



November 3, 2023

Erica Y. Williams, Chair  
Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006-2803

VIA Online submission

**Re: PCAOB Rulemaking Docket Matter No. 053—Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability**

Dear Chair Williams:

The Center for American Progress (CAP or “we”) respectfully submits this letter regarding the above-referenced proposal (“the proposal”).

CAP is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans through bold, progressive ideas, strong leadership, and concerted action.

We strongly support the Public Company Accounting Oversight Board’s (the Board or PCAOB) proposed amendments to PCAOB Rule 3502, relating to persons who contribute directly and substantially to violations by a registered public accounting firm. Specifically, we support the Board’s proposals to change the liability standard for associated persons from “recklessness” to “negligence” and to specify that a contributory actor need not be an associated person of the registered firm that has committed a primary violation in order to be subject to potential liability under the rule.

The proposed amendments are clear, understandable, and appropriate for the reasons explained in the proposal. They will promote efficient coordination between the SEC and the PCAOB in enforcing standards and ensuring quality audits. As such, they will promote efficiency in the capital markets and increase investors’ confidence in audits, which are a critical tool for investor protection.

***The proposed amendments appropriately update Rule 3502 to reflect the current environment surrounding audits today.***

The environment in which companies operate today is rapidly changing, which adds to the risks companies face and the potential impacts on their financial statements. As emerging risks, such as climate-related disasters,<sup>1</sup> proliferate and the financial crises of recent decades have prompted repeated concerns about the economy,<sup>2</sup> audited financial statements have become ever more important to investors. Investors need to know that individual auditors of financial statements are exercising the same level of care as the auditing firms they assist are required to take in order to ensure that there are no material misstatements or omissions in the financial statements that investors and others rely on.

Markets are also changing rapidly, along with the growth of very large companies.<sup>3</sup> As a result, it is increasingly common for firms to have multiple individuals contributing to audits, making it difficult to find any one individual whose behavior rises to the level of recklessness, even when the auditing firm's conduct is clearly reckless.

***The proposal to change the liability threshold for an associated person to negligence is both logical and efficient***

The fact that a natural person contributed to a violation committed by a firm is not a reason to lower the standard of care they must exercise, especially since the firm's activities are also carried out by natural persons. Since the firm's work cannot be carried out except by natural persons, it makes no sense to say that the firm can be held accountable if negligent but the person actually doing the auditing work cannot be held accountable unless their behavior amounts to recklessness. This is an obvious gap in accountability. With the proposed changes to Rule 3502, associated auditors will be more likely to act reasonably in carrying out audits and comply with their legal requirements, such as standards relating to the audit itself, quality control, and ethics.

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<sup>1</sup> See, e.g., NOAA National Centers for Environmental Information (NCEI), U.S. Billion-Dollar Weather and Climate Disasters (2023), available at <https://www.ncei.noaa.gov/access/billions/>.

<sup>2</sup> See, e.g., "The biggest financial crises of the last four decades," Reuters, March 25, 2023, available at <https://www.reuters.com/business/finance/biggest-financial-crises-last-four-decades-2023-03-25/>; and U.S. Department of the Treasury, Financial Stability Oversight Council, web page at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc> (last accessed November 2023) ("The Council is charged by statute with identifying risks to the financial stability of the United States; promoting market discipline; and responding to emerging threats to the stability of the U.S. financial system.").

<sup>3</sup> Austan Goolsbee, "Big Companies Are Starting to Swallow the World," The New York Times, September 30, 2020, available at <https://www.nytimes.com/2020/09/30/business/big-companies-are-starting-to-swallow-the-world.html>.

Moreover, the liability change will enable the PCAOB and the SEC to more efficiently and effectively pursue enforcement cases regardless of which entity has the resources to bring the case.

Congress clearly intended, when it enacted the Sarbanes-Oxley Act of 2002,<sup>4</sup> to provide the newly created PCAOB with the tool of sanctioning registered firms and their associated persons for negligent conduct.<sup>5</sup> Current Rule 3502 undermines the statute's intent by requiring an associated person's conduct to reach a level of recklessness before they can be held liable under the rule.

***Individual auditors should be held accountable for their contributions to the primary violation of "any" registered public accounting firm***

Given the complexity and scope of many audits today and the frequent use of unaffiliated experts, we see no reasonable explanation for requiring that the associated person be an affiliate of the firm committing the primary violation.

A person whose actions or inactions materially contribute to a primary violation should have liability regardless of whether that person is an affiliate of the firm. Otherwise, there is a material liability and accountability disparity based solely on the person's affiliation status and not on their misconduct.

Having third-party contributors avoid basic liability rewards a lack of careful audit quality control protections and also incentivizes individual audit experts to structure their provision of services so as to escape liability.

Worse, the Board may not have a window into actions carried out by an associated auditor and may be limited in its ability to question those auditors. The changes proposed would go a long way toward creating the right incentives for associated auditors to ensure that they comply fully with applicable laws, rules, and standards that the Board is charged with enforcing.

If nearly two-thirds of cases in which a firm was charged with a violation did not result in a contributory actor being held accountable, as the staff research found (p.18), it is clear that there is a regulatory gap—because a firm violation necessarily has to be carried out by a natural person.

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<sup>4</sup> 15 U.S.C. Sections 7211-7220.

<sup>5</sup> See, Public Law 107-204, Section 105, available at <https://www.govinfo.gov/content/pkg/PLAW-107publ204/html/PLAW-107publ204.htm>.

## **Conclusion**

We strongly agree that the proposed changes would make the rule both a more effective deterrent and a more effective enforcement tool and thus carry out the intent of Sarbanes-Oxley in creating the PCAOB to investigate, bring charges against, and sanction registered public accounting firms and associated persons for violations of relevant laws, rules, and standards.

Not only would the proposed changes make Rule 3502 more consistent with the purposes of deterrence and accountability, it would also ensure that the PCAOB's standard is consistent with investor expectations as to the accountability of any registered accountant who contributes to a registered firm's violation—an expectation that Sarbanes-Oxley clearly recognized that investors should have.

For any questions regarding this comment letter, please contact Alexandra Thornton, Senior Director, Financial Regulation, at the Center for American Progress, [athornton@americanprogress.org](mailto:athornton@americanprogress.org).

Sincerely,

Center for American Progress