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NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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202-737-0900  
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November 13, 2023

Submitted by email ([comments@pcaobus.org](mailto:comments@pcaobus.org))

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006

**RE: PCAOB Rulemaking Docket Matter No. 053**

Dear Sir or Madam:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),<sup>1</sup> I am writing in response to the *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability*, PCAOB Release No. 2023-007 (the “Proposal”), issued by the Public Company Accounting Oversight Board (“PCAOB”) on September 19, 2023.<sup>2</sup> The Proposal would amend PCAOB Rule 3502 governing liability of associated persons who contribute to a registered public accounting firm’s primary violation by (i) lowering the threshold for liability under Rule 3502 to negligence (from the current standard of recklessness) and (ii) clarifying that an associated person can be liable if their misconduct contributes to a primary violation at any PCAOB member firm. NASAA supports the Proposal as an appropriate adjustment to the PCAOB’s existing enforcement authority under Rule 3502.

Investors rely on audited financial statements to be an accurate and complete representation of a company’s financial condition. Federal and state securities laws require many companies to have their financial statements audited by PCAOB member firms. Since the PCAOB’s creation, the PCAOB has had the authority to bring enforcement actions against member firms upon a finding that the firm acted negligently. Rule 3502 as adopted by the PCAOB in 2005, though, has had an elevated recklessness standard for violations by associated persons of a member firm. This has led to the incongruous result that the PCAOB can find a member firm liable for violating

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<sup>1</sup> Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

<sup>2</sup> The Proposal is publicly available at <https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/053/pcaob-release-no.-2023-007-rule-3502-proposal.pdf>.

PCAOB rules but it cannot also find individuals who participated in the misconduct liable where the misconduct arose entirely through negligence. The Proposal would eliminate this incongruity.<sup>3</sup>

This is an appropriate change. The Proposal would buttress investors' expectation that accountants will be independent and diligent in their audit work. It is consistent with Congress's intent in Section 103(a) of the Sarbanes-Oxley Act that the PCAOB should establish appropriate ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports.<sup>4</sup> Furthermore, by equilibrating the liability standards for PCAOB member firms and their associated persons at negligence, the PCAOB will be aligning its enforcement authority with authority already possessed by the Securities and Exchange Commission in its enforcement actions<sup>5</sup> and by private plaintiffs in civil lawsuits.<sup>6</sup> NASAA accordingly encourages the PCAOB to adopt the Proposal.

Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,



Claire McHenry  
NASAA President and  
Deputy Director  
Nebraska Bureau of Securities

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<sup>3</sup> Proposal at 7.

<sup>4</sup> Pub. Law 107-204, 116 Stat. 745 (2002).

<sup>5</sup> See Proposal at 13.

<sup>6</sup> See Thomas C. Pearson, *Potential Litigation Against Auditors for Negligence*, 5 BKLYN. J. CORP. FIN. & COM. L. 405 (2011) (discussing civil suits for negligence filed against auditors).