



**SECURITIES AND EXCHANGE COMMISSION**  
**[Release No. 34-102074; File No. PCAOB-2024-05]**

**Public Company Accounting Oversight Board; Order Granting Approval on Constructive Requests to Withdraw from Registration**

January 2, 2025

**I. Introduction**

On November 14, 2024, the Public Company Accounting Oversight Board (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 proposed amendment to PCAOB Rule 2107, *Withdrawal from Registration* (the “Amendment”).<sup>3</sup>

The Amendment was published for comment in the *Federal Register* on November 21, 2024.<sup>4</sup> The Commission received one comment letter from the public regarding the Amendment.<sup>5</sup> This order approves the Amendment, which we find to be consistent with the requirements of Title I of SOX and the rules and regulations issued thereunder and necessary or appropriate in the public interest or for the protection of investors.<sup>6</sup> The Amendment and the Commission’s findings with respect thereto are discussed in further detail below.

**II. Description of the Amendment**

On November 14, 2024, the PCAOB adopted the Amendment.<sup>7</sup> The Amendment was

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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 Constructive Requests to Withdraw from Registration*, Release No. 34-101644 (Nov. 15, 2024) [89 FR 92213 (Nov. 21, 2024)] (“Notice of Filing of Proposed Rules”), available at <https://www.sec.gov/files/rules/pcaob/2024/34-101644.pdf>.

<sup>4</sup> *Id.*

<sup>5</sup> A copy of the comment letter received on the Commission notice of the Amendment is available on the Commission’s website at <https://www.sec.gov/comments/pcaob-2024-05/pcaob202405.htm>.

<sup>6</sup> See section 107(b)(4)(A) through (B) of SOX, 15 U.S.C. 7217(b)(4)(A) through (B).

<sup>7</sup> See *Constructive Requests to Withdraw from Registration*, PCAOB Release No. 2024-011 (Nov. 14, 2024) (“Adopting Release”), available at [https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-054/2024-011-registration.pdf?sfvrsn=35f8b138\\_2](https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-054/2024-011-registration.pdf?sfvrsn=35f8b138_2).

preceded by a proposal on February 27, 2024, “Proposals Regarding False and Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration” (the “Proposing Release”).<sup>8</sup> The PCAOB’s process to develop the Amendment included consideration of the comments received on the Proposing Release.

In the Notice of Filing of Proposed Rules,<sup>9</sup> the PCAOB stated that it was proposing the Amendment to enhance its registration program by creating a more accurate public record of registered public accounting firms in operation that wish to remain registered.<sup>10</sup> Under current rules, a registered public accounting firm can be removed from PCAOB registration only if the PCAOB either: (1) authorizes a withdrawal from registration based on a firm-initiated withdrawal request<sup>11</sup> or (2) imposes a disciplinary sanction revoking the firm’s registration.<sup>12</sup> The Amendment establishes a new procedural mechanism to address situations in which a registered firm has ceased to exist, is nonoperational, or no longer wishes to remain registered, as demonstrated by its failures, for at least two consecutive reporting years, to both (1) file annual reports (PCAOB Form 2, *Annual Report*) and (2) pay annual fees.

The PCAOB explains that, despite repeated reminders, a consistent group of firms neither files annual reports nor pays annual fees each year.<sup>13</sup> The presence of continuously delinquent firms on its list of registered firms hinders several regulatory objectives, including the PCAOB’s ability to maintain an accurate public record of registered public accounting firms in operation and that wish to remain registered; to ensure that the information required on annual reports is being

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<sup>8</sup> See *Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration*, PCAOB Release No. 2024-001 (Feb. 27, 2024), available at [https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-054/2024-001-registration.pdf?sfvrsn=51869da\\_2](https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-054/2024-001-registration.pdf?sfvrsn=51869da_2).

<sup>9</sup> Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Constructive Requests to Withdraw from Registration, Release No. 34-101644 (Nov. 15, 2024) [89 FR 92213] (Nov. 21, 2024) (“Notice of Filing of Proposed Rules”), available at <https://www.sec.gov/files/rules/pcaob/2024/34-101644.pdf>.

<sup>10</sup> Notice of Filing of Proposed Rules at 7.

<sup>11</sup> Rule 2107 provides that a registered firm may request leave to withdraw from registration at any time by filing Form 1-WD.

<sup>12</sup> See Adopting Release at 2.

<sup>13</sup> *Id.* at 3.

reported to the public and the PCAOB; to collect mandatory annual fees; and to efficiently use staff time and resources.<sup>14</sup> With the Amendment, the PCAOB aims to have a reasonable, efficient, and equitable way of identifying and removing from registration firms that have ceased to exist, are nonoperational, or no longer wish to remain registered.<sup>15</sup>

The Amendment, which adds paragraph (h) to existing Rule 2107, allows the PCAOB to treat failures to both (1) file annual reports (PCAOB Form 2, *Annual Report*) and (2) pay annual fees, for at least two consecutive reporting years, as a constructive request to withdraw from registration, and to initiate a process to deem the firm’s registration withdrawn. To initiate the constructive withdrawal process, the PCAOB would furnish the firm with a written Notice of Delinquency and Impending Withdrawal (the “Notice”), designed to provide the firm with notice of the process, the reason for commencement of the process, and its significance for the firm’s registration.<sup>16</sup> The Notice would provide that the firm has 60 days to contact the PCAOB’s registration staff by email to avoid withdrawal.<sup>17</sup> The Notice would be sent to the firm’s primary contact, as identified in the firm’s most recent filing with the PCAOB on Forms 1, 2, 3, or 4, via mail or commercial courier service, and the PCAOB would obtain a confirmation of actual or attempted delivery.<sup>18</sup> In addition to the mailed Notice, the PCAOB would also publish notice of the impending withdrawal on its public website.<sup>19</sup>

### **III. Effective Date**

The Amendment will be effective initially for annual reports and annual fees that are due in 2025. This means that a registered firm that does not file an annual report and does not pay an

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<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 14.

<sup>17</sup> *Id.* at 16.

<sup>18</sup> *Id.* at 15.

<sup>19</sup> *Id.*

annual fee in 2025 and 2026 could have its registration deemed withdrawn under Rule 2107(h) beginning in the fall of 2026.

#### **IV. Discussion and Commission Findings**

##### *a. Existing Requirements and Current Non-Compliance*

Section 102(d) of SOX requires each registered firm to submit an annual report to the PCAOB, while section 102(f) directs the PCAOB to assess and collect annual fees from each registered firm. Registration of firms and collecting annual fees to recover the cost of processing and reviewing registration applications and annual reports<sup>20</sup> are important components of the framework that enables the PCAOB to fulfill its investor protection mandate. Despite the express statutory requirements set forth in SOX, and repeated reminders from the PCAOB, however, a consistent group of firms neither files annual reports nor pays annual fees each year.<sup>21</sup> Moreover, PCAOB data indicate that, over time, a number of firms have persistently failed to fulfill both annual obligations, with more than 50 firms in noncompliance for at least six consecutive years and 13 firms in noncompliance for 14 consecutive reporting years.<sup>22</sup> The PCAOB states that this pattern of delinquency may be a result of firms that have ceased to exist, are non-operational, or otherwise do not wish to remain registered.<sup>23</sup>

The presence on PCAOB's registration list of firms that continuously fail to meet their basic obligations to maintain registration hinders several important PCAOB regulatory objectives: maintaining an accurate public record of registered public accounting firms in operation that wish to remain registered; ensuring that the public has access to information required by the annual report; collecting fees to support operation of its registration program; and efficiently using staff time and resources.<sup>24</sup> We note that the PCAOB currently has only two mechanisms for removing a

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<sup>20</sup> See SOX section 102(f), 15 U.S.C. 7212(f).

<sup>21</sup> See Adopting Release at 3.

<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 4.

registered public accounting firm from PCAOB registration: (1) authorizing a withdrawal from registration based on a firm-initiated withdrawal request<sup>25</sup> or (2) imposing a disciplinary sanction revoking the firm’s registration.<sup>26</sup> Both mechanisms require some active engagement with the firms—they begin with either the firm initiating a request for withdrawal or the PCAOB’s Office of Secretary providing notice of an Order Instituting Disciplinary Proceedings to the firm, which may not be possible in circumstances where the firm has ceased to exist, is non-operational, or for some other reason fails to comply with the basic requirements of registration.<sup>27</sup> By allowing the PCAOB to deem a firm’s registration withdrawn under specified conditions and subject to certain procedural safeguards, the Amendment will help the PCAOB use its resources more efficiently and enhance its registration program by maintaining an accurate public record.

*b. Rule 2107(h) Mechanism for Constructive Withdrawal and Procedural Protections*

Under the new procedural mechanism in Rule 2107(h), the PCAOB would be able to deem a firm to have made a constructive request to withdraw if the firm has, for at least two consecutive reporting years, failed to both (1) file annual reports (PCAOB Form 2, Annual Report) and (2) pay annual fees.

Given that these represent two of the primary obligations of registered firms, we believe it is appropriate for the PCAOB to deem such failures as a constructive request to withdraw, and that in these circumstances the PCAOB should, with adequate procedural protections, take steps to withdraw such firm from registration. We note that the Rule 2107(h) process is discretionary, and the PCAOB has stated that its staff will continue to send warning letters each year to delinquent registered firms.<sup>28</sup>

The PCAOB concluded that the two-year benchmark is an appropriate proxy for firms that

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<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 6. To initiate withdrawal from registration, a registered firm must file a Form 1-WD. *See* Rule 2107(d), while a revocation begins with the PCAOB’s Office of the Secretary providing notice of an Order Instituting Proceedings to the firm. *See* PCAOB Rule 5201, *Notification of Commencement of Disciplinary Proceedings*.

<sup>28</sup> *See* Adopting Release at 14.

have ceased to exist, are non-operational, or no longer wish to remain registered, whereas one reporting year of delinquency was an insufficient basis upon which to infer that a firm no longer wished to remain registered, and three or more years may unduly delay appropriate regulatory action.<sup>29</sup> We agree that two years of delinquencies in complying with the basic obligations for registration of paying fees and filing reports strikes the appropriate balance of regulatory efficiency and fairness to firms.

As described above in more detail, to initiate the constructive withdrawal process, the PCAOB would furnish the firm with a written Notice of Delinquency and Impending Withdrawal (the “Notice”), to the firm’s primary contact as identified in the firm’s most recent PCAOB filing on Forms 1, 2, 3, or 4.<sup>30</sup> In addition to written notice, the PCAOB will also publish notice of the impending withdrawal on its public website.<sup>31</sup> We believe that these two methods are reasonably designed to provide firms with notice of the constructive withdrawal process, particularly in light of the fact that firms are required to maintain updated contact information.<sup>32</sup>

After the date the PCAOB sends the Notice, the firm has a 60-day period in which to send the PCAOB’s registration staff an email indicating that it wishes to remain registered to stop the constructive withdrawal process. In evaluating the sufficiency of the procedural protections, we note that a firm will have approximately two months to evaluate and respond to the Notice and that it is not required to become current in its filings or fees to stop the constructive withdrawal process; the firm need only send an email to the staff to stop the constructive withdrawal process. This relatively low barrier to stopping the process should help ensure that firms that are in existence, operational, and wish to remain registered are not removed pursuant to this procedural mechanism, which is intended principally to address delinquencies that are due to firms ceasing to exist or

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<sup>29</sup> *Id.* at 13.

<sup>30</sup> *Id.* at 15.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

operate, or otherwise no longer wishing to remain registered. In reaching this conclusion, however, we reiterate that, as observed by the PCAOB, violations of the PCAOB's reporting and fee requirements remain subject to enforcement.<sup>33</sup>

*c. Withdrawal from Registration*

If a firm does not notify the PCAOB that it wishes to remain registered in the 60-day period, the PCAOB is able to treat its consecutive failures for two years to file an annual report and pay annual fees as a constructive request to withdraw and to deem the firm's registration withdrawn. We note that, as a withdrawal-based mechanism, Rule 2107(h) is not a disciplinary proceeding or process, and, accordingly, withdrawal pursuant to this provision is not reported as a disciplinary sanction to any interested authorities.<sup>34</sup> Further, a firm whose registration is withdrawn, if it were in existence and operational notwithstanding the consecutive delinquencies triggering constructive withdrawal, would retain eligibility to perform work on audits of issuers or broker-dealers, provided such work remains below the substantial role threshold established by Rule 1001(p)(ii) and PCAOB Rule 2100.<sup>35</sup> Finally, a firm that has withdrawn from registration is permitted to reissue or give consent to the use of a prior audit report issued by the firm while registered with the PCAOB.<sup>36</sup>

The comment period closed on the Amendment on December 12, 2024. We received one comment letter, from an accounting firm. The commenter supported the Amendment, stating that the Amendment would create a more accurate public record of registered public accounting firms in operation that wish to remain registered.

**V. Effect on Emerging Growth Companies**

Section 103(a)(3)(C) of SOX requires that any rules of the PCAOB requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be

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<sup>33</sup> *Id.* at 13.

<sup>34</sup> *Id.* at 7.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

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 Emerging Growth Companies (“EGCs”).<sup>37</sup> The provisions of the Amendment 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.”<sup>38</sup> In the Notice of Filing of Proposed Rules, the Board expressed its view that section 103(a)(3)(C) does not apply to the Amendment because the Amendment does not impose any additional requirements on audits. To the extent that section 103(a)(3)(C) does apply, however, the Board recommended that the Commission determine that the Amendment apply to audits of EGCs.<sup>39</sup>

With respect to the Commission’s determination of whether the Amendment will apply to audits of EGCs, the PCAOB provided information, including data and analysis of EGCs, that sets forth its views as to why it believes the Amendment should apply to audits of EGCs. The PCAOB stated that an annual white paper prepared by its staff concluded that there were 3,031 companies that self-identified with the Commission as EGCs and filed audited financial statements in the preceding 18 months.<sup>40</sup> The PCAOB further stated that EGCs are likely to be newer companies, with audit committees having more limited experience in managing the process for finding and selecting a PCAOB-registered public accounting firm. Removal of consecutively delinquent firms,

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<sup>37</sup> 15 U.S.C. 7213(a)(3)(C). 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 under Titles I and III of the JOBS Act*, Release No. 33-11098 (Sept. 9, 2022) [87 FR 57394 (Sept. 20, 2022)], available at <https://www.sec.gov/files/rules/final/2022/33-11098.pdf>.

<sup>38</sup> *Id.*

<sup>39</sup> *See* Notice of Filing of Proposed Rules, Special Considerations for Audits of Emerging Growth Companies.

<sup>40</sup> *See* Notice of Filing of Proposed Rules (citing PCAOB Office of Economic and Risk Analysis, *Characteristics of Emerging Growth Companies and Their Audit Firms at November 15, 2022* (Feb. 20, 2024), available at [https://assets.pcaobus.org/pcaob-dev/docs/default-source/economicandriskanalysis/projects/other/documents/white-paper-on-characteristics-of-emerging-growth-companies-as-of-nov-15-2022.pdf?sfvrsn=a8294f3\\_4](https://assets.pcaobus.org/pcaob-dev/docs/default-source/economicandriskanalysis/projects/other/documents/white-paper-on-characteristics-of-emerging-growth-companies-as-of-nov-15-2022.pdf?sfvrsn=a8294f3_4)).

that are likely to be non-existent, non-operational, or no longer wish to be registered, could help reduce the search costs associated with making this decision. Further, the PCAOB indicated that it had no reason to believe that registered firms providing services to EGCs will incur costs that are greater than those incurred by firms providing services to non-EGCs, which are, in either case, likely to be incremental for operating firms that wish to remain registered. The PCAOB also noted that commenters agreed that the proposals generally should apply to audits of EGCs and that excluding the application of the proposals from audits of EGCs would be inconsistent with protecting the public interest.

We agree with the PCAOB's assessment as to the costs and benefits of the Amendment to EGCs. In particular, we agree that the Amendment may be of particular benefit to EGCs where audit committees may have less experience searching for and engaging audit firms, and may stand to benefit most from improved data quality as it relates to auditors. Accordingly, to the extent that section 103(a)(3)(C) applies, and 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 Amendment to the audits of EGCs is necessary or appropriate in the public interest.

## **VI. Conclusion**

The Commission has reviewed and considered the Amendment, the information submitted therewith by the PCAOB, the comment letter received, and the recommendation of the Commission's staff. The Commission concludes that the determinations made by the PCAOB as described in the Adopting Release are reasonable. The Amendment establishes an efficient procedural mechanism for the PCAOB to remove from registration firms that have ceased to exist, are non-operational, or no longer wish to remain registered. We agree that, as the PCAOB explains, the presence of continuously delinquent firms on the PCAOB's list of registered firms hinders several regulatory objectives, including its ability to maintain an accurate public record of registered public accounting firms in operation and that wish to remain registered; to ensure that

the information required on annual reports is being reported to the public and the PCAOB; to collect mandatory annual fees; and to efficiently use PCAOB staff time and resources.<sup>41</sup> The Amendment will provide the PCAOB with an efficient mechanism to achieve these regulatory goals, while, through various procedural safeguards, balancing the need for reasonable and fair notice to firms that do indeed wish to maintain their registration.

Therefore, in connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Amendment is consistent with the requirements of Title I of SOX and the rules and regulations thereunder and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, to the extent that section 103(a)(3)(C) of SOX applies, the Commission finds that the application of the Amendment 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 Amendment (File No. PCAOB-2024-05) be and hereby is approved.

By the Commission.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>41</sup> See Adopting Release at 4.