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

Via e-mail: comments@pcaobus.org

Re: PCAOB Rulemaking Docket Matter No. 053

To the Office of the Secretary:

Baker Tilly US, LLP (“Baker Tilly” or “we”) appreciates the opportunity to provide comment on *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability* (the “Proposal”), issued by the Public Company Accounting Oversight Board (“PCAOB” or the “Board”) on September 19, 2023.¹

Baker Tilly is committed to providing the highest quality audits for our clients and for investors, and we acknowledge the role of enforcement proceedings in promoting audit quality. High quality audits require auditors to act with due professional care and, on a daily basis, to exercise significant professional judgment. Because an auditor’s judgment is integral to the performance of quality audits, we are concerned that the Proposal’s shift to a negligence standard for individual conduct could unfairly punish professionals who, acting in good faith, made difficult judgment calls in technical, complex audits that, in hindsight, turned out to be incorrect.

Rule 3502 was adopted in 2005 as part of a rulemaking effort specifically “designed to address certain concerns related to auditor independence when auditors become involved in marketing or otherwise opining in favor of aggressive tax shelter schemes or in selling personal tax services to individuals who play a direct role in preparing the financial statements of public company audit clients.”²

At the time, the Board considered a negligence standard for Rule 3502, but ultimately chose to adopt recklessness standard instead, explaining that “[t]he Board does not seek to create through this rule a vehicle

¹ In addition to the views stated herein, Baker Tilly also shares the views expressed in the Center for Audit Quality’s public comment letter in this matter.

² *Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*, PCAOB Release No. 2005-020, at 14 (Nov. 22, 2005), available at: https://pcaobus.org/Rulemaking/Docket017/2005-11-22_Release_2005-020.pdf

to pursue compliance personnel who act in an appropriate, reasonable manner, that in hindsight, turns out to have not been successful.”³

We are concerned that, under the Proposal, Rule 3502 could become exactly that: a vehicle to pursue individual disciplinary action against auditors and other firm personnel who exercised reasonable professional judgment in complex circumstances. As former Board member Duane DesParte noted, “If anything, audits have become more complex, involve greater judgment, and include more participants than in 2004 when Rule 3502 was first contemplated.”⁴ In that context, we believe that the Proposal would create an environment where both auditors and the firm professionals who work full time to enhance and ensure audit quality control will fear that the exercise of their best professional judgment could still be the end of their careers.

The risk of sanction for good faith errors has potentially enormous implications for the auditing profession more broadly. As the Board is aware, there has been a marked decline in the number of professionals in the accounting industry in recent years, a result of both lower numbers of people entering the profession and increasing numbers of people departing it.⁵ Indeed, the current decline in new graduates will be compounded by the retirement of a substantial number of senior professionals in the coming years.⁶

The Proposal has the potential to create further downward pressure on the number of accountants in the profession by subjecting them to the risk of individual sanction anytime their judgment is determined, in hindsight, to have led to the wrong result, regardless of whether they knew or should have known their conduct would cause a violation of applicable rule and law. It seems highly likely that even more accountants will choose to opt out of public company audits, leave the profession, or never enter it at all because of the risk that the exercise of their best professional judgment, done in good faith, could be punished with sanctions that might devastate their reputation and their careers.

The Board’s economic analysis identified this risk, noting that the Proposal “could unintentionally discourage auditors from accepting important audit roles if they fear being held liable, leaving these roles to be accepted by less cautious or less qualified individuals.”⁷ As Board member Christina Ho noted, this risk is particularly high for more junior auditors, who might decide “to leave the public company auditing profession

³ See *Public Company Accounting Oversight Board; Notice of Filing of Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*, S.E.C. Release No. 34-53427 (Mar. 7, 2006), available at: <https://www.sec.gov/files/rules/pcaob/34-53427.pdf>.

⁴ DesParte, Duane M., *Statement on Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability* (Sept. 19, 2023), available at: <https://pcaobus.org/news-events/speeches/speech-detail/statement-on-proposed-amendments-to-pcaob-rule-3502-governing-contributory-liability>.

⁵ See e.g., Ellis, Lindsay, *Why So Many Accountants Are Quitting*, The Wall Street Journal (Dec. 28, 2022), available at: https://www.wsj.com/articles/why-so-many-accountants-are-quitting-11672236016?mod=article_inline; *2021 Trends: A report on accounting education, the CPA exam and public accounting firms’ hiring of recent graduates*, AICPA, (Mar. 24, 2022), available at: <https://www.aicpa-cima.com/professional-insights/download/2021-trends-report>; Ho, Christina, *Technology and Talent - Audit Quality Challenges in the 21st Century* (Sept. 15, 2022), available at: <https://pcaobus.org/news-events/speeches/speech-detail/ho-technology-and-talent-audit-quality-challenges-in-the-21st-century>

⁶ See e.g., Mutoh, Anna, *Why Graduates Aren’t Hot on Accounting Careers: Low Starting Pay, Onerous Testing*, The Wall Street Journal (May 12, 2023), available at: <https://www.wsj.com/articles/why-graduates-arent-hot-on-accounting-careers-low-starting-pay-onerous-testing-c05bf267>

⁷ *Proposal* at 26.

altogether” rather than face disciplinary action, especially if Rule 3502 is enforced against junior auditors themselves.⁸ In the long term, fewer auditors means less investor protection and, eventually, consolidation in the number of firms that provide public company audits and a functional limit on the number of public companies that can operate in the U.S.

We urge the Board not to adopt the Proposal.

Sincerely,

A handwritten signature in black ink that reads "Baker Tilly US, LLP". The signature is written in a cursive, flowing style.

Baker Tilly US, LLP

⁸ Ho, Christina, *The Cost of Unintended Consequences: Accounting Talent, Audit Quality, Investor Protection* (Sept. 19, 2023), available at: [https://pcaobus.org/news-events/speeches/speech-detail/the-cost-of-unintended-consequences-accounting-talent-audit-quality-investor-protection-\(statement-on-proposed-amendments-to-pcaob-rule-3502-governing-contributory-liability\)](https://pcaobus.org/news-events/speeches/speech-detail/the-cost-of-unintended-consequences-accounting-talent-audit-quality-investor-protection-(statement-on-proposed-amendments-to-pcaob-rule-3502-governing-contributory-liability)).