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Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street NW  
Washington, D.C. 20006-2803

## **Re: Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration**

Dear Office of the Secretary:

RSM US LLP (RSM, “we”) values the opportunity to offer our comments on the Public Company Accounting Oversight Board’s (PCAOB) *Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration* (the proposals). RSM is a registered public accounting firm serving middle-market issuers, brokers, and dealers.

### **Overall Comments on the Proposals**

We thank the Board for the opportunity to provide comments on these proposals. We are in general agreement with the proposals relating to modifications to the PCAOB’s registration program and support efforts to prohibit registered public accounting firms from disseminating false or misleading information regarding their PCAOB registration status and the extent of their regulatory scrutiny. Firms should not be using PCAOB registration as a marketing or client-generating tool. We ask that the Board be specific when possible regarding the verbiage on false or misleading statements concerning PCAOB registration status. We respectfully request more definition and direct guidance.

We are providing further detail on these areas, as well as other comments, in our responses to a selection of the questions as set out below.

### **Comments on Specific Questions Posed by the Board**

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?

We do not believe 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 is clear and appropriately tailored. The proposal is too far encompassing and there is too much room for interpretation. We would suggest a tightened definition of what is considered a false or misleading statement. Footnote 25 states, “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 and any such loss.” We are concerned that this footnote and the lack of requirement for intent or causation of harm invalidates the intended application of the rule to “material” facts and misrepresentations, as described on page 11 of the proposal. The standard should be revised to include either a definition or description of what constitutes material, or the final rule should not carry forward the language in footnote

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25 and should directly explain the correlation between the rule as written and an errant statement made without intent to deceive and by which no one was harmed.

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?

We request clarity and specificity about what falls under the definition of marketing. There is limited mention of social media other than regarding “otherwise holding out statements...in social media profiles.” Social media is very broad and not defined in the proposal. Social media responses, comments and video clips are outside the scope of “profiles.” Firm personnel could be responding to queries or threads with no ill will but unknowingly “marketing” their employer. It is unclear to what degree the content and comments will be enforced for associated persons of registered public accounting firms. There needs to be clarity about who and what is subject to monitoring.

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?

We concur with the proposal that firms that are newly registered with the PCAOB should 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.

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?

We would like to request clarification on the situation where a firm would be utilizing the phrase, “PCAOB Registered – Services Not Subject to PCAOB Oversight.” Should a firm be proposing on multiple services that include services subject to PCAOB oversight, including services outside of the audit, it would be helpful to have guidance illustrating practically how the disclaimer language, “PCAOB Registered – Services Not Subject to PCAOB Oversight” would be expected to be included in proposal documents and discussions.

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?

As described in the proposal,<sup>1</sup> when a registered firm issues an auditor’s report for a client other than an issuer or broker-dealer, the firm is required to reference their PCAOB registration in their auditors’ reports in the title and the “basis for opinion” section. While we do not take issue with the phrase, “PCAOB

<sup>1</sup> See footnote 43 on page 21 of the proposal.

Registered – Services Not Subject to PCAOB Oversight,” it is not sufficiently clear how the auditor’s report should be modified to reflect this language.

The auditor’s report language states, "Report of Independent Registered Public Accounting Firm" as the title and, "We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB" in the body. It is unclear where the PCAOB expects the new disclaimer language to be added in the auditor’s report, such as in the title or the body, and how the existing language would be modified. We recommend that the title *not* be modified to avoid confusion. We recommend the PCAOB make this clarification by amending Auditing Standard (AS) 3101, *The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*, to clarify to the relevant paragraph(s) that the PCAOB wishes to be modified. Further clarification could be achieved by adding an illustrative report for these situations in a newly added Appendix C to AS 3101.

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?

Yes, a conforming change should be made to AS 3101 and 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. Additionally, see our response to question 13.

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

The proposed amendment to Form 3 is clear and appropriately tailored; however, we recommend adding italics to defined terms to be in line with other items in Form 3.

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?

Written notice to the last reported address of the firm’s primary contact with the Board as a means of informing a firm that its registration could be withdrawn is an appropriate means for communication. However, we recommend that the Board also use email as a means for this messaging in addition to written notice because the Board may not always have the correct mailing address of the firm on file, mail may not always be delivered, firm personnel may be working from remote or other office locations and email is significantly faster, especially for international recipients.

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?

The Board may want to consider an extension of the time for a registered firm to act and to prevent the withdrawal of its registration to 60 days to account for incorrect addresses, international mail processing or overseas holiday leave periods that differ from U.S. norms.

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?

Email is a reasonable way for a firm to contact the Registration staff, as long as PCAOB email filters allow for review of all messages. Our concern is that messages could be marked as potential spam due to the domains or locations they are being sent from and therefore would not be received by Registration staff. We recommend that the PCAOB allow for additional communication methods to ensure there are no barriers for firms attempting to reach the Registration staff or commit to providing positive confirmation of receipt of the emails so the sender has confidence the message was received.

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.

With the lack of any reference of intent to mislead or judgment of economic harm provided by a firm making an errant statement, it is not possible to truly estimate the cost of this proposal. If the proposal is enforced only against firms who act egregiously in making intentional misleading statements to attain work they are otherwise not qualified to perform, then the cost could be proportionate to the risk of harm to investors. However, if the standard is enforced by seeking damages from any firm that has any individual who errantly forgets to add a qualifier of "services not covered" in a statement made, the costs to the firms in legal services and reputational harm—to both the firms and the PCAOB—would likely outweigh the benefits.

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?

If the amendments result in required changes to the auditor's report, we recommend the Board clarify the effective dates and not provide effective dates that are before the auditing standards are updated to reflect the required changes. For example, specifying that the updates are required in reports issued after a certain date would add clarity.

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We would be pleased to respond to any questions the PCAOB or its staff may have about our comments. Please direct any questions to Jamie Klenieski, Audit Quality and Risk Leader, at 215.648.3014, or Sara Lord, Chief Auditor, at 612.376.9572.

Sincerely,

*RSM US LLP*

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