

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSE-2024-31 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2024-31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official

give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-31 and should be submitted on or before December 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Stephanie J. Fouse,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-101644; File No. PCAOB-2024-05]**

### Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Constructive Requests To Withdraw From Registration

November 15, 2024.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley," or the "Act"), notice is hereby given that on Thursday, November 14, 2024, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rules described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

#### I. Board's Statement of the Terms of Substance of the Proposed Rules

On November 14, 2024, the Board adopted *Constructive Requests To Withdraw from Registration* ("proposed rules"). The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b-4 and is available on the Board's website at <https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-054> and at the Commission's Public Reference Room.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

#### II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, to the extent that Section 103(a)(3)(C) of the Act applies to the proposed rules, the Board is requesting that the Commission approve the proposed rules, pursuant to that provision, for application to audits of emerging growth companies ("EGCs"), as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 ("Exchange Act"). The Board's request is set forth in section D.

##### A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

###### (a) Purpose

To further enhance the PCAOB's registration program, the Board adopted an amendment to its rule regarding withdrawals from registration. The amendment establishes a new procedural mechanism that will enable the Board 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 to file annual reports (PCAOB Form 2, *Annual Report*) and pay annual fees for at least two consecutive reporting years. Until now, a firm could be removed from PCAOB registration only if the Board either (1) authorized a withdrawal from registration based on firm-initiated withdrawal request or (2) imposed a disciplinary sanction revoking the firm's registration. The amendment the Board adopted introduces a third procedural mechanism for removing a firm from PCAOB registration. It builds on the existing framework of firm-initiated withdrawal requests under PCAOB Rule 2107, *Withdrawal from Registration*, by creating a process that treats consecutive delinquencies as a constructive request from a firm for leave to withdraw from registration. New paragraph (h) ("*Constructive Withdrawal Requests*") of Rule 2107 will allow the Board, under certain conditions, to update its registration records by (1) treating a firm's failure both to file annual reports and to pay annual fees for at least two consecutive

reporting years as a constructive request by the firm for leave to withdraw from registration, and (2) deeming the firm's registration withdrawn.

If approved by the Commission, Rule 2107(h) will take effect initially for annual reports and annual fees that are due in 2025, meaning that a registered firm that does not file an annual report and does not pay an annual fee for both the 2025 and 2026 reporting years could be deemed withdrawn from registration under Rule 2107(h) beginning in the fall of 2026.

See Exhibit 3 for additional discussion of the purpose of this project.

#### (b) Statutory Basis

The statutory basis for Rule 2107(h) is Title I of the Act, and, specifically, Section 102 of the Act (registration) and Sections 101(c)(1), (c)(5), (f)(6), and (g)(1) of the Act (duties, powers, and rules of the Board). Rule 2107(h) directly relates to the Board's statutory duties and the purposes for its establishment.

#### B. Board's Statement on Burden on Competition

Not applicable. The Board's consideration of the economic impacts of the proposed rules is discussed in section D below.

#### C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board initially released the proposed rules for public comment in PCAOB Release No. 2024-001 (February 27, 2024).<sup>1</sup> The Board received 18 written comment letters relating to its initial proposed rules. See Exhibits 2(a)(B) and 2(a)(C). The Board adopted its proposed amendment to Rule 2107 with modifications to address comments it received. The Board is continuing to consider next steps relating to other aspects of the initial proposed rules that the Board did not adopt on November 14, 2024. The Board has carefully considered comments received on proposed Rule 2107(h). The Board's response to the comments it received, and the changes it made to the initial proposed rules in response to the comments received, are discussed below.

#### Background

Each year, a registered firm must file an annual report with the Board and pay

an annual fee to the Board.<sup>2</sup> Despite repeated reminders, a consistent group of firms neither files annual reports nor pays annual fees each year. The PCAOB's Registration staff devotes resources each year to sending multiple communications to these firms, but these efforts have repeatedly failed to yield the required annual reports and annual fees from this persistent group of delinquent firms. As of August 31, 2024, data show that 80 registered firms did not file annual reports and did not pay annual fees for both the 2022 and 2023 reporting years.<sup>3</sup>

To be clear, the 80 registered firms in question were not merely *late* in filing their annual reports and paying their annual fees by the respective due dates. These firms have not filed annual reports and have not paid annual fees *at all* for both the 2022 and 2023 reporting years. It is possible that many of these firms either may no longer exist or may not understand that they remain registered with the PCAOB, given their consecutive failures to file annual reports and pay annual fees. The PCAOB staff believes that these firms include, for example, sole proprietorships that remain registered even though the sole proprietor has died; firms that registered with the Board years ago but now appear to be defunct; and small firms, often in foreign countries, that cannot be reached through the primary contact person designated by the firm.<sup>4</sup> Additionally, the PCAOB staff believes that none of these 80 firms has recently

issued an audit report for an issuer.<sup>5</sup> For 79 of these firms, there is no indication that they have recently played a substantial role in issuer audits.<sup>6</sup> This suggests that, with respect to the vast majority of consecutively delinquent firms—79 of the 80 identified firms—there is no indication of recent engagement in services requiring PCAOB registration.

The presence of consecutively delinquent firms on the Board'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 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. Before now, the PCAOB has lacked an effective procedural mechanism to deal with such firms. The prior framework offered only two methods of removing a firm from PCAOB registration: (1) the Board authorizing a withdrawal based on a firm-initiated withdrawal request,<sup>7</sup> and

<sup>5</sup> Based on Audit Analytics data, PCAOB staff analyzed audit reports issued between January 1, 2021, and August 31, 2024, which covers the 2022 and 2023 reporting years. The terms "audit," "audit report," "issuer," "broker," and "dealer" are used as defined in the Act and PCAOB Rule 1001, *Definitions of Terms Employed in Rules*. The term "broker-dealer" refers to entities registered with the SEC as either a "broker" or a "dealer," or both.

<sup>6</sup> Without a firm's own Form 2 reporting, it is challenging for the PCAOB staff to conclusively determine whether a firm has played a substantial role in preparing or furnishing an audit report for an issuer or broker-dealer. Based on a review of Form AP data, the PCAOB staff noted that one of the 80 firms that did not file annual reports and did not pay annual fees for both the 2022 and 2023 reporting years was reported by another registered firm as potentially playing a substantial role in issuer audit reports issued in 2022, 2023, and 2024. However, the inferences that the PCAOB can draw from this are limited by the constraints inherent in Form AP reporting: (1) only the firm that issues the audit report to the issuer files Form AP, and it alone identifies "other accounting firm" participants and the audit hours attributable to those firms; and (2) for purposes of Form AP reporting, an "other accounting firm" is categorized as a participant in an issuer audit if any of its principals or professional employees performed work on the audit that was supervised by the firm that issues the audit report, irrespective of whether the "other accounting firm" itself participated in the audit. Therefore, after reviewing available data, the PCAOB staff has not found any indications that 79 of the 80 firms have recently engaged in any services requiring PCAOB registration, and the participation of the remaining firm in such services remains uncertain due to the characteristics of Form AP reporting.

<sup>7</sup> Pursuant to PCAOB rules, subject to certain limitations, a firm's registration with the Board is deemed withdrawn if the firm requests leave to withdraw by filing Form 1-WD, *Request for Leave to Withdraw from Registration*, and (i) the Board grants leave to withdraw, or (ii) the Board does not, within 60 days of receipt of the request, order that

<sup>2</sup> See PCAOB Rule 2200, *Annual Report*; PCAOB Rule 2202, *Annual Fee*.

<sup>3</sup> Figure 3 of the Proposing Release reflected 87 registered firms, as of December 31, 2023, that did not file annual reports and did not pay annual fees for both the 2022 and 2023 reporting years. By August 31, 2024, this number decreased to 80 firms. Five of the original 87 firms withdrew from registration in 2024, removing them from PCAOB registration as of August 31, 2024. Based on the PCAOB staff's analysis of data from Audit Analytics and PCAOB Form AP, *Auditor Reporting of Certain Audit Participants*, there is no indication that these five firms have performed any services for issuers requiring PCAOB registration between January 1, 2021, and August 31, 2024. Additionally, two of the original 87 firms addressed their prior noncompliance by filing their annual reports and paying their annual fees for the 2022 and 2023 reporting years after the due dates had passed, thus these firms are also no longer included in the analysis. Although five firms withdrew from registration and two firms are no longer delinquent, it is difficult to attribute this behavior directly to the Proposing Release. Moreover, this subset of firms is small compared to the 92 percent of firms (80 out of 87) that continue to exhibit a pattern of delinquency spanning at least two consecutive reporting years.

<sup>4</sup> See Figure 1 for a breakdown by firm type of the 80 firms that did not file annual reports and did not pay annual fees for the 2022 and 2023 reporting years.

<sup>1</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) ("Proposing Release").

(2) the Board instituting formal disciplinary proceedings that could lead to the revocation of the firm's registration due to violations of laws, rules, or standards that the Board is charged with enforcing.<sup>8</sup>

As discussed below, the Board believes a "constructive withdrawal request" mechanism will provide the PCAOB with 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. After furnishing a consecutively delinquent firm with written notice and 60 days to contact the Registration staff, the new provision of the PCAOB's rule relating to withdrawal from registration permits the Board to treat a firm's failure both to file annual reports and to pay annual fees for at least two consecutive reporting years as a constructive request by the firm for leave to withdraw from registration, and to deem the firm's registration withdrawn. As indicated above, updating the PCAOB's registration records through this process will promote the quality of information by removing from registration firms that have ceased to exist, are nonoperational, or no longer wish to remain registered.

#### Discussion

The PCAOB added a provision to an existing rule to advance the PCAOB's investor protection mission and to enhance the Board's registration program by creating a more accurate public record of registered public accounting firms in operation that wish to remain registered.

Specifically, the PCAOB adopted an amendment to an existing rule to add a new provision that will permit the Board to deem a firm's registration withdrawn—under specified conditions and subject to enumerated safeguards—if the firm fails to file its annual reports and to pay its annual fees for at least two consecutive reporting years. This dual condition, involving the lack of *both* annual report submission *and* annual fee payment over two consecutive reporting years, is designed to identify and remove from registration firms that have ceased to exist, are nonoperational, or no longer wish to remain registered.

withdrawal of the firm's registration be delayed. See Rule 2107(a).

<sup>8</sup> Under Section 105(c)(4) and (5) of the Act and PCAOB Rule 5300, *Sanctions*, the Board can revoke a firm's registration as a sanction in a Board disciplinary proceeding under certain circumstances. See Rule 1001(r)(ii) (defining "revocation" as "a permanent disciplinary sanction terminating a firm's registration").

Until now, the PCAOB has had no effective and efficient procedural mechanism to withdraw consecutively delinquent firms from registration. As noted above, under the Board's current rules, there are only two ways for a registered firm to depart from PCAOB registration. One is a firm-initiated withdrawal: a firm seeking to withdraw from registration can file a form requesting leave to withdraw.<sup>9</sup> The other is revocation: when appropriate, a firm's registration can be revoked as a sanction in a Board disciplinary proceeding upon a finding of intentional, reckless, or repeatedly negligent conduct.<sup>10</sup>

Withdrawal and revocation often suffice as methods for managing the PCAOB's registration records, but each of these paths depends on some form of active engagement with the registered firm. They begin either with the firm filing a withdrawal request or with the PCAOB's Office of the Secretary providing notice of an Order Instituting Disciplinary Proceedings ("OIP") to the firm.<sup>11</sup> In some circumstances, however, such as when a firm that has ceased to exist or is nonoperational or for some other reason consecutively fails to file its annual reports and pay its annual fees, it may not be possible to actively engage with that registered firm. To account for such situations, the Board believes there should be a procedural mechanism for the Board to update the PCAOB's registration records.

Building on the Board's current withdrawal framework in Rule 2107, the

<sup>9</sup> Rule 2107 provides that a registered firm may request leave to withdraw from registration at any time by filing Form 1-WD. Withdrawal, however, is not immediately effective; the Board may order that withdrawal be delayed while the Board carries out an inspection, investigation, or disciplinary proceeding. See Rule 2107(d). After a firm's registration is withdrawn, the firm is permitted to participate in audits of issuers or broker-dealers and otherwise associate with registered firms only so long as the withdrawn firm's participation falls below the "substantial role" threshold. See Rule 1001(p)(iii). A firm that withdraws from registration and later decides that it wishes to re-register must reapply for registration by filing a new PCAOB Form 1, *Application for Registration*.

<sup>10</sup> After the Board revokes a firm's registration, the firm is not permitted to participate in audits involving issuers or broker-dealers or otherwise associate with a registered firm; even participation that falls below the "substantial role" threshold would violate the order revoking the firm's registration. See *Rules on Investigations and Adjudications*, PCAOB Release No. 2003-015 (Sept. 29, 2003), at A2-7 (a revocation "prohibit[s] the firm from preparing or issuing, or participating in the preparation or issuance of, audit reports"). The revocation remains in operation unless and until the Board approves a new application for registration submitted by the firm. See generally paragraphs (a) and (c) of PCAOB Rule 5302, *Applications for Relief From, or Modification of, Revocations and Bars*.

<sup>11</sup> See generally PCAOB Rule 5201, *Notification of Commencement of Disciplinary Proceedings*.

core premise of Rule 2107(h) is that a two-year period of noncompliance with the PCAOB's annual reporting and annual payment requirements, following warnings of these omissions, can reasonably be interpreted as a constructive request by the firm for leave to withdraw from registration, provided that appropriate procedural safeguards are in place. Often, a firm's failure to file an annual report and pay an annual fee is the first indication that the firm may be defunct or no longer wishes to remain registered. Therefore, the Board believes that, when a firm fails to submit annual reports and to pay annual fees for at least two consecutive reporting years, it is reasonable to infer that the firm has ceased to exist, is no longer operational, or no longer wishes to remain registered with the PCAOB.

As a withdrawal-based mechanism, Rule 2107(h) is not a disciplinary proceeding or disciplinary process. Instead of resulting in a disciplinary sanction (like a revocation), Rule 2107(h) would result in withdrawal of the firm from registration. Unlike a revocation, a withdrawal under Rule 2107(h) would not be reported as a disciplinary sanction to the Commission, state regulatory authorities, foreign accountancy licensing boards, or the public.<sup>12</sup> A withdrawal under Rule 2107(h) would, instead, be reflected on the PCAOB's website as a withdrawal from registration. Should the firm seek re-registration, it would be required to file a Form 1 like other firms that were previously registered but withdrew from registration, without the need to adhere to the requirements of Rule 5302(a) or (c), which relate to the termination of revocation sanctions. Under Rule 2107(h), a firm whose registration is withdrawn, in contrast to a firm whose registration is revoked,<sup>13</sup> would retain eligibility to perform work on audits of issuers or broker-dealers, provided that work remains below the substantial role threshold established by Rule 1001(p)(ii) and PCAOB Rule 2100, *Registration Requirements for Public Accounting Firms*. In accordance with Rule 2107(b)(1), 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 Board; however, the firm is not allowed to update or dual-date any previously issued audit report once the firm is no longer registered.

<sup>12</sup> Cf. Section 105(d) of the Act.

<sup>13</sup> See footnote 10.

### Consecutively Delinquent Firms and Current Responses

Section 102(d) of the Act requires each registered firm to submit an annual report to the PCAOB. The PCAOB's annual reporting framework implements Section 102(d) by requiring each registered firm to report, on an annual basis, general information about the firm and its audit practice over the most recent 12-month reporting period. Annual reports must be filed on Form 2 and must be filed no later than June 30 of each year.<sup>14</sup>

Annual reporting is an important part of the investor protection framework prescribed by the Act and PCAOB rules. Information provided by registered firms in their annual reports informs the

PCAOB's oversight activities and provides information to the public regarding the nature and extent of each registered firm's audit practice with respect to issuers and broker-dealers. Annual reporting also keeps the PCAOB's records current on such basic information as the firm's name, location, and contact information, and provides assurance, through a firm certification,<sup>15</sup> that the firm has reported the occurrence of various significant events during the reporting period on PCAOB Form 3, *Special Report*. When a firm does not comply with the reporting requirements, it deprives the public of valuable information and impacts the PCAOB's analysis and planning for inspections and other Board responsibilities.

Each registered firm must also pay an annual fee. Section 102(f) of the Act directs the Board, in relevant part, to assess and collect annual fees from each registered firm in amounts that, together with registration fees, are sufficient to recover the costs of processing and reviewing registration applications and annual reports. Annual fees are due on or before July 31 of each year.<sup>16</sup>

Since the Board's annual reporting and annual fee requirements became effective in 2010, a number of registered firms have continuously failed both to file annual reports and to pay annual fees, in violation of PCAOB rules. While some firms have belatedly made their required filings and payments, others remain persistently noncompliant.

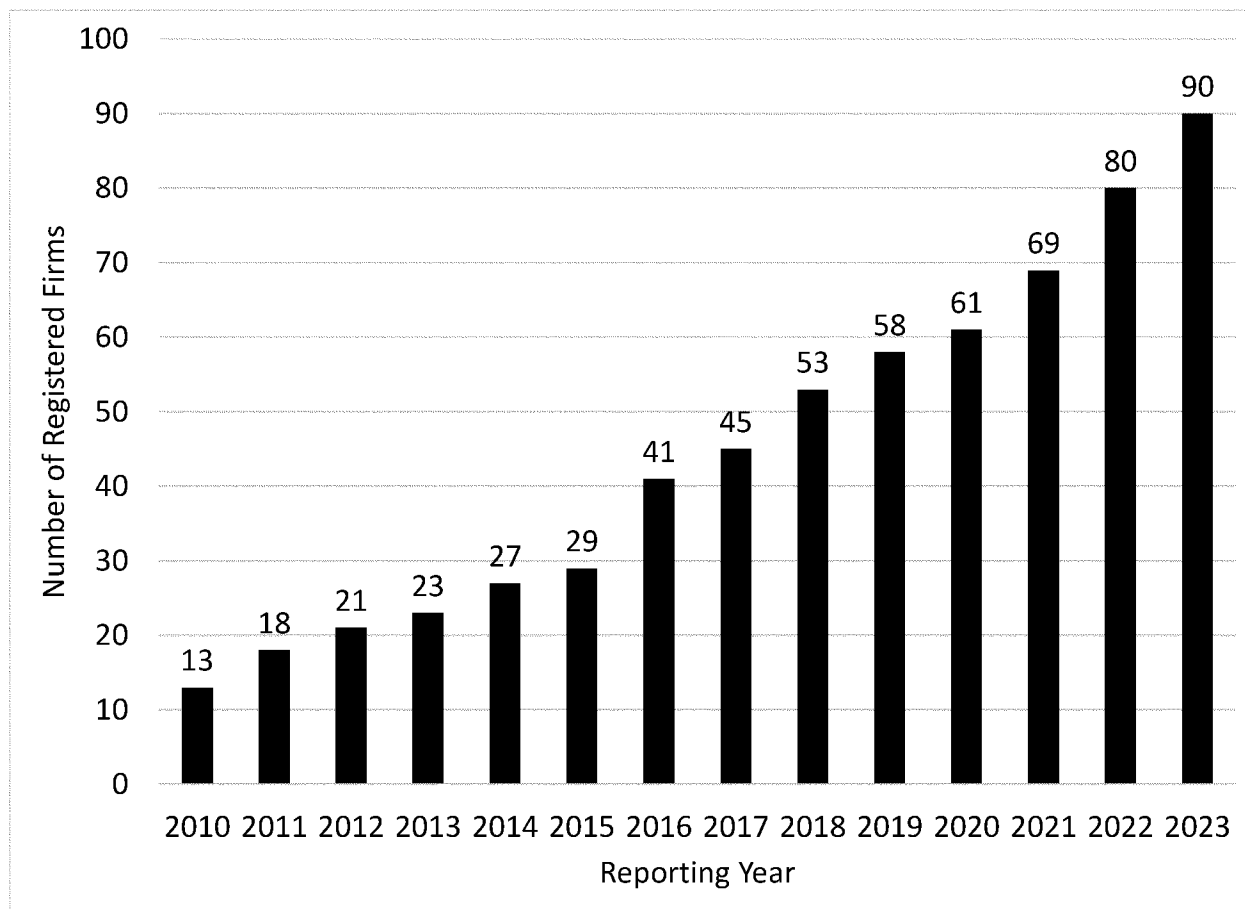
<sup>14</sup> See Rule 2200 and PCAOB Rule 2201, *Time for Filing of Annual Report*.

<sup>15</sup> See Form 2, Item 10.1.

<sup>16</sup> See Rule 2202.

**Figure A. Cumulative Number of Registered Firms With Continuous Noncompliance From the Indicated Reporting Year Through the 2023 Reporting Year**<sup>17</sup>

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Source: RASR.<sup>18</sup>

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**Note:** Reporting years are based on the PCAOB's reporting year-end of March 31 (e.g., the 2023 reporting year covers April 1, 2022, to March 31, 2023). Registered firms must submit an annual report by June 30 and pay an annual fee by July 31 each year, covering the 12-month period from April 1 to March 31.

Figure A is based on data available as of August 31, 2024. Each bar in Figure

A illustrates the cumulative number of firms registered with the PCAOB as of August 31, 2024, that have continuously failed both to file annual reports and to pay annual fees from each reporting year listed on the x-axis through August 31, 2024. These data exclude firms that were previously noncompliant but subsequently either withdrew from registration or belatedly made their

required filings and payments before August 31, 2024.<sup>19</sup>

For example, the bar for the 2010 reporting year shows that 13 firms failed both to file annual reports and pay annual fees starting in reporting year 2010, and those firms have remained consistently noncompliant every subsequent reporting year through 2023. By the 2011 reporting year, the cumulative total increases to 18 firms,

<sup>17</sup> The PCAOB staff's analysis ends with the 2023 reporting year. Although annual reports and annual fees for the 2024 reporting year were due several months ago, in the PCAOB's experience some firms eventually file their annual reports and pay their annual fees many months after these deadlines. Including those firms in the analysis could potentially prevent an accurate count of delinquent firms for the 2024 reporting year and skew the assessment of the number of firms that might be

subject to withdrawal from registration under Rule 2107(h). However, the PCAOB believes this decision does not affect the PCAOB's inferences, as a preliminary review of reporting year 2024 data through August 31, 2024, shows no significant deviations from the patterns observed through reporting year 2023.

<sup>18</sup> The term "RASR" refers to the PCAOB's web-based Registration, Annual, and Special Reporting System, which provides access to publicly available

PCAOB information about registered public accounting firms, and is available at <https://rasr.pcaobus.org/Search/Search.aspx>.

<sup>19</sup> The number of delinquent firms depicted in the graph does not account for firms' filing and payment activities after August 31, 2024. Therefore, for example, if a firm was delinquent for reporting year 2023 but subsequently filed an annual report or paid an annual fee after August 31, 2024, it would still be considered delinquent in the graph.

representing an additional five firms that first failed to meet both annual obligations in 2011 and continued their noncompliance through the end of this period. This cumulative count grows progressively with each subsequent reporting year as more firms fall into continuous noncompliance through the end of this period, reaching a total of 90 firms by the 2023 reporting year. This represents just under six percent of the total population of 1,554 PCAOB-registered firms as of August 31, 2024.<sup>20</sup>

These 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. Based on the PCAOB staff's experience, the Board believes that many of these continuously delinquent firms may be defunct. Consequently, it is unlikely that these firms will either (1) voluntarily request leave to withdraw from registration or (2) assert to the PCAOB that their registration was withdrawn under Rule 2107(h) when they needed to remain registered in order to perform audit work for issuers or broker-dealers.

In each reporting year, the Registration staff contacted all registered firms to remind them of their obligations to file annual reports and to pay annual fees prior to their respective due dates. After the relevant due dates passed, the Registration staff followed up by sending at least one warning letter to each delinquent firm, specifically highlighting its failure to meet the annual filing and annual payment requirements. These warning letters have been effective in spurring most delinquent firms to act.

But each year, a recurring set of firms does not cure delinquencies and yet remains registered. Without Rule 2107(h), the PCAOB would have no effective and efficient procedural mechanism to withdraw these

consecutively delinquent firms from registration.

Relying on firm-initiated withdrawals is not currently a viable avenue, as these consecutively delinquent firms have not requested leave to withdraw from PCAOB registration and, given their extended unresponsiveness and repeated noncompliance, are unlikely to do so in the future. Moreover, existing Board rules do not permit PCAOB staff to file a request for leave to withdraw from registration on a firm's behalf, even upon information and belief that the firm no longer exists or has ceased operations.

Nor have enforcement efforts proven to be a desirable approach—or even a viable option—in certain circumstances. Historically, the PCAOB's Division of Enforcement and Investigations (“DEI”) has allocated its resources toward higher risk delinquencies, prioritizing enforcement action with respect to delinquent firms that continue to issue audit reports or play a substantial role in the preparation or furnishing of audit reports. Since 2011, the Board has issued more than three dozen OIPs against delinquent firms,<sup>21</sup> and while most of those cases settled (or were dismissed in connection with the delinquent firm's withdrawal from registration), nine of those cases proceeded to an initial decision by a hearing officer.<sup>22</sup> Although the facts and legal issues in these proceedings were generally straightforward, each case consumed substantial time and resources that could have been expended pursuing other oversight activities. And in some cases, the PCAOB has encountered difficulties providing notice of the institution of a disciplinary proceeding to a firm that appears to have ceased operations; serving OIPs on seemingly nonexistent or nonoperational firms may be

unnecessarily challenging, if even possible.

Additionally, encumbering the disciplinary process to address a registered firm's noncompliance with the PCAOB's annual reporting and payment requirements may often be a disproportionate response to a defunct firm's failure to request leave to withdraw from registration before ceasing operations. Instituting approximately 80 new disciplinary proceedings, one for each registered firm that failed to file an annual report and pay the annual fee for both the 2022 and 2023 reporting periods, would impose significant resource demands on the Board and its staff and could require significant time to resolve. The Board believes a more efficient process, with appropriate procedural safeguards, should be available to address circumstances where a registered firm's conduct gives rise to the inference that the firm has ceased to exist, is nonoperational, or no longer wishes to remain registered with the PCAOB.

#### Mechanics of Rule 2107(h)

The Board designed Rule 2107(h) expressly to fall within the framework of a withdrawal from registration. Rule 2107(h) is aimed at registered firms that have ceased to exist, are nonoperational, or no longer wish to remain registered. Still, in the absence of procedural safeguards, the Board recognizes that there is some risk that a constructive-withdrawal-request approach could unintentionally affect a firm that wishes to remain registered. Anticipating that risk, Rule 2107(h) includes a set of procedural safeguards to protect the interests of any firm that wishes to remain registered, including written notice and website notice, and an opportunity to stop the Rule 2107(h) process merely by emailing the Registration staff.

On balance, the Board believes that Rule 2107(h) will avoid unnecessary expenditures of PCAOB resources while still affording a registered firm notice and an opportunity to stop the withdrawal process. It would also cause consecutively delinquent firms either to contact the Registration staff or to be withdrawn from registration more efficiently than is possible currently. Thus, the Board believes Rule 2107(h) will provide a reasonable and effective way to identify and remove from the PCAOB's registration records those firms that have ceased to exist, are nonoperational, or no longer wish to remain registered.

Commenters broadly supported proposed Rule 2107(h), and the Board adopted the proposed amendment with

<sup>20</sup> Section III.B.1 of the Proposing Release provided similar data as depicted in Figure A, but with a cutoff date of December 31, 2023, instead of August 31, 2024. As a result, the number of firms that both did not file an annual report and did not pay an annual fee for reporting years 2022 and 2023 decreased. Specifically, the number of noncompliant firms for the 2022 and 2023 reporting years decreased from 87 and 108 as of December 31, 2023, to 80 and 90 firms, respectively, as of August 31, 2024. The number decreased because some of the initially noncompliant firms either (1) withdrew from registration in 2024 or (2) filed annual reports and/or paid annual fees for the corresponding reporting year in 2024. See footnote 3 for a similar discussion of the reasons why the number of firms that did not file annual reports and did not pay annual fees for both the 2022 and 2023 reporting years changed.

<sup>21</sup> This figure represents OIPs that solely relate to delinquent annual reports or annual fees, or both. See, e.g., *R.A. Bianchi & Associates, An Accountancy Corporation*, PCAOB Release No. 105–2015–003 (Jan. 22, 2015); *Baumgarten & Company LLP*, PCAOB Release No. 105–2013–001 (Feb. 21, 2013); *Reuben E. Price & Co., Public Accountancy Corp.*, PCAOB Release No. 105–2011–008 (Dec. 20, 2011); *GLO CPAs, LLLP*, PCAOB Release No. 105–2011–006 (Nov. 30, 2011).

<sup>22</sup> See *Monte C. Waldman CPA*, PCAOB File No. 105–2015–013 (Aug. 4, 2016); *Chr. Mortensen Revisionsfirma, statsautoriseret revisionsinteressentskab*, PCAOB File No. 105–2015–008 (Jan. 12, 2016); *David W. Dube*, PCAOB File No. 105–2014–005 (Nov. 30, 2015); *Joseph Troche, CPA*, PCAOB File No. 105–2014–007 (Mar. 6, 2015); *P.S. Yap & Associates*, PCAOB File No. 105–2013–006 (May 8, 2014); *Kenneth J. McBride*, PCAOB File No. 105–2012–007 (May 7, 2013); *Eric C. Yartz, P.C.*, PCAOB File No. 105–2012–006 (May 7, 2013); *Buckno Lisicky & Company, P.C.*, PCAOB File No. 105–2011–004 (Jan. 9, 2012); *Paul Gaynes*, PCAOB File No. 105–2011–006 (Jan. 3, 2012).

certain limited modifications, as discussed below. One commenter, an academic, expressed concern that withdrawing a firm from registration through the Rule 2107(h) process would remove the firm from the PCAOB's enforcement authority. However, the Board may consider its enforcement-related responsibilities when deciding whether or when to employ Rule 2107(h)'s constructive-withdrawal-request process with respect to a particular firm, just as it may consider whether a firm-initiated withdrawal from registration should be delayed in light of the Board's responsibilities to conduct investigations or disciplinary proceedings.<sup>23</sup>

#### 1. Prerequisites

Under Rule 2107(h)(1), the withdrawal process would be available only if a registered firm, for at least two consecutive Form 2 reporting years, has neither filed an annual report nor paid an annual fee.<sup>24</sup> The two-year benchmark is intended to serve as a proxy to assist the Board in identifying firms that may fairly be deemed to have made a constructive withdrawal request. The Board believes delinquency for a period of at least two consecutive reporting years is an effective indication that a firm has ceased to exist, is nonoperational, or no longer wishes to remain registered.<sup>25</sup> Under the two-year benchmark, all firms that recently filed an annual report or paid an annual fee would fall outside the scope of Rule 2107(h). The Board believes that a single missed filing or payment, or even one reporting year's worth of missed annual reports and payments, is an insufficient

<sup>23</sup> See Rule 2107(d) (the Board may delay a firm-initiated withdrawal by up to 18 months, if done within 60 days of receiving a completed Form 1-WD and determined necessary to fulfill the Board's inspection, investigative, or disciplinary responsibilities under the Act); see also Rule 2107(e) (automatically delaying a firm's withdrawal if a Board disciplinary proceeding is pending against the firm or any of its associated persons).

<sup>24</sup> A Form 2 reporting year covers the 12-month period from April 1 to March 31. See Form 2, General Instruction 4.

<sup>25</sup> While the PCAOB recognizes that seven of the originally identified 87 consecutively delinquent firms either withdrew from registration (five firms) or caught up on overdue annual reports and annual fees (two firms), this activity supports the rationale for adopting Rule 2107(h). The actions of these firms reinforce the utility of establishing a clear benchmark to infer that a consecutively delinquent firm, if it still exists, no longer wishes to remain registered with the PCAOB. The two-year marker of consecutive noncompliance with the annual reporting and annual fee requirements will serve as an effective and clear benchmark for interpreting such consecutive noncompliance as a firm's constructive request for leave to withdraw from registration. And the procedural safeguards built into Rule 2107(h) provide a clear and easy course of action for a firm if the inference that the firm no longer wishes to remain registered is inaccurate.

basis upon which to infer that a firm no longer wishes to remain registered.<sup>26</sup> On the other hand, allowing three or more years of delinquency before presuming a firm no longer wishes to remain registered may unduly delay appropriate regulatory action. The *minimum* amount of time that a firm would have to be delinquent before meeting the threshold of "two consecutive reporting years" would be 13 months, encompassing the first overdue annual report following the June 30 deadline, the first overdue annual fee following the July 31 deadline, the second overdue annual report following June 30 of the second consecutive year, and the second overdue annual fee following July 31 of the second consecutive year.

The Rule 2107(h) process is discretionary. Whether Rule 2107(h) is used, and the exact timing of how it is used, is left to the Board. Establishing a discretionary process, rather than a mandatory or automatic one, allows the Board to consider specific facts and circumstances—including whether a firm is providing services requiring PCAOB registration and whether the firm is subject to a current or forthcoming inspection or investigation—when determining whether to deem the firm's registration withdrawn under Rule 2107(h). The Board did not receive any comments on the discretionary nature of Rule 2107(h).

The Registration staff will continue its practice of sending warning letters each year to delinquent registered firms. These notices will continue to call attention to any missed annual report filings or annual fee payments.

While commenters generally supported the two-year threshold for considering a firm's non-submission of annual reports and non-payment of annual fees as a basis for a constructive withdrawal request, some commenters suggested either reducing this period to one year or treating a single missed annual report or annual fee as a sufficient basis to initiate a firm's withdrawal from PCAOB registration. The Board considered these options, but, as explained in the Proposing Release and above, the Board believes that a two-year criterion, encompassing both annual reports and annual fees, is an appropriate indicator that a firm has ceased to exist, is nonoperational, or no longer wishes to remain registered.

Of course, the failure to file reports or pay fees when due constitutes a

<sup>26</sup> Of course, rule violations related to noncompliance with the Board's annual reporting and payment requirements remain subject to enforcement.

violation of PCAOB rules concerning annual reporting and fees, and firms should bear in mind that new paragraph (h) of Rule 2107 does not limit the Board's enforcement authority with respect to violations of those requirements.

#### 2. Notice of Delinquency and Impending Withdrawal

Pursuant to Rule 2107(h)(2), the Board commences the Rule 2107(h) process by sending a written notice to the registered firm's primary contact with the Board as identified in the firm's most recent filing on Form 1, Form 2, Form 3, or PCAOB Form 4, *Succeeding to Registration Status of Predecessor*. That notice (the "Notice of Delinquency and Impending Withdrawal") would specify the annual reports and annual fees that are past due and remain outstanding and provide information to the firm about the impending withdrawal of its registration, including the opportunity to avoid withdrawal by contacting the Registration staff within 60 days. The Notice of Delinquency and Impending Withdrawal is intended to provide the firm notice of the commencement of the Rule 2107(h) process, the reason for the commencement of that process, its potential significance for the firm's registration, and the firm's opportunity to avoid withdrawal by sending an email to the Registration staff within 60 days.

The Board would send the Notice of Delinquency and Impending Withdrawal to the registered firm's primary contact with the Board as identified in the firm's most recent filing on Form 1, Form 2, Form 3, or Form 4, via a mail or commercial courier service, and the Board would obtain a confirmation of actual or attempted delivery.<sup>27</sup> In considering the fairness of this approach, the Board has taken into account that if there has been a change in the identity or business mailing address of the firm's primary contact from the information disclosed in a previous form filing, the firm is required to report that change to the PCAOB within 30 days on Form 3.<sup>28</sup> In light of a firm's longstanding obligation to maintain up-to-date primary contact information, the Board believes it is fair and reasonable for the Registration staff

<sup>27</sup> In the adopted rule, the PCAOB revised the proposed phrase "that results in a confirmation of actual or attempted delivery" to "and obtains a confirmation of actual or attempted delivery." This change aims to enhance clarity. The Board did not receive any comments on this specific phrasing, and this change is not intended to alter the rule's meaning.

<sup>28</sup> See PCAOB Rule 2203, *Special Reports*, and Items 2.18 and 7.2 of Form 3.

to send the Notice of Delinquency and Impending Withdrawal to the firm's primary contact at the address reported in the firm's most recent filing.<sup>29</sup>

One commenter suggested that the PCAOB should use email in addition to traditional mail or a commercial courier service when providing notice of the initiation of the Rule 2107(h) withdrawal process. The Board emphasizes that all registered firms are required to keep their primary contact's mailing address updated under current PCAOB rules. Moreover, as discussed in the next subsection, notice by mail or commercial courier service would be supplemented, as required under Rule 2107(h), by a notice on the PCAOB's website. Together, the Board believes that these methods of providing notice are sufficient. However, the Board also notes that the rule does not prohibit the Board or its staff from using email as an additional, discretionary means by which to provide notice of the initiation of the Rule 2107(h) process to firms. Though the use of email is not mandated by Rule 2107(h), the Board or PCAOB staff may deem it appropriate, under certain circumstances, to supplement the prescribed notice with email.

### 3. Website Notice

After the Notice of Delinquency and Impending Withdrawal is sent to the registered firm's primary contact, the Board will publish notice of the impending withdrawal on its public website, pursuant to Rule 2107(h)(3). The Board will make reasonable efforts to do so promptly. The website posting is intended to provide reasonable notice to the firm and to others, including any current or former audit clients, who may be able to alert the firm of the impending withdrawal of its registration and its 60-day window to avoid withdrawal. Disclosing the firm's pending withdrawal on the Board's website is also consistent with the current firm-initiated withdrawal process.<sup>30</sup>

<sup>29</sup> See generally Rule 141 of the Commission's Rules of Practice, 17 CFR 201.141, which similarly permits service to the most recent address shown on a registered entity's most recent filing with the Commission.

<sup>30</sup> See Rule 2107(b)(2) (requiring disclosure of the identity of any firm with a pending request to withdraw from registration and the date the Board received the Form 1-WD); see also Registered Public Accounting Firms—Withdrawal Request Pending, available at [https://assets.pcaobus.org/pcaob-dev/docs/default-source/registration/firms/documents/withdrawal-requests.pdf?sfvrsn=d30aab29\\_287](https://assets.pcaobus.org/pcaob-dev/docs/default-source/registration/firms/documents/withdrawal-requests.pdf?sfvrsn=d30aab29_287).

### 4. Sixty-Day Opportunity To Avoid Withdrawal From Registration

After the date the Board sends the Notice of Delinquency and Impending Withdrawal to the registered firm's primary contact, the firm, under Rule 2107(h)(4), would have 60 days to stop the withdrawal process.<sup>31</sup> The Board believes 60 days is a reasonable amount of time for the firm to become aware of the initiation of the Rule 2107(h) process, review the Notice of Delinquency and Impending Withdrawal, consider whether it wishes to remain registered, and contact the Registration staff by email.<sup>32</sup>

To stop the Rule 2107(h) process, the registered firm's primary contact would be required to send an email to a designated electronic address specified in the Notice of Delinquency and Impending Withdrawal within the 60-day period. In contemplating how a firm should stop the Rule 2107(h) process, the Board sought to establish a method of contacting the PCAOB that would not be overly burdensome. Requiring that an email be sent by the firm's primary contact increases the likelihood that the person who contacts the PCAOB is an authorized representative of the firm.<sup>33</sup> This requirement also increases the likelihood that future communications to the firm would result in actual notice to the firm.<sup>34</sup> In particular, this process

<sup>31</sup> PCAOB Rule 1002, *Time Computation*, governs the computation of periods of time prescribed in or allowed by the Board's rules. Rule 1002's time computation principles would apply to the 60-day period specified in the Notice of Delinquency and Impending Withdrawal.

<sup>32</sup> The limitations imposed in Rule 2107(c) do not apply to firms that have received notice of the commencement of the Rule 2107(h) process. Those limitations apply only to firms that choose to initiate the withdrawal process through the filing of a completed Form 1-WD.

<sup>33</sup> If the email address of the firm's primary contact on file with the Board is outdated, the firm is required to update this information using Form 3 before transmitting an email to stop the Rule 2107(h) process. See Items 2.18 and 7.2 of Form 3. This ensures that any email received by the Registration staff to stop the Rule 2107(h) process originates from an authorized representative of the firm, who has access to the firm's account in the RASR system.

<sup>34</sup> One firm expressed concern that emails sent to the PCAOB to stop the Rule 2107(h) process potentially could be marked as spam. The commenter suggested that the Board should either allow for additional communication methods or commit to confirming receipt of emails so that the sender has confidence that an email was received. The Board believes that having a single channel for communications from firms to stop the Rule 2107(h) process promotes efficiency and the proper administration of the rule, and the Board believes that email is the optimal method because it is fast, not unduly burdensome, and in writing. Given the significance of an email from a firm under Rule 2107(h)(4), the PCAOB staff will confirm receipt of such an email. This confirmation will provide assurance to firms regarding the successful delivery of their email to the PCAOB.

expedites further communications with the firm regarding its legal obligations to file annual and special reports and pay annual fees, and will facilitate its ability to institute, as the Board deems appropriate, a disciplinary proceeding against the firm.<sup>35</sup>

In the Proposing Release, the Board suggested a 30-day period for firms to send an email to the Registration staff to stop the withdrawal process. One firm suggested that a 60-day period might be more appropriate. The Board has decided to adopt a 60-day window for sending an email to the Registration staff. This extension aims to provide firms with sufficient time to become aware of the initiation of the Rule 2107(h) process, which includes notification of pending withdrawals posted on its website. The extended period also allows firms sufficient time to have internal discussions to determine whether they wish to remain registered. It also accommodates any updates needed regarding the firm's primary contact with the Board to facilitate the email to the Registration staff.

### 5. Withdrawal From Registration

If, after the 60-day period in Rule 2107(h), the registered firm has not emailed the Registration staff, the Board would be able to treat the firm's consecutive failures to file annual reports and to pay annual fees as a constructive request for leave to withdraw from registration, and to deem the firm's registration withdrawn.<sup>36</sup> The provision reflects the Board's judgment that a firm that has not filed an annual report and has not paid an annual fee over a period of at least two consecutive reporting years may reasonably be deemed to have made a constructive request for leave to withdraw from PCAOB registration. After the Board deems a registration withdrawn pursuant to Rule 2107(h), the Registration staff, consistent with existing practices, would send written notification to the firm regarding the withdrawal. The withdrawal of the firm from registration would also be reflected on the Board's website.

<sup>35</sup> If a firm sends an email to the Registration staff to stop Rule 2107(h)'s withdrawal process, it still could face potential enforcement action, just like any other registered firm that violates the PCAOB's annual reporting or annual fee requirements.

<sup>36</sup> As noted, the intent of Rule 2107(h) is to identify firms that have ceased to exist, are nonoperational, or no longer wish to remain registered. It is not intended as a disciplinary measure against firms that wish to remain registered but fail to fulfill their obligations to file annual reports or pay annual fees. The PCAOB has other mechanisms to address such noncompliance.



After a firm's registration is withdrawn pursuant to Rule 2107(h), the consequences would mirror those of any other withdrawal from PCAOB registration. Specifically, the withdrawn firm, like any other unregistered firm, would be prohibited from engaging in the preparation or issuance of an audit report for an issuer or broker-dealer, or playing a substantial role in the preparation or furnishing of an audit report for an issuer or broker-dealer, other than to issue a consent to the use of an audit report for a prior period that it issued while registered.<sup>37</sup> A firm that has had its registration withdrawn pursuant to Rule 2107(h) would no longer have to comply with the PCAOB's annual reporting or annual fee requirements. Should such a firm wish to re-register, it would have to file a new registration application and pay a registration fee, as is required of all firms reapplying after withdrawal. In reviewing any such registration application from the firm, the Board has discretion to consider its past interactions with the firm during the firm's previous registration period. This includes considering any instances in which the firm did not file required reports, including annual reports, or pay required annual fees.<sup>38</sup>

#### Effective Date

The Board has determined that Rule 2107(h), if approved by the Commission, will take effect initially for annual reports and annual fees that are due in 2025, meaning that a registered firm that does not file an annual report and does not pay an annual fee in 2025 and in 2026 could have its registration deemed withdrawn under Rule 2107(h) beginning in the fall of 2026.

<sup>37</sup> See Section 102(a) of the Act; Rule 2100; Rule 1001(p)(ii). Note 2 to Rule 2100 clarifies that issuing a consent to include an audit report for a prior period does not, in itself, obligate a public accounting firm to be registered with the PCAOB. This provision applies to a firm whose registration has been withdrawn, including a firm whose registration has been withdrawn pursuant to Rule 2107(h).

<sup>38</sup> Consistent with the Board's current practices, a history of not filing annual reports or paying annual fees has, in some cases, led to disapproval of a withdrawn firm's subsequent application for re-registration. See, e.g., *Registration Application of Alas Oplas & Co., CPAs*, PCAOB Release No. 102-2024-004 (Aug. 20, 2024); *Registration Application of S S Kothari Mehta and Company*, PCAOB Release No. 102-2021-001 (Nov. 23, 2021); *Registration Application of GYL Decauwer LLP*, PCAOB Release No. 102-2018-001 (June 13, 2018); *Registration Application of David R. Ramos, CPA*, PCAOB Release No. 102-2014-002 (Mar. 6, 2014); *Registration Application of Lawrence Hoffman, Certified Public Accountant, P.C.*, PCAOB Release No. 102-2014-001 (Jan. 28, 2014); *Registration Application of Vail & Knauth LLP*, PCAOB Release No. 102-2013-001 (Feb. 21, 2013).

The Board initially proposed that annual reports and annual fees due in 2024 could be considered if Rule 2107(h) was adopted. While most commenters did not comment on the proposed amendment's effective date, one commenter supported the proposed effective date. In addition, one firm suggested that missing annual reports and unpaid annual fees for 2024 should be taken into consideration under Rule 2107(h) only if the final rule amendment took effect prior to the 2024 deadlines for these annual obligations.

In light of the timing of Rule 2107(h)'s adoption, the Board opted to defer the initial consideration of annual reports and annual fees under Rule 2107(h) to those due in 2025. This approach ensures that registered firms are adequately informed of the constructive-withdrawal-request mechanism introduced by Rule 2107(h).

#### D. Economic Considerations and Application to Audits of Emerging Growth Companies

##### Economic Analysis

The Board is mindful of the economic impacts of its rulemaking. This section discusses the economic baseline, need, expected economic impacts of the final rule amendment, and alternative approaches considered. The Board's economic discussion is largely qualitative in nature due to data limitations. However, where reasonable and feasible, the analysis incorporates quantitative information, including data from the PCAOB's RASR system.

The Board sought information relevant to the economic analysis throughout this rulemaking<sup>39</sup> and has carefully considered the comments submitted. Some commenters expressed favorable opinions about the economic analysis and also commented on specific sections of the economic analysis such as the baseline, need, benefit, and cost sections. Some commenters raised concerns about certain aspects of the economic analysis. The Board discussed these comments and its responses to them in the relevant sections below.

##### Baseline

This section establishes the economic baseline against which the impacts of the final rule amendment can be considered. The discussion above describes important components of the

<sup>39</sup> See, e.g., Proposing Release at 44, 52, 56, 60–61, 62–63. Although the Proposing Release's economic analysis also addressed proposed Rule 2400 and the proposed amendment to Form 3, this economic discussion is limited to the amendment to Rule 2107 that the Board has adopted.

baseline, including the current regulatory framework and certain firms' consecutive failures to file annual reports and pay annual fees. This section discusses two additional components that inform the Board's understanding of the economic baseline: (1) the PCAOB staff's analysis of RASR data and (2) a consideration of relevant research.

Commenters indicated that the baseline and the data provided in the economic analysis are helpful in understanding the economic impacts of the proposals.

##### 1. Analysis of RASR Data

To inform the Board's understanding of the baseline for the Rule 2107(h) amendment, the PCAOB staff has analyzed RASR data to calculate the number of registered firms with repeated failures to file annual reports and pay annual fees (Figure 1 below).

This section examines statistics of registered firms that failed to file annual reports and/or pay annual fees. Figure 1 presents the number of registered firms that failed to file annual reports and/or pay annual fees for reporting years 2022 and 2023.<sup>40</sup> Among all 1,554 registered firms as of August 31, 2024,<sup>41</sup> 1,406 firms (90 percent) were required to file annual reports and pay annual fees for reporting years 2022 and 2023.<sup>42</sup> Of those 1,406 registered firms, 84 firms failed for both years to file annual reports, 84 firms failed for both years to pay annual fees, and 80 firms failed for those two reporting years to both pay annual fees and file annual reports.<sup>43</sup> The overall rate of registered firms that failed to both file annual reports and pay annual fees for reporting years 2022

<sup>40</sup> As previously noted, annual report (Form 2) reporting years span from April 1 of the previous year to March 31 of the reporting year. The 2022 reporting year covers April 1, 2021, to March 31, 2022. The 2023 reporting year covers April 1, 2022, to March 31, 2023.

<sup>41</sup> The PCAOB staff based this analysis of reporting years 2022 and 2023 using August 31, 2024, as the cutoff date. As discussed above, the PCAOB did not include data from reporting year 2024.

<sup>42</sup> Firms with pending withdrawal requests are excluded from the analysis. Also, as of August 31, 2024, some registered firms were not required to pay annual fees or file annual reports for reporting years 2022 and 2023. For example, firms that registered after March 31, 2023, were not required to file the 2023 annual report or pay the 2023 annual fee.

<sup>43</sup> Four firms failed to file annual reports for both years but paid an annual fee for at least one of the years, and another four firms failed to pay annual fees for both years but filed an annual report for at least one of the years. The PCAOB does not have access to specific information on the reasons for this partial noncompliance. The PCAOB notes that these firms would not meet the criteria for withdrawal under Rule 2107(h).

and 2023 is just under six percent (80 out of 1,406).  
 Ninety-nine percent of the firms that failed to file annual reports and pay annual fees for both years are non-affiliate firms (“NAFs”) (79 out of 80), which tend to be smaller firms.<sup>44</sup> Thirty-

three percent of these 80 firms (26 firms) are U.S. NAFs and 66 percent (53 firms) are non-U.S. NAFs; thus non-U.S. NAFs account for twice as many instances of failing to both file annual reports and pay annual fees for both years. Within firm types, four percent of U.S. NAFs

and 12 percent of non-U.S. NAFs failed to file annual reports and pay annual fees for both years. In comparison, no U.S. GNFs and only one non-U.S. GNF failed to file annual reports and pay annual fees for both years.

FIGURE 1—NUMBER OF REGISTERED FIRMS THAT DID NOT FILE ANNUAL REPORTS AND/OR PAY ANNUAL FEES AS OF AUGUST 31, 2024

	Firms required to file annual reports and pay annual fees for reporting years 2022 and 2023	Firms that did not file annual reports for reporting years 2022 and 2023	Firms that did not pay annual fees for reporting years 2022 and 2023	Firms that both did not file annual reports and did not pay annual fees for reporting years 2022 and 2023	Percentage of firms that both did not file annual reports and did not pay annual fees for reporting years 2022 and 2023 (%)
Firms .....	1,406	84	84	80	6
By firm type:					
U.S. GNF .....	6	0	0	0	0
Non-U.S. GNF .....	323	1	1	1	0.3
U.S. NAF .....	633	27	26	26	4
Non-U.S. NAF .....	444	56	57	53	12

Source: RASR.

The PCAOB staff’s analysis of the 80 registered firms that failed to file annual reports and pay annual fees for reporting years 2022 and 2023 (reflected in Figure A above) shows a consistent pattern over multiple reporting years. Notably, a majority of these firms have failed to file annual reports and pay annual fees for more than two consecutive reporting years. For example, Figure A shows that 58 of these 80 firms failed both to file an annual report and to pay an annual fee for reporting year 2019, and these 58 firms continued to neglect these obligations for five consecutive years, from reporting years 2019 to 2023.

2. Consideration of Relevant Research and Implications

The PCAOB staff has reviewed literature related to the final rule amendment. To the PCAOB’s knowledge, no studies specifically address the economic consequences of situations where an audit firm has ceased to exist, is nonoperational, or no longer wishes to remain registered—as

indicated by consecutive delinquencies in its annual reporting and annual fee obligations—and yet continues to appear as registered on the PCAOB website. Additionally, there is a lack of research on the effects of withdrawing such firms from registration.<sup>45</sup>

The presence of registered firms that have ceased to exist, are nonoperational, or no longer wish to remain registered impacts the utility and value of the registration data on the PCAOB’s website and in its internal records. First, there is a significant misalignment: the PCAOB’s registration records continue to list these firms as registered, which implies they exist, are operational, and wish to remain registered, despite their actual statuses potentially being to the contrary—nonexistent, nonoperational, or no longer wishing to remain registered. Second, these firms do not file annual reports, resulting in outdated information about their existence, operational status, and scope of practice. Third, while it is more common for the PCAOB to have limited or no information about the operational

status of registered firms that have stopped filing annual reports and paying annual fees, there are exceptional circumstances where the PCAOB staff is aware of information, such as the death of a sole proprietor, indicating that a registered firm has ceased to exist or become nonoperational. In these instances, despite having information that the firm has ceased operations, the PCAOB currently lacks a mechanism to adjust its registration records to reflect this reality. This limitation introduces a discrepancy between the PCAOB staff’s internal knowledge and the information reflected on the PCAOB’s website.

Academic research provides insights into the broader implications of lower-quality information in the registration data. Studies indicate that higher information processing costs—arising from the need to verify and interpret potentially lower-quality information on registered firms—can lead to inefficiencies in information search costs.<sup>46</sup> Currently, the inclusion of persistently delinquent firms in the

<sup>44</sup> NAFs are accounting firms registered with the Board that are not global network firms (“GNFs”). GNFs are the member firms of the six global accounting firm networks that include the largest number of PCAOB-registered non-U.S. firms (BDO International Ltd., Deloitte Touche Tohmatsu Ltd., Ernst & Young Global Ltd., Grant Thornton International Ltd., KPMG International Cooperative, and PricewaterhouseCoopers International Ltd.). The discussion in this release uses “U.S. GNF” to refer to a GNF member firm based in the United States, and “non-U.S. GNF” to refer to a GNF member firm based outside the United States. Similarly, “U.S. NAF” refers to a NAF firm based

in the United States, and “non-U.S. NAF” refers to a NAF firm based outside the United States.

<sup>45</sup> The PCAOB did not receive any comments regarding additional data or academic studies in response to its request for such information in the Proposing Release.

<sup>46</sup> See, e.g., E. Blankespoor, E. deHaan, and I. Marinovic, *Disclosure processing costs, investors’ information choice, and equity market outcomes: A review*, 70 *Journal of Accounting and Economics* 1 (2020). Blankespoor et al. (2020) study how information processing costs—such as the costs of monitoring, acquiring, and integrating public

information—impact investor behavior and market outcomes. They argue that high processing costs, such as acquiring and integrating information into decision-making, can discourage stakeholders from engaging with available data, leading to inefficient outcomes. Extending these findings to the PCAOB registration context, it suggests that removing persistently delinquent firms from registration could decrease information processing costs by lowering the costs of assessing the operational status of these firms. Thus, improving the overall quality of information available could reduce inefficiencies in audit search decisions.

PCAOB's registration list could impose additional search costs, as the information available to stakeholders is less useful. Additionally, in circumstances where the PCAOB has information indicating that certain firms may no longer exist, are nonoperational, or no longer wish to remain registered, the PCAOB lacks a mechanism to withdraw these firms from registration. Without a mechanism to update PCAOB registration records to reflect this information, search costs could remain elevated for stakeholders attempting to verify the operational status of PCAOB-registered firms.

For stakeholders such as audit committees of potential clients assessing a firm's suitability as an auditor, these higher information processing costs can delay their analysis and potentially impact the efficiency of audit-related decisions. Improving the quality of the PCAOB's registration records by removing persistently delinquent firms would reduce stakeholders' information processing costs and better support well-informed decision-making in the audit market.

Partners or former partners of audit firms are typically aware of their firm's operational status—including whether the firm no longer exists, is nonoperational, or no longer wishes to remain registered. Additionally, the PCAOB staff sometimes gathers anecdotal information through its interactions with firms and their personnel, further informing its understanding of a firm's operational status. However, such information bearing upon a registered firm's operational status may not be readily available to the public. Together, these discrepancies obscure the true status of these firms, resulting in a gap between what the PCAOB staff knows internally and what is publicly available on the PCAOB website. Additionally, there are gaps between what firms, including their partners or former partners, know about their operational status and what is accessible to the public on the PCAOB's website.

Currently, without a mechanism to remove consecutively delinquent firms from registration, the PCAOB lacks a means to accurately convey the status of these firms to stakeholders, which could result in less-informed decisions.

#### Need and How the Changes Would Address the Need

This section discusses the problem that needs to be addressed and explains how the final rule amendment is expected to address it.

The PCAOB currently has no effective and efficient procedural mechanism to

withdraw from registration firms that are consecutively delinquent with respect to filing required annual reports and paying mandatory annual fees. As discussed in Figure 1, PCAOB staff analysis indicates that as of August 31, 2024, 80 firms did not file annual reports and did not pay annual fees for both the 2022 and 2023 reporting years. Many of these firms may be defunct.

The presence of such firms on the PCAOB's registration records may not only disrupt the PCAOB's regulatory objectives, such as maintaining an accurate public record of operational registered firms that wish to remain registered and efficiently using PCAOB staff time and resources, which diminishes the Board's ability to fulfill its investor protection mission, but could also adversely impact investor confidence in the capital markets. While their number is small and there is no indication that these firms are currently issuing audit reports on which investors rely, the fact that a firm may fail to comply with fundamental obligations incident to registration and yet remain registered could lessen the significance of PCAOB registration in the market. Firms that are complying with the annual reporting and fee requirements may form a mistaken belief that they also may be able to forgo compliance with their reporting and fee obligations when they observe that these consecutively delinquent firms remain registered with the Board. It is also possible that this conduct could persist,<sup>47</sup> necessitating resolution to maintain confidence in the capital markets.

In addition, PCAOB staff spend time and resources seeking to contact these firms year after year so that they will comply with their basic legal obligations, including annual reporting and the payment of annual fees that contribute to funding the PCAOB's registration program. Also, utilizing enforcement mechanisms to pursue these firms would not always be feasible, and even where feasible, would further strain staff time and resources. These firms' inattention, inactivity, or inanimacy would cause the PCAOB to incur recurring costs with no expected improvement in sight.

Rule 2107(h) would address the need to make the PCAOB's oversight more

effective and efficient by providing an effective procedural mechanism to withdraw from PCAOB registration firms that have ceased to exist or are otherwise defunct, or no longer wish to remain registered.

Commenters were generally supportive of the proposed amendment to Rule 2107 and stated that they understood the rationale for the amendment to the rule. In particular, one commenter expressed agreement that the proposed amendment to Rule 2107 would result in more efficient use of PCAOB resources.

Furthermore, commenters agreed that the proposed amendment to Rule 2107(h) would address the need to make the PCAOB's oversight more effective and efficient. One commenter agreed that the amendment generally will accomplish the objective of providing a mechanism for the Board to remove from the PCAOB's registration records firms that are delinquent in filing their annual reports with the PCAOB and paying their annual fees. Another commenter indicated the proposed amendment to Rule 2107 would provide the PCAOB with a mechanism to keep its registration records updated, providing issuers and broker-dealers in the process of selecting an appropriate accounting firm greater confidence that any accounting firm they consider hiring is operational and wishes to remain registered with the PCAOB.

In general, commenters did not introduce arguments or data that caused the Board to change its assessment of the need for the final rule amendment. The Board believes the final rule amendment addresses the problem discussed above, yielding the economic impacts discussed further below.

#### Economic Impacts

This section discusses the expected benefits and costs of the final rule amendment and potential unintended consequences. One commenter expressed agreement with the benefit and cost evaluation provided in the Proposing Release and stated that it was not currently aware of any additional academic studies or data related to the economic impacts of the proposals that could be used to quantify the benefits and costs.

##### 1. Benefits

Rule 2107(h) would provide an effective procedural mechanism to withdraw from PCAOB registration firms that have ceased to exist, are nonoperational, or no longer wish to remain registered. Therefore, it would facilitate the PCAOB's regulatory objectives discussed above by enabling

<sup>47</sup> The accumulation of possibly defunct or nonoperational firms on the PCAOB's registration list potentially reflects a growing issue. See Figure A and the accompanying description. If a significant portion of all registered firms is perceived as never filing annual reports or paying annual fees without apparent consequence, it risks creating a perception of widespread noncompliance and PCAOB inaction.

the public and the PCAOB to have a higher quality list of registered firms. Such an improvement could provide informational benefits to investors, audit committees, and other stakeholders by reducing their information search and processing costs. Additionally, it would reduce the gaps in information about the operational status of registered firms.

Additionally, Rule 2107(h) would reduce resources spent by the PCAOB in efforts to bring delinquent firms into compliance with the annual reporting and fee payment requirements. This would allow the PCAOB to more effectively allocate PCAOB staff resources that are currently used to attempt to contact delinquent firms, which could enhance the PCAOB's ability to advance its investor protection mission. One commenter agreed that, by allowing the PCAOB to reallocate staff resources away from contacting delinquent firms, Rule 2107(h) would enhance the PCAOB's ability to further its mission.

Further, removing firms that consistently fail to meet their annual reporting and annual payment obligations will help promote the integrity of the list of registered firms. By treating consecutive delinquencies as a constructive request for leave to withdraw, the PCAOB may foster a sense of fairness among all registered firms, and a level playing field where compliance with basic requirements, such as filing annual reports and paying annual fees, is maintained.

Given the nature of these benefits, the PCAOB does not expect a substantial influence on efficiency, competition, or capital formation as a result of the rule amendment.

## 2. Costs

Rule 2107(h) would impose potential incremental costs only on operating firms with at least two years of consecutive delinquencies. As discussed above, 80 firms currently meet the criterion for Rule 2107(h)'s withdrawal process. For firms that no longer exist, are nonoperational, or no longer wish to remain registered, the Board does not anticipate any costs with respect to being removed from the PCAOB's registration records.<sup>48</sup>

<sup>48</sup> As discussed above, among the 80 firms that meet the criterion for Rule 2107(h)'s constructive-withdrawal-request process based on the 2022 and 2023 reporting years, 58 had not filed annual reports and had not paid annual fees since at least 2019. The PCAOB staff's analysis has found that only one of the 80 firms has any indication that it may have performed services requiring registration in recent years. Should this firm's noncompliance persist, it could be subject to the Rule 2107(h) constructive-withdrawal-request process and could

For any firms that wish to remain registered, they would incur the cost of stopping the withdrawal process under Rule 2107(h), by preparing and submitting an email to the PCAOB notifying the staff of their desire to remain registered with the Board as directed in the Notice of Delinquency and Impending Withdrawal within the 60-day period.

Rule 2107(h) includes several safeguards to protect firms that wish to remain registered but may be unaware that the withdrawal process has commenced. These include multiple forms of notice, a 60-day window during which firms can stop the withdrawal process, and a straightforward process to stop the withdrawal. These measures should significantly reduce the likelihood of a firm being withdrawn under Rule 2107(h) without its knowledge, which should attenuate any potential costs or disruptions associated with an unexpected withdrawal.<sup>49</sup>

The Board did not receive specific comments on the costs of Rule 2107(h). However, a commenter expressed the belief that the expected implementation costs of the proposals as a whole would be minimal, which would result in a net positive economic impact. Based on the above discussion of the incremental costs expected to result from this amendment, the Board does not anticipate a significant impact on efficiency, competition, or capital formation.

## 3. Potential Unintended Consequences

In addition to the benefits and costs discussed above, the final rule amendment could have unintended economic consequences. One commenter noted that the potential unintended consequences discussed in the proposals are adequate. There were no other comments related to potential unintended consequences with respect to the proposed amendment to Rule 2107. The following discussion describes potential unintended consequences considered by the Board and, where applicable, factors that mitigate those potential consequences.

utilize the rule's safeguards to stop the withdrawal process if it wishes to remain registered.

<sup>49</sup> While unlikely, there exists a possibility that a firm might unexpectedly discover that its registration has been withdrawn under Rule 2107(h), despite the rule's safeguards. Should this occur, the firm would need to undertake the process of re-registering with the PCAOB if it wished to provide services requiring registration, thereby incurring the costs associated with registration. Additionally, the firm could lose business from issuers or broker-dealers that might have engaged the firm's audit services had it maintained its PCAOB registration.

Rule 2107(h) provides a new procedural mechanism that would make consecutively delinquent registered firms eligible for withdrawal from PCAOB registration. Because this mechanism does not require affirmative action by a firm, an unintended consequence could arise if a firm was withdrawn from registration contrary to the firm's wishes. This could potentially impact clients, potential clients, and the public. However, as noted above, Rule 2107(h) includes several safeguards—including multiple forms of notice and a straightforward process to stop the withdrawal process—that should significantly reduce the likelihood of such an occurrence. Should such an exceptional situation arise, the firm has the option to reapply for registration and present to the PCAOB any special circumstances that led to the firm's noncompliance with the PCAOB's annual reporting and fee payment rules and its inability to stop the Rule 2107(h) withdrawal procedure.<sup>50</sup>

## Alternatives Considered

The Board considered alternatives to the final rule amendment, taking into account feedback from commenters on alternative approaches considered in the Proposing Release, as well as other alternatives suggested by commenters. This section considers all of the alternative approaches and discusses what the Board believes to be the most reasonable alternatives.

Rather than a constructive-withdrawal-request approach to delinquent annual reports and annual fees, the Board considered an expedited enforcement approach. Although issuing an order imposing a disciplinary sanction on these firms, upon a finding of consecutive violations of the Board's annual reporting and annual payment requirements, is a possibility, instituting and resolving an expedited disciplinary proceeding would require significantly more PCAOB staff time and other Board resources than the approach outlined in Rule 2107(h).<sup>51</sup> Furthermore, revocation

<sup>50</sup> While unlikely, it is conceivable that, despite the PCAOB's best efforts to provide notice, a firm deemed withdrawn under Rule 2107(h) may issue an audit report, or update or dual-date a previously-issued report, that gets included in a filing with the Commission. In such a scenario, the Commission has authority to bring an enforcement action against the firm; the Board may consider such conduct if the firm applies to re-register; and issuer and broker-dealer clients of the firm may incur costs to engage a new accounting firm, as well as reputational costs.

<sup>51</sup> In such litigation, even in circumstances where the firm is defunct, the hearing officer may need to address service issues (including for non-U.S. firms), issue a show-cause order, enter default (after DEI files a motion), and issue an initial decision specifying and justifying sanctions. Such litigation

would take significantly longer as compared to the approximately 60 days it would take following the approach outlined in Rule 2107(h). Therefore, the Board has adopted the constructive-withdrawal-request approach largely as it was originally proposed.

Some commenters stated they would be supportive of constructive withdrawal requests if a firm fails to file annual reports *or* fails to pay annual fees. The Board believes the dual condition of both failure to file annual reports and failure to pay annual fees appropriately identifies firms that cease to exist, are nonoperational, or no longer wish to remain registered. A firm that has done one or the other but not both implies some level of activity at the firm and wish to remain registered, indicating that other tools in the PCAOB's toolkit may be available to promote compliance.

One commenter suggested reducing the threshold for constructive withdrawal requests to one year of noncompliance, but the Board concluded that this could increase the risk of withdrawing from registration operational firms that wish to remain registered.<sup>52</sup>

The Board believes that both of these alternative processes suggested by commenters would enhance the risk of a withdrawal from registration of operational firms that wish to remain registered. The procedural safeguards in Rule 2107(h), including the timing parameters, help ensure that the Rule 2107(h) process does not impose a significant burden on firms that inadvertently fail to comply with the annual reporting and annual payment requirements or on other entities (clients, investors, etc.). The requirements set forth in Rule 2107(h) provide firms sufficient notice and a clear process that governs how and when a firm's registration would be

also consumes significant DEI staff time, in light of the production requirements of PCAOB Rule 5422, *Availability of Documents For Inspection and Copying*, as well as the motion practice and briefing that is expected on sanctions. The adopted approach would avoid these delays.

<sup>52</sup> As discussed above, the minimum amount of time that a firm must be delinquent in filing annual reports and paying annual fees before meeting the threshold of two consecutive reporting years is 13 months. In contrast, under a framework that considers only a single reporting year's noncompliance, a firm would be eligible for the constructive-withdrawal-request mechanism after only one month of delinquency, spanning from the firm's failure to file an annual report by June 30 of the reporting year to the firm's failure to pay the annual fee by July 31 of the same reporting year. The Board believes that such a brief period of delinquency is not sufficient to indicate that a firm has ceased to exist, is nonoperational, or no longer wishes to remain registered.

withdrawn based on a constructive withdrawal request.

In response to a commenter's suggestion, the Board extended from 30 days to 60 days the time that these firms have to decide whether to send an email to the Registration staff so that firms can remain registered. This change may incrementally reduce the likelihood of withdrawals from registration of a firm that is operational and wishes to remain registered.

#### Special Considerations for Audits of Emerging Growth Companies

Pursuant to Section 104 of the Jumpstart Our Business Startups ("JOBS") Act, rules adopted by the Board subsequent to April 5, 2012, generally do not apply to the audits of emerging growth companies ("EGCs"), as defined in Section 3(a)(80) of the Exchange Act, 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>53</sup> As a result of the JOBS Act, the rules that the Board adopts are generally subject to a separate determination by the Commission regarding their applicability to audits of EGCs.

The final rule amendment does not impose any additional requirements on emerging growth company audits. Accordingly, the Board believes that Section 103(a)(3)(C) of the Act does not apply. Nevertheless, the Board has included this analysis to inform the rulemaking. The discussion of benefits, costs, and unintended consequences above generally applies to audits of EGCs.

To inform consideration of the application of PCAOB rules and standards to audits of EGCs, PCAOB staff prepares a white paper annually that provides general information about characteristics of EGCs.<sup>54</sup> As of the

<sup>53</sup> See Public Law 112–106 (Apr. 5, 2012). Section 103(a)(3)(C) of the Act, as added by Section 104 of the JOBS Act, also provides that any rules of the Board requiring (1) mandatory audit firm rotation or (2) a supplement to the auditor's report in which the auditor would be 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 an EGC. The final rule amendment does not fall within either of these two categories.

<sup>54</sup> See PCAOB Office of Economic and Risk Analysis, *Characteristics of Emerging Growth Companies and Their Audit Firms at November 15, 2022* (Feb. 20, 2024) ("EGC Staff White Paper"), available at [https://assets.pcaobus.org/pcaob-dev/docs/default-source/economicandriskanalysis/projectsother/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/projectsother/documents/white-paper-on-characteristics-of-emerging-growth-companies-as-of-nov-15-2022.pdf?sfvrsn=a8294f3_4).

November 15, 2022 measurement date, PCAOB staff identified 3,031 companies that self-identified with the Commission as EGCs and filed audited financial statements in the 18 months preceding the measurement date.<sup>55</sup>

EGCs are likely to be newer companies, and their audit committees may have limited experience in seeking and selecting PCAOB-registered public accounting firms. The removal of consecutively delinquent firms from the PCAOB registration database, as facilitated by Rule 2107(h), could enhance the quality of the information available and reduce information search costs, thereby aiding the decision-making of these stakeholders. As for the costs associated with the final rule amendment, which are likely to be incremental for operating firms that wish to remain registered, the Board has 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.

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.

Accordingly, and for the reasons explained above, the Board has requested that the Commission determine, to the extent that Section 103(a)(3)(C) of the Act applies, that it 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, to apply the final rule amendment to audits of EGCs.

### III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal**

<sup>55</sup> The EGC Staff White Paper uses a lagging 18-month window to identify companies as EGCs. Please refer to the "Current Methodology" section in the Staff White Paper for details. Using an 18-month window enables staff to analyze the characteristics of a fuller population in the EGC Staff White Paper but may tend to result in a larger number of EGCs being included for purposes of the present EGC analysis than would alternative methodologies. For example, an estimate using a lagging 12-month window would exclude some EGCs that are delinquent in making periodic filings. An estimate as of the measurement date would exclude EGCs that have terminated their registration, or that have exceeded the eligibility or time limits. In the EGC Staff White paper, PCAOB staff identified 263 registered audit firms that issued audit reports for the 3,031 EGCs as of the November 15, 2022 measurement date. None of these 263 audit firms are among the 80 firms that failed to file annual reports and pay annual fees for reporting years 2022 and 2023.

**Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) By order approve or disapprove such proposed rules; or

(B) Institute proceedings to determine whether the proposed rules should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/pcaob/>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include PCAOB-2024-05 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to PCAOB-2024-05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/pcaob/>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly.

We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to PCAOB-2024-05 and should be submitted on or before December 12, 2024.

By the Commission.

**Vanessa A. Countryman.**

*Secretary.*

[FR Doc. 2024-27247 Filed 11-20-24; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35387; File No. 812-15188]

##### **Zscaler, Inc.**

November 15, 2024.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of application for an order under Section 3(b)(2) of the Investment Company Act of 1940 ("Act").

**APPLICANT:** Zscaler, Inc.

**SUMMARY OF APPLICATION:** Applicant seeks an order under Section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicant states that it is in the business of providing, improving, and developing cloud security solutions to businesses.

**FILING DATES:** The application was filed on December 28, 2020, and amended on May 11, 2021, July 28, 2021, January 6, 2022, July 31, 2023, and September 13, 2024.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving applicants with a copy of the request, by email if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 10, 2024, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and

the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov).

**ADDRESSES:** The Commission:

*Secretarys-Office@sec.gov*. Applicant: Remo Canessa, Chief Financial Officer, and Robert Schlossman, Esq., Chief Legal Officer, Zscaler, Inc., at [Treasury@zscaler.com](mailto:Treasury@zscaler.com); Kevin R. Bettsteller, Esq., at [kbettsteller@gibsondunn.com](mailto:kbettsteller@gibsondunn.com).

**FOR FURTHER INFORMATION CONTACT:**

Adam Lovell, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. For Applicant's representations, legal analysis, and conditions, please refer to Applicant's fifth amended and restated application, dated September 13, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

##### **Applicant's Representations**

1. Applicant states that it is a Delaware corporation formed in 2007 that, directly and through its wholly-owned subsidiaries,<sup>1</sup> is engaged in the business of providing, improving, and developing cloud security solutions to businesses.

2. Applicant states that its business is highly capital intensive, requires R&D of new technologies, and does not involve the Applicant acquiring or retaining significant "hard" operating assets. Applicant states that it maintains significant cash reserves that it seeks to invest for purposes of conserving capital and providing liquidity until the funds are used in its cloud-based services and technology business. As described more fully in the application, Applicant states that it requires significant liquid capital primarily to: (i) fund R&D for new products and services, (ii) advance the commercialization of its business, (iii) otherwise fund its operations, and (iv) make other capital expenditures in keeping with the growth of the

<sup>1</sup> Applicant states that its 28 wholly-owned subsidiaries generally engage in sales and marketing or research and development ("R&D") activities in their respective jurisdictions.