

Office of the Secretary

Public Company Accounting Oversight Board

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To the Secretary :

This commenter has reviewed PCAOB Release No. 2021 – 001. While it is a privilege to be able to comment and give feedback on these matters, please note the following question stems and responses on the subject of the proposed Rulemaking Document Matter No. 048. Responses to questions are as follows :

a. Is it appropriate to limit jurisdiction-wide determinations to registered firms headquartered in the jurisdiction? If not, what should be the scope of jurisdiction-wide determinations under the proposed rule? Limiting jurisdiction – wide determinations to registered firms headquartered in a particular sovereign jurisdiction should not be construed as creating cross – border legal compliance requirements, statutory in nature, that are legislated and enforced from outside the jurisdiction. By this, jurisdictional agreements on Rule 6100 should include language that non – U.S. rules parallel U.S. rules under the circumstances and that enforcement of HFCAA rules in cross – border situations, given the parallel legal provisions, should be at least at first initiated by authorities in the non – U.S. jurisdictions given the non – U.S. statutory parallels.

b. Is it appropriate for the Board to look, in the first instance, at registered firms' required filings with the Board to determine where a firm is headquartered? If not, what information should the Board consider to determine where a firm is headquartered? The Board should look not only at the registered firms' required filings with the Board and with home – rule regulators to determine where a firm is headquartered, but the economic substance and materiality with respect to the economic size of the reporting entity within a jurisdiction should also play a role in determining where the firm has its headquarters.

c. Is the proposed rule's framework of jurisdiction-wide and individualized determinations an appropriate approach to Board determinations under the HFCAA? Does the proposed rule make sufficiently clear the distinction between the jurisdiction-wide determinations contemplated by subparagraph (a)(1) and the individualized determinations contemplated by subparagraph (a)(2)? If not, what additional guidance or clarity would be useful? The proposed rule's framework of jurisdiction – wide and individualized determinations is an appropriate, constructive approach to Board investigations and determinations under the HFCAA while the Board should include language in the rules, for instance, in the event of agency considerations or if the investigation examines a firm contractor or sub – contractor auditor. It also appears the Board went to considerable lengths to distinguish between the auditor as headquartered in a specific jurisdiction or as having an office in a specific jurisdiction. In this one finds the distinction between a headquartered firm and an office such as a regional or cross – border office is easily distinguishable.

d. Is it appropriate for the Board to look, in the first instance, at a registered firm's required filings with the Board to determine where the firm's offices are (firms are required to identify all of their offices when they first register with the Board ...) located? If not, what information should the Board consider to determine where a firm's offices are located? In determining where the firm's offices are located, the Board should first look at the firm's required filings with the Board and then any related documentation such as charters and the auditor's other certified documents to confirm cross – border or non – U.S. office locations.

e. As noted in footnote 83, although the HFCAA refers to a "branch or office" of a registered firm, subparagraph (a)(2) of the proposed rule refers only to an "office." Is it appropriate to refer only to an "office" in subparagraph (a)(2)? If not, what distinction should the Board recognize between a "branch" and an "office" in this context? Under the circumstances where a branch has its own books and records and an office might not, a distinction between "branch" and "office" should be made in subparagraph (a)(2) between these two distinct types of entities simply based upon the financial reporting status of the "branch" as with its own accounting system separate from but connected to headquarters and whereas an "office" is by this a different entity if not just given its implied smaller economic size and substance compared with the "branch".

f. Is this approach to the timing of Board determinations appropriate? Should the Board take a different approach to the timing of its determinations? Should the Board consider changes in facts and circumstances more or less frequently than annually (e.g., semi-annually or biennially)? Given the consideration that the board examine facts and circumstances as to changes in filings and their timing, annual consideration of firm headquarters, "branch", and "office" locations seems appropriate at this time. It is important that the Board also consider the overall importance of "branch" and "office" locations to the headquarters in examining the

economic substance and materiality of these to headquarters activities and locations within a jurisdiction.

g. The Board, when determining whether it can “inspect or investigate completely” under the HFCAA, would assess whether a position taken by a foreign authority impairs the Board’s ability to execute its statutory mandate with respect to inspections or investigations. Are there other benchmarks the Board should consider using to determine whether it can inspect or investigate completely? Factors that include benchmarks to consider in whether an inspection or investigation can be completed or is complete have to do with the nature, timing and extent of examination and then investigation functions and the overall value of these to any Board findings. The background of this can be determined in the inspection planning process and using risk assessment in combination with PCAOB inspection and investigation abilities and capabilities as assessed for the statutory mandate with respect to firms with more than a hundred issuers and those with a hundred or less.

h. To determine whether the Board can “inspect or investigate completely” under the HFCAA, the proposed rule provides that the Board will look to three factors. Are the three factors identified in paragraph (b) of the proposed rule appropriate and sufficiently clear? Is there any additional guidance or clarity the Board should provide with respect to those factors? Are there other factors the Board should consider using to determine whether it can inspect or investigate completely? The three factors considered for the proper and appropriate completion of inspections and investigations as illustrated in paragraph (b) of the proposed rules are appropriate and clear insofar as compliance with the rules of the HFCAA and in the inspections and investigations selection process that is called for given the provisions of Rule 6100. Certainly, however, the Board cannot be expected to investigate audit matters while carrying on an examination as these are distinct activities and functions and investigations are to follow examinations in time, usually. Any refusal by non – U.S. authorities to comply with a Board inspection or investigation should be minimized by efforts at jurisdictional and statutory parallels and resolutions in cross – border facts and circumstances.

i. Is there any additional guidance or clarity that the Board should provide with respect to the basis for a Board determination? Paragraph (c) of Rule 6100 seems to provide adequate and substantive guidance on responses to situations, facts and relevant circumstances having to do with possible impairment(s) in the execution of the Board’s mandate with respect to inspections and investigations.

j. Should the Board’s reports to the Commission contain any other information in addition to the information specified in subparagraph (e)(1) of the proposed rule? The inspection and

examination reports to the Board should be according to an analysis of the three factors in paragraph (b) and the Board's ability to conduct and complete inspections and investigations. These reports should contain relevant information as to determinations under Section 101 of the Sarbanes – Oxley Act and any descriptions and reasons why the Board cannot execute its inspections and investigations mandate : While the reports by the Board will contain analyses of the relevant inspection and investigation matters and factors set forth in paragraph (b) as well as the basis for the Board's conclusions, the subject mater firm in the investigation should be identified in said reports by its registered firm name and identification number.

k. Are there any considerations the Board should take into account when determining where on the Board's website to post copies of the Board's reports to the Commission? Provided the Board's reports comply with paragraph (b) provisions and related provisions such as paragraph (e) and Sarbanes – Oxley Act Section 105 as well as related confidentiality and secrecy rules, Rule 6100 provides adequately for the posting of paragraph (b) reports, perhaps in a section of the Board's website dedicated to these reports.

l. Apart from posting the Board's reports to the Commission on the Board's website, should the Board also indicate on a registered firm's profile in the Board's Registration, Annual, and Special Reporting System that the firm is subject to a Board determination under the HFCAA? The Board should also disclose on a registered firm's profile any information having to do with a Board determination under the HFCAA. This meets with the necessity to make such information and related details readily, and publicly available and accessible.

m. Is subparagraph (e)(2)'s approach to confidentiality considerations clear and appropriate? Are there any other grounds upon which the publicly available copy of a Board report to the Commission might need to be redacted? The subparagraph (e)(2)'s approach to confidentiality considerations is clear and succinct, and appropriate and in the event of legal protection, a report would "be redacted if it contained proprietary, personal, or other information protected by applicable confidentiality laws." The availability of such content while subject to legal protection could also be made available publicly if legal provisions allow in the event of legal matters subsequent to the report are found to be bearing upon the report and requirements call for public disclosure of the relevant records.

n. Besides posting a copy of the Board's report to the Commission on the Board's website, should the Board notify stakeholders about Board determinations under the HFCAA by other means? If so, which stakeholders should receive such notice, and when and how should it be provided? Specifically, should registered firms that are subject to a Board determination receive notice of such determination, and if so, when and how should it be provided? Stakeholders, given the duty of the Board to them, given determinations under the HFCAA and other related rules should be

informed of the Board determinations by way of press release, or the auditing entity should send a relevant and illustrative memorandum to stakeholders notifying them of Board scrutiny within a reasonable time (to be determined) after the completion and posting of the paragraph (b) report. Registered firms are a stakeholder in the inspection and investigations process and should be thus informed in the same way as other stakeholders in the jurisdiction examined.

o. Should the Board continue its practice of publishing the Denied Access List on its website? If so, should any changes be made to the Denied Access List to avoid potential confusion with the Commission's identification of covered issuers under the HFCAA or with the disclosures provided by covered issuers under the HFCAA and the Commission's rules? The Public Company Accounting Oversight Board should continue to publish its Denied Access List on its website with references to identification of those subject to inspections and investigations and related results and findings.

p. Is it appropriate to have Board determinations become effective on the date the Board issues its report to the Commission? If not, when should Board determinations take effect? Unless otherwise declared or stated in an inspection or investigation report, Board determinations should become effective on the date of issue to the Commission.

q. Should the proposed rule provide registered firms with a mechanism to provide relevant information to, or to seek reconsideration or reevaluation by, the Board with respect to a Board determination? If so, when should such a process be available, what procedures should it entail, and how could it be administered so as not to interfere with the ability of the Board and the Commission to discharge their responsibilities under the HFCAA on a timely basis? The proposed rule provides an overall outline with relevant information on seeking reconsideration or reevaluation by the Board with respect to a Board determination. The timing as reasonable in the reconsideration or reevaluation process should be the subject of further individualized determinations by the Board given the availability of resources including human resources, if not then subject to Commission rules and guidelines and the rules and guidelines of applicable administrative law.

r. Is subparagraph (h)(1)'s annual consideration of changed facts and circumstances clear and appropriate? Should the Board consider changes in facts and circumstances more or less frequently than annually (e.g., semi-annually or biennially)? Should the Board publicly report the outcome of this process whenever the Board decides that reassessment of a prior determination is not warranted or that a prior determination should not be modified or vacated? The guidance on annual consideration of changed facts and circumstances is clear and appropriate. This annual consideration should prevail apart from possible ad hoc considerations concerning the reconsideration and reevaluation processes for firms with a

hundred or more issuers, and the economic importance or weight of the Board determination and the resolve of the firm to redress any findings.

s. Should the Board provide any additional guidance or clarity regarding the Board's process for modifying or vacating a prior determination? Should the Board's report regarding a modified or vacated determination contain any information not already specified in the proposed rule? The Board does not need to provide any additional guidance nor clarity considering the process for modifying or vacating a prior determination as completed and submitted to the Commission. Given the possible economic magnitude and legal importance, especially jurisdictional importance of the modification of, or vacatur of a report, the Board might elect to issue a press release indicating relevant details as to the vacatur of, or modifications to its previous determination(s).

t. Is the process described in paragraph (h) of the proposed rule sufficient to monitor the continued justification for a prior determination? Should the Board instead specify a termination date (e.g., three years, five years, ten years) prior to which the Board must formally renew or reissue a prior determination for that determination to remain in effect? The process described in paragraph (h) of the proposed rule is sufficient to monitor the continued justification for a previous Board determination, and this commenter believes overall the Board determination and findings should stand until the report is vacated or modified given the vacatur and modification process described in Rule 6100.

u. Does the Board's analysis of the potential economic impacts of the proposed rule adequately address the benefits and costs of the proposed rule? Some regulators have the long – held reputation of caring little for their stakeholders and caring even less about the economic consequences of their rulemakings. This commenter believes the well – reasoned Board analysis of the proposed rule addresses the benefits and costs of the proposed rule and this has to do with the jurisdictional approach and range of Rule 6100 as enhancing capital formation, possibly reducing overall audit risk for firms; and in jurisdictions where the bigger audit firms allow for larger and larger entities, allowing for greater effectiveness and efficiencies of audit work. This guidance also leaves some oversight issues un – resolved whereas issuers are not infrequently in the mood to find new accountants anyway, these rules might have only a marginal effect. Overall, this guidance reduces one's sense of regulatory uncertainty and related contingencies on the subject of financial - legal jurisdictions and rules first, and audits second.

v. Is the Board's existing exemption authority adequate, or should the proposed rule include a process that would enable the Board to grant exceptions from a

jurisdiction-wide determination? If the latter, what factors should the Board take into account when considering exceptions, and how could an exception process be structured and implemented to address the concerns identified above? While the Board is not in the business of legislating statutes and rules to control international finance and related reporting, the proposed rule should include a mechanism for having determinations removed through process and due diligence, instead of allowing for facts and circumstances that are in determinations, even very adverse ones, influence removal of the determination(s) themselves through exemptions. This commenter suggests the Board, in its enlightened view of things, has chosen a very wise petitioning process for the resolution of the results of any determination instead of (again) allowing for exemptions. One factor that should be examined given any consideration by the Board for an exemption policy is the status and various initiatives of the firm entities in any particular jurisdiction that are before the U.S. Internal Revenue Service. Tax considerations often do not completely, nor do they always parallel financial ones, though at times finance is heavily influenced by tax attributes and tax status. The way transactions are treated for tax vis – a – vis their financial accounting treatment is a case in point in these matters. Also, any consideration of exemptions should not whatsoever evoke the idea that as soon as the Board issues a determination that it will hold itself out then of availing firms in particular jurisdictions of exemptions given findings in the Board inspection and investigation reports.

By,

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