

March 15, 2023

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

Via website submission: comments@pcaobus.org

RE: PCAOB Rulemaking Docket Matter No. 028: Proposed Auditing Standard – The Auditor’s Use of Confirmation, and Other Proposed Amendments to PCAOB Standards

To Whom It May Concern:

The American Bankers Association¹ (ABA) welcomes the opportunity to comment on the Public Company Accounting Oversight Board’s (PCAOB) Proposed Auditing Standard – The Auditor’s Use of Confirmation, and Other Proposed Amendments to PCAOB Standards (the Proposal). The Proposal seeks to modernize the confirmation process, which is based on standards that took effect in 1992 and adopted as a PCAOB interim standard in 2003 (AS 2310). Currently, third-party confirmation procedures are pervasive both in audits of bank financial statements as well as auditors’ use of confirmations, in which banks are requested to confirm balances of the auditees. We commend the PCAOB for taking steps towards modernizing the confirmation process standards to better reflect the significant advances in technology since the current standard was developed over thirty years ago.

Along with advances in technology have come new risks and opportunities that need further consideration. Specifically, the PCAOB should reconsider the confirmation process in the context of imposter scams such as phishing because fraudsters can use confirmation as a pretext for obtaining financial information. In addition, the procedures will be less effective given industry and government efforts advising customers not to provide financial information in response to unexpected requests.

ABA’s specific comments on the Proposal are as follows:

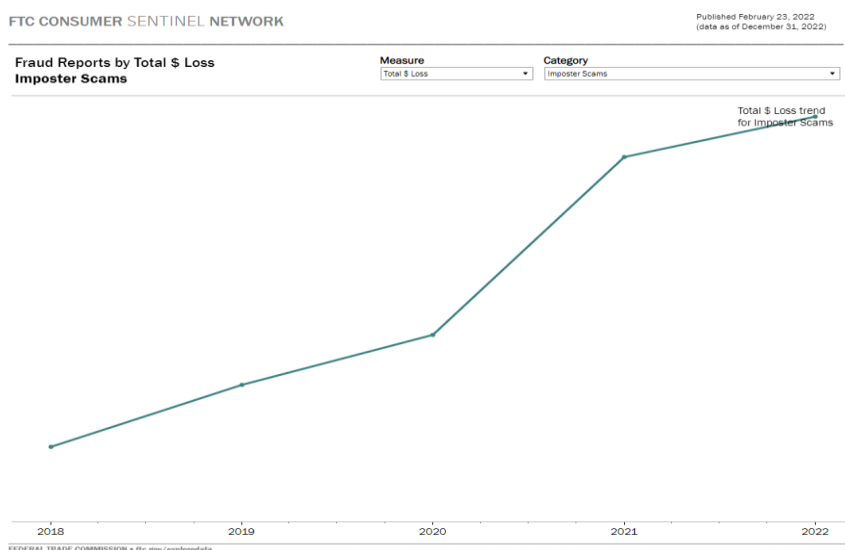
Direct Solicitation of Financial Information from Consumers Via the Use of Confirmations as Required by the Proposal may be Used to Scam Consumers and are Inconsistent with Government and Banking Industry Efforts to Prevent Scams

In addition to circumstances discussed below when the required use of third-party confirmations are ineffective and outdated, the PCAOB should reconsider confirmation requirements broadly, as they may be used to defraud consumers. For example, fraudsters attempting to perpetuate

¹ The American Bankers Association is the voice of the nation’s \$23.6 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.2 trillion in deposits and extend nearly \$12.2 trillion in loans.

phishing schemes could claim to be independent auditors of the financial institution where the consumer banks and point to PCAOB auditing standards regarding confirmations as their justification for obtaining sensitive financial information. In many cases, the fraudsters can refer the consumer to public records available from trusted sources (for example, the bank’s website or the Securities Exchange Commission) that prove the audit firm they claim to represent is, in fact, the auditor of the bank. To pressure the consumer to provide the information, the fraudster can point to requirements in the Proposal. For example, paragraph 16 of the Proposal,² the fraudster can justify why the consumer must provide the information to the fraudster, rather than merely confirming information the fraudster is providing to the consumer. This simple example demonstrates why the PCAOB should consider these implications in its rulemaking.

Imposter scams where fraudsters disguise themselves as legitimate parties have grown significantly in recent history, as demonstrated by the following chart³ from the Federal Trade Commission (FTC) in which, over the last 5 years, losses reported to the FTC for imposter scams have increased from \$492 million in 2018 to nearly \$2.7 billion in 2022:



Additionally, of the 2.4 million fraud reports submitted to the FTC in 2022, imposter scams were the most common.

One way the banking industry combats these scams is through consumer education, and banks devote significant resources to consumer education in order to protect their customers from scams. Consumer education includes cautions to customers at the time of a transaction and also other communications sent on a periodic basis through various media that they should be careful about divulging financial information. Messages include, for example, warnings describing red flags that identify common and emerging scams and how to avoid them. ABA, on behalf of its

² “Using a blank form confirmation request may provide more reliable audit evidence than using a confirmation request that includes information the auditor is seeking to confirm (e.g., customer account balance).”

³ The below chart and other data obtained from the FTC’s Sentinel Network a summary of consumer fraud can be found in https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf.

members, also educates consumers about fraud prevention. Below are a few ABA resources available to all banks (including nonmembers) free of charge:

- “Banks Never Ask That”⁴ Campaign. More than 2,000 banks have participated since the campaign began in 2020.
- ABA Foundation's Safe Banking for Seniors program.
- ABA Foundation infographics developed in conjunction with the Federal Trade Commission, including “How to Safely Use Mobile Payment Apps and Services” and “Phishing: Don’t Take the Bait,” which are available to banks and the public.
- Publicly-available information on ABA’s Consumer Resources pages to help people understand how to “Protect Yourself and Your Money.”

Many government agencies also provide consumer education on how to avoid a scam, for example the FTC⁵, Consumer Financial Protection Bureau (CFPB)⁶, and the Federal Deposit Insurance Corporation (FDIC)⁷.

All of these efforts recommend consumers conduct themselves in a manner that would render a confirmation request ineffective. For example, the FTC brochure on “How to Avoid a Scam” includes:

- “Don’t give your personal or financial information in response to a request that you didn’t expect”
- “If you get an email or text message from a company you do business with and you think it’s real, it’s still best not to click on any links. Instead, contact them using a website you know is trustworthy. Or look up their phone number. Don’t call a number they gave you or the number from your caller ID.”⁸

In this example, to complete a confirmation request, consumers must disregard the FTC’s advice not to provide financial information in response to an unexpected request. Consumers who are inclined to verify the validity of the request will normally be unable to do so through the bank’s website or customer service. The PCAOB should consider how to avoid the situation where an auditor is required to solicit information from bank costumers when the banking industry is telling that same customer that such information will never be requested for any legitimate

⁴ “Banks Never Ask That” is an ABA led industry effort to educate bank customers on scams and steps customers should take to protect themselves from scams see more: <https://www.banksneveraskthat.com/>.

⁵ “Pass It On” (<https://consumer.ftc.gov/features/pass-it-on>).

⁶ Resources to help avoid scams <https://www.consumerfinance.gov/coronavirus/avoiding-scams/>.

⁷ Avoiding Scams and Scammers <https://www.fdic.gov/resources/consumers/consumer-news/2021-10.html>.

⁸ “How to Avoid a Scam” is consumer-directed education provided at: <https://consumer.ftc.gov/articles/how-avoid-scam>.

reason. ABA welcomes a meeting with the PCAOB staff to share information and further educate the PCAOB staff on the banking industry efforts to combat scams.

The Use of Third-party Confirmation Continues to Diminish as Technology Advances

Technological innovation has changed the way businesses and consumers supply and consume financial information. This has diminished the use of third-party confirmations as audit evidence. More specifically, these changes have significantly increased the circumstances where alternative procedures may provide equally persuasive evidence in a more efficient manner. For example, the concept of sending a confirmation⁹ request fails to consider the direct, secure and regulated availability of financial information. ABA believes that there are circumstances when obtaining equally persuasive evidence information can be achieved without sending a confirmation request.

To illustrate this point, consider confirming cash with a regulated banking entity. In 2023, regulated banking entities typically provide their customers the ability to directly access bank account information electronically. Audit procedures designed to (1) verify that the information was from the correct external source (via the bank website or portal), (2) observe the client as they access the information at the same time, and (3) direct the auditee to provide the information to the auditor would appear to obtain the same level of audit evidence obtained via confirmation. In fact, this procedure may also be more effective and efficient, as it is performed without incremental participation of an external source.

However, paragraph 8 of the Proposal precludes this procedure and requires the auditor to send a third-party confirmation request. ABA recommends that the final standard allow the auditor to exercise appropriate judgment in assessing the persuasiveness of audit evidence under either circumstance and where available and how a standard can withstand future innovations that will make financial information from external knowledgeable sources more accessible.

The Proposal Further Limits the Use of Alternative Procedures as the Use of Confirmation is Becoming Less Effective

The increased incremental effort for a confirming party to identify, consider, and complete a confirmation request has reduced the effectiveness of the use of confirmations in many circumstances. In other words, history has demonstrated that the percentage of confirmations that are returned continues to decline and are already at rates that do not provide efficient audit evidence. However, the Proposal removes the guidance in AS 2310 paragraph 34 that allows the auditor to exercise professional judgment when determining that the use of confirmations would be ineffective. The Proposal also changes how the presumption of the use of third-party confirmation is overcome. Under AS 2310, if an auditor determines that the combination of inherent risk, control risk and alternate audit procedures reduce the audit risk to an acceptably low level, then the reliance on third-party confirmation can be reduced. However, the threshold

⁹ The Proposal requires the auditor to direct (send) a confirmation to the confirming party (paragraph .18) and for the auditor to maintain control of the confirmation through the process (paragraphs .22-.24).

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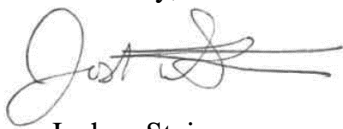
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to overcome the rebuttable presumption¹⁰ in the Proposal is more restrictive compared to AS2310.

The Proposal also adds a requirement to communicate those instances to the Audit Committee. Based on these changes the Proposal will require expanded use of confirmations even when the auditor is aware that the use of confirmations will be ineffective. The ABA believes that any presumption that confirmations are necessary is outdated and the PCAOB should amend the Proposal to eliminate paragraphs 9, 12, and 14.

In summary, the PCAOB efforts to modernize the confirmation process should go beyond the current efforts to update the current framework and include the broader considerations surrounding the impact of the use of confirmations¹¹ and other current and future procedures that can effectively provide the necessary audit evidence. We will contact the PCAOB staff to establish a meeting date on these important issues. Thank you for considering our comments. If you need additional information or have questions, please contact me (jstein@aba.com; 202-663-5318).

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua Stein", with a stylized flourish at the end.

Joshua Stein

¹⁰ Paragraph 14 of the Proposal states the threshold as “performing other substantive procedures (without using confirmation) would provide audit evidence that is at least as persuasive as the evidence that the auditor might expect to obtain through performing confirmation procedures.”

¹¹ Including those highlighted in this letter regarding consumer protection and the Proposal’s direct conflict with consumer education efforts.