

# NASBA

National Association of State Boards of Accountancy

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**David A. Costello, CPA**  
President & CEO

October 17, 2003

U.S. Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609  
Attention: Secretary  
VIA E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: SEC File No. PCAOB-2003-05  
SEC Release No. 34-48511 dated September 22, 2003  
(Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules  
Relating to Compliance With Auditing and Related Professional Practice Standards and  
Advisory Groups)

Dear Commissioners:

We appreciate the opportunity to offer comment to the Securities and Exchange Commission (the "Commission" or the "SEC") regarding the filing with the Commission by the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") of its proposed rules relating to compliance with auditing and related professional practice standards and advisory groups. The Commission published the captioned notice (the "SEC Notice") to solicit comment on the proposed rules pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"). The rules were proposed by the PCAOB in PCAOB Release No. 2003-005, dated April 18, 2003 (the "PCAOB Proposing Release"), and were adopted by the PCAOB for submission to the Commission in PCAOB Release No. 2003-009, dated June 30, 2003 (the "PCAOB Adopting Release").

The National Association of State Boards of Accountancy (NASBA) is the national organization of the accountancy regulators of all states and other U.S. jurisdictions (collectively, the "states"). NASBA's member boards (the "State Boards") are government agencies composed of both licensees and non-licensee public members. As the only authorities empowered to grant or revoke licenses of certified public accountants (CPAs), the State Boards understand the delicate balance between the need for swift discipline and the necessity of procedural fairness.

NASBA's primary focus here is fostering federal/state cooperation. We believe that close cooperation and a working partnership of the PCAOB and the SEC with NASBA and the State Boards will result in more effective regulatory efforts than otherwise would be achieved.

We are pleased to see in footnote 7 on page 7 of the PCAOB Adopting Release that the PCAOB anticipates appointing state accounting regulators to its standing advisory group that will assist it in performing its standard-setting responsibilities. We strongly believe that state accounting regulators should serve on any advisory groups appointed by the PCAOB and we welcome the prospect that this will be the case.

## **I. General Comments about Proposed Rules.**

We submit these comments to the Commission (and, by copy of this letter, also to the PCAOB) in the spirit of ongoing cooperative communication. We hope that our views will be considered favorably in connection with possible *future* rule-making by the PCAOB, including the anticipated adoption or approval of various auditing and related professional practice standards. We ask that the SEC and the PCAOB give ongoing consideration to our thoughts on these matters.

## **II. Comments on Selected Provision of the Proposed Rules.**

### **Proposed Rule 3100. Compliance with Auditing and Related Professional Practice Standards.**

The PCAOB Proposing Release sought views on whether there are other standards, in addition to PCAOB [auditing and related professional practice] standards, with which the PCAOB should require registered public accounting firms to comply. In its comment letter, NASBA urged the PCAOB to require that a registered public accounting firm and each of its associated persons be duly licensed, registered or permitted or otherwise hold valid practice privileges and be in good standing under the laws of each applicable state and each other applicable jurisdiction where or with respect to which the activities of the accounting firm or the associated person require the accounting firm or the associated person to be licensed, registered or permitted or otherwise hold valid practice privileges under the laws of the state or other jurisdiction or the rules, regulations or policies of the appropriate state regulatory authority or other jurisdictional regulatory authority.

The analysis regarding Rule 3100 at page A2-v in Appendix 2 of the PCAOB Adopting Release notes that the PCAOB decided not to amend the Rule to reflect this suggestion. The PCAOB Adopting Release at pages A2-iv and A2-v also notes, "Registration with the [PCAOB] does not supersede state registration or licensing requirements and the [PCAOB] expects registered public accounting firms and their associated persons to comply with state and other applicable legal requirements. Rule 3100, however, is merely intended to codify the obligation of registered public accounting firms and their associated persons to comply with [PCAOB] Standards and to ensure that the [PCAOB's] Standards are enforceable."

We understand the rationale of the PCAOB's decision not to include in Rule 3100 a separate requirement regarding licensing. Nevertheless, we continue to believe that a public accounting firm should be required to demonstrate to the PCAOB its diligence in determining what states or other jurisdictions require it (and its associated persons) to be licensed, registered or permitted and to provide evidence that it (as well as its associated persons) be duly licensed, registered or permitted in good standing in such states and other jurisdictions. In addition, we believe that a failure of a public accounting firm to meet such a requirement should have disciplinary consequences for the firm. The PCAOB should not appear to foster, condone or tolerate the unlicensed practice of forms of public accountancy for which license is required by applicable state law for *either* firms *or* individuals associated with firms. Accordingly, while NASBA's member boards continue to simplify multistate licensing requirements, the PCAOB should regularly check the current license status of all accountants associated with registered public accounting firms and firms applying for registration (in addition to the firms themselves) with State Boards, either directly or facilitated through NASBA. It is our experience that indifference to licensing requirements may betoken a firm culture of indifference to other professional obligations.

As the PCAOB concluded after thoughtful consideration, Rule 3100 probably is not the best place for a rule to address licensing for registered public accounting firms and their associated persons. As noted in our prior letter to you, one alternative is to require

additional information about required licenses in the PCAOB annual report rules -- perhaps phasing in increased levels of required firm diligence over several years -- and to set requirements to hold those licenses in good standing in the auditing and related professional practice standards to be adopted by the PCAOB. For example, the PCAOB might require that only properly licensed firms and properly licensed associated persons (when such licensing is required by the applicable state) may do audit work for SEC issuers. NASBA believes it is fundamental that registered public accounting firms and their associated persons comply with applicable licensing requirements. We strongly urge the PCAOB to consider favorably this approach in its future rulemaking.

**Conclusion.**

NASBA appreciates the opportunity to provide these comments. Should you have questions about our thoughts on the proposed rules or other matters, please contact us. We look forward to ongoing communication and cooperation with the PCAOB and the SEC.

Sincerely,

David A. Costello, CPA  
President & CEO

K. Michael Conaway, CPA  
Chair, NASBA

c: William J. McDonough, Chairman, Douglas R. Carmichael, Chief Auditor  
Public Company Accounting Oversight Board