

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97223; File No. PCAOB-2023-01)

March 30, 2023

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments to Board Rule Governing Determinations Under the Holding Foreign Companies Accountable Act

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley” or the “Act”), notice is hereby given that on March 29, 2023, the Public Company Accounting Oversight Board (the “Board” or the “PCAOB”) filed with the Securities and Exchange Commission (the “Commission” or the “SEC”) the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board’s Statement of the Terms of Substance of the Proposed Rules

On March 28, 2023, the Board adopted amendments to PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act* (collectively, the “proposed rules”). The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b-4 and is available on the Board’s website at <https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-050> and at the Commission’s Public Reference Room.

II. Board’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Sarbanes-Oxley mandates that the Board inspect registered public accounting firms and investigate possible statutory, rule, and professional standards violations committed by those firms and their associated persons. That mandate applies with equal force to the Board’s oversight of registered firms in the United States and in foreign jurisdictions.¹

In December 2020, recognizing the obstacles the Board has faced when attempting to conduct inspections and investigations in certain foreign jurisdictions, Congress enacted the Holding Foreign Companies Accountable Act (“HFCAA”), which amended Sarbanes-Oxley.² The HFCAA required that the Board determine whether it is unable to inspect or investigate completely registered public accounting firms located in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.³ The HFCAA also mandates that, after the Board makes such a determination, the Commission shall require covered issuers⁴ that retain such firms to make certain disclosures in their annual reports and, eventually, if certain conditions persist, shall prohibit trading in those issuers’ securities.⁵

Following public comment, the Board adopted PCAOB Rule 6100, *Board*

¹ See, e.g., Section 106(a)(1) of Sarbanes-Oxley, 15 U.S.C. § 7216(a)(1).

² Pub. L. No. 116-222, 134 Stat. 1063 (Dec. 18, 2020).

³ See Section 104(i)(2)(A) of Sarbanes-Oxley, 15 U.S.C. § 7214(i)(2)(A).

⁴ See Section 104(i)(1)(A) of Sarbanes-Oxley, 15 U.S.C. § 7214(i)(1)(A) (defining “covered issuer”).

⁵ See generally *Holding Foreign Companies Accountable Act Disclosure*, SEC Release No. 34-93701 (Dec. 2, 2021).

Determinations Under the Holding Foreign Companies Accountable Act, to establish a framework for the Board to make its determinations under the HFCAA.⁶ Rule 6100 establishes the manner of the Board’s determinations; the factors the Board will evaluate and the documents and information it will consider when assessing whether a determination is warranted; the form, public availability, effective date, and duration of such determinations; and the process by which the Board will reaffirm, modify, or vacate any such determinations.

On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023 (“the 2023 Appropriations Act”),⁷ amending certain provisions of Sarbanes-Oxley that relate to Board determinations under the HFCAA. As a result, the Board is amending Rule 6100 to conform to the 2023 Appropriations Act’s amendment of Section 104(i)(2)(A)(ii) of Sarbanes-Oxley.⁸

Amendments to Rule 6100(a). Consistent with the HFCAA,⁹ Rule 6100(a), as

⁶ See *Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, PCAOB Rel. No. 2021-004 (Sept. 22, 2021); see also *Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, SEC Release No. 34-93527 (Nov. 4, 2021).

⁷ See Pub. L. No. 117-328 (Dec. 29, 2022).

⁸ The other amendments to Sarbanes-Oxley in the 2023 Appropriations Act relate to the timetable for trading prohibitions. See Section 301 of Division AA of the 2023 Appropriations Act (reducing, from three years to two years, the timetable for trading prohibitions set forth in Section 104(i)(3) of Sarbanes-Oxley). Because Rule 6100 does not address the timetable for such prohibitions, no related changes to Rule 6100 are necessary.

⁹ See HFCAA § 2(i)(2)(A)(ii), 15 U.S.C. § 7214(i)(2)(A)(ii) (providing that a Board determination as to a registered firm can be based only on a position taken by an authority in “the foreign jurisdiction described in clause (i),” that is, the foreign jurisdiction where a branch or office of the firm is located).

originally adopted, provided that a Board determination regarding its inability to inspect or investigate completely a registered public accounting firm could be based only on positions taken by authorities *in the foreign jurisdiction where the firm was headquartered* (for purposes of Rule 6100(a)(1)) *or in a foreign jurisdiction where the firm had an office* (for purposes of Rule 6100(a)(2)).¹⁰ Therefore, if the Board were unable to inspect or investigate a firm completely because of a position taken by an authority in a foreign jurisdiction where the firm neither was headquartered nor had an office, a determination under the HFCAA as to the firm could not be made.

The 2023 Appropriations Act amends Section 104(i)(2)(A)(ii) of Sarbanes-Oxley to allow the Board to make a determination as to a firm located in one foreign jurisdiction based on a position taken by an authority in a different foreign jurisdiction.¹¹ The Board is amending Rule 6100(a)(1) and (a)(2) to effectuate that change by replacing “in that jurisdiction” with “in a foreign jurisdiction” at the end of both provisions.

Amendments to Rule 6100(c) and (d). Relatedly, because future Board determinations could implicate two foreign jurisdictions—one where the firm is located and another whose authorities are taking positions that render the Board unable to inspect

¹⁰ See PCAOB Rule 6100(a)(1) (pre-amendment) (“The Board may determine that it is unable to inspect or investigate completely registered public accounting firms headquartered in a foreign jurisdiction because of a position taken by one or more authorities in *that* jurisdiction.”) (emphasis added); PCAOB Rule 6100(a)(2) (pre-amendment) (“The Board may determine that it is unable to inspect or investigate completely a registered public accounting firm that has an office that is located in a foreign jurisdiction because of a position taken by one or more authorities in *that* jurisdiction.”) (emphasis added).

¹¹ See Section 301 of Division AA of the 2023 Appropriations Act (striking “the foreign jurisdiction described in clause (i)” and inserting “a foreign jurisdiction” in Section 104(i)(2)(A)(ii) of Sarbanes-Oxley).

or investigate completely—the Board is amending Rule 6100(c) and (d) to eliminate potentially ambiguous or confusing references to “the foreign jurisdiction.” Specifically, the Board is deleting “in the foreign jurisdiction or any political subdivision thereof” in Rule 6100(c)(1); is replacing “any relevant authority in the foreign jurisdiction” with “any relevant foreign authority” in Rule 6100(c)(2); is replacing “the foreign authority’s” with “any relevant foreign authority’s” in Rule 6100(c)(3); and is deleting “located in the foreign jurisdiction” in Rule 6100(d).

Effective Date. The Board determined that the amendments to Rule 6100 take effect upon approval by the Commission. The effective date takes into consideration the statutory amendments to Sarbanes-Oxley and the limited, conforming nature of the changes to Rule 6100.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board’s Statement on Burden on Competition

Not applicable. The amendments to Rule 6100 reflect the statutory amendment to Section 104(i)(2)(A)(ii) of Sarbanes-Oxley.

C. Board’s Statement on Comments on the Proposed Rules Received from Members, Participants or Others

The Board did not solicit written comments on the proposed rules. The amendments to Rule 6100 reflect the statutory amendment to Section 104(i)(2)(A)(ii) of Sarbanes-Oxley.¹²

¹² The amendments to Rule 6100 do not require “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 issuers, nor do they impose any “additional requirements” on auditors. Section 103(a)(3)(C) of

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Within 45 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

- (A) by order approve or disapprove such proposed rules; or
- (B) institute proceedings to determine whether the proposed rules should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/pcaob.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include PCAOB-2023-01 on the subject line.

Paper comments:

Sarbanes-Oxley. Accordingly, the Board has concluded that Section 103(a)(3)(C) of Sarbanes-Oxley does not apply to this rulemaking.

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to PCAOB-2023-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/pcaob.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to PCAOB-2023-01 and should be submitted on or before [insert 21 days from publication in the *Federal Register*].

For the Commission by the Office of the Chief Accountant.¹³

Sherry R. Haywood,
Assistant Secretary.

¹³ 17 CFR 200.30-11(b)(1) and (3).