CAQ

January 2, 2025
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. 34-101724; File No. PCAOB-2024-06] Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Firm and Engagement Metrics; PCAOB Rulemaking Docket Matter No. 041.

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 final rules (Final Rules or Adopting Release) adopted by the Public Company Accounting Oversight Board (PCAOB or the Board) on November 21, 2024 (File No. PCAOB 2024 – 06) and filed with the Securities and Exchange Commission (SEC or Commission) on November 22, 2024, in Release No. 34-101724.

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 related to the SEC's obligation to conduct economic analysis and our concerns regarding the Board's lack of sufficient analysis and due process, and reiterate numerous concerns that we first raised in our comment letters related to the Firm and Engagement Metrics Proposal (PCAOB Release 2024-002 or Proposal),[1] but that were not adequately addressed in the Final Rules adopted by the Board.[2]

[1] See PCAOB Release 2024-002 dated April 9, 2024.
[2] See CAQ comment letter dated June 7. 2024, our Smaller Firm Task Force comment letter dated June 20, 2024 and our Supplemental comment letter including survey data dated August 1, 2024.

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Since the CAQ's inception, we have consistently supported the Board's efforts to modernize existing auditing standards and improve transparency related to the audit process. We have played an active role in providing feedback related to standard-setting and rulemaking activities 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 effective and efficient implementation. We believe that these cooperative efforts have enhanced overall audit quality and ultimately investor protection.

During the past year or so, we have highlighted significant concerns 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]."[3]

The Adopting Release for the Final Rules even 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.[4] However, the Firm and Engagement Metrics 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.[5]

Overarching Concern Regarding Lack of Sufficient Analysis and Due Process

As stated in our comment letter to the Commission, we are concerned that the Board's adoption of its Final Rules on Firm and Engagement Metrics and Firm Reporting has not allowed for thorough consideration and analysis of stakeholder comments.[6] PCAOB Board member Christina Ho observed 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]."[7] As a result, the Board has not obtained sufficient feedback to develop Final Rules that meets the needs of stakeholders and minimizes the risk of unintended consequences.

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[3] See statement from Duane DesParte.

[4] Adopting Release 2024-012, page 189.

[5] 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." (Adopting Release 2024-12, page 189). 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.

[6] See CAQ comment letter dated November 22, 2024 (https://www.sec.gov/comments/pcaob-2024-07/pcaob202407-545435-1562282.pdf).

[7] 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.

The CAQ suggested that the proposed rules would exacerbate audit firm litigation and reputation risks. As acknowledged in the Adopting Release, the CAQ performed a survey of audit committee chairs. Some participants in the survey agreed that the proposal could create litigation and reputation risk. Regarding these risks, the Board stated, "we agree that plaintiffs' lawyers may use the final metrics to support their cases. Supporting this view, some research finds that PCAOB inspection reports with audit deficiencies are positively associated with the number of lawsuits subsequently filed against the inspected auditor. However, while we acknowledge this could encourage some frivolous lawsuits, we believe it would largely contribute positively to audit quality as it would create an incentive for firms to produce high quality audits. Indeed, we believe it would help drive more competition on audit quality, a criterion that the same commenter urged us to consider."[8] We are surprised with the Board's suggestion that the threat of frivolous lawsuits has a positive impact on audit quality; it seems much more likely that firms will divert resources to address such litigation that could instead be devoted to improving audit quality. Regardless, the Board's stated belief on these points is not accomplished by reasoned cost-benefit analysis.

The Board's action to adopt these Final Rules also seems counter to views expressed by members of U.S. Congress.[9] Moreover, we are concerned about stakeholder awareness and availability to participate in the Commission comment process, particularly for smaller US public company audit firms with fewer resources, creating a risk that their views on these rules will not be heard and considered.

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 (7.5 months; 226 days).[10] Firm and Engagement Metrics 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).[11] The Board has moved this rule forward with such speed despite the fact that 70% of commenters expressed concerns on the proposed rule.[12] 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 PCAOB Auditing Standard (AS) 2, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements*, (AS 2) - since revised and now AS 2201 - which "had to be amended three years later after a disastrous rollout and public outcry."[13] Taking appropriate time upfront in the rulemaking process leads to better outcomes and prevents unintended consequences and costly revisions to fix later.

We appreciate that the project on Audit Quality Indicators has a long history dating back to the 2008 Department of the Treasury's *Advisory Committee on the Auditing Profession Report* (Treasury ACAP

[8] Adopting Release, pages 254-255.
[9] See letters from House Representative and House Financial Services Committee Chairman-Designate French Hill (dated November 13, 2024), Senator Tim Scott (dated November 17, 2024), and French Hill and House Representative and House Financial Services Chairman Patrick McHenry (dated December 16, 2024).
[10] Statement on the Firm & Engagement Metrics Adopting Release - Will This Unusually Rushed Auditing Standard Suffer the Same Fate of the Auditing Standard 2? | PCAOB
[11] Ibid.
[12] https://www.sec.gov/comments/pcaob-2024-07/pcaob202407-545435-1562282.pdf
[13] Statement on the Firm & Engagement Metrics Adopting Release - Will This Unusually Rushed Auditing Standard Suffer the Same Fate of the Auditing Standard 2? | PCAOB

Report).[14] In reference to that report, Chair Williams has characterized the PCAOB's adoption of Firm and Engagement Metrics as "the PCAOB carrying forward recommendations that have been talked about for 16 years."[15] In the Treasury ACAP Report, Recommendation 3 was "Recommend the PCAOB, in consultation with auditors, investors, public companies, audit committees, boards of directors, academics, and others, *determine the feasibility* [emphasis added] of developing key indicators of audit quality and effectiveness and requiring auditing firms to publicly disclose these indicators." The Board has determined it not feasible to develop key indicators of audit quality. The PCAOB renamed its "Audit Quality Indicators" project to "Firm and Engagement Metrics" because "Audit Quality Indicators" could be perceived as a definitive measure of audit quality, which the PCAOB does not want to suggest.[16] In other words, there is not a proper basis to suggest that the Final Rules actually were supported by 16 years of engagement; instead, the Board rushed out new concepts that require additional vetting.

Unresolved Concerns Raised in CAQ and Smaller Firm Comment Letters

We acknowledge the efforts made by the PCAOB staff to modify certain (limited) aspects of the Final Rules in response to the numerous pragmatic concerns raised in the comment letter process. However, significant concerns remain unresolved.

We do not support public disclosure of engagement-level metrics.

The Final Rules would require engagement-level metrics to be publicly disclosed. We continue to support an alternative approach that focuses on discussion related to certain engagement-level metrics with each audit committee. We do not support public disclosure of engagement-level metrics for the reasons articulated in our June 7th comment letter and reiterated in this letter.

In the Adopting Release, the Board responded to comments received on the public reporting of metrics by stating that investors and investor-related groups were generally supportive, despite the fact that many other commenters, primarily firms and firm-related groups, criticized the proposal. The Board also described comments that agreed with the PCAOB's rationale for the metrics, including providing investors with decision-useful information that will assist them in making decisions about audit-related matters such as ratifying the appointment of the auditor or voting for reelection of Board members that serve on the audit committee. However, in the Adopting Release, the Board did not attempt to sufficiently address opposing views from investors who questioned the usefulness of the information to institutional and fundamental investors. For example, in one comment letter, an investor stated:

> "The proposing release acknowledges that few retail investors will benefit from the data; but a significant percentage of *institutional investors* [emphasis added] will probably not tap into it either. It is *highly unlikely* [emphasis added] that index and ETF managers will devote any resources to following these metrics. Ditto for the proxy advisors. Fundamental investors are more likely to pay attention, but many are already stretched thin, both on the buy side and sell side. (I am not the only security analyst who has difficulty keeping up with all of the SEC filings produced by companies in my coverage list.) The indirect correlations of these metrics with audit quality will

[14] See PCAOB Concept Release on Audit Quality Indicators (July 1, 2015).

[15] Ibid.

[16] See PCAOB Board member George Botic Statement in Support of Firm and Engagement Metrics Proposal dated April 9, 2024.

probably not provide a sufficient incentive for many fundamental investors to incorporate them into their work flows."[17]

It is unclear how the PCAOB could come to the conclusion that "investors, *particularly institutional investors* [emphasis added], will find the final metrics useful and indeed an improvement in the quality of information over the limited information currently available,"[18] without addressing the comment received from an investor that is contrary to this view. We are concerned that the Board is overemphasizing views from a minority of investor advocates. The SEC should require that the Board reconsider its hypothetical assumptions about how investors will use the reported metrics before the SEC approves the Final Rules.

We continue to be concerned that certain engagement and firm-level metrics will inevitably be misinterpreted, and auditors preparing written narratives that attempt to guess and address a wide range of questions will add significant costs that will not meaningfully improve audit quality. The reporting of engagement-level metrics could also be in tension with client confidentiality obligations.

The Final Rules overstate the utility and understate the expected cost of reported data.
The economic analysis does not provide a sufficient basis for approval of the SEC, and we are concerned that the costs to comply with the Final Rules will far exceed the benefits.

Extensive education will be needed of investors and financial statement users to help them understand the proposed metrics. The one-size-fits-all approach in the Final Rules will make it difficult to compare firms and engagements. This is why, in our comment letter dated June 7, 2024, we instead suggested a more robust dialogue with audit committees as they are better informed about such matters.

In addition, in our June 7th comment letter, we strongly recommended that the Board perform sound economic analysis to determine whether the benefit of the required disclosures would outweigh the substantial costs to aggregate, prepare, review and submit them. To aid the Board in this analysis, on August 1, 2024, we 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. 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.

Chair Williams has emphasized the importance of public discourse to the Board's activities. For example, she stated in her testimony before the U.S. House of Representatives Committee on Financial Services Subcommittee on Capital Markets, "The public comment period is an absolutely essential part of that

[17] See comment letter from Lark Research dated June 7, 2024.
[18] See Adopting Release 2024-012, page 178.

process and we carefully weigh each and every comment we receive."[19] We don't agree that all comment letters related to the Proposal have been adequately weighed. For example, while our August 1st comment letter and surveys were referred to in the updated economic analysis in the Adopting Release, these key findings were not explicitly mentioned, let alone addressed. Instead, only answers to specific questions were included that supported the PCAOB's views about what investors and audit committees may need. For example, the Adopting Release states, "Fifty-nine percent of participants said the information available to them to fulfill their external auditor oversight responsibilities meets all of their needs. Thirty-six percent said the information meets most of their needs and the remaining 5% said the information meets less than most of their needs. These results suggest that most audit committees believe the current information environment is sufficient. However, the results do not imply that additional information cannot be useful to audit committee members. Indeed, 27% of the surveyed audit committee members seek more information about how their audit engagement is being performed, about the audit firm, or about other audit firms."[20] Said another way, according to our survey results, only 5% of respondents stated that current information is not meeting their needs. The PCAOB did not further research or explore why audit committee members are of the view that the current information environment is sufficient, nor did they seek to understand whether the metrics proposed would change the view of the minority of audit committee members who responded that their information needs are currently not met. A balanced approach to consideration of the survey results does not appear to have been taken.

The Board failed to conduct "more research" or adequately consider feedback provided by the public in the comment letter process.[21] The costs come not only in the monetary form of aggregating, preparing, reviewing and submitting volumes of data (the usefulness of which has not been established or supported), but it also comes in the form of the risk that audit quality will suffer. Time and resources spent complying with increased regulatory reporting burdens (with unproven benefit) will divert resources and likely will stand to ultimately hinder audit quality.

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[19] See Chair Williams' Testimony Before U.S. House of Representatives Committee on Financial Services Subcommittee on Capital Markets | PCAOB.

[20] See Adopting Release 2024-012, page 183.

[21] The Final Rules include the phrases "we believe," "we also believe," "the board believes," or "we do not believe" nearly 300 times in 335 pages.

For example:

- "*We believe* [emphasis added] these metrics will provide valuable additional information, context, and perspective on auditors and audit engagements, which can be used by investors, audit committees, and other stakeholders, and which will further our oversight activities." (See Adopting Release 2024-012, page 3)

- "*We also believe* [emphasis added] that gathering data and calculating the final metrics, given the subjects they address, will not be overly costly, time-consuming, or burdensome." (See Adopting Release 2024-012, page 6)

"We believe" is not evidence-based standard-setting. These statements do not provide sufficient economic analysis. It remains unclear if or how the disclosure requirements in the Final Rules are useful to investors, audit committees, and other stakeholders. As noted above, our research indicates stakeholders have the information they need. Further, there has not been sufficient outreach or evidence gathered to identify the costs of the Final Rules.

This comes at a time when the profession is already challenged to attract and maintain the necessary talent to perform quality audits.

The Final Rules adopted by the Board are not supported by sufficient public input and robust analysis of the usefulness of the data to be collected, its benefit to stakeholders and whether those benefits outweigh the costs to audit firms and public companies, many of which are ultimately borne by investors. For example, the Board stated that a benefit of the Final Rules would likely be improvements to the PCAOB's oversight programs.[22] However, the Board did not quantify the benefits and costs of using the disclosures required by the Final Rules to enhance their oversight activities.

A materiality threshold to reporting requirements was not incorporated into the Final Rules.
Currently, there is no de minimis threshold when it comes to compliance with certain PCAOB firm and engagement reporting requirements (e.g., Form AP). While it is important for firms to comply with the Board's rules, creating a system that has no tolerance for even the smallest, immaterial error is not practical or in the public interest. Inspection findings and enforcement cases based on minor inconsequential errors redirect firm resources that otherwise enhance audit quality. This level of compliance does not provide a clear benefit to stakeholders. Combining this with a significant increase in the amount and detail of the proposed firm and engagement-level metrics will significantly exacerbate these issues. The risk of enforcement for minor, unintentional errors in reporting may also play a role in public accounting firms' decision to cease auditing public companies.

In our comment letter dated June 7, 2024, we recommended that the PCAOB establish a de minimis threshold for unintentional inaccuracy that applies to all firm reporting. The Board's response is lacking. In its Adopting Release, the Board stated:

> "We are not adopting a materiality or de minimis threshold in connection with the obligation to amend forms to correct information that was incorrect at the time the report was filed or to provide information that was omitted from the report and was required to be provided at the time the report was filed. Historically, the Board has not established, and has not found necessary, materiality or de minimis thresholds in connection with form amendments. As a commenter acknowledged, a materiality or de minimis threshold will not necessarily eliminate challenges commenters have identified or those that have yet to be identified in connection with potential corrections. Indeed, we believe that implementing a materiality or de minimis threshold would introduce *unnecessary complexity and uncertainty* [emphasis added] to the form amendment process and, further, would potentially threaten, or be perceived to threaten, the accuracy and reliability of reported information, thereby undermining the intended purpose of the amendments.
>
> At present, we believe applying the existing Form AP guidance is appropriate and sufficient for the final rules. We will monitor for issues connected to form amendments and consider updates to implementation guidance as appropriate. Addressing issues as they arise through implementation guidance—as opposed to establishing a materiality or de minimis threshold in the adopting release or through a rule amendment—will help ensure that any guidance is informed by, and better tailored to, issues raised by experience under the final rules rather than

[22] See Adopting Release 2024-012, page 190.

speculative concerns. We believe monitoring for the need for guidance is a better solution than implementing a materiality or de minimis threshold in the adopting release or through rule amendment."

We strongly disagree with this response as it relates to Form AP and believe it does not reflect sound rulemaking in the Final Rules. The Adopting Release does not make it clear how a materiality threshold adds "complexity and uncertainty." On the contrary, stakeholders' views are that a materiality threshold can help *simplify these considerations*. Additionally, materiality is the foundation of financial reporting. Therefore, the Board has not demonstrated how an immaterial or de minimis correction would impact the accuracy and reliability of information in a meaningful way that would change the total mix of information stakeholders use.

Between January 1, 2022, and November 19, 2024, approximately 25% of the PCAOB's enforcement orders consisted of failures by firms to comply with PCAOB reporting requirements.[23] One has to question whether (1) the high percentage of these matters that relate to rules compliance could suggest that the rules are themselves overly complex or calibrated in a way that leads to frequent violations and (2) the Board should consider whether those PCAOB resources would be better spent focusing directly on audit quality or on helping firms to comply.

Furthermore, the PCAOB states that monitoring issues connected to form amendments would inform the need for future guidance. The PCAOB has data and experience about Form AP since it was first required in 2017 that could have been used now to inform the rulemaking, rather than waiting until implementation challenges arise at some point in the future. However, upon review of the PCAOB's Post Implementation Review (PIR) webpage, there has been no PIR conducted of the Form AP reporting requirements. Such a PIR could have informed this rulemaking and in particular provided more evidence for the PCAOB to determine whether or not a materiality threshold is necessary.

Since the PCAOB has not completed a PIR related to Form AP, the CAQ scanned the academic literature available on Form AP Reporting.

We reviewed the available academic research using two questions:

1. *Did audit quality or audit efficiency improve after mandatory Form AP disclosures became effective?*

   Based on the papers reviewed,[24] there is little to no evidence that Form AP disclosures improve audit quality or audit efficiency.

[23] This 25% stat was calculated using settled orders from 2022 through November 19, 2024, posted on the PCAOB's website.

[24] 1. *What's in a Name? Initial Evidence of U.S. Audit Partner Identification Using Difference-Differences Analyses*. Lauren M. Cunningham, Chan Li, Sarah E. Stein, and Nicole S. Wright. The Accounting Review, September 2019; 2. *Engagement Partner Identification Format and Audit Quality.* Jean Bedard, Carl Brousseau and Louis-Philippe Sirois. International Journal of Auditing, January 2024; 3. *A Fresh Look or Resource Constraints? Examining Changes to Component Auditor Use Following Audit Partner Rotation.* Russell Barber, Jenna J. Burke, and Katherine A. Gunny.

2. *Do Form AP disclosures provide decision-useful information to stakeholders?*

   Based on the papers reviewed,[25] the disclosures may provide information that shapes the perception of external stakeholders, but it is not clear that is a "good" outcome. The first paper cited in the footnote above finds no evidence to support the idea that stakeholders use the information in Form AP. The second, third, and fourth are context specific—i.e., Form AP disclosures may be useful when there is a change in inspection access, or when there is a partner-related scandal, or when there is a restatement. However, these papers do not speak to whether the information is useful more generally.

The Final Rules are an overreach of jurisdictional authority.

In our view, several of the reporting requirements the Board seeks to impose also 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 proposal and the Final Rules. Accordingly, we encourage the Commission to reassess whether the Board has the statutory authority to require certain aspects of the reporting contemplated by the Final Rules.

Because the PCAOB's mandate does not extend to oversight of audit committees, more coordination with those that charged with such oversight would have been helpful. The economic analysis does not present any evidence from the PCAOB, SEC, NASDAQ, the New York Stock Exchange or others that audit committees today are making uninformed or otherwise questionable decisions related to auditor appointments.

In the Final Rules, the Board identifies Section 102(d) of SOX, as the principal basis on which it has proceeded.[26] Section 102(d) requires registered audit firms "to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2)."[27] 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."[28] The Board asserts that this residual clause in subsection (b)(2)(H) gives it "broa[d] authority"

September 2024 Working Paper; 4. *An Examination of the Effects of Component Auditor Disclosures on Audit Quality and Audit Fees*. Gopal V. Krishnan, Juan Mao, Mary S. Stone, and Jing Zhang. October 2024 Working Paper.

[25] 1. *Do Investors Care Who Did the Audit? Evidence from Form AP*. Marcus M. Doxey, James G. Lawson, and Thomas J. Lopez. Journal of Accounting Research, December 2021; 2. *Do U.S. Investors Value Foreign Component Auditors?* Bingyi Chen and Jenelle K. Conway. Journal of Accounting Research, June 2022; 3. *Is Audit Partner Identification Useful? Evidence from the KPMG "Steal the Exam" Scandal*. Lawrence J. Abbott, Russell Barber, William L. Buslepp, and Pradeep Sapkota. Auditing: A Journal of Practice & Theory, May 2023; 4. *Component Auditor Use and Lenders' Perception of Audit Quality*. Gopal V. Krishnan, Juan Mao, and Jing Zhang. Auditing: A Journal of Practice Theory, November 2023; 5. *Do Investors Care About Who Led the Audit in the U.S.? Evidence from Announcements of Accounting Restatements.* Daniel Aobdia, Vincent Castellani, and Paul Richardson, January 2024 Working Paper.

[26] Adopting Release 2024-012, page 41.

[27] 15 U.S.C. § 7212(d).

[28] *Id.* § 7212(b)(2)(H).

to promulgate any reporting requirements that it deems "necessary or appropriate to serve the public interest or protect investors."[29]

But as the Board itself recognizes, the authority conferred by the residual clause is "not unbounded."[30] 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.[31] In the 2024 *Loper Bright* decision—which postdated the Board's Proposal—the Supreme Court called upon lower courts to continue "polic[ing] the outer statutory boundaries" of agency authority.[32] *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."[33] 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."[34] Similarly, phrases such as "public interest" and "protection of investors" do not confer "a broad license" on agencies "to promote the general public welfare," but rather "take [their] meaning from the purposes of the regulatory legislation."[35] 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."[36] 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."[37]

Applying these principles to Section 102(b)(2), the Board's authority to require the provision of "other" information under subsection (b)(2)(H) should be viewed as 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.[38] That list does not suggest that Congress contemplated the disclosure of

[29] Adopting Release 2024-012, page 41.
[30] Adopting Release 2024-013, page 27.
[31] *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263 (2024) (citation omitted).
[32] *Id.* at 2268.
[33] *Loper Bright Enters. v. Raimondo*, 45 F.4th 359, 368 (D.C. Cir. 2022), *vacated and remanded on other grounds*, 144 S. Ct. 2244.
[34] *N.Y. Stock Exch. LLC v. SEC*, 962 F.3d 541, 554-55 (D.C. Cir. 2020) (interpreting The Securities Exchange Act of 1934 (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).
[35] *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).
[36] *Chamber of Comm. v. SEC*, 412 F.3d 133, 139-40 (D.C. Cir. 2005).
[37] *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.").
[38] *See* 15 U.S.C. § 7212(b)(2)(A)-(G).

the detailed information called for by the Final Rules, such as the average number of hours worked per week by the engagement partner (especially with respect to a particular audit), or the disclosure of such personal information as the number of years an individual accountant has worked in a particular industry. These and other metrics related to workload, professional experience, and other areas—both at the firm- and engagement-level—would demand a level of disclosure that bears little clear relationship to the items identified by Congress.

In response, the Board suggests it has "broad" authority under subsection (b)(2)(H) to mandate any reporting that might "enhanc[e] the transparency and quality of audits."[39] But this argument fails to appreciate the extent to which subsections (b)(2)(A) through (b)(2)(G) narrow the scope of subsection (b)(2)(H). Although the information collected under subsection (b)(2)(H) need not be identical to the information enumerated in subsections (b)(2)(A) through (b)(2)(G), it does need to be *similar*. Information regarding workload and professional experience (among other areas) is different in kind from financial information, quality control policies, and the other information enumerated in subsection (b)(2). In addition, each of subsections (b)(2)(A) through (b)(2)(G) requires reporting of certain identified *firm*-level information—not *engagement*-level metrics.[40] As a result, it is not clear that the Board has authority to mandate reporting of *engagement*-level metrics through the Final Rules. Firm-level metrics and engagement-level metrics are different in nature and scope.

The Board next asserts that Section 103(a)(1) provides independent authority for the reporting requirements in the final rules.[41] That provision empowers the Board to "establish … such auditing and related attestation standards, such quality control standards, such ethics standards, and such independence standards to be used by registered public accounting firms in the preparation and issuance of audit reports, … as may be necessary or appropriate in the public interest or for the protection of investors."[42] By its plain terms, this provision relates to the promulgation of professional practice standards to be used in the preparation and issuance of audit reports, not reporting requirements.

Indeed, the Board acknowledges that the information covered by the Final Rules would "not appear directly within audit reports."[43] Yet the Board claims the reporting requirements are "fundamental auditing and quality control standards at their core" because the mandated disclosures might ultimately "promote the quality and accuracy of audit reports."[44] This is a strained characterization of audit standards, at best. Fundamentally, an audit standard relates to the preparation and issuance of the audit report, whereas a requirement to report information to the PCAOB does not—it is that simple. 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

[39] Adopting Release 2024-012, pages 41-42.
[40] *See, e.g.*, *id.* § 7212(b)(2)(B) ("the annual fees received by *the firm*") (emphasis added); *id.* § 7212(b)(2)(E) ("a list of all accountants associated with *the firm*") (emphasis added). Of course, the firm-level information that the Board requires under subsection (b)(2)(H) must still be similar in nature to the firm-level information identified in subsections (b)(2)(A) through (b)(2)(G).
[41] Adopting Release 2024-012, pages 39-40.
[42] 15 U.S.C. § 7213(a)(1).
[43] Adopting Release 2024-012, page 39.
[44] *Id.*, page 40.

with specific solutions.'"[45] The Board's authority to issue a given reporting requirement must be found, if at all, in the specific provisions that speak to reporting requirements (*i.e.*, Sections 102(d) and 102(b)(2)).

The Board also invokes Sections 101(c)(5) and 101(g)(1) as "ancillary authority that supports the Board's primary powers in Sections 102 and 103."[46] 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."[47] This provision does not 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.[48] Even if Section 101(c)(5) does give the Board rulemaking authority, the same principle discussed above in relation to Section 103(a)(1) applies here as well: 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)).[49] 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 in connection with Sections 102(d) and 102(b)(2)(H).

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]."[50] This provision in no way defines or speaks to the *scope* of the Board's authority.

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 (SRO), 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].[51] Combining this requirement with Section 107(b)(3) of SOX,[52] 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

[45] *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citations omitted).
[46] Adopting Release 2024-012, page 40 & n.84.
[47] 15 U.S.C. § 7211(c)(5).
[48] 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).
[49] *See RadLAX Gateway Hotel, LLC*, 566 U.S. at 645.
[50] 15 U.S.C. § 7211(g)(1).
[51] 15 U.S.C. § 78c(f).
[52] 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."

rely on the PCAOB's economic analysis in the Adopting Release,[53] we note that the Board has not sufficiently analyzed the impact of the Final Rules on efficiency, competition, and capital formation. For example, in the Adopting Release, the Board states, "the full implications of the metrics on competition and capital formation might take several years to manifest, as stakeholders would need time to adapt to and fully integrate the final metrics effectively."[54]

Conclusion

Board member Ho's dissent referred to the disastrous roll-out of AS 2. These Final Rules could suffer a similar fate. 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 Public Company Accounting Oversight Board."[55] We recommend the SEC consider the tools available to the Commission to prevent these Final Rules from becoming effective. For the reasons described in this letter, we recommend that the Commission decline to approve the "Firm and Engagement Metrics" Final Rules. The PCAOB and its staff 1) have not obtained and considered sufficient public input from stakeholders to determine the data to be collected is desired by and/or useful to stakeholders, and 2) have not sufficiently studied the costs to audit firms (and ultimately, investors and public companies) — especially the unintended economic consequences of massive data requests on smaller audit firms, smaller public companies and the overall capital markets — to conclude that those costs are justified in terms of increased audit quality.

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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) or Vanessa Teitelbaum (vteitelbaum@thecaq.org).

Sincerely,

Dennis J. McGowan

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cc:

[53] 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).

[54] Adopting Release 2024-012, page 261.

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

CAQ

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