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PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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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

Summary: The Public Company Accounting Oversight Board ("PCAOB" or "Board") is proposing for public comment a new rule, along with amendments to an existing rule and form, related to its registration program. Proposed new PCAOB Rule 2400, *False or Misleading Statements Concerning PCAOB Registration and Oversight*, would prohibit a registered public accounting firm and its associated persons from making false or misleading statements concerning the 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. Proposed new paragraph (h), *Constructive Withdrawal Requests*, of existing PCAOB Rule 2107, *Withdrawal from Registration*, would permit the Board, under specified conditions, to treat a firm's failures both to file annual reports and to pay annual fees for at least two consecutive reporting years as a constructive request for leave to withdraw from registration and to deem the firm's registration withdrawn.

Public Comment: Interested persons may submit written comments to the Board. Comments should be sent by email to comments@pcaobus.org or through the Board's website at pcaobus.org. Comments also may be sent to the Office of the Secretary, PCAOB, 1666 K Street, NW, Washington, DC 20006-2803. All comments should refer to PCAOB Rulemaking Docket Matter No. 054 in the subject or reference line and should be received by the Board no later than April 12, 2024.

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I. EXECUTIVE SUMMARY

Registration with the PCAOB provides access to a key privilege: the ability to issue audit reports for issuers and broker-dealers or to play a substantial role in those audits. In turn, public securities markets in the United States depend on public accounting firms that are registered with the PCAOB. In their role as gatekeepers, these firms bolster the reliability of financial information disclosed by issuers and broker-dealers to investors and other stakeholders.

To protect investors and further the public interest, the PCAOB employs various mechanisms for overseeing registered firms' audits of issuers and broker-dealers, including inspections and enforcement actions. The confidence of those who invest their capital in the U.S. securities markets turns, in part, on the knowledge that the public accounting firms that audit issuer financial statements and broker-dealer reports are themselves subject to oversight by the PCAOB. Yet, some investors, audit clients, potential audit clients, issuers' audit committees, and members of the broader public may lack clarity on the scope of PCAOB oversight under the Sarbanes-Oxley Act of 2002, as amended ("Act"). A mistaken belief that the PCAOB has oversight of all aspects of a registered firm's operations could produce a false sense of confidence in such firm's work. Therefore, it is important that PCAOB-registered firms refrain from disseminating false or misleading information concerning their registration status, including the extent of regulatory scrutiny by the PCAOB to which they are subject.

Anchored by our statutory mandates, the PCAOB's oversight extends only to work performed in connection with audits of issuers and broker-dealers. Significantly, at present, nearly half of the firms registered with us do not perform any audit-related activities for issuers or broker-dealers. It is crucial, then, for clients, potential clients, and the broader public to understand that the work of these firms falls outside the scope of our inspection or enforcement authority. Additionally, even for firms that perform some work within the scope of our oversight, other work that they perform—including engagements concerning the financial statements of clients that are neither issuers nor broker-dealers—remains outside our purview.

The PCAOB's website offers information regarding certain professional services provided by registered firms, based on their self-reported data. Yet, with only one limited exception (*see* PCAOB Rule 2107(c)(4)), there are no specific PCAOB rules or standards governing the statements that a firm and its associated persons may convey to clients, potential clients, and the public regarding a firm's PCAOB registration, including the extent of PCAOB oversight of the firm's services.

We are therefore proposing a new rule, PCAOB Rule 2400, *False or Misleading Statements Concerning PCAOB Registration and Oversight*. By prohibiting statements that are false or misleading, proposed Rule 2400 would regulate the manner in which firms present to clients, potential clients, or the public their PCAOB registration status, including the scope of the PCAOB's oversight of their work.

Proposed Rule 2400 consists of three principal parts.

1. *General prohibition on false or misleading statements*. The first provision would generally prohibit a registered firm and its associated persons from making any false or misleading statement concerning the firm's PCAOB registration status, including the extent of the PCAOB's oversight of the firm's services.

2. *Application of general prohibition in specific circumstances*. The second provision would set forth a non-exhaustive list of circumstances that would violate the general prohibition. These include certain statements concerning PCAOB registration and oversight that (i) state or imply the PCAOB sponsors, recommends, or endorses the firm or its services; (ii) are made by a firm that is not currently subject to PCAOB oversight; (iii) refer to particular services that are not subject to PCAOB oversight; (iv) appear in auditors' reports for clients other than issuers or broker-dealers; or (v) are made by a firm with a pending request to withdraw from PCAOB registration.

3. *Registration applicant's false or misleading statements*. The final provision would indicate that the Board, when reviewing a firm's application for registration with the PCAOB, may consider any prior false or misleading statements made by the applicant firm or its personnel regarding the firm's PCAOB registration status, including the extent of PCAOB oversight of the firm.

Additionally, to complement proposed Rule 2400, we are proposing an amendment to PCAOB Form 3, *Special Reporting Form*, which requires that registered firms file a special report following the occurrence of specified events.

Finally, to further enhance our registration program, we are proposing a new procedural mechanism that would enable the Board to address situations in which a registered firm is repeatedly delinquent in filing its annual report to the PCAOB and in paying annual fees to the PCAOB. Currently, removal of firms from PCAOB registration is possible either through (1) the

Board's authorization of a firm-initiated withdrawal request or (2) the Board's imposition of a disciplinary sanction revoking the firm's registration. This proposal would introduce a third procedural mechanism for removal, building off of the existing firm-initiated withdrawal framework, by creating a process for constructive withdrawal requests. Proposed new paragraph (h) ("*Constructive Withdrawal Requests*") of current PCAOB Rule 2107, *Withdrawal from Registration*, would, under certain conditions, allow the Board (i) to treat a firm's failure both to pay annual fees and to file annual reports for at least two consecutive reporting years as a constructive request by the firm for leave to withdraw from registration, and (ii) to deem the firm's registration withdrawn.

The text of the proposed new rule, form amendment, and rule amendment is set forth in the Appendix. We request comment on all aspects of the proposals. In particular, we request responses to the comment requests specified below. We encourage commenters to provide any evidence, including data or practical experience, that informs their views. Instructions on how to comment, including by email or postal mail, can be found on the cover page of this release. Comments submitted can be found at the docket page of PCAOB Rulemaking Docket Matter No. 054.

II. BACKGROUND

A. Overview of PCAOB Registration and the Board's Oversight of Registered Firms

Section 102(a) of the Act, and PCAOB Rule 2100, *Registration Requirements for Public Accounting Firms*, require that a public accounting firm that prepares or issues an audit report[1]

[1] An "audit" is defined in Section 110(1) of the Act and paragraph (a)(v) of PCAOB Rule 1001, *Definitions of Terms Employed in Rules*, as an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the U.S. Securities and Exchange Commission ("SEC" or "Commission"), for the purpose of expressing an opinion on the financial statements or providing an audit report. An "audit report" is defined in Section 110(2) of the Act and Rule 1001(a)(vi) as a document, report, notice or other record – (1) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and (2) in which a public accounting firm either – (i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or (ii) asserts that no such opinion can be expressed.

with respect to an issuer[2] or broker-dealer,[3] or plays a substantial role in the preparation or furnishing of such an audit report,[4] must be registered with the Board.[5]

By and large, a firm registers with the Board by having an application for registration approved by the Board.[6] A firm applying for registration must complete and file an application

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[2] An "issuer" is defined in Section 2(a)(7) of the Act and Rule 1001(i)(iii) to mean an entity that is an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 ("Exchange Act")) and that has registered any of its securities under Section 12 of the Exchange Act, or is required to file reports under Section 15(d) of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 and that it has not withdrawn.

[3] A "broker" is defined in Section 110(3) of the Act and Rule 1001(b)(iii) to mean a broker (as defined in Section 3(a)(4) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of the Exchange Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm. A "dealer" is defined in Section 110(4) of the Act and Rule 1001(d)(iii) as a dealer (as defined in Section 3(a)(5) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of the Exchange Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm. The use of the term "broker-dealer" in this release refers to entities that are registered with the SEC as both a broker and a dealer and to entities that are registered as only one or the other.

[4] The phrase "play a substantial role in the preparation or furnishing of an audit report," as defined in Rule 1001(p)(ii), means (1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report, or (2) to perform the majority of the audit procedures with respect to a subsidiary or component of any issuer or broker-dealer the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer or broker-dealer necessary for the principal auditor to issue an audit report. For purposes of that definition, "material services" means services, for which the engagement hours or fees constitute 20% or more of the total engagement hours or fees, respectively, provided by the principal auditor in connection with the issuance of all or part of its audit report. *See* Note 1 to Rule 1001(p)(ii).

[5] More specifically, Section 102(a) of the Act states, "It shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer, broker, or dealer." Firms that violate Section 102(a) and Rule 2100 have faced SEC enforcement action. *See*, *e.g.*, SEC Press Release, *SEC Charges 69 Audit Firms and Partners for Issuing Audit Reports While Not Registered with the PCAOB* (Sept. 13, 2007). Moreover, such violations have served as grounds for the Board to disapprove registration applications from certain public accounting firms. *See*, *e.g.*, *Registration Application of CNGSN and Associates LLP*, PCAOB Release No. 102-2023-002 (Nov. 7, 2023); *Registration Application of KPMG Audit SRL*, PCAOB Release No. 102-2022-002 (July 7, 2022); *Registration Application of Ernst & Young-Middle East*, PCAOB Release No. 102-2020-001 (June 16, 2020).

[6] In certain limited circumstances, an unregistered firm can succeed to the registration status of a predecessor firm. *See* PCAOB Rule 2108*, Succeeding to the Registration Status of a Predecessor*; *see also* PCAOB Form 4.

on PCAOB Form 1, *Application for Registration*,[7] and pay a registration fee.[8] When deciding whether to approve a firm's completed application for registration, the Board assesses whether approval of the firm's application is "consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports."[9]

A firm's registration application may be approved by the Board even if the firm does not have the immediate intention of performing audit work with respect to issuers or broker-dealers.[10] A firm may seek PCAOB registration for various reasons: it might aim to undertake, or wish to make itself eligible to perform, audit work necessitating PCAOB registration under the Act; it could be pursuing work that demands PCAOB registration due to other rules[11] or contractual commitments; or it might perceive PCAOB registration as enhancing its reputation and marketability. It is noteworthy that a significant proportion of PCAOB-registered firms—

[7] *See* Section 102(b) of the Act; PCAOB Rule 2101, *Application for Registration*. The Act prescribes some of the contents of a registration application. *See* Section 102(b)(2)-(3) of the Act.

[8] *See* Section 102(f) of the Act; PCAOB Rule 2103, *Registration Fee*.

[9] PCAOB Rule 2106(a), *Standard for Approval.* The Board's written notice of disapproval of a completed registration application is treated as a disciplinary sanction for purposes of review of that disapproval by the Commission. *See* Sections 102(c)(2) and 107(c) of the Act.

[10] The Board has permitted, but not encouraged, such firms to register. *See Registration System for Public Accounting Firms*, PCAOB Release No. 2003-007 (May 6, 2003), at 6 ("While, consistent with Section 102(a) of the Act, the Board's rules would only *require* public accounting firms that prepare or issue an audit report on an issuer, or play a substantial role in preparing or issuing an audit report, to register with the Board, the Board's rules would *allow* any other public accounting firm to register.") (emphasis in original); *Frequently Asked Questions Regarding Registration with the Board*, PCAOB Release No. 2003-011F (Dec. 4, 2017) (hereinafter "*Frequently Asked Questions on Registration*"), at FAQ 8 ("[T]he Board does not encourage the registration of firms that are not required to be registered and are not actively seeking to develop their practice to provide services for which registration is required.").

[11] Some regulators have adopted rules requiring entities subject to their jurisdiction to use a PCAOB-registered firm for specified services unrelated to audits of issuers and broker-dealers. For example, SEC Rule 206(4)-2 under the Investment Advisers Act of 1940, 17 C.F.R. § 275.206(4)-2 (the "Advisers Act Custody Rule"), requires an SEC-registered investment adviser that maintains custody of client funds or securities as—or has custody because a related person maintains client funds or securities as—a qualified custodian, in connection with advisory services the investment adviser provides to clients, to have those assets verified by way of an annual surprise examination conducted by an independent public accountant registered with the PCAOB (but, notably, the Advisers Act Custody Rule also requires that such independent public accountant be "subject to regular inspection" by the PCAOB). *See* Section (a)(6)(i) of the Advisers Act Custody Rule. Engagements that fall under the Advisers Act Custody Rule are not subject to PCAOB oversight.

approximately 40% to 50%—perform no audit services that require PCAOB registration under the Act.[12]

Registration with the Board does not mean that a firm's entire professional practice is subject to PCAOB oversight. The PCAOB's regulatory responsibilities under the Act—including standard-setting, inspections, and enforcement—are linked to the work performed by a registered firm and its associated persons in connection with audits of issuers and broker-dealers.[13] Congress, therefore, tailored the Board's authority to align with those designated responsibilities.[14] Accordingly, if a firm does not provide any services related to the audits of issuers or broker-dealers, then no aspect of the firm's professional practice falls under the PCAOB's oversight.[15]

B. False or Misleading Statements Concerning PCAOB Registration, Including the Extent of PCAOB Oversight

As elaborated in Section IV below, we have noted instances where some registered firms have claimed on their websites that PCAOB registration is a "seal of approval" and a "mark of excellence." They also have stated, for example, that PCAOB registration is a distinction that empowers them to deliver the "highest level of service and expertise" to clients.

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[12] This information is based on PCAOB Form 2, *Annual Report*, filings for 2021, 2022, and 2023. For further discussion of this data, *see* Section IV.A.1.i below.

[13] Under the Act, a public accounting firm cannot engage in certain audit work for issuers or broker-dealers without first being registered with the Board, *see* Section 102(a) of the Act. Once registered, any such work performed by the firm and its associated persons is governed by auditing and related professional practice standards set by the PCAOB, *see* Section 103 of the Act, is subject to review in a PCAOB inspection, *see* Section 104 of the Act, and is subject to the Board's investigative and disciplinary authority, *see* Section 105 of the Act.

[14] To illustrate, as a general matter, if a registered firm offers tax preparation, bookkeeping, business consulting, and assurance services to private companies, issuers, and broker-dealers, the PCAOB would have oversight authority only with respect to those services that are performed in connection with audits of issuers and broker-dealers. This statutory limitation does not imply that the PCAOB's oversight authority is confined exclusively to the financial statement audits of issuers or broker-dealers. Rather, it indicates that the PCAOB's oversight authority extends to those services that involve audits of issuers and broker-dealers.

[15] *See* FAQ 8 of *Frequently Asked Questions on Registration* ("[R]egistration alone . . . does not subject a firm's audits to Board oversight. The Board's standard-setting, inspections, and enforcement authority . . . relate only to a firm's practice in connection with audits of issuers, brokers, or dealers."). Of course, all registered firms must comply with the PCAOB's rules requiring annual and special reporting and the payment of annual fees. *See, e.g.*, PCAOB Rule 2200, *Annual Report*; PCAOB Rule 2202, *Annual Fee*; PCAOB Rule 2203, *Special Reports.*

However, PCAOB registration is not a seal of approval,[16] and the Board has emphasized that "registration, in and of itself, should not be viewed as indicative of the quality of the firm's professional services."[17] Nonetheless, mischaracterizations about the significance of PCAOB registration may cause market participants—including investors, clients, potential clients, audit committees, and the general public—to draw inaccurate conclusions about the extent of the PCAOB's oversight authority over the firm or the quality of services provided by the firm or registered firms in general.

Currently, apart from a single exception,[18] there is no specific PCAOB rule or standard that expressly limits how a registered firm or its associated persons may characterize the firm's PCAOB registration and oversight in marketing and other external communications. While the PCAOB has long indicated that a firm's registration is not a benchmark of audit quality or a seal of approval, and has clarified that its oversight is limited to work performed in connection with audits of issuers and broker-dealers, we lack a rule-based mechanism to regulate how firms convey the significance of their PCAOB registration to clients, potential clients, and the public.

As discussed in Section III.A below, proposed Rule 2400 would prohibit false or misleading statements by a registered firm and its associated persons about the firm's PCAOB registration. Specifically, under proposed Rule 2400, a registered firm and its associated persons, in their statements to clients, potential clients, and the public, must not mislead that audience about the significance of the firm's PCAOB registration, including the scope of PCAOB oversight of the firm and its services. Proposed Rule 2400 aims to prevent false or misleading statements to clients, potential clients, and the public that could influence their decisions and ultimately confidence in the capital markets.

Proposed Rule 2400 is structured around three main components. The first component would establish a general prohibition on false or misleading statements regarding PCAOB registration, including the extent of PCAOB oversight of a firm. The second component provides a non-exhaustive list of statements that would violate the general prohibition. The third component pertains to the Board's consideration of false or misleading statements regarding PCAOB registration and oversight as part of the PCAOB's registration process.

To complement proposed Rule 2400, we also propose a modification to current PCAOB Form 3, *Special Reporting Form*. That proposed modification is discussed in Section III.A below.

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[16] Indeed, because a firm must register with the Board *before* preparing or issuing an audit report for an issuer or broker-dealer or playing a substantial role in connection therewith, a newly registered firm typically has performed no such audit work when the Board approves its registration application.

[17] FAQ 8 of *Frequently Asked Questions on Registration*.

[18] A registered firm with a pending request to withdraw from PCAOB registration is prohibited from publicly representing its PCAOB registration status without specifying that it is "registered – withdrawal request pending." *See* PCAOB Rule 2107(c)(4).

C. Firms' Repeated Failures to File Annual Reports and to Pay Annual Fees

Each year, a registered firm must file an annual report with the Board and pay an annual fee to the Board.[19] Year after year, a recurring set of registered firms neither file annual reports nor pay annual fees. The PCAOB's Registration staff sends multiple communications to these firms each year, reminding them of our annual reporting and annual payment requirements, but these efforts have been unavailing for those firms. As of December 31, 2023, data show that 87 firms did not file annual reports and did not pay annual fees in both 2022 and 2023.

To be clear, these are not firms whose annual reports and annual payments were merely late. They are firms that did not file annual reports or make annual payments at all in 2022 or 2023. The staff believes that these firms include, for example, sole proprietorships that remain registered even though the sole proprietor has died; firms that registered with the Board years ago but now appear to be defunct; and small firms, often in foreign countries, that cannot be reached through the primary contact person designated by the firm. The Registration staff suspects that many of these firms either no longer exist or may not understand that they remain registered with the PCAOB, given their repeated failures to file required reports and pay mandatory fees.

The presence of repeatedly delinquent firms on our list of registered firms frustrates several regulatory objectives, including our ability to maintain an accurate public record of registered public accounting firms in operation; to ensure that the information required on annual reports is being reported to the PCAOB and the public; to collect annual fees required to be paid; and to efficiently use staff time and resources. But we presently lack an effective procedural mechanism to deal with such firms. The current framework offers only two methods of removing firms from PCAOB registration: (1) the Board authorizing withdrawal requests that firms actively initiate,[20] and (2) formal disciplinary proceedings that lead to the revocation of the firm's registration.

As discussed in Section III.B below, we believe a "constructive withdrawal request" mechanism would provide the PCAOB with a reasonable, efficient, and fair way to identify and remove from registration firms that are repeatedly delinquent due to their lack of compliance with regulatory requirements. After furnishing a repeatedly delinquent firm with written notice and 30 days to contact the Registration staff, the proposed new provision of the PCAOB's rule relating to withdrawal from registration would permit the Board to treat a firm's failure both to

[19] *See* PCAOB Rules 2200 and 2202.

[20] Pursuant to PCAOB rules, subject to certain limitations, a firm's registration with the Board is deemed withdrawn if the firm requests leave to withdraw by filing Form 1-WD and (i) the Board grants leave to withdraw, or (ii) the Board does not, within 60 days of receipt of the request, order that withdrawal of the firm's registration be delayed. *See* PCAOB Rule 2107(a).

pay annual fees and to file annual reports for at least two consecutive reporting years as a constructive request by the firm for leave to withdraw from registration and to deem the firm's registration withdrawn. In our view, updating our registration records through this process would promote accuracy and transparency regarding the identity of registered firms to the benefit of investors, clients and potential clients, and the public.

III. DISCUSSION

We are proposing for public comment one new rule, one amendment to a PCAOB reporting form, and one amendment to add a provision to an existing rule to advance the PCAOB's investor protection mission and to enhance the Board's registration program.

A. Proposed Rule 2400: False or Misleading Statements Concerning PCAOB Registration and Oversight

Proposed Rule 2400, *False or Misleading Statements Concerning PCAOB Registration and Oversight*, would prohibit a registered public accounting firm and its associated persons from making any false or misleading statement related to the firm's PCAOB registration status, including the extent of the PCAOB's oversight of the firm's services. This proposed rule would apply when the firm or its associated persons market the firm's services or otherwise hold the firm out to clients, potential clients, or the public. If adopted by the Board and approved by the Commission, proposed Rule 2400 would mitigate the risk that a firm or its associated persons might tout the firm's PCAOB registration as an indicator of audit quality or a seal of approval. Moreover, it would highlight that the Board's oversight authority is generally limited to work performed in connection with audits of issuers and broker-dealers.[21]

Proposed Rule 2400 sets forth a general prohibition on such false or misleading statements and identifies a set of specific, yet non-exhaustive, false or misleading statements that would violate the general prohibition.

1. General Prohibition on False or Misleading Statements

Proposed Rule 2400(a) would establish a general prohibition on false or misleading statements concerning a registered public accounting firm's PCAOB registration status, including the extent of the PCAOB's oversight of the firm's services. Proposed paragraph (a)'s general prohibition on false or misleading statements would provide as follows:

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[21] The Board is proposing Rule 2400 under the Board's authority in Sections 101, 102, 103, and 106 of the Act. *See* Section 101(c)(1), (c)(5), (f)(6), and (g)(1) of the Act (duties, powers, and rules); Section 102 of the Act (registration and reporting); Section 103(a)(1) of the Act (authority to promulgate ethics and quality control standards); Section 106(a)(2) of the Act (authority to require the registration of foreign firms). The Board also notes that the PCAOB's name and logo are registered trademarks of the Board.

> 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.

Proposed paragraph (a) would apply to false or misleading statements that are made by a registered public accounting firm[22] or its associated persons.[23] The false or misleading statements governed by proposed paragraph (a) would be limited to those that relate to a firm's status as PCAOB-registered, including the extent of the PCAOB's oversight of the firm's services. A violation of proposed paragraph (a)'s general prohibition could provide a basis for potential PCAOB inspection findings and, where appropriate, enforcement action.[24]

Because it applies to "material" facts, minor errors would not be sanctionable under proposed Rule 2400(a), but material misrepresentations would be. The determination of the materiality set forth by the proposed rule would be an objective inquiry, depending upon whether a reasonable client, potential client, or member of the public would view the false or misleading facts as having significantly altered the total mix of information made available concerning the firm's PCAOB registration status, including the extent of the PCAOB's oversight of the firm's services.[25]

Proposed Rule 2400 is limited to false or misleading statements—oral, written, or otherwise recorded—that occur or are communicated when the firm or associated person is "marketing or otherwise holding out" the firm to a client, potential client, or the public. The phrase "marketing or otherwise holding out a registered public accounting firm to a client, potential client, or the public"[26] would have two components.

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[22] *See* PCAOB Rule 1001(r)(i) (defining "registered public accounting firm").

[23] *See* PCAOB Rule 1001(p)(i) (defining "person associated with a public accounting firm (and related terms)").

[24] *See* Sections 104(c)(1) and 105(c)(4) of the Act.

[25] Under the proposed rule, the PCAOB would not be required to prove that a misstatement or omission was made with the intent to deceive, manipulate, or defraud under proposed Rule 2400(a). Nor would there be a need to demonstrate reliance on the misstatement or omission, economic loss incurred by anyone, or a causal link between the misstatement or omission and any such loss.

[26] This phrase is used on multiple occasions in proposed Rule 2400, and the discussion of it in this section applies to its use throughout the proposed rule.

First, "marketing . . . a registered public accounting firm to a client, potential client, or the public" is intended to include all commercial statements, in any medium (including spoken communication), that are designed to attract attention or patronage to the firm or to a product, business, or service of the firm. It is designed to capture all of the marketing statements that a public accounting firm or its associated persons communicate or transmit to a client, potential client, or the public. It would include marketing statements that are made to the general public on a firm's website, in blogs or podcasts or otherwise online, in newspapers, on the radio, or on television. The phrase would also include more specific marketing statements, such as proposals for new services, that are directed to a particular client or potential client, or to a group of such clients or potential clients. Specific marketing statements could be disseminated in person, over the phone, or through an email, an electronic presentation, or the mail, to name a few examples.

Second, "otherwise holding out a registered public accounting firm to a client, potential client, or the public" would refer to statements in which a firm or its associated persons present or represent the firm to a client, potential client, or the public as being registered with the PCAOB as part of the firm's qualifications, expertise, or professional standing. Otherwise holding the firm out to a client, potential client, or the public would, for example, include statements concerning the firm's PCAOB registration that are included among the firm's profile or general qualifications. Those statements could be displayed on the firm's website, letterhead, business cards, brochures, flyers, posters, or other firm-produced materials. "Otherwise holding out" statements may also be included, for example, in social media profiles or in a display at a trade show booth.

The phrase "marketing or otherwise holding a registered public accounting firm to a client, potential client, or the public" is intended to exclude statements that do not promote the firm or its services or emphasize the firm's credentials, expertise, qualifications, or reputation to a client, potential client, or the public. Consequently, a firm's or its associated persons' internal communications—such as statements in a code of conduct, internal memos or email, or an employee handbook—that are not shared with a client, a potential client, or the public would not fall within the scope of the rule. Similarly, a statement submitted by a firm in a regulatory notice or in another communication required by a regulator would not fall within the scope of proposed Rule 2400.

Questions:

1. Is the proposed general prohibition on false or misleading statements concerning a firm's PCAOB registration status, including the extent of the PCAOB's oversight of a firm's services, clear and appropriately tailored? Why or why not?

2. Does the phrase "marketing or otherwise holding out a registered public accounting firm to a client, potential client, or the public," which is used in multiple provisions of proposed Rule 2400, accurately capture all of a firm's

marketing and otherwise holding out statements? Should it be broader or narrower? Is its scope clear?

2. Application of General Prohibition in Specific Circumstances

Proposed Rule 2400(b) would set forth a set of non-exclusive circumstances that would violate proposed paragraph (a)'s general prohibition on false or misleading statements. A violation of any of the various provisions of proposed Rule 2400(b), like a violation of paragraph (a)'s general prohibition, could provide a basis for a potential PCAOB inspection finding and, where appropriate, sanctions.[27]

i. PCAOB Endorsement

While the Board "approves" a firm's registration application under a public interest and investor protection standard,[28] the Board does not, in any way, sponsor, recommend, or otherwise endorse any registered firm or its services. Indeed, as illustrated by the Board's inspection reports and enforcement orders, the quality of the audit work of some registered firms (and some previously registered firms) has raised serious concerns.

Proposed Rule 2400(b)(1) would provide that a registered firm and its associated persons "must not state or imply that the firm or any of the firm's services have been sponsored, recommended, or otherwise endorsed by the PCAOB." The proposed rule seeks to prevent clients, potential clients, and the public from being erroneously led to perceive that a firm has the PCAOB's endorsement. As many view endorsements as indicators of quality, such false or misleading statements could give a false impression of superior service quality and might lead clients, potential clients, or the public to place undue trust in a firm, to mistakenly believe they are accessing PCAOB-backed services, or to forgo thoroughly evaluating the firm or the actual quality of services provided.

Proposed Rule 2400(b)(1) would apply "[w]hen marketing or otherwise holding out a registered public accounting firm to a client, potential client, or the public." This phrase is also used in proposed Rule 2400(a) and would have the same meaning (*see* Section III.A.1. above).

The phrase "must not state or imply," in proposed Rule 2400(b)(1), would prohibit a firm and its associated persons from explicitly asserting sponsorship, recommendation, or endorsement of the firm by the PCAOB, such as "We are endorsed by the PCAOB," "Our audit services come with the PCAOB's stamp of approval," or "PCAOB Recommended." Similarly, it

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[27] Compliance with one provision of proposed Rule 2400(b) does not grant immunity if another statement violates the general prohibition in proposed Rule 2400(a). Such violations could result in inspection findings or, potentially, enforcement actions.

[28] *See* PCAOB Rule 2106(a).

would prohibit a firm and its associated persons from implying that the firm is sponsored, recommended, or endorsed by the PCAOB, for instance through statements such as "Recognized by the PCAOB for our excellence."

Questions:

3. Is the proposed prohibition on statements suggesting that the PCAOB has sponsored, recommended, or otherwise endorsed a firm or any of its services clearly expressed and appropriately structured? Why or why not?

4. Should the scope of the prohibition be adjusted? If so, in what ways should it be narrowed or broadened?

ii. Registered Firms Not Currently Subject to PCAOB Oversight

Through our oversight activities, we have observed that in situations where all of a registered firm's professional services in recent years are outside the scope of the PCAOB's oversight authority, the firm and its associated persons might still promote the firm's PCAOB registration to clients, potential clients, and the public. Such statements inaccurately suggest that the work of these firms falls within the PCAOB's regulatory reach, potentially misleading clients, potential clients, and the public about the true extent of the PCAOB's oversight of these firms.

Proposed Rule 2400(b)(2) would provide that, if a registered firm has not issued an audit report for an issuer or broker-dealer, or played a substantial role in such an audit, within the past three years, the firm and its associated persons must not, when marketing or otherwise holding out the firm to a client, potential client, or the public, state or imply that the firm is registered with the PCAOB or is subject to the PCAOB's oversight without also prominently indicating in that statement that the firm is not currently providing services that subject the firm's work to potential PCAOB inspection (for example, "PCAOB Registered – Not Currently Providing Services Subject to PCAOB Oversight").

Proposed paragraph (b)(2) is designed to address any marketing and other public statements that are made by the 40% to 50% of registered firms that neither audit issuers nor broker-dealers, nor play a substantial role in those audits, and their associated persons. When a firm that has not engaged in any work that is subject to PCAOB oversight within the last three years and the firm or its associated persons promote the firm's PCAOB registration status, market participants, including investors, are liable to be misled about the extent of the PCAOB's oversight of the firm and its services. If such a firm or its associated persons, without appropriate qualification, state or imply that the firm is registered with the PCAOB or subject to PCAOB oversight, they may give the impression that the firm is subject to the same level of scrutiny, standards, and oversight as firms whose professional practices are actually within the PCAOB's oversight authority. We believe such firms and their associated persons should either

refrain from referring to the firm's PCAOB registration in statements to clients, potential clients, or the public, or, if they opt to refer to the firm's PCAOB registration, prominently indicate that the firm is not currently providing services that subject the firm's work to PCAOB oversight.

Proposed Rule 2400(b)(2) would apply "[w]hen marketing or otherwise holding out a registered public accounting firm to a client, potential client, or the public." This phrase is also used in proposed Rule 2400(a) and would have the same meaning (*see* Section III.A.1 above).

a. Three-Year Lookback Period

Given that the Board's inspection program is our "primary tool of oversight"[29] and has been described as "the cornerstone" of our regulatory oversight of audit firms,[30] we propose using a firm's eligibility for PCAOB inspection as the benchmark to determine whether a firm is "currently subject to PCAOB oversight" for purposes of proposed paragraph (b)(2). Proposed paragraph (b)(2)'s restrictions would apply to all registered firms that have not performed services within the past three years that are subject to inspection, along with their associated persons.[31] This lookback period aligns with the PCAOB's statutory triennial inspection cycle.[32]

Registered firms that issue audit reports with respect to more than 100 issuers in a calendar year are required to be inspected by the Board annually.[33] Registered firms that issue an audit report with respect to at least one issuer, but no more than 100 issuers, are required to be inspected at least once every three years.[34] Furthermore, registered firms that play a

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[29] *Final Rule Concerning the Timing of Certain Inspections of Non-U.S. Firms, and Other Issues Relating to Inspections of Non-U.S. Firms*, PCAOB Release No. 2009-003 (June 25, 2009), at 8-9.

[30] *Order Approving Proposed Amendment to Board Rules Relating to Inspections*, SEC Exchange Act Release No. 61649 (Mar. 4, 2010), at 5.

[31] Firms that, within the past three years, have issued an audit report for an issuer or broker-dealer or have played a substantial role in such an audit would not be affected by proposed paragraph (b)(2). Those firms would still need to be mindful of the general prohibition on false or misleading statements in proposed paragraph (a), as well as the restrictions in proposed subparagraphs (b)(1), (3)-(5).

[32] Nothing in this release should be interpreted as restricting the Board's statutory authority to investigate or take enforcement action for conduct predating the three-year lookback period referenced in this rulemaking.

[33] *See* PCAOB Rule 4003(a)*, Frequency of Inspections*; Section 104(b)(1)(A) of the Act.

[34] *See* PCAOB Rule 4003(b); Section 104(b)(1)(B) of the Act; *see also* PCAOB Rule 4003(c) (the Board has discretion to forgo the inspection of a firm that has requested leave to withdraw from registration); PCAOB Rule 4003(e) (the Board has discretion to forgo the inspection of a firm that has not issued an audit report in two consecutive calendar years).

substantial role on issuer audits but do not issue audit reports for such clients are also subject to inspection,[35] and we also inspect registered firms that conduct audits of broker-dealers.[36]

For a firm to comply with proposed Rule 2400(b)(2), it would need to assess for itself whether it had issued an audit report for an issuer or broker-dealer, or played a substantial role in such an audit, within the past three years (36 months). For purposes of proposed paragraph (b)(2), the date of the relevant audit report would determine the date when the firm is considered to have either issued the audit report or played a substantial role in the audit of the issuer or broker-dealer. We believe setting a specific date would be advantageous for regulatory certainty, as it would clearly establish a point in time when a firm has either issued an audit report for an issuer or broker-dealer or played a substantial role in such an audit.

To illustrate, consider a registered firm's assessment of the three-year lookback period as of the date of this proposing release (February 27, 2024): The firm would need to determine if, between February 27, 2021, and February 27, 2024, it had either issued an audit report for an issuer or broker-dealer, or had played a substantial role in such an audit with respect to an audit report that was dated within that timeframe. If the answer is "no," then the firm would be subject to the limitations of proposed paragraph (b)(2).[37]

b. Stating or Implying the Firm Is PCAOB-Registered or Subject to PCAOB Oversight

Firms that, as a result of the three-year lookback period, are subject to proposed paragraph (b)(2)'s limitations (along with their associated persons) must determine whether their marketing or other public statements "state or imply that the firm is registered with the PCAOB or is subject to the PCAOB's oversight." That phrase would encompass explicit indications that a firm is registered with the Board, such as "We are registered with the PCAOB" or "PCAOB-Registered." It would also include statements implying that the firm is registered. Such a statement could be made by a firm or its associated persons by displaying the PCAOB's name on the firm's website, letterhead, or print advertisements. Additionally, proposed Rule 2400(b)(2) would prohibit a firm and its associated persons from making claims about the firm's services, absent the indication described below, that would only be true if the firm were

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[35] *See* PCAOB Rule 4003(h) (the Board shall conduct inspections of some "substantial-role-only" firms each year).

[36] *See* PCAOB Rule 4020T, *Interim Inspection Program Related to Audits of Brokers and Dealers*; Section 104(a)(2) of the Act.

[37] In most circumstances, newly registered firms, by their nature, would not have issued an audit report for an issuer or broker-dealer, or played a substantial role in such an audit, within the past three years. Thus, until such time as they have issued an audit report for an issuer or broker-dealer, or have played a substantial role in such an audit and the corresponding audit report has been issued, newly registered firms would be subject to the provisions of proposed Rule 2400(b)(2).

registered with the Board, such as "The PCAOB has authorized us to audit public companies in the United States." By contrast, a statement that an audit was performed pursuant to PCAOB standards would not, by itself, state or imply that a firm is PCAOB-registered, as all public accounting firms—including firms that are not registered with the Board—may follow PCAOB standards for purposes outside of the PCAOB's oversight authority.[38]

c. Prominent Indication That the Firm Is Not Currently Providing Services Subject to PCAOB Oversight

With respect to a firm subject to proposed paragraph (b)(2) (by virtue of the three-year lookback period), firms and associated persons that choose to state or imply that the firm is registered with the PCAOB or is subject to the PCAOB's oversight would need to clarify, in connection with each such statement or implication, that the firm is not currently providing services that subject the firm's work to potential PCAOB inspection. For example, the firm or associated person could state that it is "PCAOB Registered – Not Currently Providing Services Subject to PCAOB Oversight." The phrase "not currently providing services subject to PCAOB oversight" is intended as a neutral, descriptive reference that does not express any opinion or judgment about the firm or its services. It is intended solely as a factual description that the registered firm does not currently provide services that are subject to PCAOB inspection.[39]

We note that the Board is not proposing to require any firm or associated person to say anything in statements to clients, potential clients, or the public about the firm's PCAOB registration or the scope of the PCAOB's oversight. Silence about such matters is an option under proposed Rule 2400. But if a firm or associated person *chooses* to refer to the firm's PCAOB registration or PCAOB oversight in a statement to a client, potential client, or the public, we see a need to prohibit false or misleading statements concerning the firm's PCAOB registration to avoid market participants drawing inaccurate conclusions and, as a result, being harmed.

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[38] We are aware, for example, of some circumstances outside the context of audits of issuers or broker-dealers in which assurance providers are required to conduct engagements in accordance with PCAOB standards, but are not required to be PCAOB-registered. *See, e.g.,* Securities Investor Protection Commission ("SIPC") Rule 600(b)(3), 17 C.F.R. § 300.600(b)(3) (mandating that an independent public accountant be engaged to perform specified agreed-upon-procedures in accordance with PCAOB standards in connection with a broker-dealer's SIPC Annual General Assessment Reconciliation Form or Certification of Exclusion from Membership Form). A statement by an independent public accounting firm, whether registered or not, that such an engagement was conducted in accordance with PCAOB standards, taken alone, would not constitute a violation of proposed Rule 2400(b)(2).

[39] Descriptions of each registered firm's professional practice, including whether or not each firm has issued an audit report for an issuer or broker-dealer or played a substantial role in such an audit, are already required to be reported to the PCAOB annually and made public on the PCAOB's website.

Under proposed Rule 2400(b)(2), the scope of the firm's or associated person's disclosure obligation would need to parallel the size and nature of the audience for its statement. For example, if a firm or one of its associated persons is communicating with just one potential client, then the firm's or associated person's disclosure obligation would relate only to that potential client. Additionally, the qualification must be included "in that statement." This means that the qualification must be present in the same sentence or declaration where the firm's PCAOB registration or PCAOB oversight is mentioned.[40]

Proposed Rule 2400(b)(2) further provides that the qualification must be "prominently indicat[ed]."[41] A prominent indication would be one that is clearly visible or noticeable. It is an indication that is likely to be noticed by others and can be used by the recipient of the message to understand whether the firm provides professional services that are subject to PCAOB oversight. Because of the variety of contexts in which a reference to a firm's PCAOB registration or its PCAOB oversight can arise, whether a particular qualification is prominent will necessarily depend on the facts and circumstances of how it is presented. In general, a prominent indication is one that is proportional to, and matches the significance of, the firm's or its associated persons' indication of the firm's PCAOB registration or the PCAOB's oversight of the firm. A prominent qualification should appear in proximity to the firm's or its associated persons' indication of the firm's PCAOB registration or the PCAOB's oversight of the firm. Examples of qualifications that may not be considered prominent would be those that appear in a small font size that is difficult to read or those obscured at the end of a long document.

Questions:

5. Is the proposed prohibition on firms not currently providing services subject to PCAOB oversight and their associated persons clear and appropriately tailored? Why or why not?

6. Is a lookback period of three years clear? Is it appropriate for assessing whether a firm is currently providing services that subject the firm's work to PCAOB oversight? If not, should this lookback period be longer or shorter, and why?

7. Is the phrase "prominently indicating in that statement," which is used throughout proposed Rule 2400(b), sufficiently clear? If not, why not?

8. Is the phrase "PCAOB Registered – Not Currently Providing Services Subject to PCAOB Oversight" appropriate and understandable? Should we consider

[40] In instances where statements are conveyed to clients, potential clients, or the public across multiple interactions, we would expect that corresponding disclaimers should accompany each separate communication, rather than relying on a single, initial disclosure.

[41] This phrase is used on multiple occasions in proposed Rule 2400, and the discussion of it in this section applies to its use throughout the proposed rule.

alternative suggested qualification language? If so, what language would be preferable, and why?

9. Should firms that are newly registered with the PCAOB have some period of time before they (and their associated persons) are required to disclose in firm marketing or other public statements that such firms are "PCAOB Registered – Not Currently Providing Services Subject to PCAOB Oversight," if such firms or their associated persons mention PCAOB registration in those statements? If so, how long should that transition period last? What would be the purpose of such a transition period? What qualification language, if any, should be required during that transition period?

iii. Services Not Subject to PCAOB Oversight

As previously noted, the Board generally has oversight authority over only the portion of a registered firm's services that is performed in connection with the audits of issuers and broker-dealers. Although the firm, as an entity, registers with the PCAOB, only its work related to auditing of issuers and broker-dealers, not all aspects of a firm's professional services, is subject to the PCAOB's oversight.

Therefore, we believe it is false or misleading for a firm or its associated persons, when referring exclusively to services that are not subject to PCAOB oversight, to state or imply that the firm is registered with the PCAOB or subject to PCAOB oversight without clarifying that those services are not in the PCAOB's regulatory purview. Using a firm's PCAOB registration to promote a firm's provision of services outside of the PCAOB's oversight can give the false impression that the PCAOB has a broader scope of authority than it actually does, and this can lead to misconceptions on the part of clients, potential clients, and the public about the nature and extent of the PCAOB's oversight of the firm. Such misconceptions can cause investors to place undue trust in services the PCAOB does not oversee. Investors may make poor investment decisions based on this misplaced trust, potentially harming confidence in the capital markets.

Proposed Rule 2400(b)(3) would provide that, when referring exclusively to services that are outside of the PCAOB's oversight authority, a registered firm and its associated persons must not state or imply that the firm is registered with the PCAOB or is subject to the PCAOB's oversight without also prominently indicating in that statement that such services are not subject to PCAOB oversight (for example, "PCAOB Registered – Services Not Subject to PCAOB Oversight").

In statements exclusively concerning services that are not subject to PCAOB oversight, the Board believes a firm and its associated persons should either remain silent about the firm's PCAOB registration or disclose to the firm's clients, potential clients, or the public that such work is not subject to PCAOB oversight. For example, a registered firm, in a written proposal to

a potential client offering tax preparation services, or business consulting services, or assurance services for clients that are outside of the PCAOB's scope of oversight, would need either to remain silent about the firm's PCAOB registration or to prominently disclose that the services offered are not subject to PCAOB oversight.

Proposed Rule 2400(b)(3) would apply "[w]hen marketing or otherwise holding out a registered public accounting firm to a client, potential client, or the public." This phrase is also used in proposed Rule 2400(a) and would have the same meaning (*see* Section III.A.1 above). Similarly, the phrase "state or imply that the firm is registered with the PCAOB or is subject to the PCAOB's oversight" is also used in proposed Rule 2400(b)(2), and it would have the same meaning in proposed paragraph (b)(3) (*see* Section III.A.2.ii.b above).

A registered firm or its associated person that chooses to mention the firm's PCAOB registration or the PCAOB's oversight of the firm in their statements concerning services that are not subject to PCAOB oversight would be required, under proposed Rule 2400(b)(3), to "prominently indicat[e]" that such services are not subject to PCAOB oversight. For example, a firm or its associated persons could say "PCAOB-Registered – Services Not Subject to PCAOB Oversight." As discussed above (*see* Section III.A.2.ii.c), a prominent indication would be one that is clearly visible or noticeable; it is an indication that is likely to be noticed by others and can be used by the recipient of the message to understand that the services at issue are not subject to PCAOB inspection or enforcement. Under proposed Rule 2400(b)(3), the scope of the firm's and its associated persons' disclosure obligation would parallel the scope of the specific statement. For example, if a firm or its associated persons are communicating with just one potential client, then their disclosure obligation would relate only to that potential client.

The disclaimer "PCAOB Registered – Services Not Subject to PCAOB Oversight" is intended to inform clients, potential clients, and the public that, while a service may be offered by a firm registered with the PCAOB, that service does not come under the regulatory authority of the PCAOB. Such a disclaimer would prevent a firm and its associated persons from capitalizing on any misperception that might come with PCAOB registration when the firm offers services that the PCAOB does not oversee. To foster informed decision-making and avoid misrepresentations or misunderstandings, we believe that a firm and its associated persons, when using its PCAOB registration status or PCAOB oversight for marketing purposes, should be clear about which services are and are not overseen by the PCAOB.

Proposed paragraph (b)(3) would apply when a statement refers "exclusively" to services that are not subject to PCAOB oversight. This emphasis on exclusivity is intended to clarify that proposed paragraph (b)(3) would apply only when all of the services mentioned in the statement are beyond the PCAOB's oversight authority. Marketing statements that encompass both services under PCAOB oversight and those outside PCAOB oversight would not be governed by proposed paragraph (b)(3). However, it is important to note that such multi-service marketing statements would still be subject to the general prohibition on false or misleading statements in proposed Rule 2400(a).

Under the proposal, firms and associated persons would be responsible for determining whether they are required to indicate that the referenced services are not subject to PCAOB oversight. It is important to note that these assessments would not bind the PCAOB in any way. The authority of the PCAOB, as established by the Act, would remain unaltered by a firm's or an associated person's determination about whether a specific service is within the purview of PCAOB oversight.[42]

Questions:

10. Is the proposed rule governing use of a firm's PCAOB registration or PCAOB oversight in statements concerning services that are not subject to PCAOB oversight clear and appropriately tailored? Why or why not?

11. Is the phrase "PCAOB Registered – Services Not Subject to PCAOB Oversight" appropriate and understandable? Should we consider alternative disclaimer language? If so, what language would be preferable, and why?

iv. Auditors' Reports for Clients Other Than Issuers or Broker-Dealers

A similar concern arises when a registered firm issues an auditor's report for a client other than an issuer or broker-dealer and indicates in its report that it is PCAOB-registered.[43] When a registered firm cites its PCAOB registration or PCAOB oversight in an auditor's report

[42] Of course, a firm can avoid becoming subject to proposed paragraph (b)(3) by refraining from referencing its PCAOB registration or PCAOB oversight in marketing statements about services that could be outside of the PCAOB jurisdiction.

[43] We understand that the interaction of the SEC's reporting requirements, which necessitate or permit entities that are not issuers or broker-dealers to be audited under PCAOB standards, combined with the PCAOB's auditor reporting standards, currently requires registered firms to reference their PCAOB registration in auditors' reports issued under PCAOB standards for some entities that are not issuers or broker-dealers. These references appear in the title and the "basis for opinion" section of these auditors' reports. *See* paragraphs .06 and .09g of AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*; paragraphs .03, .40, and .46 of AS 3105, *Departures from Unqualified Opinions and Other Reporting Circumstances*; SEC Rule 1-02(d) of Regulation S-X, 17 C.F.R. § 210.1-02(d) (defining "audit (or examination)," when used in regards to financial statements of entities that are not issuers as defined by Section 2(a)(7) of the Act, as "an examination of the financial statements by an independent accountant in accordance with either the standards of the PCAOB or U.S. generally accepted auditing standards ('U.S. GAAS') as specified or permitted in the regulations and forms applicable to those entities for the purpose of expressing an opinion thereon"). *See also* paragraph .44 of AICPA AU-C Section 700, *Forming an Opinion and Reporting on Financial Statements* (as amended by AICPA, Statement on Auditing Standards No. 131, *Amendment to Statement on Auditing Standards No. 122 Section 700*).

for a client that is not an issuer or broker-dealer,[44] it is important that such references do not lead to confusion, deception, or mistakes among the firm's clients, potential clients, or the public about the nature and extent of the PCAOB's oversight of the firm's professional services. Because the PCAOB does not have oversight of these engagements, we believe a firm either should not mention its PCAOB registration or PCAOB oversight in such auditors' reports or, if it does so, should prominently indicate in the auditor's report that such services are not subject to PCAOB oversight.

Proposed Rule 2400(b)(4) would therefore specify that a registered firm, when issuing an auditor's report for a client other than an issuer or broker-dealer, must not state in its auditor's report that the firm is registered with the PCAOB or is subject to the PCAOB's oversight without also prominently indicating[45] in that auditor's report that such services are not subject to PCAOB oversight (for example, "PCAOB Registered – Services Not Subject to PCAOB Oversight").

Proposed paragraph (b)(4) would apply to statements in the auditor's report "that the firm is registered with the PCAOB or is subject to the PCAOB's oversight." A statement that the firm is registered with the PCAOB encompasses the use of the word "registered" in the title "Report of Independent *Registered* Public Accounting Firm."[46] It would also include a reference to a firm's PCAOB registration as part of the basis for the opinion expressed in the auditor's report ("We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States)").[47] As previously noted, however, a firm's statement that an audit was performed pursuant to PCAOB standards would not, by itself, indicate or imply that a firm is PCAOB-registered, as any public accounting firm—including a firm that is not registered with the Board—may follow PCAOB standards when performing work outside of the PCAOB's oversight authority.

Proposed paragraph (b)(4) would apply "[w]hen issuing an auditor's report for any client that is not an issuer, broker, or dealer." As noted above, the scope of the Board's oversight authority relates only to audit work in connection with audits of "issuers" and "broker-dealers," as those terms are defined in the Act.[48] As a result, the Board's oversight does not extend to audits of entities that are not issuers or broker-dealers (even if those audits are conducted in

[44] We use "auditor's report" in an expansive sense to encompass reports expressing audit opinions on the financial statements or reports of clients that are not issuers or broker-dealers.

[45] The phrase "prominently indicating" is discussed above. *See* Section III.A.2.iii.c.

[46] *See* AS 3101.06g (auditor's report must include the title, "Report of Independent *Registered* Public Accounting Firm") (emphasis added).

[47] *See* AS 3101.09c ("Basis for Opinion" includes "A statement that the auditor is a public accounting firm registered with the PCAOB (United States)").

[48] *See supra* footnotes 2 and 3.

accordance with PCAOB standards). For example, the audits of most employee stock benefit plans (except certain plans that file reports with the Commission on SEC Form 11-K), the audits of non-issuer entities under SEC rules such as Regulation Crowdfunding and Regulation A, and the statutory audits of non-issuer foreign entities that are not owned by, controlled by, or affiliated with issuers are excluded from the Act's "issuer" definition.

Assurance clients that are excluded from the Act's "issuer" definition also include companies that voluntarily file periodic reports with the Commission.[49] A company that makes periodic filings with the Commission only pursuant to a requirement contained in an indenture agreement would be an example of a voluntary filer.[50] If a registered firm were to issue an auditor's report for a voluntary filer and includes a reference to the firm's PCAOB registration in its auditor's report for that client, proposed Rule 2400(b)(4) would require that firm to prominently indicate in its auditor's report that such services are not subject to PCAOB oversight. For example, the firm could say "PCAOB-Registered – Services Not Subject to PCAOB Oversight."[51]

Similarly, if a registered firm were to issue a proof-of-reserves report for a cryptocurrency entity that is not an issuer or broker-dealer, then the firm, under proposed paragraph (b)(4), would be required either: (i) to remain silent about the firm's PCAOB registration or PCAOB oversight in the proof-of-reserves report; or (ii) if it opts to mention its PCAOB registration or PCAOB oversight in the report, to prominently disclose in the proof-of-reserves report that its proof-of-reserve services are not subject to PCAOB oversight.[52] Without such disclosures, we are concerned that statements concerning PCAOB registration in auditors' reports for clients that are not issuers or broker-dealers are false or misleading and may cause confusion, deception, or mistakes among clients, potential clients, or the public, since that

[49] Generally, "voluntary filers" must specify on the cover page of reports filed with the Commission that they are not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. *See, e.g.,* SEC Form 10-K ("Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the [Exchange] Act."); SEC Form 20-F ("If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.").

[50] This situation is distinguishable from one in which a company *voluntarily registers* a class of securities under Section 12 of the Exchange Act; in that situation, the company would be required to file periodic reports and would meet the definition of "issuer" under the Act.

[51] A firm's or associated person's disclaimer that "services not subject to PCAOB oversight" would not bind the PCAOB in any way. The authority of the PCAOB, as established by the Act, would remain unaltered regardless of the accuracy of the assessment made by a firm or associated person about whether a specific service is within the purview of PCAOB oversight.

[52] If the cryptocurrency entity were an issuer or broker-dealer, the statements would fall within the scope of proposed Rule 2400(a) and possibly proposed Rule 2400(b)(3).

audience may be misled into thinking that work that is outside of the PCAOB's oversight falls within it.

Questions:

12. Is the proposed rule governing reference to a firm's PCAOB registration or PCAOB oversight in auditors' reports for clients that are not issuers or broker-dealers clear and appropriately tailored? Why or why not?

13. Is the phrase "PCAOB Registered – Services Not Subject to PCAOB Oversight" appropriate and understandable in this context? Should we consider alternative suggested disclaimer language? If so, what language would be preferable, and why?

14. Should a conforming change be made to AS 3101 or AS 3105 to cross-reference the disclosure obligation of proposed Rule 2400(b)(4) applicable to audits performed in accordance with PCAOB standards for entities that are not issuers or broker-dealers? Should we consider alternative conforming changes to PCAOB standards? If so, what changes would be preferable, and why?

v. Pending Firm Requests for Leave to Withdraw from Registration

We believe that it would be false or misleading for a firm that has a request for leave to withdraw from registration pending with the PCAOB, or such firm's associated persons, to state to a client, potential client, or the public that the firm is registered with the PCAOB without disclosing the firm's pending withdrawal request. Consistent with that premise, current PCAOB Rule 2107(c)(4), which has been in effect since its approval by the Commission in 2004,[53] already provides that a firm that has requested to withdraw from PCAOB registration may not "publicly represent" its registration status without specifying it as "registered – withdrawal request pending."[54]

Proposed Rule 2400(b)(5) is intended to ensure alignment between existing Rule 2107(c)(4) and the broader framework of proposed Rule 2400 and to augment the existing rule. Specifically, proposed paragraph (b)(5) would provide that, while a registered firm has a Form

[53] *See Order Approving Proposed Rule and Application Instructions Governing Withdrawal From Registration*, SEC Exchange Act Release No. 49694 (May 13, 2004).

[54] *See* PCAOB Rule 2107(c)(4) ("[b]eginning on the date of Board receipt of a completed Form 1-WD, and continuing for as long as the Form 1-WD is pending . . . the firm's registration status shall be designated as 'registered—withdrawal request pending,' and the firm shall not publicly represent its registration status without specifying it as 'registered—withdrawal request pending.'"). The Registration staff maintains a list on the PCAOB website of pending withdrawal requests. *See* Registered Public Accounting Firms – Withdrawal Request Pending.

1-WD[55] pending, the firm and its associated persons must not state that the firm is registered with the PCAOB without also prominently indicating in that statement that the firm has a withdrawal request pending (for example, "PCAOB Registered – Withdrawal Request Pending"). Proposed Rule 2400(b)(5) would apply to registered firms and their associated persons. It would encompass both express and implied statements that the firm is PCAOB-registered (*see* Section III.A.2.ii.b above). It also would require a prominent indication, in the same statement, that a withdrawal request is pending (*see* Section III.A.2.ii.c above).

Question:

15. Is the proposed rule regarding firms with pending withdrawal requests clear and appropriately tailored? Why or why not?

3. Consideration of Registration Applicant's False or Misleading Statements

Proposed Rule 2400(c) would state that, when reviewing applications for registration under PCAOB Rule 2106, the Board may consider any prior false or misleading statements made by the applicant firm or its personnel regarding the firm's PCAOB registration status, including the extent of PCAOB oversight of the firm's services. We believe that such false or misleading statements may have resulted from the firm's failure to exercise the degree of care that the Board would expect of a public accounting firm under the circumstances. The Board currently factors in these considerations during its review of registration applications.[56] Proposed Rule 2400(c) would codify this existing practice.

As indicated in Rule 2106, the Board approves registration applications consistent with its responsibilities under the Act to protect investors and further the public interest in informative, accurate, and independent audit reports. Rule 2106(a) specifies that, during its review of a registration application, the Board examines "the application for registration, any additional information provided by the applicant, and any other information obtained by the Board."[57] Proposed Rule 2400 would not change the Board's existing discretion regarding the statements it considers when deciding whether to approve a registration application.[58]

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[55] A request for leave to withdraw from PCAOB registration is filed on PCAOB Form 1-WD. *See* PCAOB Rule 2107(b)(1); Form 1-WD.

[56] *See, e.g., Registration Application of CNGSN and Associates LLP*, PCAOB Release No. 102-2023-002 (Nov. 7, 2023).

[57] *See also* FAQ 13 of *Frequently Asked Questions on Registration* ("How will the Board decide whether to approve my application?").

[58] We do not intend any limitation on the Board's discretion to consider "any other information obtained by the Board" when evaluating a firm's registration application. This includes the consideration of any

Therefore, the Board retains the latitude to determine the relevance of any statement by the firm or its personnel to the Board's decision-making process.

Question:

16. Is the proposed rule regarding consideration of a registration applicant's or its personnel's false or misleading statements regarding the firm's PCAOB registration status, including the extent of PCAOB oversight of the firm's services clear and tailored appropriately? Why or why not?

4. Proposed Item 2.3A of Form 3

Proposed Item 2.3A of PCAOB Form 3 would require a registered firm that has not issued an audit report for an issuer or broker-dealer, or played a substantial role in such an audit, for three years or more to report to the PCAOB within 30 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.[59]

The proposed addition to Form 3 would complement proposed Rule 2400(b)(2). Under that proposed rule, a firm that has not issued an issuer or broker-dealer audit report or played a substantial role in such an audit during the three-year lookback period (and its associated persons) must prominently indicate, if they reference the firm's PCAOB registration or PCAOB oversight, that the firm is not currently providing services that subject the firm's work to PCAOB oversight. Upon issuing an opinion or playing a substantial role, the firm would no longer need to provide such a qualification. We recognize that when a firm or its associated persons do not provide such a qualification, clients, potential clients, or the public might wish to verify—using data reported by the firm to the PCAOB (and available on the PCAOB's website) or data reported by the client to the SEC (and available on the SEC's website)—that the firm has recently provided services that subject the firm's work to PCAOB inspection or enforcement. Additionally, the firm may be inclined to quickly report to the PCAOB its role in issuing an audit report for an issuer or broker-dealer, or playing a substantial role in such an audit so that the firm's filings available to the public on the PCAOB's website reflect its updated activities. This reporting would ensure that the information on the PCAOB's website is promptly updated to align with the firm's marketing and otherwise holding out statements that no longer include a qualification under proposed Rule 2400(b)(2).

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misrepresentations made by the firm or its personnel that do not relate to the firm's PCAOB registration status or the extent of PCAOB oversight.

[59] As discussed elsewhere, the 30-day filing period for Form 3 would begin on the date the audit report is issued. For a firm that plays a substantial role in the audit of an issuer or broker-dealer, this means the firm must submit a Form 3 within 30 days following the date of the issuance of the audit report by the lead auditor.

Currently, registered firms are required to report on Form 2, *Annual Report*, whether they have issued an audit report for an issuer or broker-dealer, or have played a substantial role in such an audit, during the prior reporting year.[60] However, there is a time lag between the time the firm provides those services to an issuer or broker-dealer and when it files its annual report with the PCAOB.[61] As a result, if a firm only recently issued an audit report for an issuer or broker-dealer, or played a substantial role in such an audit, for the first time (or for the first time in more than three years), this information would not immediately be reported to the PCAOB or updated in the firm's filings in the PCAOB's Registration, Annual, and Special Reporting ("RASR") system. Amending Form 3 to require the filing of a special report within 30 days after a firm first issues an audit report for an issuer or broker-dealer, or initially plays a substantial role in such an audit (or, in either case, does so for the first time in more than three years), would rectify that, by expediting the public's access to this information on the PCAOB's website.[62]

Question:

17. Is the proposed amendment to Form 3 clear and appropriately tailored? Why or why not?

B. Proposed Rule 2107(h): Constructive Withdrawal Requests Based on Firms' Repeated Failures to File Annual Reports and to Pay Annual Fees

We are proposing for public comment an amendment to an existing rule to add a new provision that would permit the Board to deem a firm's registration withdrawn—under specified conditions and subject to enumerated safeguards—if the firm fails to pay annual fees and to file annual reports for at least two consecutive reporting years. This dual condition, involving the lack of both fee payment and annual report submission over two consecutive reporting years, is designed to identify firms that have either ceased to exist, are nonoperational, or have lost interest in retaining their registration.

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[60] *See generally* Part III of PCAOB Form 2. Additional information on issuer audit reports is available through PCAOB Form AP and in audit reports that are included in filings made with the Commission.

[61] Form 2 is filed annually, with a reporting period covering April 1 to March 31. The deadline for filing Form 2 is June 30 of each year.

[62] Based on historical data, we estimate that approximately 20 firms per year would be required to make such a Form 3 filing. At this time, we are not proposing a corresponding Form 3 requirement for firms that are no longer actively involved in issuing audit reports for issuers or broker-dealers or playing a substantial role in those audits.

The PCAOB currently has no effective and efficient procedural mechanism to withdraw repeatedly delinquent firms from registration. As noted earlier, under current rules, there are only two ways for a registered public accounting firm to depart from PCAOB registration. One is a firm-initiated withdrawal: A firm seeking to withdraw from registration can file a form requesting leave to withdraw.[63] The other is revocation: When appropriate, a firm's registration can be revoked as a sanction in a Board disciplinary proceeding upon a finding of intentional, reckless, or repeatedly negligent conduct.[64]

Withdrawal and revocation often suffice as complementary methods for managing the PCAOB's registration list, but each of these paths depends on some form of engagement with the firm. They begin either with the firm filing a withdrawal request or with the PCAOB's Office of the Secretary providing notice of an Order Instituting Disciplinary Proceedings (OIP) to the firm.[65] In some circumstances, however, such as when a firm has ceased to exist or is nonoperational, it may not be possible to contact a registered firm. To account for such situations, we believe there should be a procedural mechanism for the Board to update the PCAOB's registration list.

Building on the Board's current withdrawal framework in Rule 2107, the core premise of proposed Rule 2107(h) is that a prolonged period of noncompliance with the PCAOB's annual reporting and annual payment requirements, following warnings of these omissions, can

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[63] PCAOB Rule 2107, *Withdrawal from Registration*, provides that a registered firm may seek to withdraw at any time by filing Form 1-WD, *Request for Leave to Withdraw from Registration*. Withdrawal, however, is not immediately effective; the Board may order that withdrawal be delayed while the Board carries out an inspection, investigation, or disciplinary proceeding. *See* Rule 2107(d). After a firm's registration is withdrawn, the firm is permitted to participate in audits of issuers or broker-dealers and otherwise associate with registered firms only so long as the withdrawn firm's participation falls below the "substantial role" threshold. *See* PCAOB Rule 1001(p)(ii) (defining "play a substantial role in the preparation or furnishing of an audit report"). A firm that withdraws from registration and later decides that it wishes to re-register must reapply for registration by filing a new registration application.

[64] Under Section 105(c)(4) of the Act and PCAOB Rule 5300, *Sanctions*, the Board can revoke a firm's registration as a sanction in a Board disciplinary proceeding under certain circumstances. *See* PCAOB Rule 1001(r)(ii) (defining "revocation" as "a permanent disciplinary sanction terminating a firm's registration"). After the Board revokes a firm's registration, the firm is not permitted to participate in audits involving issuers or broker-dealers or otherwise associate with a registered firm; even participation in a PCAOB audit that falls below the "substantial role" threshold would violate the order revoking the firm's registration. *See Rules on Investigations and Adjudications*, PCAOB Release No. 2003-015 (Sept. 29, 2003), at A2-7 (a revocation "prohibit[s] the firm from preparing or issuing, or participating in the preparation or issuance of, audit reports"). The revocation remains in operation unless and until the Board approves a new application for registration submitted by the firm. *See generally* paragraphs (a) and (c) of PCAOB Rule 5302, *Applications for Relief From, or Modification of, Revocations and Bars*.

[65] *See generally* PCAOB Rule 5201, *Notification of Commencement of Disciplinary Proceedings*.

reasonably be interpreted as a constructive request by the firm for leave to withdraw from registration, provided that appropriate procedural safeguards are in place. Often, a firm's failure to file an annual report and pay an annual fee is the first indication that the firm may be defunct or has lost interest in maintaining its PCAOB registration. Therefore, we propose that, when a firm fails to submit annual reports and annual fees for two or more consecutive reporting years, it is reasonable to infer that the firm has either ceased to exist, is no longer operational, or no longer wishes to remain registered with the PCAOB.[66]

As a withdrawal-based mechanism, proposed Rule 2107(h) would not be a disciplinary proceeding or disciplinary process. Instead of resulting in a disciplinary sanction (like a revocation), proposed Rule 2107(h) would result in withdrawal of the firm's registration. Unlike a revocation, a withdrawal under proposed Rule 2107(h) would not be reported as a disciplinary sanction to the Commission, state regulatory authorities, foreign accountancy licensing boards, or the public.[67] A withdrawal under proposed Rule 2107(h) would, instead, be reflected on the PCAOB's website as a withdrawal. Should the firm seek re-registration, it would be required to file a Form 1, akin to other firms that were previously registered but withdrew from registration, without the need to adhere to the requirements of Rule 5302(a) or (c), which relate to the termination of revocations. Under proposed Rule 2107(h), a firm whose registration is withdrawn, in contrast to a registration that is revoked, would retain eligibility to perform some work on audits of issuers or broker-dealers, provided that work remains below the substantial role threshold established by Rules 1001(p)(ii) and 2100. In accordance with Rule 2107(b)(1), a firm that has withdrawn its registration, having been registered previously, is permitted to reissue or give consent to the use of a prior report it issued while registered; however, the firm is not allowed to update or dual-date any previously issued report once it is no longer registered.[68]

1. Repeatedly Delinquent Firms and Current Responses

Section 102(d) of the Act requires each registered firm to submit an annual report to the PCAOB. Our annual reporting framework implements Section 102(d) by requiring each registered firm to report annually basic information about the firm and its audit practice over

[66] The statutory basis for proposed Rule 2107(h) is Title I of the Act, and, specifically, Section 101(c)(1), (c)(5), (f)(6), (g)(1) of the Act (duties, powers, and rules), and Section 102 of the Act (registration and reporting). The proposal directly relates to our statutory duties and the purposes for our establishment, as discussed above.

[67] *Cf*. Section 105(d) of the Act.

[68] *Cf*. SEC Division of Corporation Finance, Financial Reporting Manual, Topic 4115, Involuntary PCAOB Deregistration (after revocation, audit reports issued by a revoked firm may no longer be included in an issuer's filings, even if the firm previously issued the audit report before the date of revocation).

the most recent 12-month reporting period. Annual reports must be filed on Form 2, *Annual Report Form*,[69] and must be filed no later than June 30 of each year.[70]

Annual reporting is an important part of the investor protection framework prescribed by the Act and PCAOB rules. Annual reports inform our oversight activities and inform the public by providing information on the nature and extent of each firm's audit practice with respect to issuers and broker-dealers. Annual reporting also keeps our records current on such basic matters as the firm's name, location, and contact information, and it provides assurance, through a firm certification,[71] that the firm has reported the occurrence of various significant events during the reporting period on Form 3, *Special Reporting Form*. When a firm does not comply with the reporting requirements, it impacts our analysis and planning for inspections and other functions and deprives the public of valuable information.

Each registered firm must also pay an annual fee. Section 102(f) of the Act directs us, in relevant part, to assess and collect annual fees from each registered firm in amounts that, together with registration fees, are sufficient to recover the costs of processing and reviewing registration applications and annual reports. Annual fees are due on or before July 31 of each year.[72]

Each year since our annual reporting and annual fee requirements became effective in 2010, some firms have failed to file annual reports or to pay annual fees, or both, in violation of our rules. According to the staff's records, of the firms registered with the PCAOB as of December 31, 2023, 13 firms have both an omitted annual report and annual fee for 2010, 18 firms for 2011, 21 firms for 2012, 23 firms for 2013, 27 firms for 2014, 29 firms for 2015, 41 firms for 2016, 45 firms for 2017, 53 firms for 2018, 58 firms for 2019, 61 firms for 2020, 69 firms for 2021, 87 firms for 2022, and 108 firms for 2023. Moreover, the 13 firms that did not file an annual report and did not pay the annual fee in 2010 have not submitted any annual reports or annual fees during each of the subsequent 13 reporting years up through 2023. In addition, the 87 currently registered firms that did not file an annual report and did not pay an annual fee in 2022 also failed to satisfy both obligations in 2023.

In each of the reporting periods from 2010 to 2023, the Registration staff contacted all registered firms to remind them of their obligations to file annual reports and pay annual fees prior to their respective due dates. After the relevant due dates passed, the Registration staff followed up by sending each delinquent firm at least one warning letter. These letters called each delinquent firm's attention to the delinquencies and warned that the failure to file annual

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[69] *See* PCAOB Rule 2200.

[70] *See* PCAOB Rule 2201, *Time for Filing of Annual Report*.

[71] *See* Form 2, Item 10.1.

[72] *See* PCAOB Rule 2202, *Annual Fee*.

reports and/or pay annual fees may be referred to the PCAOB's Division of Enforcement and Investigations ("DEI") unless the delinquent firm either submitted all past due reports and fees or requested leave to withdraw from registration. These warning letters have been effective in spurring most delinquent firms to act.

But each year, a recurring set of firms do not cure their delinquencies and yet remain registered. We presently have no effective and efficient procedural mechanism to withdraw these repeatedly delinquent firms from registration.

Relying on firm-initiated withdrawal is not currently a viable avenue. These repeatedly delinquent firms have not requested leave to withdraw from PCAOB registration and, given their extended unresponsiveness and repeated noncompliance, it is unlikely that they will do so in the future. Moreover, existing Board rules do not permit Board staff to file a request for leave to withdraw from registration on a firm's behalf, even upon information and belief that the firm no longer exists or has ceased operations.

Nor have enforcement efforts proven to be a desirable approach—or even a viable option—in certain circumstances. Historically, DEI has allocated its resources toward higher risk delinquencies, prioritizing enforcement action with respect to those delinquent firms that continue to issue audit reports or play a substantial role in the preparation or furnishing of audit reports. Since 2011, we have issued over 39 OIPs against delinquent firms,[73] and while most of those cases settled (or were dismissed in connection with the delinquent firm's withdrawal from registration), nine of those cases proceeded to an initial decision by a hearing officer.[74] Although the facts and legal issues in these proceedings were generally straightforward, each case consumed substantial time and resources that could have been expended in pursuing other oversight activities. And in some cases, we have encountered difficulties providing notice of the institution of a disciplinary proceeding to a firm that appears to have ceased operations; serving OIPs on seemingly nonexistent or nonoperational firms may be unnecessarily challenging, if even possible.

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[73] This figure represents OIPs that solely relate to delinquent annual reports or annual fees, or both. *See*, *e.g.*, *R.A. Bianchi & Associates, An Accountancy Corporation*, PCAOB Release No. 105-2015-003 (Jan. 22, 2015); *Baumgarten & Company LLP*, PCAOB Release No. 105-2013-001 (Feb. 21, 2013); *Reuben E. Price & Co., Public Accountancy Corp.*, PCAOB Release No. 105- 2011-008 (Dec. 20, 2011); *GLO CPAs, LLLP*, PCAOB Release No. 105- 2011-006 (Nov. 30, 2011).

[74] *See Monte C. Waldman CPA*, PCAOB File No. 105-2015-013 (Aug. 4, 2016); *Chr. Mortensen Revisionsfirma, statsautoriseret revisionsinteressentskab*, PCAOB File No. 105-2015-008 (Jan. 12, 2016); *David W. Dube*, PCAOB File No. 105-2014-005 (Nov. 30, 2015); *Joseph Troche*, CPA, PCAOB File No. 105-2014-007 (Mar. 6, 2015); *P.S. Yap & Associates*, PCAOB File No. 105-2013-006 (May 8, 2014); *Kenneth J. McBride*, PCAOB File No. 105-2012-007 (May 7, 2013); *Eric C. Yartz, P.C.*, PCAOB File No. 105-2012-006 (May 7, 2013); *Buckno Lisicky & Company, P.C.*, PCAOB File No. 105-2011-004 (Jan. 9, 2012); *Paul Gaynes*, PCAOB File No. 105-2011-006 (Jan. 3, 2012).

Additionally, encumbering the disciplinary process to address a firm's noncompliance with the PCAOB's annual reporting and payment requirements may often be a disproportionate response to a defunct firm's failure to request leave to withdraw from registration before ceasing operations. Instituting approximately 87 new disciplinary proceedings, one for each registered firm that failed to file an annual report and pay the annual fee in both 2022 and 2023, would impose significant resource demands on the Board and our staff and could require significant time to resolve. We believe a more efficient process, with appropriate procedural safeguards, should be available to address circumstances where a registered firm's conduct gives rise to the inference that the firm no longer wishes to remain registered with the Board.

2. Mechanics of Proposed Rule 2107(h)

We designed proposed Rule 2107(h) expressly to fall within the framework of a withdrawal from registration. The proposed rule is aimed at firms that are nonoperational or that otherwise appear to have lost interest in retaining their registration. Still, in the absence of procedural safeguards, we recognize that there is some risk that a constructive-withdrawal-request approach could unintentionally reach a firm that wishes to remain registered. Anticipating that risk, the proposed rule includes a set of procedural safeguards to protect the interests of any firm that wishes to remain registered, including written notice and website notice, and an opportunity to stop the proposed Rule 2107(h) process merely by emailing the Registration staff.

On balance, we believe that proposed Rule 2107(h) would avoid unnecessary expenditures of PCAOB resources without detracting from a firm's right to notice and an opportunity to stop the withdrawal process. It would also cause repeatedly delinquent firms either to contact the Registration staff or to be withdrawn from registration more efficiently than is possible currently. Thus, we believe proposed Rule 2107(h) would provide a reasonable and effective way to identify and clear from registration firms that, by virtue of their repeated delinquencies, have indicated that they no longer wish to remain registered with the PCAOB.

i. Prerequisites

Under proposed Rule 2107(h)(1), the withdrawal process would be able to be invoked only if a registered firm *for at least two consecutive Form 2 reporting years neither* has filed an annual report *nor* has paid an annual fee.[75] The two-year benchmark is intended to serve as a proxy to assist the Board in identifying firms that may fairly be deemed to have made a constructive withdrawal request. We believe delinquency for a period of at least two consecutive reporting years is an effective indication that a firm no longer wishes to be registered. Under the two-year benchmark, all firms that recently filed an annual report or paid

[75] A Form 2 reporting year covers the 12-month period from April 1 to March 31. *See* PCAOB Form 2, General Instruction 4.

an annual fee would fall outside the scope of proposed Rule 2107(h). We believe that a single missed filing or payment, or even one reporting year's worth of missed annual reports and payments, is an insufficient basis upon which to infer that a firm no longer wishes to remain registered.[76] On the other hand, three or more years of delinquency seems too long of a period to presume that a firm wishes to continue to remain registered. The rule would be discretionary: Whether the rule would be used, and the exact timing of how it would be used, would be left to the Board.[77]

Even if proposed Rule 2107(h) were adopted by the Board and approved by the Commission, the Board expects that the Registration staff would continue its practice of sending warning letters each year to delinquent firms. These notices would continue to call attention to any missed annual report or annual fee payment and warn that such conduct may be referred to DEI unless the firm either submits all past due reports and payments or requests leave to withdraw from registration. Of course, the failure to file reports or pay fees when due constitutes a violation of our rules concerning annual reporting and fees, and operational firms should bear in mind that proposed new paragraph (h) of Rule 2107 would not limit our enforcement authority with respect to violations of those requirements.

ii. Notice of delinquency and impending withdrawal

Pursuant to proposed Rule 2107(h)(2), the Board would commence the proposed Rule 2107(h) process by sending a written notice to the firm's primary contact with the Board as identified in the firm's most recent filing on Form 1, Form 2, Form 3, or Form 4. That notice (the "Notice of Delinquency and Impending Withdrawal") would specify the annual reports and annual fees that are past due and remain outstanding and provide information to the firm about the impending withdrawal of its registration, including the opportunity to avoid withdrawal by contacting the Registration staff within 30 days. The content requirements of the Notice of Delinquency and Impending Withdrawal are designed to provide the firm notice of the commencement of the proposed Rule 2107(h) process, the reason for the commencement of that process, its potential significance to the firm's registration, and the firm's opportunity to avoid withdrawal by sending an email to the Registration staff within 30 days.

The Board would send the Notice of Delinquency and Impending Withdrawal to the firm's primary contact with the Board as identified in the firm's most recent filing on Form 1,

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[76] Of course, rule violations related to noncompliance with the Board's annual reporting and payment requirements remain subject to enforcement.

[77] The *minimum* amount of time that a firm would have to be delinquent before meeting the proposed rule's threshold of "two consecutive reporting years" would be 13 months, encompassing the first overdue annual report following the June 30 deadline, the first overdue annual fee following the July 31 deadline, the second overdue annual report following June 30 of the second consecutive year, and the second overdue annual fee following July 31 of the second consecutive year.

Form 2, Form 3, or Form 4, via a mail or commercial courier service that results in a confirmation of actual or attempted delivery. In considering the fairness of this approach, we have taken into account that if there has been a change in the identity or business mailing address of the firm's primary contact from what was provided in a previous form filing, it is required to report that change to us within 30 days on Form 3, *Special Reporting Form*.[78] In light of a registered firm's longstanding obligation to maintain up-to-date primary contact information, we believe it is fair and reasonable for the Registration staff to send the Notice of Delinquency and Impending Withdrawal to the firm's primary contact at the address reported in the firm's most recent filing.[79]

iii. Website notice

After the Notice of Delinquency and Impending Withdrawal is sent to the firm's primary contact, the Board would be required to publish notice of the impending withdrawal on its website, pursuant to proposed Rule 2107(h)(3). The website posting is intended to provide reasonable notice to the firm and to others, including any current or former audit clients, who may be able to alert the firm of the impending withdrawal of its registration and its 30-day window to avoid withdrawal. Disclosing the firm's pending withdrawal on our website would also be consistent with the current firm-initiated withdrawal process.[80]

iv. Thirty-day opportunity to avoid withdrawal from registration

After the date the Board sends the Notice of Delinquency and Impending Withdrawal to the firm's primary contact, the firm, under proposed Rule 2107(h)(4), would have 30 days to stop the withdrawal process.[81] We believe 30 days is a reasonable amount of time for the firm to review the notice, consider whether it wishes to remain registered, and send an email to the Registration staff.

To stop the proposed Rule 2107(h) process, the firm's primary contact would be required to send an email to a designated electronic address specified in the Notice of Delinquency and Impending Withdrawal within the 30-day period. In contemplating how a firm

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[78] *See* PCAOB Rule 2203 and Items 2.18 and 7.2 of Form 3.

[79] *See generally* Rule 141 of the Commission's Rules of Practice, 17 C.F.R. § 201.141, which similarly permits service to the most recent address shown on a registered entity's most recent filing with the Commission.

[80] *See* PCAOB Rule 2107(b)(2) (requiring disclosure of the identity of any firm with a pending request to withdraw from registration and the date the Board received the Form 1-WD); *see also* Registered Public Accounting Firms – Withdrawal Request Pending.

[81] PCAOB Rule 1002, *Time Computation*, governs the computation of periods of time prescribed in or allowed by the Board's rules. Rule 1002's time computation principles would apply to the 30-day period specified in the Notice of Delinquency and Impending Withdrawal.

should stop the proposed Rule 2107(h) process, we sought to establish a method of contacting the PCAOB that would not be overly burdensome. Requiring that an email be sent by the firm's primary contact would increase the likelihood that the person who contacts the PCAOB is an authorized representative of the firm. This requirement also would increase the likelihood that future communications made to the firm's primary contact would be most likely to result in actual notice to the firm. In particular, this process would expedite further communications with the firm regarding its legal duties to file annual and special reports and pay its annual fees, and would facilitate our ability to institute, as we deem appropriate, a disciplinary proceeding against the firm.[82]

v. Withdrawal of registration

If, after the 30-day period in proposed Rule 2107(h), the firm has not emailed the Registration staff, the Board would be able to treat the firm's repeated failures to file annual reports and to pay annual fees as a constructive request for leave to withdraw from registration and deem the firm's registration withdrawn. The provision reflects our judgment that a firm that has not filed an annual report and has not paid an annual fee over this period may fairly be deemed to have made a constructive request for leave to withdraw from PCAOB registration. After the Board deems a registration withdrawn pursuant to proposed Rule 2107(h), we anticipate that the Registration staff, consistent with existing practices, would send written notification to the firm regarding the withdrawal. Additionally, the withdrawal of the firm from registration would also be reflected on our website.

After a firm's registration is withdrawn pursuant to proposed Rule 2107(h), the consequences would mirror those of any standard withdrawal from PCAOB registration. A firm that has had its registration withdrawn pursuant to proposed Rule 2107(h) would not have to comply with our annual reporting or annual fee requirements. The withdrawn firm, like any other unregistered firm, would be prohibited from engaging in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report for an issuer or broker-dealer, other than to issue a consent to the use of an audit report for a prior period.[83] Should such a firm wish to re-register, it would have to file a new registration application and pay a registration fee, as is required of all firms reapplying after withdrawal. In reviewing any such registration application from the firm, the Board has discretion to consider its past interactions with the firm during its previous registration period. This includes considering any

[82] If a firm sends an email to the Registration staff to stop the proposed Rule 2107(h)'s withdrawal process, it still could face potential enforcement action, just like any other registered firm that violates the PCAOB's annual reporting or annual fee requirements.

[83] *See* Section 102(a) of the Act; PCAOB Rule 2100; PCAOB Rule 1001(p)(ii). Note 2 to Rule 2100 clarifies that issuing a consent to include an audit report for a prior period does not, in itself, obligate a public accounting firm to be registered with the PCAOB. This provision would apply to firms whose registrations have been withdrawn pursuant to Rule 2107(h).

instances where the firm did not file necessary reports, including annual reports, or pay required annual fees.[84]

Questions:

18. Would proposed Rule 2107(h) strike the right balance between expediting our ability to clear from PCAOB registration firms that no longer wish to remain registered and giving potentially affected firms appropriate procedural safeguards? What are the advantages and disadvantages of the proposed approach? Are there alternative procedural mechanisms we should consider to withdraw the registrations of firms that fail to meet their annual reporting and fee payment obligations?

19. Is it appropriate to infer, for purposes of proposed Rule 2107(h), that a registered firm that has not filed an annual report and has not paid an annual fee for at least two consecutive reporting periods has made a constructive request for leave to withdraw from PCAOB registration? If not, why not? Would omitted annual reports and annual fees across a different period of time be more appropriate? If so, how long?

20. Is written notice to the last reported address of the firm's primary contact with the Board (i.e., the address our rules mandate must be kept current) an appropriate means of informing a firm that its registration could be withdrawn? If not, what additional or alternative notice procedures should we consider?

21. Is notice on our website an appropriate supplemental means of providing the firm with notice that its registration could be withdrawn? Are there any other forms of notice that we should consider?

22. The website posting also would provide the firm's current and former clients—and the broader public—with notice that the firm's registration could be withdrawn. Are there any other forms of notice to current and former clients or other stakeholders that we should provide? If so, how might we ascertain the identity of, and contact information for, such stakeholders?

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[84] Consistent with the Board's current practices, a history of not filing annual reports or paying annual fees has, in some cases, led to disapproval of a withdrawn firm's subsequent application for re-registration. *See, e.g.*, *Registration Application of David R. Ramos*, *CPA*, PCAOB Release No. 102-2014-002 (Mar. 6, 2014); *Registration Application of Lawrence Hoffman*, Certified Public Accountant, P.C., PCAOB Release No. 102-2014-001 (Jan. 28, 2014); *Registration Application of Vail & Knauth LLP*, PCAOB Release No. 102-2013-001 (Feb. 21, 2013); *Registration Application of GYL Decauwer LLP*, PCAOB Release No. 102-2018-001 (June 13, 2018); *Registration Application of S S Kothari Mehta and Company*, PCAOB Release No. 102-2021-001 (Nov. 23, 2021).

23. Is 30 days a reasonable amount of time for a registered firm to act and to prevent the withdrawal of its registration? If not, how long should the opportunity to contact the Registration staff be?

24. Is email a reasonable way to require a firm to contact the Registration staff? If not, what alternative method(s) of contacting staff would be preferable?

IV. ECONOMIC ANALYSIS

The Board is mindful of the economic impacts of its rulemaking. This section discusses the economic baseline, need, expected economic impacts of the proposals, and alternative approaches considered. Because there are limited data and research findings available to estimate quantitatively the economic impacts of the proposals, the Board's economic discussion is largely qualitative in nature. However, where reasonable and feasible, the analysis incorporates quantitative information, including data from the PCAOB's RASR system.

A. Baseline

This section establishes the economic baseline against which the impacts of the proposals can be considered. Sections II and III above describe important components of the baseline, including: (1) the current regulatory framework, (2) potentially misleading statements regarding PCAOB registration status, including the extent of PCAOB oversight of firms' services, and (3) firms' repeated failures to file annual reports and pay annual fees. We discuss below two additional components that inform our understanding of the economic baseline: (1) the staff's analysis of RASR data, and (2) a summary of relevant academic literature.

1. Analysis of RASR Data

The staff has analyzed RASR data to calculate: (1) the number of registered firms that are not currently providing services subject to PCAOB oversight, and (2) the number of registered firms with repeated failures to file annual reports and pay annual fees.

i. "Active" vs. "Inactive" Registered Firms

For ease of reference, in the figures in the economic analysis, we refer to registered firms that are currently providing services subject to PCAOB oversight as "active" firms, and registered firms that are not currently providing services subject to PCAOB oversight as "inactive" firms. Specifically, "inactive" firms refer to firms that have not issued an audit report for an issuer or broker-dealer, or played a substantial role in such an audit, within the past three years.

Figure 1 examines the population of registered firms as of December 31, 2023, and presents the number of "active" versus "inactive" firms based on their Form 2 filings during the

three-year period covered by the 2021, 2022, and 2023 reporting years (spanning April 1, 2020, to March 31, 2023).[85] Among all 1,599 registered firms as of December 31, 2023, 1,424 registered firms (89 percent) filed the required Form 2 filings for reporting years 2021 through 2023.[86] Among those 1,424 registered firms, 49 percent (699 registered firms) are "inactive."[87] These firms reported not issuing, or playing a substantial role in the preparation or furnishing of, an audit report for an issuer or broker-dealer during the three reporting years that were analyzed. The percentage of "inactive" firms is notably high for non-affiliate firms ("NAFs"), especially for non-U.S. NAFs. Forty-one percent of U.S. NAFs and 76 percent of non-U.S. NAFs are "inactive."[88] For global network firms ("GNFs"), none of the U.S. GNFs and 32 percent of non-U.S. GNFs are "inactive."

[85] Form 2 reporting years span from April 1 of the previous year to March 31 of the reporting year. The 2021 reporting year covers April 1, 2020, to March 31, 2021. The 2022 reporting year covers April 1, 2021, to March 31, 2022. The 2023 reporting year covers April 1, 2022, to March 31, 2023. As of the date of our analysis, Form 2 data for the current Form 2 reporting year is not available, therefore the Board relies on Form 2 data from the 2021 to 2023 reporting years to estimate the number of "active" and "inactive" firms.

[86] Based on our data, 175 registered firms (1,599 - 1,424) are not included in the analysis. Specifically, 138 firms did not file one or more of the Form 2 filings they were required to file for reporting years 2021 to 2023, and 37 firms were not required to file Form 2 filings for the 2021 to 2023 reporting years because they registered after March 31, 2023, or had a withdrawal request pending on or before June 30, 2021. If a firm's withdrawal request is pending on or before June 30th of a reporting year, it is not required to file the Form 2 filing for that reporting year.

[87] Under this proposal, as explained in Section III.A.2 above, registered firms that shifted from "active" to "inactive" would be required to comply with proposed Rule 2400(b)(2). As of December 31, 2023, 19 registered firms shifted from "active" to "inactive" in reporting year 2021, 19 registered firms shifted from "active" to "inactive" in reporting year 2022, and 21 registered firms shifted from "active" to "inactive" in reporting year 2023.

[88] NAFs are accounting firms registered with the Board that are not GNFs. GNFs are the member firms of the six global accounting firm networks that include the largest number of PCAOB-registered non-U.S. firms (BDO International Ltd., Deloitte Touche Tohmatsu Ltd., Ernst & Young Global Ltd., Grant Thornton International Ltd., KPMG International Cooperative, and PricewaterhouseCoopers International Ltd.). The discussion in this release uses "U.S. GNF" to refer to a GNF member firm based in the United States, and "non-U.S. GNF" to refer to a GNF member firm based outside the United States. Similarly, "U.S. NAF" refers to a NAF firm based in the United States, and "non-U.S. NAF" refers to a NAF firm based outside the United States.

Figure 1. Number of "active" vs. "inactive" registered firms as of December 31, 2023

	Firms that filed all required Form 2s for reporting years 2021 - 2023	Active firms	Inactive firms	Percent of active firms	Percent of inactive firms
Firms	**1,424**	**725**	**699**	**51%**	**49%**
By firm type					
U.S. GNF	6	6	0	100%	0%
Non-U.S. GNF	332	226	106	68%	32%
U.S. NAF	674	396	278	59%	41%
Non-U.S. NAF	412	97	315	24%	76%

Source: RASR.

Figure 2 presents the number of registered firms, as of December 31, 2023, that became "active" in reporting years 2021 – 2023, following a period of three reporting years or more in which the firm was "inactive," or after registering and issuing an audit report for an issuer or broker-dealer or playing a substantial role in such an audit.[89] Twenty-seven registered firms shifted from "inactive" to "active" in reporting year 2021, 22 registered firms shifted from "inactive" to "active" in reporting year 2022, and 16 registered firms shifted from "inactive" to "active" in reporting year 2023.[90] In total, 65 registered firms shifted from "inactive" to "active" in the three reporting years from 2021 through 2023. Of these 65 firms, approximately 78 percent (51 firms) are NAFs (24 U.S. NAFs and 27 non-U.S. NAFs), while the remainder are non-U.S. GNFs.

[89] Figure 2 includes firms that recently registered with the PCAOB and, during the 2021, 2022, and 2023 reporting years, either issued an audit report for an issuer or broker-dealer or played a substantial role in such an audit. Under the proposal, a recently registered firm would be subject to proposed Rule 2400(b)(2) until it either issues an audit report for an issuer or broker-dealer or plays a substantial role in such an audit.

[90] Under this proposal, as explained in Section III.A.4 above, registered firms that shifted from "inactive" to "active" would be required to file a Form 3 within 30 days of that change. Figure 2 presents the number of registered firms that shifted from "inactive" to "active," which would necessitate a Form 3 filing within 30 days following this change.

Figure 2. Number of registered firms that shifted from "inactive" to "active" as of December 31, 2023

	Firms shifted from inactive to active in reporting year 2021	Firms shifted from inactive to active in reporting year 2022	Firms shifted from inactive to active in reporting year 2023	Firms shifted from inactive to active in reporting years 2021 - 2023
Firms	**27**	**22**	**16**	**65**
By firm type				
U.S. GNF	0	0	0	0
Non-U.S. GNF	7	5	2	14
U.S. NAF	8	10	6	24
Non-U.S. NAF	12	7	8	27

Source: RASR.

ii. Constructive Withdrawal Requests

Figure 3 presents the number of registered firms that failed to pay annual fees and/or to file annual reports for reporting years 2022 and 2023. Among all registered firms as of December 31, 2023, 1,491 firms (93 percent) were required to pay annual fees and file annual reports for reporting years 2022 and 2023.[91] Of the 1,491 registered firms, 94 firms failed to pay annual fees, 92 firms failed to file annual reports, and 87 firms failed to both pay annual fees and file annual reports for the two consecutive reporting years of 2022 and 2023. The overall rate of registered firms that failed to both pay annual fees and file annual reports for reporting years 2022 and 2023 is just under 6 percent (87 out of 1,491).[92] Most of the firms that failed to pay annual fees and file annual reports for both years are NAFs. Specifically, four

[91] Firms with pending withdrawal requests are excluded from the analysis. Also, as of December 2023, some registered firms were not required to pay annual fees or file annual reports for reporting years 2022 and 2023. For example, firms that registered after March 31, 2023, were not required to file the 2023 annual report or pay the 2023 annual fee.

[92] Of these 87 firms, approximately 67 percent (58 firms) failed to pay annual fees and file annual reports for the five consecutive reporting years from 2019 to 2023. Approximately 78 percent (68 firms) of the 87 firms that failed to pay annual fees and file annual reports registered with the PCAOB prior to calendar year 2013.

percent of U.S. NAFs and 12 percent of non-U.S. NAFs failed to pay annual fees and file annual reports for both years. In comparison, no U.S. GNFs and only one non-U.S. GNF failed to pay annual fees and file annual reports for both years.

Figure 3. Number of registered firms that did not pay annual fees and/or file annual reports as of December 31, 2023

	Firms required to pay annual fees and file annual reports for reporting years 2022 and 2023	Firms that did not pay annual fees for reporting years 2022 and 2023	Firms that did not file annual reports for reporting years 2022 and 2023	Firms that both did not pay annual fees and did not file annual reports for reporting years 2022 and 2023	Percent of firms that both did not pay annual fees and did not file annual reports for reporting years 2022 and 2023
Firms	**1,491**	**94**	**92**	**87**	**6%**
By firm type					
U.S. GNF	6	0	0	0	0%
Non-U.S. GNF	328	1	1	1	0.3%
U.S. NAF	689	29	30	28	4%
Non-U.S. NAF	468	64	61	58	12%

Source: RASR.

2. Academic Literature

The staff has reviewed the literature related to the proposals, and we summarize here two strands of relevant literature.

First, academic research suggests that more informative disclosure by market participants could reduce information asymmetry,[93] and make the capital markets more

[93] *See, e.g.,* D. Bergh, D. Ketchen, I. Orlandi, P. Heugens, and B. Boyd, *Information Asymmetry in Management Research: Past Accomplishments and Future Opportunities,* 45 Journal of Management 122 (2019) ("Information asymmetry is a condition wherein one party in a relationship has more or better information than another."); George A. Akerlof, *The Market for Lemons: Quality uncertainty and*

efficient for participants.[94] To extend this finding to the setting of disclosure of information by audit firms to their clients, potential clients, and the public, it is plausible that these groups may benefit from enhanced transparency and a reduction in information asymmetry when audit firms disclose more accurate and timely information concerning their PCAOB registration and oversight status in their disclosures to clients, potential clients, and the public.[95]

Second, research suggests that PCAOB oversight could provide useful information that serves as a signal to market participants about the quality of registered firms' services. In particular, academic research indicates that PCAOB-registered firms subject to PCAOB inspection tend, on average,[96] to have higher audit quality than PCAOB-registered firms that are not subject to PCAOB inspection.[97] However, these on-average statistical findings may not

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the market mechanism, 84 Quarterly Journal of Economics 488 (1970) ("the bad cars sell at the same price as good cars since it is impossible for a buyer to tell the difference between a good car and a bad car; only the seller knows . . . the difficulty of distinguishing good quality from bad quality is inherent in the business world").

[94] *See, e.g.,* Itay Goldstein and Liyan Yang, *Information Disclosure in Financial Markets*, 9 Annual Review of Financial Economics 101 (2017); Paul Healy and Krishna Palepu, *Information Asymmetry, Corporate Disclosure, and the Capital Markets: A Review of the Empirical Disclosure Literature*, 31 Journal of Accounting and Economics 405 (2001).

[95] To the best of our knowledge, the impact of disclosure by audit firms in marketing statements has not been studied in the literature. However, in the absence of such a literature, staff have referred to academic research on capital market implications of disclosure by issuers and other capital market participants. *See, e.g., supra* footnote 93.

[96] Academic articles in *infra* footnote 97 conduct statistical analyses to draw conclusions about the association of audit quality and the PCAOB inspection status using a limited number of measures of audit quality. We acknowledge that it is challenging to construct a comprehensive measure of audit quality using a limited set of metrics. We further acknowledge that the concept of audit quality and the measurement of audit quality is a subject of discussion in the academic literature. *See, e.g.,* B.E. Christensen, S.M. Glover, T.C. Omer, and M.K. Shelley, M.K., *Understanding Audit Quality: Insights from Audit Professionals and Investors*, 33 Contemporary Accounting Research 1648 (2016) (describing how "[t]he degree to which financial statement users can rely on an audit opinion depends on the quality of the audit performed. Despite the importance of audit quality to the stability of the capital markets, and the large body of research investigating the topic, regulators, investors, and researchers continue to debate the definition, composition, and measurement of audit quality.").

[97] *See, e.g.,* Inder Khurana, et al., *PCAOB Inspections and the Differential Audit Quality Effect for Big 4 and Non–Big 4 US Auditors, 38* Contemporary Accounting Research 376 (2021). *See also* Mark Defond and Clive Lennox, *Do PCAOB Inspections Improve the Quality of Internal Control Audits?,* 55 Journal of Accounting Research 591 (2017); Philippe Lamoreaux et al., *Does PCAOB Inspection Access Improve Audit Quality? An Examination of Foreign Firms Listed in the United States, 61* Journal of Accounting and Economics 313 (2016); Joseph Carcello et al., *The Effect of PCAOB Inspections on Big 4 Audit Quality,* 23 Research in Accounting Regulation 86 (2011); Audrey Gramling et al., *Are PCAOB-identified Audit*

necessarily translate to the situation of an individual firm.[98] For instance, a firm with poor inspection results or a firm that has been subject to disciplinary sanctions may not fit this general trend. Nonetheless, clients, potential clients, and the public may mistakenly assume that PCAOB oversight extends to all PCAOB-registered firms or to all services provided by these registered firms.[99] Academic studies suggest that PCAOB inspection reports on issuer audits could also provide more detailed information about firms' audit quality.[100] However, inspection reports are only available for registered firms that have provided services that are subject to PCAOB inspection. As a result, when evaluating the audit quality of registered firms that have not recently provided services subject to PCAOB inspection, market participants often encounter a scarcity of information. In these situations, a firm may try to use its PCAOB registration status to suggest to clients, potential clients, or other stakeholders that it provides higher quality services than an unregistered firm. These clients, potential clients, and other stakeholders may not understand that the services the firm is offering are not inspected or otherwise overseen by the PCAOB.

Deficiencies Associated with a Change in Reporting Decisions of Triennially Inspected Audit Firms?, 30 Auditing: A Journal of Practice & Theory 59 (2011).

[98] Findings in studies in *supra* footnote 97 suggesting a positive association between PCAOB oversight and audit quality do not necessarily imply that PCAOB oversight *causes* higher audit quality. These studies merely find positive associations between PCAOB oversight status and audit quality. Academic research suggests that PCAOB oversight could also have an indirect effect on audit quality such as peer or spillover effects. For example, one study finds that large audit firm offices improve audit quality following PCAOB enforcement naming another office within their firm, whereas small firm offices improve their audit quality following PCAOB enforcement of local small firm competitors. *See* P.T. Lamoreaux, M. Mowchan, and W. Zhang, *Does Public Company Accounting Oversight Board Regulatory Enforcement Deter Low-Quality Audits?,* 98 Accounting Review 335 (2023).

[99] While the stream of research in *supra* footnote 97 may be extrapolated to infer that PCAOB oversight could be associated with higher audit quality, these studies do not contain evidence of how PCAOB oversight of issuer or broker-dealer audits relates to the quality of audits of non-issuers, non-broker-dealers, or in the realm of non-audit services. Only a few academic studies examine PCAOB-registered firms that are not subject to PCAOB oversight or work that is not subject to PCAOB oversight performed by PCAOB-registered firms. For example, one study finds survey evidence that firms whose services are not subject to PCAOB oversight voluntarily registered with the PCAOB as a strategy to signal their audit quality to stakeholders. *See, e.g.,* William Read et al., *Local and Regional Audit Firms and the Market for SEC Audits*, 18 Accounting Horizons 241 (2004). Another study finds evidence that positive outcomes from audit reviews as measured by a higher probability of crowdfunding success and higher total amount raised were concentrated in PCAOB-registered auditors under the Securities and Exchange Commission's Regulation Crowdfunding. *See* J. Gong, J. Krishnan and Y. Liang, *Securities-Based Crowdfunding by Startups: Does Auditor Attestation Matter?*, 97 The Accounting Review 213 (2022).

[100] *See*, *e.g.*, B. K. Church and L. Shefchik, L., *PCAOB Inspections and Large Accounting Firms*, 26 Accounting Horizons 43 (2012); Brian Daugherty et al., *Negative PCAOB Inspections of Triennially Inspected Auditors and Involuntary and Voluntary Client Losses*, 15 International Journal of Auditing 231 (2011).

Question:

25. We request comment generally on the baseline for evaluating the economic impacts of the proposed rules. Are there additional data or academic studies that we should consider?

B. Need

This section discusses the problem that needs to be addressed and explains how the proposals are expected to address it.

1. Problem to Be Addressed

i. Proposed Rule 2400

In the audit market, clients, potential clients, and the public cannot easily observe the services performed by the audit firm or the quality of the audit, leading to an information asymmetry between the audit firm and the audit client, investors, and other market participants.[101] In such a low-information environment, available pieces of information may take on an outsized level of importance and lead to inefficient choices in selecting auditors or other decisions for market participants.[102] This may increase the risk of moral hazard,[103] as

[101] *See, e.g.*, Monika Causholli & Robert W. Knechel, *An Examination of the Credence Attributes of an Audit*, 26 Accounting Horizons 631 (2012).

[102] *See*, *e.g.*, Akerlof (1970) ("The presence of people in the market who are willing to offer inferior goods tends to drive the market out of existence-as in the case of our automobile 'lemons.' It is this possibility that represents the major costs of dishonesty-for dishonest dealings tend to drive honest dealings out of the market . . . the presence of people who wish to pawn bad wares as good wares tend to drive out the legitimate business. The cost of dishonesty, therefore, lies not only in the amount by which the purchaser is cheated; the cost also must include the loss incurred from driving legitimate business out of existence."); Jonathan Levin, *Information and the Market for Lemons*, 32 The RAND Journal of Economics 657 (2001) ("Resale markets, housing markets, and markets for corporate securities probably all suffer to some extent from the problem that some market participants have better information than others about the value of the good being traded. In such markets, theory suggests that only a fraction of the potential gains from trade are realized").

[103] *See*, *e.g.*, Gregory N. Mankiw, *Principles of Economics*, Cengage Learning, *6th* edition (2008), at 468 ("Moral hazard is a problem that arises when one person, called an agent, is performing some task on behalf of another person, called the principal. If the principal cannot perfectly monitor the agent's behavior, the agent tends to undertake less effort than the principal considers desirable.").

market participants may not be able to discern when they are being given false or misleading information.[104]

In this environment, a firm may proffer, and the audit client, investors, and other market participants may accept, false or misleading statements about the firm's registration with the PCAOB, or the extent of the PCAOB's oversight of the firm's services, as indicative of audit quality. As discussed in Section IV.A, academic literature suggests that PCAOB oversight may be associated with higher average audit quality.[105] In this context, clients, potential clients, and the public could be misled into believing that PCAOB registration alone is an indicator of audit quality, as they may not understand which services the PCAOB oversees.

The potential for these misunderstandings could be assessed considering three scenarios: First, clients, potential clients, and the public could avoid being misled by claims that can be independently verified – such as whether the firm is registered with the PCAOB or not – by verifying those claims for themselves or with the help of more informed professionals. Second, in the case of claims that are not verifiable – such as the quality of services that are beyond the PCAOB's oversight authority and are not the subject of any PCAOB inspection report – clients, potential clients, and the public could protect themselves from being misled by treating the claims as insubstantial or by discounting, in whole or in part, the claims being made. Third, some clients, potential clients, and the public could have behavioral biases and/or irrationality which could inhibit them from effectively using the first two possibilities.[106]

Although there is a risk that false or misleading statements about a firm's PCAOB registration and oversight status may mislead clients, potential clients, and the public, currently there is no specific PCAOB rule that expressly prevents firms or their associated persons from making false or misleading statements about the nature of the firm's PCAOB registration status or the extent of the PCAOB's oversight of the firm's services.

To understand the extent of the problem, the staff conducted a review of the websites of about 10 percent of all PCAOB-registered firms (167 firms). During this review, the staff found instances where firms made false or misleading statements concerning their PCAOB registration status or the extent of the PCAOB's oversight of the firm's services. The selection of firms for this review was influenced by the PCAOB staff's prior familiarity with certain firms, as a result of their regulatory oversight responsibilities. Thus, it is possible that the sample may be

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[104] *See*, *e.g.*, Bengt Holmstrom, *Moral Hazard and Observability*, 10 The Bell Journal of Economics 74 (1979).

[105] *See supra* footnote 97.

[106] *See*, *e.g.*, Kent Daniel, David Hirshleifer, and Siew Hong Teoh, *Investor Psychology in Capital Markets: Evidence and Policy Implications*, 49 Journal of Monetary Economics 139 (2002) ("limited attention and processing capacity creates a general problem of investor credulity"); Matthew G. Nagler, *Rather Bait Than Switch: Deceptive Advertising with Bounded Consumer Rationality*, 51 Journal of Public Economics 359 (1993).

biased towards selecting firms that could have false or misleading statements on their websites. However, the staff was unable to review firms' marketing materials beyond their public websites. Therefore, it is conceivable that the overall incidence of false or misleading statements across all communication channels could exceed what was identified in the staff's review of firm websites.

- *Endorsement*. When trying to appeal to market participants, firms have an incentive to take advantage of information asymmetries (i.e., clients, potential clients, and the public know less about the nature of the PCAOB's oversight than the auditor does) by asserting that the PCAOB has endorsed the firm or a particular service, even though the PCAOB does not endorse firms or their services.

  Among the 167 firm websites reviewed, the staff found six instances where firms made statements that suggested the PCAOB endorsed the firm or its services. For example, as of the date of the staff's review, one registered firm posted on its website that "The role of a PCAOB registered accountant is to perform accounting and auditing duties with the utmost efficiency and accuracy under the compliance of the PCAOB and SEC rules and regulations. The PCAOB label is a seal of approval and a mark of excellence that we are proud to wear." Similarly, another registered firm posted on its website that "We are also registered with the PCAOB to ensure the highest professional standards."

- *Registered firms not subject to PCAOB oversight*. Registered firms that are not conducting audit work subject to PCAOB oversight may tout their PCAOB registration status in ways that may mislead market participants to believe that the PCAOB is exercising oversight of their work. Figure 1 in Section IV.A.1 above shows that approximately 49 percent of registered firms that filed the required Form 2 filings for the 2021 to 2023 reporting years are not currently providing services subject to PCAOB oversight, suggesting possibilities for confusion or misunderstanding among clients, potential clients, and the public.

  In the course of reviewing 167 firm websites, the staff identified 58 firms that are not currently providing services subject to PCAOB oversight, based on their Form 2 reporting. Within this subset of 58 firms, 13 (about 22 percent of this group) included information about their PCAOB registration status on their websites. For example, one registered firm that is not currently providing services subject to PCAOB oversight posted on its website that, "As a PCAOB registered public accounting firm, [the firm] can provide assurance, tax, and business advisory services for your business needs." Another registered firm that is not currently providing services subject to PCAOB oversight posted on its website that "Registration is not a requirement, however, [the firm] chooses to be a PCAOB-registered firm." Additionally, a different such firm posted on its website that it is "PCAOB Certified." These types of statements, when not qualified, may mislead market participants to incorrectly believe that the PCAOB is exercising oversight of the work of these firms.

The fact that nearly half of registered firms (699 firms), based on their Form 2 filings for the 2021 to 2023 reporting years, are not currently providing services subject to PCAOB oversight,[107] may allow these registered firms, potentially unintentionally, to free-ride on the higher average reputation for audit quality linked to firms that are currently providing services subject to PCAOB oversight. This may create an opportunity for at least some of the firms that are not currently providing services subject to PCAOB oversight (given their significant number and the absence of oversight into their activities through the inspections program) to tout their PCAOB registration in a way that intentionally misappropriates the audit quality signal, because such misappropriation is not prohibited by rule.

While clients, potential clients, and the public could refer to inspection reports[108] and other PCAOB sources such as enforcement orders available on the PCAOB's website to obtain information about the audit quality of registered firms that are currently providing services subject to PCAOB oversight, this would incur information search costs,[109] which may be burdensome for some market participants, especially for less sophisticated potential clients and investors.[110] In addition, while inspection reports and other public sources may provide information that could enhance understanding of audit quality for clients, potential clients, and the public, it would not be available for registered firms whose activities are not subject to PCAOB oversight and is not a complete source of information about audit quality. Moreover, for firms that are not

[107] *See* Figure 1 in Section IV.A.1.

[108] While inspection reports could contain information about audit quality, the PCAOB includes disclaimers that inspection report findings may not be representative of the inspected firm's audit work or all of the audit procedures performed for the audits reviewed. *See, e.g.,* 2023 Inspection Procedures ("A PCAOB inspection results in an inspection report. A PCAOB inspection report is not intended to serve as a balanced report card or overall rating tool. Nothing in Part I of an inspection report should be interpreted to imply the Board has reached a conclusion about a firm's quality control policies, procedures, or practices.").

[109] Search costs refer to costs that clients, potential clients, and the public may incur to look for any information about firms' quality of services. Potential clients of smaller audit firms or investing public who are not very sophisticated investors may prefer to incur less information search costs, for example, by reading marketing statements or accessing firms' website information. If they are more sophisticated, they may look for Form 2 information and/or inspection reports from the PCAOB website and spend more time and resources analyzing the information.

[110] Registered firms, clients, potential clients, and the public can check data in Item 3 of Form 2 to determine a firm's PCAOB oversight status. The PCAOB also publishes inspection reports where the public can obtain information on a firm's PCAOB registration and oversight status. These sources, however, are likely to involve search costs, which could deter investors from using them. For example, less sophisticated potential clients and investors of smaller public companies or private companies may not know they can search for inspection reports on the PCAOB website or may find such search efforts to be burdensome.

currently providing services subject to PCAOB oversight, PCAOB registration status may be one of very few signals about audit quality available to clients, potential clients, and the public at little or no cost even if this signal may be imprecise, and clients, potential clients, and other stakeholders may therefore give it undue weight.[111]

- *Services not subject to PCAOB oversight (including auditors' reports for clients other than issuers and broker-dealers)*. PCAOB-registered firms may hold out their PCAOB registration status with respect to services that are not subject to PCAOB oversight. We understand that the interaction of SEC reporting requirements and AS 3101 mandates that registered firms reference their PCAOB registration in auditors' reports that are prepared in accordance with PCAOB standards for some entities that are not issuers or broker-dealers. A staff review of 30 auditors' reports, issued by 25 firms registered with the PCAOB for non-issuers that file reports with the Commission, confirmed that PCAOB-registered firms are referencing their PCAOB-registration status in those reports.[112] Given that the PCAOB lacks inspection or enforcement authority for audits of non-issuers, these references to firms' PCAOB registration could lead to confusion unless they are qualified.

  A particularly difficult form of confusion may arise with an auditor's report for an engagement outside PCAOB oversight. When these reports, indicating the firm's PCAOB registration, are provided to clients that are not issuers or broker-dealers, investors and other financial statement users, who may find it especially difficult to discern the differences between the PCAOB's oversight role in audits of issuers and broker-dealers and its absence in other audit or assurance work, might rely on them. A tangible example of this potential for confusion has emerged from recent questions around the PCAOB's role with respect to certain attestation engagements that PCAOB-registered firms performed for cryptocurrency entities (proof-of-reserve engagements).[113] To the extent that PCAOB-registered firms provide proof-of-reserve engagement services to their cryptocurrency clients, there is a risk that investors and other market participants might mistakenly believe such services fall under PCAOB oversight, when they do not.

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[111] *See supra* footnote 106. It is possible that many of the potential misstatements in marketing and otherwise holding out statements could be verified using other sources including the PCAOB's and SEC's websites. However, due to the search costs such as learning to use these sources and the time it may take to look for information about audit quality, as well as any behavioral biases, PCAOB registration status alone may still be perceived as a less costly source of information.

[112] Among the 25 firms that issued auditors' reports for voluntary filers, eight were included in the 167 firms whose websites were reviewed by the staff.

[113] *See* Office of the Investor Advocate, PCAOB, Investor Advisory: Exercise Caution With Third-Party Verification/Proof of Reserve Reports (Mar. 8, 2023).

- *Pending firm withdrawal requests*. An auditor that is currently registered with the PCAOB but has a request for withdrawal pending may claim that it is registered with the PCAOB while not disclosing its withdrawal is pending, which has the potential to mislead clients, potential clients, or the public.[114]

  A review of the websites of the 30 firms with pending withdrawal requests as of January 15, 2023 showed that two of them had statements that appear to be inconsistent with the proposed rule.[115] These two firms stated they are PCAOB-registered on their websites without disclosing their pending withdrawals. One firm posted on its website that it "has membership in . . . Public Company Accounting Oversight Board (PCAOB)," and the other firm posted on its website that it is "registered with the Public Company Accounting Oversight Board (PCAOB) entitling the firm to undertake the audit of US public companies and their subsidiaries." The review was limited to information available on firm websites as of the date of staff's review.

- *Consideration of registration applicant's false or misleading statements*. A firm that is not registered with the PCAOB, yet makes false or misleading statements about its PCAOB registration status or the extent of the PCAOB's oversight of its services, could potentially mislead clients, potential clients, or the public.[116]

In light of these observations, we consider two consequences that may arise with respect to matters within the PCAOB's regulatory jurisdiction.

First, there is a risk of clients, potential clients, and the public misinterpreting which services provided by a PCAOB-registered firm are actually subject to PCAOB oversight. If distinctions are not clearly reflected in their marketing or otherwise holding out statements, market participants who rely on services provided by registered firms that are not currently providing services subject to PCAOB oversight may form a mistaken belief that those services

[114] Current PCAOB Rule 2107(c)(4), which has been in effect since its approval by the Commission in 2004, mandates that a firm seeking withdrawal from PCAOB registration may not publicly represent its registration status with specifying it as "registered – withdrawal request pending." We propose integrating this existing requirement into proposed PCAOB Rule 2400, as an auditor that has requested withdrawal but omits the "withdrawal request pending" qualifier could potentially mislead clients, potential clients, and the public. Once a firm requests withdrawal, current PCAOB Rule 2107(c)(1) prohibits the firm from issuing audit reports for issuers or broker-dealers, or from playing a substantial role in such audits.

[115] The website statements of these firms also may violate proposed PCAOB Rule 2107(c)(4).

[116] Current PCAOB Rule 2106(a) allows the Board to take such conduct into account under its general standard for approval of a registration application, which focuses on the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports. Proposed Rule 2400(c) would codify the Board's current practice under current PCAOB Rule 2106(a).

are subject to the PCAOB's oversight when, in reality, they are not. If losses arise from this misconception, those market participants (including investors in public companies or customers of broker-dealers) could mistakenly lose confidence in regulated markets, which in turn could cause them to make inefficient decisions.[117] For example, investors may make less informed investment decisions, or improperly price the value of securities, ultimately resulting in inefficient capital allocation.

We understand that similar consequences could result from marketing and otherwise holding out statements from registered firms that include implications of PCAOB endorsement, statements from firms not subject to PCAOB oversight, or statements concerning services not subject to PCAOB oversight. Misconceptions regarding the scope and significance of PCAOB oversight can result in misplaced reliance, influencing market participants' behavior in ways that affect their decision-making processes. For example, when a private company seeks an audit under AICPA standards or non-audit services from a PCAOB-registered firm, the potential client and users of the firm's resulting auditor's report might be misled by false or misleading information in the firm's marketing materials. As a result, these clients and users of the firm's auditor's report could mistakenly believe that the firm's PCAOB registration is relevant to the firm services they are using, or that the service's quality is affected simply because it is provided by a PCAOB-registered firm. Neither of these propositions is necessarily true. For example, customers of cryptocurrency firms may not have been aware that a proof-of-reserves attestation engagement for an entity that is not an issuer or broker-dealer, even if it is performed by a PCAOB-registered firm, is not an audit subject to PCAOB oversight. Therefore, those market participants might have given undue credence to the level of third-party assurance provided by such engagements.[118]

Second, an issuer or broker-dealer that is seeking to retain a PCAOB-registered firm to perform services requiring registration with the PCAOB could be confused. Consider a scenario where the issuer or broker-dealer is presented with three firms that are equally holding themselves out as PCAOB-registered – one of them is PCAOB-registered and currently providing services subject to PCAOB oversight, another is PCAOB-registered but not currently providing services subject to PCAOB oversight, and the final is not currently PCAOB-registered.[119] The

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[117] For example, consider a scenario where investors lose money on a financial product offered by a private company audited by a PCAOB-registered firm, where the service is not subject to PCAOB oversight. This situation could lead to diminished trust in the firm's audit services for issuers and broker-dealers that are under PCAOB oversight. This erosion of confidence may occur even though the investor losses originated from services outside of the PCAOB's oversight, rather than those under its oversight.

[118] It is possible that firms' quality control systems apply to all of firms' assurance work, which could attenuate the issues raised herein. For example, while a particular type of assurance work may not be subject to PCAOB oversight, it may be overseen by the firm's quality control system.

[119] While the issuer or broker-dealer could check the PCAOB website and determine that an audit firm is not actually registered with the PCAOB, the potential client may at least initially rely on the firm's

phrase "PCAOB-registered" in this instance does not differentiate between the first two firms; one that is actively performing issuer or broker-dealer audits and is subject to PCAOB inspection, and another firm that, while it is legally authorized to perform the service (i.e., able to sign the opinion under Section 102(a) of the Act), may lack recent experience in performing audits of issuers or broker-dealers.[120] As for the unregistered firm that holds itself out as PCAOB-registered, it is making a false or misleading statement, and would need to obtain Board approval of its registration application before holding itself out as PCAOB-registered. While further diligence during the tendering process could eventually help the issuer or broker-dealer to distinguish among the three,[121] an issuer or broker-dealer could waste effort and incur information search costs. Such inefficiencies could delay decision-making, a situation that would not have been necessary with more accurate and timely information regarding registration and oversight status.

In addition, for the second possibility discussed above, both registered firms and their clients and potential clients, along with the general public, may benefit from more timely disclosure in Form 3 of changes in the firms' services, and thus PCAOB oversight status, especially in situations where firms transition from "inactive" to "active." While such information can be derived from Form 2 filings, those filings are only made once per year, whereas Form 3 is reported within 30 days of a special event's occurrence. As discussed in Figure 2, staff analysis indicates that 65 registered firms shifted from "inactive" to "active" in the three reporting years from 2021 through 2023.

ii. Proposed Rule 2107(h)

As discussed in Section III.B, the PCAOB currently has no effective and efficient procedural mechanism to withdraw the registrations of firms that are repeatedly delinquent with respect to filing required annual reports and paying mandatory annual fees. As discussed in Figure 3 in Section IV.A.1, staff analysis indicates that as of December 31, 2023, 87 firms did not file annual reports and did not pay annual fees in both 2022 and 2023 reporting years. Many of these firms may be defunct.

The presence of such firms on the PCAOB's registration list may not only frustrate the PCAOB's regulatory objectives and impede its ability to fulfill its investor protection mission but

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representations and only later verify the firm's registration status after expending time and effort evaluating the firm's bid. Because audit committees (or their equivalent at broker-dealers) are not frequently in the market for a new auditor, they may not be immediately aware of the availability of this information on the PCAOB's website.

[120] It is possible that a newly registered firm, once it builds up clients from audit services subject to PCAOB oversight, might see an improvement in the quality of its services, eventually aligning with the quality of services of firms that have been providing such services for a longer period.

[121] *See also supra* footnote 109 for search costs that may be incurred by the issuer or broker-dealer.

also could diminish the confidence of investors and clients of broker-dealers in the capital markets. While their number is small and there is no indication that these firms are currently providing audit reports on which investors and clients of broker-dealers rely, the fact that a firm may fail to comply with fundamental obligations incident to registration and yet remain registered lessens the significance of PCAOB registration in the market. It is also foreseeable that this conduct will persist, necessitating resolution to maintain confidence in the capital markets.

In addition, PCAOB staff spend time and resources seeking to contact these firms year after year so that they will comply with their basic legal obligations, including the payment of annual fees that contributes to funding the PCAOB's registration and annual reporting program; their inattention, inactivity, or inanimacy would cause the PCAOB to incur recurring costs with no improvement in sight.

2. How the Proposals Address the Need

Proposed Rule 2400 would address the issues related to firms' false or misleading statements regarding their PCAOB registration and extent of PCAOB oversight by prohibiting false or misleading statements to a client, potential client, and the public. Also, the requirements of proposed Rule 2400 would amend Form 3 to require the filing of a special report within 30 days of the date of the issuance of the relevant audit report, which would expedite the access to the information regarding PCAOB oversight status on the PCAOB's website for firms that recently issued or played a substantial role in the issuance of an audit report for an issuer or broker-dealer for the first time, or for the first time in more than three years.[122]

Proposed Rule 2107(h) would address the need to make the PCAOB's oversight more effective and efficient by providing an effective procedural mechanism to withdraw from PCAOB registration firms that have ceased to exist or are otherwise defunct, or no longer wish to remain registered.

Question:

26. We request comment generally on the analysis provided above regarding the need for the proposals. Should we consider any additional arguments, academic studies, or data related to the need for rulemaking?

[122] To the extent that market participants are unaware of the publicly available information on the PCAOB's website regarding firms' registration status, the economic impact of the proposed amendments to Form 3 may be attenuated.

C. Economic Impacts

This section discusses the expected benefits and costs of the proposals and potential unintended consequences.

1. Benefits

i. Proposed Rule 2400

The requirements of proposed Rule 2400 would increase the accuracy of firms' marketing and otherwise holding out statements, which would increase transparency of information and reduce information asymmetry about firms' PCAOB registration and the extent of PCAOB oversight of services firms provide.[123]

First, an increase in transparency of information about firms' PCAOB registration and oversight status could reduce information search costs incurred by clients, potential clients, and the public. Furthermore, increasing the accuracy of information that firms provide about their PCAOB registration and oversight status could prevent market participants from being misled or deceived, thereby avoiding the formation of inaccurate conclusions. This improved transparency and accuracy of information in the audit market would aid clients, potential clients, investors, and other market participants in making well-informed decisions regarding audit services, and other decisions in the capital markets, with lower information search costs.

Second, the proposals would eliminate the possibility of firms gaining an unfair advantage by inaccurately representing their PCAOB oversight status in marketing and otherwise holding out statements that are false or misleading.[124] This possibility could level the playing field for all audit firms and encourage fair competition in the audit markets for registered firms where firms compete on quality of services, rather than relying on gaining unfair advantage from misstating their PCAOB registration and oversight status.

Third, to the extent that enhanced transparency and a decrease in information asymmetry results in market participants becoming more confident about investing in issuers audited by these firms and perceiving less risk in capital markets generally, the proposals could

[123] *See supra* footnote 93.

[124] It is possible that firms that previously made misleading statements concerning their PCAOB registration would have to lower their audit fees to attract audit clients in lieu of misrepresentation of their PCAOB oversight status.

lead to an increase in the supply of capital from market participants. An increase in the supply of capital, in turn, could enhance capital formation and reduce the cost of capital to issuers.[125]

Finally, to the extent that proposed Rule 2400 would ensure that clients, potential clients, and the public could more accurately distinguish between firms that are currently providing services subject to PCAOB oversight and those that are not from marketing and otherwise holding out statements, registered firms that are currently providing services subject to PCAOB oversight in particular may have an incentive to provide more informative disclosure in marketing and otherwise holding out statements, and may be able to charge a fee premium for the more informative disclosure they provide.

To the extent that misstatements in marketing and other holding out statements are less common, or if clients, potential clients, and the public do not consider the costs to check the firm's registration status on the PCAOB website to be burdensome, and therefore they are more likely to search for this information in other sources, the benefits of the proposed rule may be attenuated. Also, to the extent that investors and clients discount misleading marketing, the proposed rule's economic benefits would be attenuated. In addition, it is possible that the benefits and costs may be different for issuers or broker-dealers as compared to private company audits or audits of other companies that are neither issuers nor broker-dealers. Also, while proposed Rule 2400 may negatively impact some of the capital formation for private company investors who were previously swayed by the misleading statements about a firm's registration status, such capital taken away from non-issuers may be reallocated to issuers.[126]

ii. Proposed Rule 2107(h)

Proposed Rule 2107(h) would provide an effective procedural mechanism to withdraw from PCAOB registration firms that have ceased to exist or are nonoperational. Therefore, it would facilitate the PCAOB's regulatory objectives discussed in Section III.B above by enabling the PCAOB and the public to have a more accurate list of operating registered firms. Additionally, it would reduce resources spent by the PCAOB in efforts to bring non-operational

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[125] *See, e.g.*, Richard Lambert, et al., *Accounting Information, Disclosure, and the Cost of Capital*, 45 Journal of Accounting Research 387 (2007); William Robert Scott and Patricia C. O'Brien, 3 *Financial Accounting Theory* 412 Prentice Hall (2003).

[126] This effect on capital formation for non-issuers/broker-dealers may not be a big factor if: (1) a majority of non-issuers/broker-dealers are not audited, or are audited by non-registered firms; (2) investors readily look up the auditor's registration status regardless of the inclusion of that information by the registered firm; or (3) misleading marketing by registered firms in cases of non-issuers is uncommon, or investors already discount such marketing. Also, it is possible that even though investors and customers of entities other than issuers and broker-dealers could look up the registration status of the firm on the PCAOB's website, they may not understand that being registered with the PCAOB does not necessarily mean the firm's work is subject to PCAOB inspection or enforcement.

firms into compliance with the annual reporting and fee payment requirements. Also, proposed Rule 2107(h) would allow the PCAOB to more effectively allocate staff resources that are currently used to attempt to contact delinquent firms, which would enhance the PCAOB's ability to advance its investor protection mission.

2. Costs

i. Proposed Rule 2400

Proposed Rule 2400 would impose costs on firms that currently use marketing and otherwise holding out statements that are inconsistent with the proposed requirements. These firms may need to revise their compliance processes, pitch materials, engagement letters, websites, and other relevant materials in order to comply with the new requirements. Additionally, firms newly subject to PCAOB oversight would incur the additional costs associated with filling out and submitting a Form 3 to the PCAOB.

To comply with proposed Rule 2400, firms would need to assess whether they have recently provided services related to audits of issuers or broker-dealers and whether their marketing and otherwise holding out statements specifically reference services that are not subject to PCAOB oversight. Those assessments should not impose significant additional costs on firms, as they would parallel the analyses that firms are already required to perform when initiating engagements with audit clients and determining whether a potential audit client is an issuer or a broker-dealer for purposes of existing PCAOB and SEC requirements.[127]

To the extent that some registered firms have used false or misleading information about their PCAOB registration status or the extent of PCAOB oversight of their services to gain an unfair advantage in the audit market, they may lose business as a result of proposed Rule 2400. The clients affected may also incur costs to search for and retain new firms.

Overall, the costs associated with proposed Rule 2400 are expected to be limited to the extent that changes are required to correct any false or misleading information in a firm's marketing and otherwise holding out statements concerning its PCAOB registration status or the extent of PCAOB oversight of its services.[128] Furthermore, to the extent that misstatements

[127] For example, under current PCAOB requirements, audits of issuers and broker-dealers must be reported on Form 2, and issuer engagements must be reported on Form AP. Additionally, companies are required to complete a checkbox on Form 10-K and Form 20-F to indicate whether they are subject to ongoing reporting obligations. *See supra* footnote 49.

[128] The costs associated with proposed Rule 2400 are likely to vary based on the specific characteristics of each registered firm. These variations may depend on factors such as the firm's practice type and the extent of the firm's current statements concerning its PCAOB registration to clients, potential clients, and the public. Firms that have not recently issued an audit report for an issuer or broker-dealer, or

in marketing and otherwise holding out statements are currently less common, or if clients, potential clients, or investors do not consider the costs to check the firm's registration status on the PCAOB website to be burdensome—and are therefore more likely to rely on sources other than the firm's marketing and otherwise holding out statements for information on PCAOB oversight—the costs of this proposed rule may be attenuated. Also, it is possible that any of the above costs borne by firms associated with proposed Rule 2400 could be passed on to issuers and broker-dealers in the form of higher audit fees.

ii. Proposed Rule 2107(h)

Proposed Rule 2107(h) would only impose potential costs on firms with repeated delinquencies. Section IV.A.1 above shows that about 6 percent of registered firms, or 87 firms, would initially be eligible for the process under the proposed rule. For firms that are no longer in existence, are not operational, or are amenable to withdrawing from PCAOB registration, there would be no costs associated with being removed from the PCAOB's registration list. For any firm that wishes to remain registered, they could stop the withdrawal process under proposed Rule 2107(h) by submitting an email to the PCAOB notifying the staff of their desire to remain registered with the Board as directed in the Notice of Delinquency and Impending Withdrawal within the 30-day period.

Questions:

27. Do commenters concur with our evaluation of the costs and benefits? Are there additional benefits or costs that should be considered? If so, what are they?

28. Are there additional academic studies or data related to the benefits and costs of the proposals? If so, please provide citations and other reference information for such studies and data.

29. Are there any data that could provide a quantitative estimation of the benefits and costs? If so, please provide the sources of such data.

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played a substantial role in such an audit, would be subject to the requirements of proposed Rule 2400(b)(2) (registered firms not currently subject to PCAOB oversight). In contrast, firms that have recently issued an audit report for an issuer or broker-dealer, or played a substantial role in such an audit, will not be impacted by proposed Rule 2400(b)(2).

Regardless of their activity in audits of issuers and broker-dealers, all registered firms would need to adhere to proposed Rule 2400(b)(1) (endorsement), (b)(3) (services not subject to PCAOB oversight), (b)(4) (auditors' reports for clients other than issuers or broker-dealers), and (b)(5) (pending firm withdrawal requests). The costs associated with these provisions will vary depending on the extent to which each firm is using its PCAOB registration in statements to clients, potential clients, and the public, and whether the firm has sought to withdraw from registration.

3. Potential Unintended Consequences

In addition to the benefits and costs discussed above, the proposals could have unintended economic consequences. The following discussion describes potential unintended consequences considered by the Board and, where applicable, factors that mitigate the potential negative consequences.

i. Potential Firm-Initiated Withdrawal From Registration by Registered Firms Not Currently Providing Services Subject to PCAOB Oversight

Proposed Rule 2400 could prompt a registered firm not currently providing services subject to PCAOB oversight to withdraw from registration, because a perceived advantage of PCAOB registration (holding out as PCAOB-registered to clients or potential clients) is removed. These firms would not be able to then accept a new issuer or broker-dealer audit client absent re-registration. To the extent that the registration process can pose a barrier to entry, issuers or broker-dealers seeking a new audit firm may find a narrower pool of available firms from which to select, which could negatively impact competition in those markets. Furthermore, it is possible that such reduction in the potential pool of registered firms could increase audit fees and reduce the quality of audit services provided to issuers and broker-dealers (and non-issuers and non-broker-dealers) due to the reduction in competition of those firms that do intend to provide those services.[129] To the extent that the costs of the additional requirements of proposed Rule 2400 may have a relatively greater adverse impact on smaller registered firms, proposed Rule 2400 may decrease the appeal of PCAOB registration and may increase the number of these smaller firms withdrawing from registration and/or reduce the number of firms applying for registration, which could potentially lower competition for small audits in the future.

These outcomes seem unlikely because firms would likely withdraw from registration only if they perceived that the benefit of "PCAOB Registered—Not Currently Providing Services Subject to PCAOB Oversight" status in marketing and otherwise holding out statements would be less than the associated costs of being registered with the PCAOB (e.g., if the ability to hold out as PCAOB-registered in non-PCAOB markets were the most significant benefit of registration). Registered firms not currently subject to PCAOB oversight that expect that they might at some point be able to bid for and win new work requiring PCAOB registration would likely continue to maintain their "PCAOB Registered—Not Currently Providing Services Subject to PCAOB Oversight" status. Moreover, the firms that may withdraw from PCAOB registration are those not currently providing services overseen by the PCAOB. Since many of these firms

[129] For larger issuers or broker-dealers who have few options for their auditor, the negative impact of the proposed rule on competition may be greater. However, to the extent that large audit firms typically provide audit services to larger issuers or broker-dealers, such greater costs may be attenuated as large audit firms are usually subject to PCAOB oversight and would not likely consider withdrawing from registration as discussed herein.

may not be currently competing in the market for audits of issuers and broker-dealers, their withdrawal may not have a substantial impact on market competition. Their absence may not lead to adverse effects on audit fees or service quality as they are not contributing to the competitive dynamics among actively competing firms.

ii. Potential Withdrawal Contrary to Firm's Wishes

Proposed Rule 2107(h) would provide a new procedural mechanism that would make repeatedly delinquent registered firms subject to withdrawal from registration. Because this mechanism does not require affirmative action by a firm, an unintended consequence could arise if a firm was withdrawn from registration contrary to the firm's wishes. This could potentially impact the firm's audit clients, their investors and customers, and other stakeholders. However, the rule includes several safeguards—including multiple forms of notice and a straightforward process to stop the withdrawal process—which should significantly reduce the likelihood of such an occurrence. Should such an exceptional situation arise, the auditor has the option to reapply for registration and present to the PCAOB any special circumstances that led to its noncompliance with the PCAOB's rules and its inability to intervene in the proposed Rule 2107(h) withdrawal procedure.[130]

iii. Potential Impacts on Non-PCAOB Markets

As discussed in Section IV.B.1, improper or ambiguous use of PCAOB-registered status, or the creation of an implication that a service is regulated by the PCAOB when it is not, can cause confusion or improper reliance in markets other than those regulated by the PCAOB. While the primary aim of proposed Rule 2400 is not to affect markets beyond the PCAOB's jurisdiction, we nonetheless acknowledge the potential beneficial effects that the proposed rule could have on them. Proposed Rule 2400 would benefit markets outside of the PCAOB's jurisdiction by requiring firms to accurately report which services are not subject to PCAOB oversight, which could enhance transparency for market participants, including investors, enabling them to make more informed decisions.

Proposed Rule 2400 may lower information search costs for non-issuer, non-broker-dealer clients (or for issuer or broker-dealer clients seeking non-audit services) by requiring firms to more accurately characterize their PCAOB registration or oversight status. However, because even PCAOB-registered status is not a mark of quality with respect to services that are

[130] While the likelihood is low, despite PCAOB's best efforts to provide notice, it is possible that a firm may issue an audit report that was included in an SEC filing, without being aware that the firm had been withdrawn under proposed Rule 2107(h). Once withdrawn, the SEC has authority to bring enforcement action against the firm. If a firm is withdrawn under this process and later issues an audit report, the Board may consider such conduct when reviewing an application for registration from the firm. Issuer and broker-dealer clients of such firms may also be negatively impacted from this scenario, as they may have to incur search costs to engage a new accounting firm.

not regulated by the PCAOB, the beneficial value of the disclosure is limited to preventing deception or misunderstanding, rather than assisting in communicating potential quality.[131]

Proposed Rule 2400 may also help users of services that are not regulated by the PCAOB to more clearly assess the nature and value of those services by helping to prevent those users from misperceiving that they are obtaining a level of assurance provided by a PCAOB-registered firm that is providing PCAOB-regulated services, when in fact the firm is not PCAOB-registered, the service is not subject to PCAOB oversight, or both. An audit performed over an issuer in the U.S. securities markets is required to be performed according to PCAOB auditing standards that mandate the rigor to be applied to the engagement and the assurance to be provided by an auditor that is (1) independent from the issuer and (2) registered with the PCAOB and subject to PCAOB inspection – all of which are backed by the potential of PCAOB or SEC enforcement if improperly performed. While services not subject to PCAOB oversight may nonetheless be performed in accordance with professional standards (e.g., AICPA standards) and be subject to governmental oversight (e.g., state boards of accountancy), these may apply with more or less rigor depending on the nature of the engagement and are not the same as the PCAOB oversight provided for issuer and broker-dealer audits.[132]

Proposed Rule 2400's requirement that these services be clearly identified as not subject to PCAOB oversight would provide information to consumers to think more critically about the nature of the services being performed and the extent to which they can or cannot

[131] To the extent that firms providing services that are not subject to PCAOB oversight may be deterred from providing information about registration status in their marketing or otherwise holding out statements, proposed Rule 2400 may reduce information available regarding registration status for non-PCAOB market participants. However, such reduction may be moderated by the possibility that the client, potential client, or the public could look up an auditor's registration status and inspection reports on the PCAOB website.

[132] For example, a cryptocurrency Proof-of-Reserve engagement (PoR) is a way for a cryptocurrency entity to provide investors or customers with some form of third-party comfort that assets have been verified and that balances held on exchanges are backed by real assets. Importantly, it is merely an asset-verification technique for a single asset type at a particular moment in time that is subject to significant limitations in terms of the procedures performed (e.g., it does not evaluate whether the cryptocurrency entity has exclusive possession of the private key to the cryptocurrency assets, nor whether the assets have been borrowed as window dressing for the PoR engagement) and in terms of the entity performing the engagement (e.g., there are no consistent standards governing the knowledge, skills, ability, or independence of the entity performing the PoR engagement). While PoR engagements may be performed in accordance with some professional standards (e.g., as an agreed-upon procedures engagement), with some oversight (e.g., by the accounting firm's licensing body), these are not equivalent to a PCAOB-regulated issuer audit.

rely on those services (e.g., in valuing their investment or expecting the safeguarding of their assets).[133]

Question:

30. We request comment generally on the potential unintended consequences of the proposals. Are the responses to the potential unintended consequences discussed in the release adequate? Are there additional potential unintended consequences that we should consider? If so, what responses to them should be considered?

D. Alternatives Considered

The Board considered two alternatives to the proposals, discussed below. However, the Board believes that the proposals strike a better balance of benefits and costs.

1. Disclosures Regarding PCAOB Registration Status in Audit Reports for Issuers and Broker-Dealers

In addition to the proposals' requirement that firms disclose, in auditors' reports for entities other than issuers or broker-dealers, that the service is not subject to PCAOB oversight (if the firm otherwise makes reference to its PCAOB registration or oversight status in the report), the Board considered proposing a requirement that a registered firm must disclose in audit reports issued for issuers or broker-dealers that the engagement is subject to PCAOB oversight, along with making conforming changes to AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion* and AS 3105, *Departures from Unqualified Opinions and Other Reporting Circumstances*. However, we believe that a firm's indication in an audit report for an issuer or broker-dealer that the firm is registered with the PCAOB is not false or misleading. Thus, there would be no value to investors or other users of those reports in requiring additional, more specific disclosures. By contrast, the proposals focus on auditors' reports for all other entities, which are not subject to PCAOB oversight, so a firm's invocation of its PCAOB registration status would be misleading (absent more), and thus supplemental disclosures would be valuable to investors and other users. The

[133] It is also possible that proposed Rule 2400 prompts registered firms to withdraw from non-PCAOB markets, which could negatively impact competition in these markets. However, this impact may be attenuated by the entry of additional non-registered firms into the non-issuer audit segment. Given that registered firms would no longer be able to leverage their PCAOB registration status in marketing and otherwise holding out statements, it might become more challenging for them to justify their (likely higher) fees to non-issuers. Consequently, this could make it less worthwhile for certain registered firms to remain in the non-issuer audit segment, potentially leading to the non-issuer market being served by a proportionally higher number of non-registered firms.

Board is therefore not proposing any amendments with respect to statements made in audit reports for issuers or broker-dealers.

2. Expedited Disciplinary Proceedings

Rather than a constructive withdrawal request approach to delinquent annual reports and annual fees, the Board considered proposing an expedited enforcement approach. Although issuing an order imposing a disciplinary sanction on these firms, upon a finding of repeated violations of the Board's annual reporting and annual payment requirements, is a possibility, revocation would consume significantly more staff and Board resources, and would take significantly more time.[134] Therefore, the Board is not proposing this approach.

Questions:

31. We request comment generally on the alternative approaches described in this release that we considered but are not proposing. Are any of these approaches, or any other approaches, preferable to the approaches that are being proposed? What reasons support those approaches over the approaches proposed?

V. SPECIAL CONSIDERATIONS FOR AUDITS OF EMERGING GROWTH COMPANIES

The proposals do not impose any additional requirements on emerging growth company (EGC) audits. Accordingly, the Board believes that Section 103(a)(3)(C) of Sarbanes-Oxley does not apply. Nevertheless, we are including this analysis to inform the rulemaking. The discussion of benefits, costs, and unintended consequences in Section IV generally applies to audits of EGCs.

Pursuant to Section 104 of the Jumpstart Our Business Startups (JOBS) Act, rules adopted by the Board subsequent to April 5, 2012, generally do not apply to the audits of EGCs, as defined in Section 3(a)(80) of the Exchange Act, unless the SEC "determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation."[135] As a result of the JOBS Act, the proposals that the Board

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[134] In such litigation, the hearing officer may need to address service issues (including for non-U.S. firms), issue a show-cause order, enter default (after DEI files a motion), and issue an initial decision specifying and justifying sanctions. Such litigation consumes significant DEI staff time, in light of PCAOB Rule 5422, *Availability of Documents For Inspection and Copying* production requirements as well as the motion practice and briefing that is expected on sanctions. The suggested approach would avoid these delays.

[135] *See* Pub. L. No. 112-106 (Apr. 5, 2012). Section 103(a)(3)(C) of the Act, as added by Section 104 of the JOBS Act, also provides that any rules of the Board requiring (1) mandatory audit firm rotation or (2) a

adopts are generally subject to a separate determination by the SEC regarding their applicability to audits of EGCs.

To inform consideration of the application of the proposals to audits of EGCs, PCAOB staff prepares a white paper annually that provides general information about characteristics of EGCs.[136] As of the November 15, 2022 measurement date, PCAOB staff identified 3,031 companies that self-identified with the SEC as EGCs and filed audited financial statements in the 18 months preceding the measurement date.[137]

EGCs are likely to be newer companies. To the extent that audit committees and investors of EGCs are less experienced in seeking PCAOB-registered public accounting firms to perform their audits, both audit committees and investors of EGCs may have a higher risk of being confused by firms' misleading statements regarding PCAOB registration and the extent of PCAOB oversight. Therefore, the benefits of proposed Rule 2400 may be greater for EGCs than for non-EGCs. As for the costs associated with the proposals, we expect that registered firms providing services to EGCs may incur costs that are approximately the same as those incurred by firms providing services to non-EGCs.

Accordingly, and for the reasons explained above, the Board anticipates that, if it adopts the proposals, it will request that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply the proposals to audits of EGCs.

Questions:

32. We request comment generally on the analysis of the proposals on EGCs. Are there reasons why the proposals should not apply to audits of EGCs? If so, what

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supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an EGC. The proposed standard does not fall within either of these two categories.

[136] *See* Office of Economic and Risk Analysis, PCAOB, Characteristics of Emerging Growth Companies and Their Audit Firms at November 15, 2022 (Feb. 20, 2024) ("Staff White Paper").

[137] The Staff White Paper uses a lagging 18-month window to identify companies as EGCs. Please refer to the "Current Methodology" section in the Staff White Paper for details. Using an 18-month window enables staff to analyze the characteristics of a fuller population in the Staff White Paper, but may tend to result in a larger number of EGCs being included for purposes of the present EGC analysis than would alternative methodologies. For example, an estimate using a lagging 12-month window would exclude some EGCs that are delinquent in making periodic filings. An estimate as of the measurement date would exclude EGCs that have terminated their registration, or that have exceeded the eligibility or time limits.

changes should be made so that the proposals would be appropriate for audits of EGCs?

33. What impact would the proposals likely have on EGCs, and how would this affect efficiency, competition, and capital formation?

VI. EFFECTIVE DATE

The Board seeks comment on the amount of time registered public accounting firms and their associated persons would need before the proposed rules would become effective, if adopted by the Board and approved by the Commission. We are considering whether, and propose that, compliance with proposed Rule 2400 and the proposed amendments to Form 3 should be required by six months after approval by the Commission. We are considering whether, and propose that, proposed Rule 2107(h) should take effect initially for annual reports and annual fees that are due in 2024, meaning that a registered firm that does not file an annual report or pay an annual fee in 2024 and 2025 could be deemed withdrawn under proposed Rule 2107(h) beginning in Fall 2025.

Question:

34. Are the proposed effective dates appropriate? If not, what would be appropriate effective dates for the proposed rules and the proposed amendment to Form 3?

VII. OPPORTUNITY FOR PUBLIC COMMENT

The Board is seeking comments on all aspects of its proposals, as well as specific comments on the proposed rule, the proposed Form 3 amendment, and the proposed rule amendment. Among other things, the Board is seeking comment on the economic analysis relating to its proposal, including potential costs. To assist the Board in evaluating such matters, the Board is requesting relevant information and empirical data regarding the proposed rule, the proposed amendment to Form 3, and the proposed rule amendment.

Comments should be sent by email to comments@pcaobus.org or through the Board's website at www.pcaobus.org. Comments may also be sent to the Office of the Secretary, PCAOB, 1666 K Street, NW, Washington, DC 20006-2803. All comments should refer to PCAOB Rulemaking Docket Matter No. 054 in the subject or reference line and should be received by the Board by April 12, 2024.

The Board will consider all comments received. After the close of the comment period, the Board will determine whether to adopt a final rule, and final amendments to Rule 2107 and Form 3, with or without changes from the proposals. Any such final rule, Form 3 amendment, and rule amendment adopted will be submitted to the Commission for approval. Pursuant to Section 107 of the Act, proposed rules of the Board do not take effect unless approved by the Commission.

* * *

On the 27th day of February, in the year 2024, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

February 27, 2024

APPENDIX – Proposed Rule Text and Form Amendments

This appendix sets forth the proposed text for a new PCAOB Rule 2400, proposed amendments to current PCAOB Form 3 – *Special Reporting Form,* and a proposed addition to current PCAOB Rule 2107, *Withdrawal from Registration*.

New PCAOB Rule 2400. False or Misleading Statements Concerning PCAOB Registration and Oversight

(a) General Prohibition on False or Misleading Statements – 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.

(b) Application of General Prohibition in Specific Circumstances – This paragraph sets forth a non-exclusive set of circumstances that violate paragraph (a) of this Rule.

(1) *Endorsement*. 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 state or imply that the firm or any of the firm's services have been sponsored, recommended, or otherwise endorsed by the PCAOB.

(2) *Registered Firms Not Currently Subject to PCAOB Oversight*. When marketing or otherwise holding out a registered public accounting firm to a client, potential client, or the public, if the firm has not issued an audit report for an issuer, broker, or dealer, or played a substantial role in such an audit, within the past three years, the firm and its associated persons must not state or imply that the firm is registered with the PCAOB or is subject to the PCAOB's oversight without also prominently indicating in that statement that the firm is not currently providing services that subject the firm's work to PCAOB oversight (for example, "PCAOB Registered – Not Currently Providing Services Subject to PCAOB Oversight").

(3) *Services Not Subject to PCAOB Oversight*. 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, when referring exclusively to firm services that are not subject to PCAOB oversight, state or imply that the firm is registered with the PCAOB or is subject to the PCAOB's oversight without also prominently indicating in that statement that such services are not subject to

PCAOB oversight (for example, "PCAOB Registered – Services Not Subject to PCAOB Oversight").

(4) *Auditors' Reports for Clients Other Than Issuers, Brokers, or Dealers*. When issuing an auditor's report for any client that is not an issuer, broker, or dealer, a registered firm must not state in its auditor's report that the firm is registered with the PCAOB or is subject to the PCAOB's oversight without also prominently indicating in that auditor's report that such services are not subject to PCAOB oversight (for example, "PCAOB Registered – Services Not Subject to PCAOB Oversight").

(5) *Pending Firm Withdrawal Requests*. 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, while the firm has a Form 1-WD pending, state or imply that the firm is registered with the PCAOB without also prominently indicating in that statement that the firm has a withdrawal request pending (for example, "PCAOB Registered – Withdrawal Request Pending").

(c) Consideration of Registration Applicant's False or Misleading Statements – When reviewing applications for registration under Rule 2106, the Board may consider any prior false or misleading statements made by the applicant firm or its personnel regarding the firm's PCAOB registration status, including the extent of PCAOB oversight of the firm's services.

* * * *

Current PCAOB Form 3 - Special Reporting Form

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New Item 2.3A The Firm has issued an audit report for an issuer, broker, or dealer, or played a substantial role in such an audit, following a period of three years or more in which the firm neither issued an audit report for an issuer, broker, or dealer nor played a substantial role in any related audit (Complete Part VIII.)

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Current PCAOB Rule 2107. Withdrawal from Registration

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New paragraph (h) Constructive Withdrawal Requests

The Board may treat a registered public accounting firm's repeated failures to file annual reports and to pay annual fees as a constructive request for leave to withdraw from registration and may deem the firm's registration withdrawn, if –

(1) The firm, for at least two consecutive reporting years, has not filed an annual report and has not paid an annual fee;

(2) The Board sends a written notice of the delinquent annual reports and annual fees and the impending withdrawal of the firm's registration (the "Notice of Delinquency and Impending Withdrawal") to the firm's primary contact with the Board, as identified in the firm's most recent filing with the Board (the "Firm's Primary Contact"), via a mail or commercial courier service that results in a confirmation of actual or attempted delivery;

(3) After the Notice of Delinquency and Impending Withdrawal is sent to the Firm's Primary Contact, the Board discloses on its website the identity of the firm, the date the Notice of Delinquency and Impending Withdrawal was sent under paragraph (2), and the date of the impending withdrawal of the firm's registration pursuant to this rule; and

(4) Within 30 days after the date the Notice of Delinquency and Impending Withdrawal is sent under paragraph (2), the Firm's Primary Contact does not submit an email to the Registration staff, as directed in the Notice of Delinquency and Impending Withdrawal, notifying the staff of the firm's desire to remain registered with the Board.