

June 5th, 2024

Office of the Secretary
Public Company Accounting
Oversight Board
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submitted via email to comments@pcaobus.org

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**Re.: PCAOB Rulemaking Docket Matter No. 055
PCAOB Release No.2024-003 of April 9th, 2024 “Proposing Release: Firm
Reporting”**

Dear Madam, dear Sir,

We would like to thank you for the opportunity to provide the PCAOB with comments on the PCAOB Release No. 2024-003 (hereinafter “the Release”).

In this letter, we firstly address general matters and then outline the key issues with which our members have concerns. We have chosen not to respond to specific questions.

General Matters

Support for a globally operable solution

The IDW broadly supports the aims of the PCAOB’s proposals. However, – as also stated in our letter to the PCAOB dated September 29th, 2015 – we consider a global solution that is sufficiently flexible to take account of different national environments as desirable.

We are pleased to note that the Release refers to the IDW’s own work in this area and to that of the European Organization, Accountancy Europe, of which IDW is a member. In regard to the IDW’s paper we would like to point out that references to disclosure of information to the public are made in respect of the transparency reports firms issue pursuant to European legislation. We would therefore urge the PCAOB to ensure that those firms in Germany that issue

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transparency reports are not subject to two sets of reporting rules. Instead, a mechanism should be established to allow cross referencing to information in firms' transparency reports where appropriate.

Potential for further flexibility to prevent disproportionate burdens

We are aware that, currently, many PCAOB-registered non-US firms from Germany audit few SEC issuers, if any. We are concerned that aspects of the proposals – similarly as would be the case for smaller US firms – could result in German PCAOB-registered firms being disproportionately impacted compared to PCAOB-registered US firms that are more active in this market to the extent that they would have to establish data collection systems beyond those already in place or as required for reporting under national or EU legislation. We urge the PCAOB to consider this aspect more fully in finalizing the proposals. We note that references are made to the ACAP final report in this context implying more flexibility than the PCAOB is currently proposing (see page 55 of the Release).

Key Concerns

Potential legal conflicts may constitute obstacles to disclosure of specific items

We support the fact that the PCAOB recognizes that providing certain information may not be possible due to legal conflicts (i.e., Form 2, item 1.4, e. and f.). However, potentially more information may be affected than acknowledged in the Release.

In this context, we strongly disagree with the stance taken by the PCAOB in the last sentence on page 21 of the release. Requiring non-US auditors to breach home country laws is not something the PCAOB is in a position to "allow" or "disallow". We therefore urge the PCAOB to acknowledge that any expansion of firms' reporting obligations need to be subject to Rule 2207 regarding legal conflicts to disclosure.

When introducing the registration and reporting rules, the Board recognized the potential for legal conflicts for non-US PCAOB-registered firms relating to the disclosure of certain data on Form 2 or Form 3. PCAOB Rule 2207 describes the requirements for non-US PCAOB-registered firms which assert such conflicts in relation to their ongoing reporting. The PCAOB's forms and systems reflect this Rule, e.g. through the inclusion of legal conflict boxes at the bottom of specific form pages, which may be selected in order to assert that there are relevant legal conflicts.

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Proposal Docket Matter No. 055 contains several further data points which may also be subject to non-US law legal conflicts. While at this stage it is not possible to identify unequivocally the full extent of these potential conflicts, we expect they are more likely to apply to items within the category of engagement (and thus individual) level metrics. We encourage the PCAOB to recognize the significance of conflicts with non-US law and to follow the same approach as has been successfully followed thus far with the operationalization of PCAOB Rule 2207.

If helpful to the Board for the review process, the IDW could provide an informal preliminary legal assessment of the data points which are more likely to trigger legal conflicts issues.

Leveraging domestic reporting

To the extent the metrics approved in any final rule are already subject to disclosure in the jurisdiction of a non-US registered firm, we suggest the PCAOB specify that it would be sufficient to cross-reference this domestic regulatory reporting, both for efficiency as well as to promote consistency of regulatory reporting. This would also address some of the interpretation and application challenges outlined in the following section.

Interpretation and data procurement challenges

We note a number of instances where the potential for differences in interpretation could be detrimental to comparability, further differences might also be due to cultural issues and the make-up of the profession etc. Below we explain why certain specific aspects of the proposals could be problematical:

In the context of the proposed reporting of “Audit Firm Governance Information” (Form 2 – Annual Report Form, Item 1.4 a.), we note that the identification of “all direct reports to” the “principal executive officer” could be interpreted in different ways. Are only other members of the executive board considered as “direct reports” or should this include e.g. the Chief of Staff or other administrative staff of the principal executive officer, too?

Furthermore, the disclosure of the names of individuals requested could violate non-US data privacy laws. Whilst, as stated above, the identification of potential legal conflicts would need further assessment and/or a legal opinion, the disclosure of names and roles which are otherwise published should be uncritical (e.g., disclosed names and roles in the annual financial statements required by German commercial law and/or in the transparency report required by EU regulation). As far as employees are concerned requiring the disclosure of names and roles could give rise to a legal conflict.

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In the context of the proposed reporting of “Fees Billed to Audit Clients and Other Financial Information” (Form 2 – Annual Report Form, Item 3.2.), the proposed fee disclosures cause disproportionate cost for restructuring of the accounting of a registered audit firm, especially for non-US audit firms with no or only a few issuer audit clients due to:

- The reporting period of the Annual Report from April 1st to March 31st next year is different from the financial year of most German audit firms (also all Big 4 audit firms). A cutoff of fees for services rendered in the reporting period would have to be established first. Furthermore, March 31st falls within the busy season for year-end audits and other calendar year-related assurance services which are completed around this cutoff day. Therefore, a considerable amount of service fees provided before the cutoff date is likely invoiced to the clients subsequently, adding calculation complexity.
- The proposed break-down of the fees has to follow the definitions in Rule 1001 of the PCAOB with special definitions for “Audit services” (Rule 1001(a)(vii)), “Other accounting services” (Rule 1001(o)(i)), “Tax services” (Rule 1001(t)(i)), and “Non-audit services” (Rule 1001(n)(ii)). The statutory accounting requirements applicable to a German audit firm do not provide revenue information in this specific classification.
- The Annual Report (Form 2) must be filed by June 30th. Considering the aspects above the available period of three months for invoicing and accounting the services rendered in the reporting period, preparing and reviewing of the required break-down, and preparing, reviewing and filing of the Annual Report seems to be very short.

In the context of the proposed reporting of “Audit-related Memberships, Affiliations, or Similar Arrangements” (Form 2 – Annual Report Form, Item 5.2 a. and b.), the reporting of (any) “network-related financial obligations of the registered firm (e.g., loans and funding arrangements to or from the network member firm)” could add an administrative burden.

In the context of the proposed “Material Events Reporting” (Form 3, Special Reporting Form, Item 8.1), the proposed reporting includes a very broad range of possible material events to be reported, which are defined so broadly that this aspect could lead to firms reporting on all material business decisions and related changes to revenue or liquidity, even if these do not pose a risk to the going concern position or the audit quality of the firm. This is further complicated by the fact that the events themselves may not be material and the materiality or otherwise of their impact may only become apparent over time. The costs of establishing new reporting mechanisms for the proposed “Material Events Reporting”, especially for firms with a few issuer clients, would greatly outweigh any potential benefits.

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Proposed reporting deadlines

In the context of the proposed shortened reporting deadline of fourteen days for the special reporting (Form 3 – Special Reporting Form, General Instructions, No. 3.), 14 calendar days (= 10 or less business days) would not allow sufficient time for the identification and internal reporting of a potential reportable event, analysis and assessment of the event and the reporting requirement, obtaining legal advice, and preparing, reviewing, approving, and filing of the special report. It should be considered that several people and roles are involved in this process. Furthermore, most of the reportable events outlined occur infrequently and unexpectedly, seldomly, or never. Maintain a permanent awareness for the special reporting requirements of the PCAOB throughout the whole organization is challenging. Therefore, we suggest that additional time is needed for the identification and internal reporting of such an event.

The same considerations apply for the proposed reporting of significant cybersecurity incidents within five business days. In practice, there may be delay between the incident and its detection. In addition, in the case of such an incident the firm's process from initial identification to final reporting proposed may be impaired by the incident (e.g., malfunction of e-mail communication etc.).

We would be pleased to provide you with further information if you have any additional questions about our response, and would be pleased to be able to discuss our views with you.

Yours truly,

Torsten Moser
Executive Director

Gillian Waldbauer
Head of International Affairs