

**SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93527; File No. PCAOB-2021-01)**

November 4, 2021

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act

I. Introduction

On September 23, 2021, 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)¹ of the Sarbanes-Oxley Act of 2002 (as amended, the “Sarbanes-Oxley Act”) and Section 19(b)² of the Securities Exchange Act of 1934 (the “Exchange Act”), a proposal to adopt a new rule, PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act* (the “Proposed Rule”).³ The Proposed Rule was published for comment in the Federal Register on September 28, 2021.⁴ This order approves the Proposed Rule, which we find to be consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

¹ 15 U.S.C. 7217(b).

² 15 U.S.C. 78s(b).

³ See *Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, PCAOB Release No. 2021-004 (Sept. 22, 2021) (“PCAOB Adopting Release”), available at https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/rulemaking/docket048/2021-004-hfcaa-adopting-release.pdf?sfvrsn=f6dfb7f8_4.

⁴ See *Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule on Board Determinations Under the Holding Foreign Companies Accountable Act*, Release No. 34-93112 (Sept. 23, 2021) [86 FR 53699 (Sept. 28, 2021)].

II. Description of the Proposed Rule

On September 22, 2021, the Board adopted the Proposed Rule,⁵ which is intended to establish a framework for the Board's determinations under the Holding Foreign Companies Accountable Act (the "HFCAA") that the Board 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.

The Proposed Rule establishes:

- The manner of the Board's determinations;
- The factors the Board will evaluate and the documents and information the Board 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.

A. Applicability and Effective Date

The Proposed Rule will be effective promptly upon approval by the Commission.

III. Comment Letters

The comment period on the Proposed Rule ended on October 18, 2021, and we did not receive any comments on the Proposed Rule. The PCAOB received and considered public comments prior to adopting the Proposed Rule.

⁵ See *supra* note 3.

IV. Effect on Emerging Growth Companies

In the PCAOB Adopting Release, the Board concluded that Section 103(a)(3)(C) of the Sarbanes-Oxley Act does not apply to the Proposed Rule.⁶ Section 103(a)(3)(C) of the Sarbanes-Oxley Act 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 emerging growth company [EGC].”⁷ The provisions of the Proposed Rule do not fall into these categories.

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.” Since the Proposed Rule does not specify additional requirements for audits of EGCs, this provision does not apply to the Proposed Rule.

While we agree with the Board’s conclusion that Section 103(a)(3)(C) of the Sarbanes-Oxley Act does not apply to the Proposed Rule, we nonetheless believe the Proposed Rule 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. Specifically, by

⁶ See PCAOB Adopting Release at footnote 112.

⁷ 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 Release No. 33-10332 *Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act* (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)].

establishing a framework for the Board's determinations under the HFCAA and requiring firms to update their information promptly, all firms, including auditors of EGCs, and investors equally benefit from the transparency of the Board's determination set forth in the Proposed Rule.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rule and the information submitted therewith by the PCAOB. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rule is consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and is necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that Section 103(a)(3)(C) of the Sarbanes-Oxley Act does not apply to the Proposed Rule.

IT IS THEREFORE ORDERED, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rule (File No. PCAOB-2021-01) be and hereby is approved.

By the Commission.

Jill M. Peterson
Assistant Secretary