NASBA
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October 24, 2023

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

Via email: comments@pcaobus.org

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

Dear Members of the Public Company Accounting Oversight Board (PCAOB):

The National Association of State Boards of Accountancy (NASBA) appreciates the opportunity to comment on the PCAOB's Release, *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability* (Proposal).

Founded in 1908, NASBA serves as a forum for the nation's Boards of Accountancy (State Boards), representing fifty-five jurisdictions. NASBA's mission is to enhance the effectiveness and advance the common interests of the State Boards that regulate all Certified Public Accountants (CPAs) and their firms in the United States and its territories, which includes all audit, attest and other services provided by CPAs. State Boards are charged by law with protecting the public.

In furtherance of that objective, NASBA offers the following comments.

General Comments

NASBA commends the PCAOB for their work in protecting the public interest and promoting audit quality, demonstrated by recent efforts to modernize and strengthen auditing standards.

The Proposal provides the background that, through the Sarbanes-Oxley Act of 2002, Congress authorized the PCAOB to investigate, bring charges against, and sanction, when appropriate, registered public accounting firms and associated persons for violations of the laws, rules and standards. The Proposal also notes that, for well over a decade, the PCAOB has brought enforcement proceedings against associated persons pursuant to Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.

The qualitative and quantitative analyses and considerations of the economic impacts as presented in the Proposal demonstrates that the current Rule 3502, codified in 2005, has struck the right tone in terms of the level of a legal liability standard and the level of discipline.

At present, a person responsible for issuing a report where there are audit failures in the performance of the audit (and perhaps others in the firm) are subject to the possibility of disciplinary actions instituted by the Securities and Exchange Commission (SEC) and by the individual's State Board or Boards. There are also internal processes within firms to discipline and rehabilitate the individual involved. There is no lack of actions to address discipline.

The PCAOB presently prosecutes only for reckless or egregious conduct. However, the PCAOB always has the opportunity to refer individuals to the SEC for further action. Such referrals would also result in State Board action if the SEC were to discipline the individual.

The Proposal implies that the discipline imposed by a firm (whether financial penalty or even expulsion) is less likely to be an effective deterrent to others as compared to a public sanction. However, evidence is not presented as to that fact nor is there an analysis as to the effectiveness of the discipline and remediation efforts of the firm.

The Proposal also acknowledges that, in making the change from recklessness to negligence in the standard, excessive litigation risk could discourage people from accepting important roles in quality control areas of their firms for fear of being held liable, potentially leaving these roles to be accepted by less cautious or less qualified individuals, which is not in the public interest.

The rationale outlined in the Proposal does not appear to provide adequate evidence or support for changing Rule 3502 and indicates only a modest number of incremental cases would result under the new negligence standard.

In November 2022, the PCAOB released a proposal for new quality control standards and to create reporting requirements on quality control matters. The new quality control standards have not been finalized so there is uncertainty over the manner in which the new quality control standards are going to be implemented and disciplined. We would recommend time for the maturation of the implementation and inspection of the implementation of those new quality control standards before moving forward with a change to Rule 3502.

Special Consideration for Emerging Growth Companies (EGC)

While the risk profile of an EGC is different from more mature entities, we agree that the Proposal should apply to EGCs as applicable. To exclude EGCs from the Proposal would be inconsistent with protecting the public interest.

Again, we appreciate the opportunity to comment on the Proposal.

Very truly yours,

Richard N. Reisig, CPA
NASBA Chair

Ken L. Bishop
NASBA President and CEO