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By email: [comments@pcaobus.org](mailto:comments@pcaobus.org)

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

**RE: PCAOB Rulemaking Docket No. 053: PCAOB Release 2023-007: Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability**

Dear Office of the Secretary:

We appreciate the opportunity to comment on the Public Company Accounting Oversight Board's (PCAOB or the Board) Release No. 2023-007, *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability* (the Proposing Release). The proposed amendments to PCAOB Rule 3502 included in the Proposing Release are herein referred to as the Proposed Amendments. We commend the Board's commitment to its mission of protecting investors and promoting high-quality audits which is supported through the Board's actions of holding individuals accountable.

We understand the importance of due professional care, professional skepticism and integrity, which are the values that have always remained at the forefront of our profession. We also recognize the important role the PCAOB plays in driving audit quality and protecting investors, through its unique ability as an independent regulator to hold accountable those firms and individuals who fail to uphold professional standards and ethics. However, we are concerned the practical implications of the Proposed Amendments may not serve to further audit quality, and may, in fact, result in outcomes different than the Board intends. We are providing feedback in this letter indicating those considerations which we believe the Board should evaluate further before adopting final amendments to PCAOB Rule 3502.

**The Proposing Release does not give adequate consideration of all costs and unintended consequences applicable to its implementation.**

While we recognize the challenges of performing a cost-benefit analysis for the Proposed Amendments, we believe the Board's conclusion that the costs are justified by the benefits does not give adequate consideration to all costs and unintended consequences. There exists a variety of costs, both direct and indirect, as well as unintended consequences that we believe may result from the implementation of the Proposed Amendments.

*Uncertainty of the scope and applicability of the Proposed Amendments may lead to a negative impact on the profession.*

We believe the uncertainty around the scope and application of the Proposed Amendments may lead to negative unintended consequences for the profession that the PCAOB has not appropriately considered. The Board's lack of specificity regarding the breadth with which a negligence standard would be applied may negatively impact two important classes of individuals: (a) those who are considering whether to enter the profession; and (b) those more experienced audit professionals who should assume greater responsibility within the profession but will be reluctant to do so under the circumstances presented in the Proposed Amendments. We agree with the concern expressed by others that the Proposed Amendments, as currently drafted, may exacerbate the accounting talent crisis and may discourage auditors from taking on more advanced audit roles.

Specifically, we believe the increased risk of personal liability created by a negligence standard will cause seasoned auditors to second-guess taking on more complex audits or greater responsibility with their firms. As the PCAOB recognizes, the audits of issuers and broker-dealers have unquestionably grown more complex and challenging in recent years, driven by changing accounting standards and the issuance of more robust auditing standards. This evolution underscores the necessity of attracting and retaining the best talent to the profession. The Proposed Amendments, on the other hand, will significantly disincentivize individuals from both joining the profession *and* taking on more impactful roles with greater responsibility. At a time when the profession needs more seasoned professionals assuming increasingly critical roles within an audit firm, the Proposed Amendments may create a barrier to access; and, as fewer individuals seek these roles, the potential for audit quality to deteriorate increases over time, causing greater negative impacts for the capital markets. While the Proposing Release contemplates a lack of available resources as an unintended consequence of the Proposed Amendments, it understates the potential harm. We believe the Board should further evaluate the resulting risk to audit quality in its economic analysis.

*Lowering the threshold for liability will increase the number of enforcement actions, ultimately resulting in increased costs.*

By reducing the threshold for liability under Rule 3502 to a negligence standard, the Board broadens its ability to bring enforcement actions against individuals. Yet, the Proposing Release does not provide the profession with any guidance on how the Proposed Amendments would be applied. The type of conduct the PCAOB would seek to enforce under the Proposed Amendments, the circumstances under which the PCAOB would assert a failure to act with due care or the factors that it would consider when seeking to hold individuals accountable for negligent conduct are not clear. That ambiguity could result in the unintended consequence of sweeping in a broad swath of professionals who may contribute to the conduct of an audit but may not be appropriate targets of an enforcement action. That uncertainty could lead to the expenditure of extraordinary costs in anticipation of a possible action and behaviors that undermine, and do not enhance, delivery of a high-quality audit. The Proposing Release also does not discuss how sanctions will be assessed for negligence. Increased enforcement activity by the PCAOB due to this reduced liability threshold will undoubtedly increase investigation defense and litigation costs. We believe the Board should more clearly address the extent to which it would exercise this proposed enhanced enforcement authority and more clearly articulate how these specifics will influence the assessment of potential costs before any final amendments are adopted.<sup>1</sup>

*The Proposing Release does not sufficiently address the potential adverse impact on the willingness of component auditors to participate in global group audits of issuers or broker-dealers and the potential deleterious effect on audit quality.*

Audits of global issuers or broker-dealers frequently require the involvement of component auditors, which are often foreign registered public accounting firms. The Proposed Amendments further expand the scope of the Board's enforcement capabilities with respect to those component auditors by reducing the threshold by which the PCAOB's enforcement actions can be brought against them. While the Board explicitly acknowledges a risk of reduced competition in the market due to impacts to 'small and medium-sized firms', the Board does not specifically assess the risk of disincentivizing foreign-registered public accounting firms from participating in group audits of US issuers and broker-dealers. In the Board's own words, the costs to firms and individuals subject to an action based on a negligence threshold "could ... be substantial." The Proposed Amendments increase the potential that foreign audit firms will more often decline to participate in a group audit of an issuer or broker-dealer under threat of increased liability and exposure. When significant components of US issuers and broker-dealers are located in foreign jurisdictions, the inability to retain experienced foreign-registered public accounting firms for component audits will have further deleterious impacts on the quality of global audits. We believe the Board should

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<sup>1</sup> While our comment letter does not address this concern, we recognize there may be questions as to the legal basis for enforcing a negligence standard with respect to contributory liability.

address these risks, particularly in an environment where effective coordination and participation in global audits is growing increasingly important.

**Clarity is needed with respect to the framework for negligence and how Rule 3502 will interact with other Board proposals that address due professional care and related concepts.**

The Board's Proposed Amendments have been issued while other proposed standards, namely PCAOB AS 1000, *General Responsibilities of the Auditor in Conducting an Audit*, EI 1000, *Integrity and Objectivity*, and QC 1000, *A Firm's System of Quality Control*, are pending final amendments. These other proposed standards, for which we have previously provided comments to the Board,<sup>2</sup> introduce or modify the definition of certain key concepts that directly or indirectly relate to due professional care and/or intentional acts of misconduct. It is not clear how the concepts of due professional care, integrity, and intentional acts of misconduct used in those proposed professional standards interrelate with the proposed negligence standard in the Proposed Amendments; and indeed, the Board's ultimate decisions in those contexts may impact observers' views regarding the efficacy of the Proposed Amendments. We recommend the Board provide a framework or explanation on how those concepts apply across the proposed standards and interact with a negligence standard in the Proposed Amendments.

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The Board will significantly benefit from delaying final amendments to Rule 3502 until after it provides the profession with appropriate guidance related to the scope and implementation of the Proposed Amendments, more fulsomely assesses the costs related to the Proposed Amendments, and considers the impact the Proposed Amendments will have on the profession and audit quality.

We appreciate the Board's consideration of our comments and observations in relation to the Board's efforts to improve its mechanisms to drive enhanced audit quality and appropriate accountability, and we would be pleased to discuss our comments with the Board and its staff at your convenience. We look forward to continuing our engagement with the Board and its staff in support of our shared commitment of investor protection and audit quality.

Sincerely,

**KPMG LLP**

KPMG LLP

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<sup>2</sup> See our comment letter, dated February 1, 2023, [RE: PCAOB Rulemaking Docket No. 046: PCAOB Release 2022-006: A Firm's System of Quality Control and Other Proposed Amendments to PCAOB Standards, Rules, and Forms](#), and our comment letter, dated May 30, 2023, [RE: PCAOB Rulemaking Docket No. 049: PCAOB Release 2023-001: Proposed Auditing Standard - General Responsibilities of the Auditor in Conducting an Audit and Proposed Amendments to PCAOB Standards](#).