

# SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-99060; File No. PCAOB-2023-02)

December 1, 2023

Public Company Accounting Oversight Board; Order Granting Approval of Auditing Standard Governing the Auditor’s Use of Confirmation

## I. Introduction

On October 4, 2023, the Public Company Accounting Oversight Board (the “Board” or the “PCAOB”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 107(b)<sup>1</sup> of the Sarbanes-Oxley Act of 2002 (“SOX”) and Section 19(b)<sup>2</sup> of the Securities Exchange Act of 1934 (the “Exchange Act”), a proposal to adopt Auditing Standard (“AS”) 2310, *The Auditor’s Use of Confirmation* (AS 2310); rescind AS 2310, *The Confirmation Process* (AS 2310); and amend several other existing auditing standards (collectively, the “Amendments”). The Amendments were published for comment in the *Federal Register* on October 17, 2023.<sup>3</sup> We received three (3) comment letters in response to the notice.<sup>4</sup> This order approves the Amendments, which we find to be consistent with the requirements of SOX and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

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<sup>1</sup> 15 U.S.C. 7217(b).

<sup>2</sup> 15 U.S.C. 78s(b).

<sup>3</sup> See *Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on The Auditor’s Use of Confirmation, and Other Amendments to PCAOB Standards*, Release No. 34-98689 (Oct. 5, 2023) [88 FR 71684 (Oct. 17, 2023)], available at <https://www.sec.gov/rules/pcaob/2023/34-98689.pdf>.

<sup>4</sup> We received comment letters from Deloitte & Touche LLP (Nov. 2, 2023), PricewaterhouseCoopers LLP (Nov. 6, 2023), and Gopal Krushna Panda (Nov. 6, 2023). Copies of the comment letters received on the Commission notice of the Amendments are available on the Commission’s website at <https://www.sec.gov/comments/pcaob-2023-02/pcaob202302.htm>.

## II. Description of the Amendments

On September 28, 2023, the Board unanimously adopted the Amendments.<sup>5</sup> The Amendments are intended to strengthen and modernize the requirements for the confirmation process by describing principles-based requirements for all methods of confirmation, including paper-based and electronic means of communications. In addition, the new standard is more directly integrated with the PCAOB's risk assessment standards by incorporating certain risk-based considerations and emphasizing the auditor's responsibilities for obtaining relevant and reliable audit evidence through the confirmation process. This should promote investor protection by enhancing the quality of audits. The requirements contained within the Amendments are discussed further below.

### A. Changes to PCAOB Standards

Among other things, the Amendments enhance the existing confirmation requirements by:

- Including principles-based requirements that are designed to apply to all methods of confirmation. These methods include longstanding practices, such as the use of paper-based confirmation requests and responses sent via regular mail; methods that involve electronic means of communications, such as the use of email or an intermediary to facilitate direct electronic transmission of confirmation requests and responses; and methods that have yet to develop.
- Expressly aligning the requirements for the auditor's use of confirmation with the requirements of the Board's risk assessment standards, including AS 1105. The

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<sup>5</sup> See *The Auditor's Use of Confirmation, and Other Amendments to PCAOB Standards*, PCAOB Release No. 2023-008 (Sept. 28, 2023), available at [https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket\\_028/2023-008\\_confirmation-adopting-release.pdf?sfvrsn=e18cef74\\_4](https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket_028/2023-008_confirmation-adopting-release.pdf?sfvrsn=e18cef74_4).

Amendments specify certain risk-based considerations and emphasize the auditor's responsibility to obtain relevant and reliable audit evidence when performing confirmation procedures.<sup>6</sup>

- Strengthening the requirements for the use of confirmation procedures in certain situations. The Amendments add a requirement that the auditor should perform confirmation procedures for cash held by third parties, carry forward the existing requirement that the auditor normally should perform confirmation procedures for accounts receivable, and include a new provision that the auditor may otherwise obtain audit evidence by directly accessing information maintained by a knowledgeable external source for cash and accounts receivable.<sup>7</sup> In addition, the Amendments carry forward the existing requirement that the auditor consider confirming the terms of certain other transactions.<sup>8</sup>
- Addressing situations in which it would not be feasible for the auditor to obtain information directly from a knowledgeable external source. The Amendments provide that if it would not be feasible for the auditor to obtain audit evidence directly from a knowledgeable external source for accounts receivable, the auditor should perform other substantive procedures, including tests of details, that involve obtaining audit evidence from external sources indirectly.<sup>9</sup>
- Mandatory communications with the audit committee regarding certain audit responses to significant risks. Under the Amendments, for significant risks associated

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<sup>6</sup> See AS 2310.03, as amended.

<sup>7</sup> See AS 2310.24 through .27, as amended.

<sup>8</sup> See AS 2310.30, as amended.

<sup>9</sup> See AS 2310.25, as amended.

with cash or accounts receivable, the auditor is required to communicate with the audit committee when the auditor either did not perform confirmation procedures or otherwise obtained audit evidence by directly accessing information maintained by a knowledgeable external source.<sup>10</sup>

- Reflecting the relatively insignificant amount of audit evidence obtained when using negative confirmation requests. Under the Amendments, the use of negative confirmation requests may provide sufficient appropriate audit evidence only when combined with other substantive procedures. The Amendments include examples of situations in which the use of negative confirmation requests in combination with other substantive procedures may provide sufficient appropriate audit evidence.<sup>11</sup>
- Emphasizing the auditor's responsibility to maintain control over the confirmation process. The Amendments state that the auditor should select the items to be confirmed, send confirmation requests, and receive confirmation responses.<sup>12</sup>
- Providing more specific direction for circumstances where the auditor is unable to obtain relevant and reliable audit evidence through confirmations. The Amendments identify situations where other procedures should be performed by the auditor as an alternative to confirmations. The Amendments also include examples of such alternative procedures that may provide relevant and reliable audit evidence.<sup>13</sup>

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<sup>10</sup> See AS 2310.28, as amended.

<sup>11</sup> See AS 2310.12 and .13, as amended.

<sup>12</sup> See AS 2310.14 through .17, as amended.

<sup>13</sup> See AS 2310.11, .19, .23, and Appendix C, as amended.

## **B. Applicability and Effective Date**

The Amendments will be effective for all audits of financial statements for fiscal years ending on or after June 15, 2025. The PCAOB has proposed application of the Amendments to include audits of emerging growth companies (“EGCs”),<sup>14</sup> as discussed in Section IV below.

## **III. Comment Letters**

The comment period on the Amendments ended on November 7, 2023. We received three (3) comment letters.<sup>15</sup> The commenters generally supported the Amendments and encouraged us to support the PCAOB’s plans to monitor implementation, conduct post-implementation review, and monitor advancements in technology that may affect application of the Amendments. We acknowledge the importance of monitoring the implementation of the Amendments and the Commission staff works closely with the PCAOB as part of our general oversight mandate.<sup>16</sup> As part of that oversight, Commission staff will keep itself apprised of the PCAOB’s activities for monitoring the implementation of the Amendments and update the Commission, as necessary. Additionally, one commenter made suggestions for expanded explanations and examples. The adopting release addresses the points raised by the commenter.

SOX requires us to determine whether the Amendments are consistent with the requirements of SOX and the securities laws or are necessary or appropriate in the public interest or for the protection of investors.<sup>17</sup> In making this determination, we have considered the

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<sup>14</sup> The term “emerging growth company” is defined in Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). *See also Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act*, Release No. 33-10332 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)], available at <https://www.sec.gov/rules/final/2017/33-10332.pdf>.

<sup>15</sup> *See Supra* note 4.

<sup>16</sup> *See* Section 107 of SOX.

<sup>17</sup> *See* Section 107(b)(3) of SOX. SOX also specifies that the provisions of Section 19(b) of the Exchange Act shall govern the proposed rules of the Board. *See* Section 107(b)(4) of SOX. Section 19 of the Exchange

comments we received, as well as the feedback received and modifications made by the PCAOB throughout its rulemaking process.

#### **IV. Effect on Emerging Growth Companies**

In the notice of filing of the Amendments, the Board recommended that the Commission determine that the Amendments apply to audits of EGCs.<sup>18</sup> Section 103(a)(3)(C) of SOX, as amended by Section 104 of the Jumpstart Our Business Startups Act of 2012, requires that any rules of the Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an EGC. The provisions of the Amendments do not fall into these categories.<sup>19</sup>

Section 103(a)(3)(C) further provides that “[a]ny additional rules” adopted by the PCAOB after April 5, 2012, do not apply to audits of EGCs “unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.” The Amendments fall within this category. Having considered those statutory factors, we find that applying the Amendments to the audits of EGCs is necessary or appropriate in the public interest.

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Act covers the registration, responsibilities, and oversight of self-regulatory organizations. Under the procedures prescribed by SOX and Section 19(b)(2) of the Exchange Act, the Commission must either approve or disapprove, or institute proceedings to determine whether the proposed rules of the Board should be disapproved; and these procedures do not expressly permit the Commission to amend or supplement the proposed rules of the Board.

<sup>18</sup> See the Notice of Filing of Proposed Rules, *supra* note 3.

<sup>19</sup> While the precise scope of this category of rules under Section 103(a)(3)(C) is not entirely clear, we do not interpret this statutory language as precluding the application of Board rules requiring inclusion of additional factual information about referred-to auditors and the scope of their work in connection with the audits of EGCs. In our view, this approach reflects an appropriate interpretation of the statutory language and is consistent with our understanding of the Congressional purpose underlying this provision.

With respect to the Commission’s determination of whether the Amendments will apply to audits of EGCs, the PCAOB provided information, including data and analysis of EGCs identified by the Board’s staff, from public sources that sets forth its views as to why it believes the Amendments should apply to audits of EGCs. In addition, the Board sought public input on the application of the Amendments to the audits of EGCs. Commenters generally supported the application of the Amendments to the audits of EGCs. The Board noted that while the associated costs may be higher for EGC audits than for non-EGC audits, due to the scalability of the risk-based requirements, the costs of performing the procedures are unlikely to be disproportionate to the benefits of the procedures. Overall, the Amendments are expected to enhance audit quality and contribute to an increase in the credibility of financial reporting by EGCs.

We agree with the Board’s analysis and further emphasize the price efficiency benefits discussed by the PCAOB noting that improvements in the quality of the audit may be more pronounced on the audits of EGCs, thereby potentially creating a larger increase to the price efficiency of EGCs by providing investors with more accurate information. Price efficiency helps investors make more informed investment decisions—facilitating issuers’, including EGCs’, access to capital—thus enhancing capital formation. Additionally, while the Amendments could impact competition in the EGC market if the indirect costs to audited companies disproportionately impact EGCs relative to their competitors, as the costs associated with the Amendments are expected to be relatively modest, any impact on competition is likely to be relatively small. As such, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, we believe there is a sufficient basis to determine that applying the Amendments to the audits of EGCs is necessary or appropriate in the public interest.

**V. Conclusion**

The Commission has reviewed and considered the Amendments, the information submitted therewith by the PCAOB, and the comment letters received. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Amendments are consistent with the requirements of SOX and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Amendments to the audits of EGCs is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

IT IS THEREFORE ORDERED, pursuant to Section 107 of SOX and Section 19(b)(2) of the Exchange Act, that the Amendments (File No. PCAOB-2023-02) be and hereby are approved.

By the Commission.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*