



July 22, 2024

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
rule-comments@sec.gov

Re: Securities and Exchange Commission [Release No. 34-100429; File No. PCAOB-2024-08] Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules Amending PCAOB Rule 3502, Responsibility Not to Knowingly or Recklessly Contribute to Violations

Dear Office of the Secretary:

The Pennsylvania Institute of Certified Public Accountants (PICPA) appreciates the opportunity to provide input on the changes approved by the Public Company Accounting Oversight Board (PCAOB) on June 12, 2024 (File No. PCAOB-2024-008) and filed with the Securities and Exchange Commission (SEC) on June 20, 2024, in Release No. 34-100429. The PICPA is a CPA association of about 20,000 members working to improve the profession and better serve the public interest. Founded in 1897, the PICPA is the second-oldest CPA organization in the United States. Membership includes practitioners in public accounting, education, government, and industry. The PICPA's comments are included below.

We are concerned regarding the shift in the liability threshold from recklessness to negligence without additional economic and legal analysis. We agree with the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness, which responded to the PCAOB's original proposal saying of the legal basis for making this change is not clear. Specifically, the response noted the following:

"The PCAOB's legal authority under SOX [the Sarbanes-Oxley Act] for instituting a negligence threshold for contributory liability is not as settled as the Proposal assumes. The PCAOB's enforcement authority is not open-ended. SOX Section 105 articulates conditions for disciplinary actions and sanctions against registered public accounting firms and associated

persons. SOX also provides some safe harbors, including for failure to supervise.¹ Nowhere does simple negligence appear in SOX as the level of intent justifying PCAOB sanctions.²

We challenge the proposal's assumption and its claims that the PCAOB is unable to fully protect investors under the Sarbanes-Oxley Act given the significant rise in PCAOB enforcement actions and fines. The PCAOB can also bring disciplinary actions outside of Rule 3502. Any analysis of the proposed change in Rule 3502 should also consider all of the PCAOB's enforcement options, including penalties, bars, suspensions, and other relief.

The PCAOB's adopting release notes that PCAOB staff "estimated two to three instances in 2022 where the amendment could have prompted staff to recommend a Rule 3502 charge." This appears to suggest a slight increase in the number of cases annually due to the amendment, but the proposal also recognizes that the associated costs could be substantial to the firms and individuals involved,³ and "could disproportionately impact small and medium-sized firms," which could result in some firms withdrawing from the issuer and broker-dealer audit market. This could cause a greater concentration of audit services.

Any benefit from these additional enforcement actions does not justify the costs, potential negative effects on the talent pool, and anticompetitive outcomes. Any increased expenses will eventually be passed on to investors, with no guaranteed improvement in audit quality. The PCAOB provides only conceptual evaluation of the costs in its release and admits that it "is not aware of additional data or quantitative analysis that could be performed," and that it only performed a "limited quantitative analysis" and "intended to highlight the overarching benefits." We urge the SEC to conduct a comprehensive impact assessment of this proposal on the accounting and auditing sectors prior to implementation.

We further question the appropriateness of suggesting that future cases would be on par with the past. The proposal cannot be evaluated in a vacuum; it must be considered in the broader context of the standard-setting environment. Given the PCAOB's shift toward rules-based over principles-based

¹ See SOX Section 105(c)(6)(B).

² SOX Section 105(c)(5) identifies intentional or knowing conduct, including reckless conduct or repeated instances of negligent conduct as necessary for applying various sanctions and penalties under Section 105(c)(4).

³ [Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability](#)

standards, the standard in the contributory liability proposal will be particularly onerous when implementing the plethora of new PCAOB rules-based standards.

Despite Erica Williams, PCAOB chair, stating that it is not her expectation that this new standard would be used “to ensnare junior professionals or other auditors who are responsibly executing their duties”⁴ and that the proposing release indicates that “the Board does not anticipate that a change in the liability standard for contributory conduct will be used to sanction isolated, good-faith errors in professional judgment,” there is no guarantee that this prosecutorial leniency would continue into the future. In fact, the PCAOB’s 2022 - 2026 Strategic Plan supports the use of “all of the statutory tools available to our enforcement program, and, when the conduct warrants it, we will use them to the maximum extent possible.”⁵

We believe that the PCAOB's strategy to target individuals for penalties would undermine the cooperative spirit of inspections and could deter potential auditors, who might opt for different career paths to avoid an adversarial atmosphere and the potential reputational harm from the publication of a mistake, difference of opinion with the PCAOB, or minor violation. Auditor stress is growing, and the heightened risk of PCAOB actions may escalate currently high attrition rates and hasten the exit of smaller firms from this market. Given the strained accounting talent pool, it is crucial to seek constructive methods to elevate audit quality and draw in skilled professionals.

We support rigorous audit quality and the modernization of audit standards. We are concerned that this particular proposal does not contribute to improving audit quality; it simply provides the PCAOB with expanded opportunities for enforcement action. There are opportunities to improve audit quality through meaningful changes to risk assessment standards, providing practice tools and resources, and enabling and encouraging innovative approaches to technology adoption.

We appreciate your consideration of our comments above and our response to the PCAOB’s proposal attached, and we are available to discuss any of these comments with you at your convenience.

Sincerely,

⁴ [Chair Williams’ Statement on Adoption of an Updated Rule To Strengthen Accountability for Contributing to Firm Violations](#)

⁵ [PCAOB 2022 - 2026 Strategic Plan](#)



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cc:

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