements than the specific provisions that govern such requirements (Sections 102(d) and 102(b)(2)). Moreover, the "necessary or appropriate," "public interest," and "protect investors" clauses in Section 101(c)(5) place the same constraints on the Board discussed above. Yet, as with the original proposal, the adopting release cites Section 101(c)(5) for the proposition that "the Board's mandate extends to monitoring firms and the audit market for disruptions, including those related to firm viability, staffing, or potential legal liabilities."[33] We maintain our belief that Section 101(c)(5) does not support such a sweeping interpretation of the Board's powers.

Section 101(g)(1) is even further afield. It simply states that the Board's rules "shall … provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under [SOX]."[34] This provision in no way defines or speaks to the *scope* of the Board's authority.

There has been scant public discourse on the rule.

Chair Williams has emphasized the importance of public discourse to the Board's activities. For example, she recently stated, "As we crafted this new standard, like we do for every standard and rulemaking project, we asked for public feedback. This is a process that the PCAOB takes very seriously. We read every single comment letter we receive—and we value the insights and feedback we receive from the public."[35] Chair Williams has stated, "In addition to the formal comment period for each new standard we propose, we also established advisory groups made up of investors, experts, and other stakeholders to ensure we are receiving input and ideas on our entire agenda."[36] However, there is limited public project history on the PCAOB website regarding the concepts included in the final rules, indicating that Board and its staff have not obtained sufficient public input to inform and educate their rulemaking process. To illustrate, there are no meetings of the Board's Standards and Emerging Issues Advisory Group (SEIAG), Standing Advisory Group (SAG) or Investor Advisory Group (IAG)[37] prior to the issuance of the proposed rules on April 9, 2024 included on the Firm Reporting project page. Additionally, while past SAG meetings have tangentially discussed the concepts included in the final rules, there have not been public discussions with advisory groups or other stakeholders specifically regarding a holistic approach to Firm Reporting, certainly not as extreme as those adopted in the final rules. Further, the few discussions that did tangentially cover

[32] *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citations omitted).
[33] See page 12 of PCAOB Release 2024-13.
[34] 15 U.S.C. § 7211(g)(1).
[35] See PCAOB Chair Williams Delivers Remarks at 19th Annual Baruch Auditing Conference | PCAOB
[36] See Chair Williams: "Trustworthy Audit: Why Society Deserves It" | PCAOB
[37] Different variations on the Board's advisory groups/councils since its inception.

Firm Reporting-related topics occurred several years ago (cybersecurity and firm financial statements were last discussed in 2018[38] and 2010,[39] respectively). Much has changed in the years since those discussions, but the PCAOB has not covered these topics more recently with the advisory groups.

In addition, Chair Williams recently characterized the PCAOB's adoption of Firm Reporting as "…the PCAOB carrying forward recommendations that have been talked about for 16 years"[40] – likely in reference to the 2008 recommendations from the Advisory Committee on the Auditing Profession (ACAP). While ACAP did make numerous generic recommendations for the auditing profession, its recommendations were certainly not as extreme as those adopted in the final rules. For example, concerned with the risk of firm failures, ACAP recommended that the PCAOB monitor potential sources of *catastrophic risk* faced by public company auditing firms. The final rules go well beyond this recommendation, requiring disclosure of "*any event* [emphasis added] or matter that poses a material risk, *or* [emphasis added] represents a material change, to the firm's organization, operations, or liquidity that will affect the provision of audit services."[41] Many of the events required to be reported to the PCAOB in the final rules are not examples of events that would threaten the firm's existence. Upon review of the PCAOB's Post Implementation Review page, there has been no post-implementation review of the Board's existing annual and special reporting requirements in the 16 years since they were substantively updated. Such a review could have informed this rulemaking and could have also assisted the Board in determining the costs and benefits of requiring such information.

Confidentiality and privacy concerns have not been addressed.

We recommended in our June 7th comment letter to the PCAOB,[42] that the information that would be required to be reported confidentially should be submitted through the inspection program, where the Board is already collecting certain of the identified categories of data, rather than through reporting on Form 2 and Form 3. Submission in the context of inspections governed by Section 104 would, among other things, clarify that the statutory confidentiality protections established under Section 105(b)(5) of the Act apply to this information,[43] and would ensure that other federal, state, or non-U.S. regulatory authorities that receive the information, including the SEC, maintain its confidentiality. We appreciate that in the final rules, the Board moved the reporting of financial statements to Section 4: Inspections. However, for the reasons provided below, the Board should expressly confirm that *all* required disclosures should be

[38] Microsoft Word - 2018-05-23 Briefing Paper - Cybersecurity Panel clean (2).docx
[39] Microsoft Word - Update on Status of PCAOB-Related ACAP Recommendations - SAG - April 2010.doc
[40] Ibid.
[41] See page 63 of PCAOB Release 2024-13.
[42] See CAQ's June 7th comment letter available on the PCAOB's Rulemaking Docket.
[43] 15 U.S.C. § 7215(b)(5).

reported and collected to the PCAOB through the inspections process to remove any doubt about the applicability of the confidentiality protections afforded by Section 105(b)(5).

Although Section 102 specifies that "the Board shall protect from public disclosure information reasonably identified[44] by the subject accounting firm as proprietary information,"[45] we are concerned that such proprietary information submitted under Section 102 could eventually be made public. Specifically, unlike information that is submitted through the inspection process (which is accorded protection under Section 105(b)(5)), it is unclear how the Board would interpret its duties under Sarbanes-Oxley were it to receive requests for confidential information from third parties not covered by Section 105(b)(5).[46] Similarly, unlike the process outlined in Section 105(b)(5) (whereby the PCAOB may make inspection information available to other agencies without the loss of its statutory confidentiality protections), if the PCAOB were to make information reported under the final rules available to other agencies, it is unclear how the PCAOB would fulfill its statutory obligation to keep the information confidential.[47] We note that the Board has added a provision in the final rules that would allow firms the opportunity to request notification in the event that the PCAOB is requested by subpoena or other legal process to disclose such reported information. We recommend that the Commission consider whether this added provision sufficiently describes how the PCAOB plans to comply with Section 102(e) of the Act which requires the Board to protect proprietary information from public disclosure,[48] when receiving such proprietary information.

The rulemaking process has been rushed.

As Board member Christina Ho noted in her statement, both the Firm Reporting and Firm and Engagement Metrics projects represent the shortest time that this current Board has moved from proposal to adoption

[44] The Board's interpretation of "reasonably identified" proprietary information adds another complexity.

[45] 15 U.S.C. § 7212(e).

[46] PCAOB Rule 2300(g) states, in part, that a confidentiality designation applied pursuant to Section 102 will not "limit the ability of the Board . . . to comply with any subpoena validly issued by a court or other body of competent jurisdiction." The Rule goes on to note that, "[i]n the event the Board receives such a subpoena, the Board will notify the public accounting firm of such subpoena, to the extent permitted by law, to allow the public accounting firm the opportunity to object to such subpoena," but does not indicate what steps the Board itself would take to maintain the confidentiality of the information.

[47] PCAOB Rule 2300(g) indicates that the Board makes confidentially submitted information available to the SEC, but does not state what limits it attempts to place on the SEC's public use of that information, nor does it indicate whether the Board might, in certain circumstances, make such information available to other agencies identified in SOX Section 105(b)(5).

[48] 15 U.S.C. § 7212(e).

(7.5 months; 226 days).[49] Firm Reporting has moved nearly twice as fast as the average time for the five other standards that the current PCAOB Board has adopted to date (15 months; 448 days).[50] The Board has moved this rule forward with such speed despite the fact that 85% of commenters expressed concerns on the proposed rule.[51] In the brief time we had to review the final rules, we note the following examples of concerns raised in the comment letter process that were inadequately addressed in the final rules:

- **Cybersecurity incident reporting:** Commenters on the rule proposal raised concerns regarding potential conflicts between PCAOB incident reporting requirements and other applicable laws and regulations. The Release asserts that the Board does "not believe there are any known direct conflicts with other current obligations of audit firms, but, in an effort to avoid unintended consequences, we have eliminated the requirement for a firm to include whether it has reported an incident to other authorities."[52] However, the Release does not actually evaluate or dive deeper into concerns regarding potentially conflicting reporting requirements. The removal of the requirement for a firm to include whether it has reported an incident to other authorities does not remotely address the legitimate feedback provided by stakeholders and additional consideration should have been given.

- **Governance disclosures:** Commenters on the rule proposal also raised a number of concerns regarding the governance disclosures, including that the proposed disclosures are duplicative of other PCAOB reporting requirements. While the Release attempts to address comments by eliminating some required governance disclosures, other duplicative disclosures, including the disclosures of individuals in the roles described in paragraph .12 of QC 1000, remain. Further, the Firm Reporting Adopting Release acknowledges that such information will most likely be voluntarily disclosed by firms (in addition to the required disclosures in Form QC). Given more time on this rulemaking process, a better approach to firm reporting could have been developed, rather than the current patchwork approach.

These are just a few of the numerous concerns that were either inadequately addressed or resolved with dismissive statements of "we believe" conjecture in the final rules. Board member Christina Ho noted in her remarks that the only other standard adopted by the PCAOB in such a short timeframe with more than 40 comments was AS 2, which "had to be amended three years later after a disastrous rollout and public

[49] See Statement on the Firm & Engagement Metrics Adopting Release - Will This Unusually Rushed Auditing Standard Suffer the Same Fate of the Auditing Standard 2? | PCAOB
[50] Ibid.
[51] caq-comment-letter_sec_firm-reporting_metrics_11.22.24.pdf
[52] See page 79 of PCAOB Release 2024-13.

outcry."[53] Taking appropriate time upfront in the rulemaking process leads to better outcomes and prevents unintended consequences and costly revisions to fix later.

SEC's Obligation to Conduct Economic Analysis

The Securities Exchange Act of 1934 (Exchange Act) requires that whenever the SEC is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will *promote efficiency, competition, and capital formation* [emphasis added].[54] Combining this requirement with Section 107(b)(3) of SOX,[55] Section 78c(f) of the Exchange Act arguably requires the SEC to conduct its own assessment to determine the effects of a PCAOB proposal on *efficiency, competition, and capital formation*, which in turn requires an economic analysis. Even if one were to assume that the SEC could rely on the PCAOB's economic analysis in the Firm Reporting Adopting Release,[56] we note that the Board has not sufficiently analyzed the impact of the final rules on efficiency, competition, and capital formation. For example, as it relates to a comment the PCAOB received on the proposed Firm Reporting rules expressing concern about the strain the rules could put on capital formation, it responded with the belief that any impact the final rules have on audit fees will be a small part of a company's decision to go public or remain public. It appears the PCAOB developed this assumption by looking at the small percentage accounting fees represent of the costs of an IPO, the proceeds, and recurring incremental costs of being public. This belief assumes that it is audit fees alone that would impact a company's decision to go (or remain) public.[57]

Conclusion

Board member Ho's dissent referred to the disastrous roll out of AS 2. In a 2007 speech, then SEC commissioner Paul Atkins stated, "Significant errors were made in the initial roll-out of Section 404 and AS 2, but we have all of the tools needed to fix Section 404 through our own rules and our oversight of the

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[53] See Statement on the Firm & Engagement Metrics Adopting Release - Will This Unusually Rushed Auditing Standard Suffer the Same Fate of the Auditing Standard 2? | PCAOB

[54] 15 U.S.C. § 78c(f).

[55] 15 U.S.C. § 107(b)(3) states that the SEC shall approve a PCAOB proposal "if it finds that the rule is consistent with the requirements of this Act and securities laws, or is necessary or appropriate in the public interest or for the protection of investors."

[56] As the D.C. Circuit has held in a similar context, a requirement that the SEC make a factual determination when approving an SRO's proposed rule cannot be "effectively abdicated" by relying solely on the findings of the SRO itself. Instead the SEC must either "critically review[]" the SRO's analysis "or perform[] its own." Susquehanna Int'l Group, LLP v. SEC, 866 F.3d 442, 446-48 (D.C. Cir. 2017).

[57] See page 161 of PCAOB Release 2024-13.

Public Company Accounting Oversight Board."[58] We recommend the SEC consider the tools available to the Commission to prevent these final rules from becoming effective. Given the significant unresolved concerns raised by the public in the comment letter process, and lack of sufficient research and economic analysis, it is not in the public interest for the SEC to approve the final rules. As such, we recommend that the Commission decline to approve the final rules.

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The CAQ appreciates the opportunity to comment on the final rules, we look forward to future engagement and we encourage the Commission and PCAOB Board to proactively seek out engagement with auditors, audit committee members and investors on these topics. As the Commission continues to gather feedback from other interested parties, we would be pleased to discuss our comments or answer questions from the Board regarding the views expressed in this letter. Please address questions to Dennis McGowan (dmcgowan@thecaq.org), Annette Schumacher (aschumacher@thecaq.org) or Erin Cromwell (ecromwell@thecaq.org).

Sincerely,

Dennis J. McGowan, CPA
Vice President, Professional Practice
Center for Audit Quality

cc:

SEC
Honorable Gary Gensler, Chair
Caroline A. Crenshaw, Commissioner
Jaime Lizárraga, Commissioner
Hester M. Peirce, Commissioner
Mark T. Uyeda, Commissioner
Paul Munter, Chief Accountant

[58] See SEC Speech: Remarks Before the SEC/NASAA 19(d) Conference (Commissioner Paul S. Atkins; May 8, 2007).