



Public Company Accounting Oversight Board

Office of the General Counsel

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December 3, 2015

By Email

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: Comment on Securities Exchange Act Release No. 34-75977:
Proposed Amendments to the Commission's Rules of Practice (File
No. S7-19-15)**

Dear Mr. Fields:

The Office of the General Counsel of the Public Company Accounting Oversight Board (Board or PCAOB) appreciates the opportunity to submit brief comments on proposed amendments to the Rules of Practice of the Securities and Exchange Commission (Commission or SEC), Release No. 34-75977.¹ We write to address those proposed amendments that would impose certain requirements to exclude or redact sensitive personal information, as defined in the proposed amendments, from filings and administrative records submitted to the Commission and to certify upon submission that those filings and records contain no such sensitive information.

We support the Commission's objectives in making the administrative appeals process more accessible to the public and increasingly efficient while at the same time protecting individuals' privacy interests by requiring exclusion or redaction of sensitive personal information generally unnecessary to the resolution of the proceedings. We believe that the requirement in proposed amended Rule 151(e)(3) that papers filed in connection with a Commission administrative proceeding be accompanied by a certification that "any sensitive personal information ... has been excluded or redacted from the filing" is consistent with those objectives and tailored to effectively and efficiently accomplish them, as the rule places the burden of compliance on the parties

¹ The comments provided in this letter are solely those of the PCAOB Office of the General Counsel (OGC) and do not necessarily represent the views of the Board, individual Board Members, or other PCAOB staff. OGC, on behalf of the Board, carries out responsibilities that are directly relevant to the proposed amendments, including representation of the Board in administrative matters on review before the SEC and transmission of the record in those matters to the SEC.

who have the most knowledge, and control over the creation, of the documents—those who draft and file them. When the PCAOB submits briefs, motions, and the like in the course of defending Board disciplinary action on review by the Commission, the PCAOB is well positioned to prevent the introduction of, or to redact as necessary, sensitive personal information from those filings.

With respect to proposed amended Rule 440, applicable to the transmission of PCAOB records in proceedings on appeal to the Commission, however, we have certain concerns relating to its implementation in the near term. Currently, the PCAOB does not have in place rules or other requirements in its administrative proceedings obligating parties to redact sensitive personal information from filings or other record materials, such as hearing exhibits and transcripts. Rule 440 presently requires the PCAOB to file with the SEC a copy of the record in PCAOB proceedings within 14 days of a party's filing of an application for review. The proposed amended rule describes the certification requirement for submission of the entire record on appeal in essentially the same language as it describes the certification requirement for ongoing filings of briefs and motions on appeal. Yet those situations are different, and we respectfully request that the language in the proposed rules be worded or applied in recognition of that difference. The certification called for by proposed Rule 440 that "any sensitive information as defined in [Rule 440(d)(1)] has been excluded or redacted" from the record would be required at a point when the record has already been amassed by the parties. Though there might be some flexibility in the proposed rule's current language, it could be read to allow PCAOB staff only 14 days to submit the record to the SEC with all sensitive personal information excluded or redacted, providing no longer period for submission of the redacted record than for submission of the unredacted record.

Disciplinary proceedings at the PCAOB can generate voluminous records. Recent examples include proceedings with records of more than 7,000 pages, 30,000 pages, and 69,000 pages. Absent time to develop and implement other processes for the exclusion or redaction of sensitive personal information, a first-impression, late-stage review of these large records for such information in the short timeframe provided would be challenging to administer and would also be particularly susceptible to human error.

The PCAOB could better achieve the objectives sought in the Commission's proposed rules by implementing administrative processes designed to prevent the parties' introduction of sensitive personal information from the initiation of the disciplinary proceeding and to require the parties to redact sensitive personal information as necessary throughout the litigation cycle, and by certifying that the PCAOB has processes in place that are reasonably designed to ensure compliance with requirements for protecting sensitive personal information in SEC review proceedings. Such a model is employed in other areas of regulatory compliance, such as the certifications of compliance and supervisory processes under FINRA Rule 3130 and MSRB G-44, as well as Rule 206(4)-7 of the Investment Advisers Act and Rule 38a-1 of

the Investment Company Act, requiring certification of internal procedures reasonably designed to ensure compliance.² It also better reflects the realities of parties' front-line role in the development of the record. Imposing reasonably designed processes at the outset of PCAOB proceedings (for example, practices and procedures similar to those in proposed SEC Rule 151) would substantially assist the PCAOB in ensuring that the records transmitted to the Commission in PCAOB cases comply with applicable requirements.³

To that end, we would also respectfully ask the Commission to provide a transition period of one year after adoption of the proposed new redaction and certification rules, during which period the PCAOB could develop, test, and improve responsive processes for managing any sensitive personal information in PCAOB administrative proceedings. In that way, PCAOB staff would be in a much better position to effectively and efficiently comply with the redaction and certification requirements. A transition period would permit the PCAOB flexibility in handling pending cases in varying stages of litigation, as well as facilitating coordination with the various participants in the adjudication process, including the PCAOB's Hearing Office, to achieve compliance with the new rules.⁴

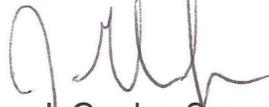
² See *Order Approving Proposed Rule Change to Adopt FINRA Rule 3130*, SEC Rel. No. 34-58661, 2008 WL 4468766 (Sept. 26, 2008); *Order Approving Adoption of Proposed New Rule MSRB G-44*, SEC Rel. No. 34-73415, 2014 WL 5408483 (Oct. 23, 2014); *Compliance Programs of Investment Companies and Investment Advisers*, SEC Rel. No. 40-2204, 2003 WL 22971048 (Dec. 17, 2003).

³ Revisiting the language of the proposed record certification requirement would also give the SEC the opportunity to address a seeming inconsistency in the current language of proposed amended Rule 440. On the one hand, paragraphs (d) and (d)(2) of proposed Rule 440 require the Board to "file" with the Commission "one unredacted copy of the record upon which the PCAOB took the complained-of action" and "one copy of an index of such record," including "any sensitive personal information, as defined in paragraph (d)(1) of this Rule," that may be contained therein; on the other hand, paragraph (d)(3) of proposed Rule 440 states, "Any filing made pursuant to this Rule must include a certification that any sensitive personal information as defined in § 201.440(d)(1) has been excluded or redacted from the filing."

⁴ If the Commission should decide not to provide for a transition period or not to provide for a different timetable for submission of a redacted copy of the record than for submission of the unredacted copy, then the Commission could still consider alleviating the burden of immediate compliance with new record redaction requirements in proceedings that already were well advanced before the new rules were adopted by requiring, for a trial period, the submission of redacted records only on an as-needed basis, upon receipt of a request from the public for the record in the particular matter.

We appreciate the opportunity to provide comments on the proposed amendments and would be pleased to discuss our comments or answer any questions on them.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Gordon Seymour". The signature is fluid and cursive, with a large initial "J" and "S".

J. Gordon Seymour
General Counsel