

August 18, 2003

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Public Company Accounting Oversight Board
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VIA E-mail to Comments@pcaobus.org

Re: PCAOB Rulemaking Docket Matter No. 005
PCAOB Release No. 2003-012, July 28, 2003
(Proposed Rules on Investigations and Adjudications)

To PCAOB:

We appreciate the opportunity to offer comments to the Public Company Accounting Oversight Board (the “Board” or the “PCAOB”) on its proposed rules on investigations and adjudications. The Board is considering the proposed rules for adoption and submission to the Securities and Exchange Commission (the “Commission” or the “SEC”) pursuant to the Sarbanes-Oxley Act of 2002 (the “Act”).

The National Association of State Boards of Accountancy (NASBA) is the national organization of the accountancy regulators of all states and other U.S. jurisdictions (collectively, the “states”). NASBA’s member boards (the “State Boards”) are government agencies composed of both licensees and non-licensure public members. As the only authorities empowered to grant or revoke licenses of certified public accountants (CPAs), the State Boards understand the delicate balance between the need for swift discipline and the necessity of procedural fairness.

NASBA’s ongoing primary focus is upon rules and policies relating to enforcement (including the collection of information that will facilitate enforcement in appropriate cases), with special attention to fostering federal/state cooperation. We believe that close cooperation and a working partnership of the PCAOB and the SEC with NASBA and the State Boards will result in more effective regulatory efforts than otherwise would be achieved. We are pleased that the Commission Order approving PCAOB rules for a registration system expressly encouraged “continued close cooperation” between the PCAOB and state regulatory bodies.

I. General Comments.

In general, NASBA urges that these and other new regulations promote vertical clarity so that State Boards can easily translate PCAOB and SEC case results into swift, equitable and defensible disciplinary actions against licensed audit firms and individual licensees (or unlicensed firms or accountants for whom a license is required) implicated in violations. In so doing, the PCAOB and the SEC will be able to place greater practical reliance upon an effectively administered State Board

licensing and discipline function that puts offending licensees at risk of losing not just their SEC clients but their certificates and their livelihoods as CPAs.

We applaud the thoroughness and thoughtfulness of the proposed rules and the related substantial effort of the PCAOB board members and staff. We are pleased to see provisions in the proposed rules for cooperation of the PCAOB with the State Boards by providing information from informal inquiries and formal investigations as contemplated by the Act. However, as reflected in our specific comments below, we do note with some concern the possible implications of conditions that might limit the flow of information to State Boards that may be useful for their enforcement activities. We urge, and trust, that the PCAOB will exercise its discretion so that it generally will forward information in a spirit of mutual cooperation between the PCAOB and the State Boards.

II. Comments on Selected Provisions of the Proposed Rules.

Proposed Rule 5108. Confidentiality of Investigatory Records.

Proposed Rule 5108 provides that the PCAOB may make information from informal inquiries and formal investigations available to, among others, any appropriate state regulatory authority, “in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of the Act or to protect investors” (which condition follows the language of Section 105(b)(5)(B)(ii) of the Act). We believe that in most instances the sharing of such information with appropriate State Boards would be *necessary* to protect investors fully. For example, in the case of professional misconduct by an individual CPA, the PCAOB can suspend or bar such person from being associated with a registered public accounting firm (and in the case of professional misconduct by the firm can suspend or revoke the registration of the firm with the PCAOB). However, it would take action by a State Board to suspend or revoke that individual’s license to practice as a CPA (or that firm’s license to practice as a CPA firm). Certainly if there is egregious professional misconduct by the person or the firm, State Board action regarding his or her license to practice (or the firm’s license to practice) should be taken without delay. Further, even if the professional misconduct is not egregious, it would still be appropriate for the PCAOB to facilitate prompt State Board focus on the matter. For example, State Boards may impose suitable remedial requirements upon the individual or firm such as practice limits, pre-issuance reviews, accelerated peer reviews or reprimands. Regardless, prompt State Board action would be *necessary* to protect investors in entities that are not SEC issuers from the risk that a CPA suspended or barred from being associated with a registered public accounting firm (or that a firm whose registration is suspended or revoked) could become involved in audits for entities that are not SEC issuers. Evidence of individual unethical conduct can cast a shadow upon all levels of professional regulation, consumer protection and public confidence.

We believe that in most instances the sharing of information from informal inquiries and formal investigations with appropriate State Boards would be necessary and appropriate. We trust that the PCAOB generally will forward information in a spirit of mutual cooperation between the PCAOB and the State Boards.

Proposed Rule 5112. Coordination and Referral of Investigations and Possible Additional Rule Regarding Reporting of Sanctions

Proposed Rule 5112(c) provides that at the direction of the Commission, the PCAOB may refer an investigation to, among others, an appropriate state regulatory authority. We are pleased to see this provision (which is parallel to Section 105(b)(4)(B)(iii) of the Act) included in the proposed rules.

We believe it also would be useful to provide with similar clarity in the rules for PCAOB reporting of sanctions to any appropriate state regulatory authority, as provided in Section 105(d)(1)(B) of the Act. [This section of the Act provides that if the PCAOB imposes a disciplinary sanction, it shall report the sanction to, among others, “any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified.”]

However, as contemplated in our other comments, we believe that the most important areas for cooperation in federal and state enforcement activities include coordination of investigations and related sharing of information. We hope, and trust, that the PCAOB will pursue a policy of information sharing in a spirit of mutual cooperation between the PCAOB and the State Boards.

Proposed Rule 5420. Leave to Participate to Request a Stay

Proposed Rule 5420 (in the set of prehearing rules) provides that the PCAOB or the hearing officer may grant leave to participate on a limited basis only to an authorized representative of the Commission, the United States Department of Justice, a United States Attorney or a criminal prosecutorial authority of a state or political subdivision of a state for the purpose of requesting a stay of a hearing. The proposed rule further provides that a stay shall be granted upon a showing that it is necessary to protect an ongoing Commission investigation. A stay otherwise would be favored upon a showing that it is in the public interest or for the protection of investors.

We urge that the PCAOB add appropriate state regulatory authorities to the list of persons that may be granted leave to request a stay. The State Boards generally are more actively involved in the discipline of licensed accountants and firms than are state criminal authorities. Violation of accountancy laws in most states constitute crimes, but some State Boards are not, by statute, “criminal prosecutorial authorities.” However, we expect that only rarely would a State Board need to request a stay; and the decision whether to grant the stay would remain with the PCAOB. Thus, we request that the PCAOB revise the proposed rule to contemplate the possibility of a State Board seeking a stay rather than attempting to preclude that possibility.

Conclusion. NASBA appreciates the opportunity to provide these comments. Should you have questions about our thoughts on the proposed rules or other matters, please contact us. We look forward to ongoing communication and cooperation with the PCAOB and the SEC.

Sincerely,



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President / CEO



K. Michael Conaway, CPA
Chair, NASBA