



Statement Regarding the PCAOB's Revised Research and Standard-Setting Agendas: Reducing Credibility, Accountability and Confidence in the Financial Reporting Process

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SPEAKER:

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EVENT:**LOCATION:**

In late 2017, [\[1\]](#) the U.S. Securities and Exchange Commission ("SEC") appointed an entirely new Board, [\[2\]](#) giving the five new members the collective opportunity to develop a PCAOB 2.0. [\[3\]](#) In 2018, we issued a Strategic Plan that promised innovative oversight, including with respect to our approach to writing auditing standards. Consistent with our statutory mission, we explicitly committed, in doing so, to consider the expectations of investors.

Last month, the PCAOB published its updated research and standard-setting agendas that will be its focus of attention and resources for the next 12 to 18 months. [\[4\]](#) The agendas do not, however, reflect the promises made in the Strategic Plan.

With respect to investor expectations, the revised agendas mostly disregard them. The agendas removed matters repeatedly identified by investors as important – matters that have only grown in significance in a COVID-19 environment. What remains largely overlaps with the priorities of an international standard setter. While these priorities may be good ones, the goal of global alignment and coordination should not take precedence over the expressed interests of U.S. investors. [\[5\]](#)

As for innovative oversight, the revised agendas mostly leave in place the remaining legacy standards adopted by the PCAOB on an "interim" basis in 2003. [\[6\]](#) These standards were written by the audit profession during the era of self-regulation, with little input from the public and were sharply criticized during Congressional hearings. [\[7\]](#)

The need to revise these out-of-date interim standards has become even more pressing with the PCAOB's ongoing consideration of changes to the standards governing quality control (QC) systems at audit firms. In our Concept Release published in December 2019, [\[8\]](#) we suggested that firms' QC systems could have as an objective conformity with our existing standards. [\[9\]](#) Given the dated nature of these interim standards, this objective could establish a low bar that does not ensure the quality of audits expected by investors and the public.

The lack of adequate public participation by investors and the public weakens confidence and trust in the standard-setting process, which can harm our capital markets. Revisions of this magnitude and the imbedded policy decisions that they reflect should only occur after public debate, discussion, and feedback.

As a result, I do not support the changes made to the agendas.

I. The Revised Research and Standard-Setting Agendas

The Strategic Plan issued in 2018 (and again in 2019) promised that the Board would seek to "[u]nderstand and consider investors' audit expectations" [\[10\]](#) and, in doing so, we promised to "be more innovative in our oversight activities—particularly with respect to our approach to inspections and standard setting." [\[11\]](#) The revised agendas, however, fail with respect to both promises. [\[12\]](#)

A. The Unfulfilled Promise of Investor Expectations

Since its formation, the PCAOB has regularly considered the expectations of investors in determining its standard-setting agenda. We did so by proactively soliciting feedback on their priorities and including topics identified through this process on the agenda. Often the input came through public meetings of the PCAOB's two advisory groups.

Investors, for example, strongly supported standards that required identification of those participating in an audit (*i.e.*, the required disclosure of the engagement partner, the firm's tenure with a particular client, and the "other auditors" used in an audit) [\[13\]](#) and the most difficult areas of an audit (*i.e.*, critical audit matters). [\[14\]](#) As a result of strong investor interest, participation and feedback, these matters were added to the standard-setting agenda and ultimately adopted by the prior Board.

With respect to the September 2020 revised agendas, there have been no public meetings of our advisory groups to discuss these changes or any other standard-setting matters. Rather than reflecting the interests of investors, the revised agendas remove the very matters that investors have repeatedly identified as important, including:

- **An Auditor's Role Regarding Other Information and Company Performance Measures, Including Non-GAAP Measures.** Not meaningfully updated since the 1970s, [\[15\]](#) this standard was written before the era of electronic filings on EDGAR, mandatory submission to the SEC of certain earnings releases, [\[16\]](#) and the widespread use of sustainability reports and climate-related information (such as the recommendations of the Financial Stability Board's Task Force on Climate-related Disclosure). [\[17\]](#) Modernization of the standard is the gateway for a discussion about an audit firm's role in providing assurance, if any, on non-GAAP measures, key performance indicators, XBRL tags, and metrics relating to ESG matters. [\[18\]](#) The role of assurance for these matters has been a topic of global discussion, goes directly to the relevance of the role of the auditor, has increasingly been seen as relevant in the debate on the impact of climate change on financial disclosure, and has only grown in importance as a result of the current pandemic. [\[19\]](#)
- **An Auditor's Consideration of Noncompliance with Laws and Regulations (NOCLAR).** [\[20\]](#) This standard addresses the obligation of firms with respect to illegal activity uncovered during an audit. The standard was adopted before the era of compliance officers and widespread use of whistleblower complaints and does not take into account high-profile cases involving serious violations of laws and regulations arising from operations rather than financial accounting and reporting. Comments from the PCAOB's Investor Advisory Group indicated a desire to move forward on this matter "with some degree of speed. . ." [\[21\]](#)
- **Consideration of an Entity's Ability to Continue as a Going Concern.** The standard was added to the PCAOB's agenda after discussion by the PCAOB's Advisory Groups (IAG and SAG) [\[22\]](#) and in light of changes to the financial reporting standards issued by the FASB. [\[23\]](#) The impact of the COVID-19 pandemic on the global economy has reconfirmed the importance of this area and the need to ensure that requirements under the standard are sufficient to ensure proper treatment and disclosure by auditors.

The revised agendas do not adequately explain the reasons for the removal of these items or include any discussion of how investor concerns that caused them to be added to the agendas in the first place were addressed. [\[24\]](#) Moreover, their removal and relegation to a status of "monitor[ing] relevant developments" is problematic in light of the particular importance of these areas in an economic environment deeply impacted by the continuing pandemic.

While deleting areas of importance to investors, the remaining items on the agendas overlap with the priorities of an international standard setter. [\[25\]](#) Proposals by other standard setters are important and can be useful sources of input. The focus of the PCAOB, however, must be on the priorities of investors and the public rather than priorities of the other standard setters. [\[26\]](#) In so doing, we will be far more likely to lead, rather than follow, in the global debate on auditing standards. [\[27\]](#)

This apparent decision to give priority to other standard setters, as suggested in the revised agendas, deserves a full public airing rather than an isolated reference in our December 2019 Concept Release. [\[28\]](#)

B. The Unfulfilled Promise of Innovative Oversight

The revised agendas are not innovative. With the exception of quality control, they fail to address the interim standards adopted by the PCAOB, leaving largely untouched the out-of-date requirements that do not adequately reflect the interests of investors and fail to take into account significant changes in the system of financial reporting that have occurred since the PCAOB opened its doors in 2003. [29]

Congress created the PCAOB in part to remedy concerns over the standard-setting process. During the nearly 70 years of self-regulation by the profession, [30] standards (or auditing rules) were determined by the profession without adequate investor input. [31] Congress addressed these concerns by giving the PCAOB the authority to write standards and instructed that this be done in the interests of investors and the public.

The Board adopted, on an "interim" basis, the same standards that were written during the era of self-regulation [32] and sharply criticized in Congressional hearings. [33] An expediency, the decision was accompanied by a commitment to reexamine the standards "as soon as possible". [34] Nonetheless, seventeen years later, despite a very different auditing environment, many of these standards remain in place without material change. [35]

The revised standard-setting agenda does include possible revisions to the standards on quality control. Moreover, the PCAOB issued a Concept Release last December seeking comment on possible revisions to these interim standards. [36]

The Concept Release, however, suggested that the objective of a system of quality control could be to "provide a firm with reasonable assurance that its personnel comply with professional standards applicable to its accounting and auditing practice and the firm's standards of quality." [37] In other words, the revised standards could have as an objective compliance with our existing outdated auditing standards. [38] Until we update the other interim auditing standards, this objective could establish a low bar that would not ensure the quality of audits expected by investors and the public.

Certainly, a systematic re-evaluation of these interim standards would be a sizeable and time-intensive project. Our revised agendas, however, do not even hint at this need, much less suggest a timetable for doing so.

II. The Impact on the Capital Markets

There are very real consequences to the capital markets resulting from the lack of transparency around the decisions made in the revised standard-setting and research agendas and the failure to adequately take investor views into account through public meetings and public comment.

The PCAOB faces a serious transparency problem. [39] Other than the meetings of our advisory groups, we rarely hold roundtables or other public meetings designed to debate, discuss, and obtain feedback on matters of importance to the PCAOB's mission. [40] Lack of transparency was a concern in the era of self-regulation and has yet to be fully remedied. [41] Without adequate transparency, there cannot be adequate accountability.

Standard setting by the PCAOB was traditionally an exception to this approach. The PCAOB benefited from feedback provided in public meetings by its Standing Advisory Group, [42] which consisted of a variety of stakeholders, including a large number of investors and investor representatives, [43] as well as its Investor Advisory Group. [44] Public meetings of these groups also helped inform and educate the wider investor community about the standard-setting process, thereby facilitating additional feedback and input.

We have not, however, held any public meetings of these advisory groups since November 2018, [45] a hiatus of almost two years. [46] Neither group has had an opportunity to publicly weigh in on the decisions to remove from the agendas the very projects that they asked us to include. Nor have they had an opportunity to address whether the PCAOB should emphasize the standard-setting priorities of an international body rather than the priorities that they recommended. [47] In the absence of public meetings of these advisory groups, investors and other participants in the capital markets have not been sufficiently alerted to these possibilities or given adequate opportunity to provide feedback. [48]

The most far reaching decision made by Congress in creating the PCAOB was to ensure that audit oversight would be done in the interest of investors and the public, effectively providing them with a guaranteed seat at the standard-setting table. The benefits of this approach are clear: Participation by investors adds credibility and accountability to the process, promotes confidence in audits conducted by independent accounting firms, and increases trust in the financial disclosure process.

The recent updates to the research and standard-setting agendas do not adequately reflect the views of investors. This is a tragic mistake. The absence of an adequate opportunity to participate through an open and public process may well weaken the credibility of, and confidence in, the efforts of the PCAOB and the audits of public companies and SEC-registered broker-dealers. ^[49] The result will be less trust in our system of financial reporting, an outcome that harms our capital markets.

Revisions to the PCAOB's project agendas should only be made after adequate public engagement with investors, including public meetings of our advisory groups. Were we to take these steps, the standard-setting and research priorities would likely be very different and better suited to the needs of investors and other participants in the capital markets.

^[1] J. Robert Brown, Jr. is a Board Member of the Public Company Accounting Oversight Board, see PCAOB, *J. Robert Brown, Jr.* (available at <https://pcaobus.org/About/Board/Pages/J-Robert-Brown.aspx>). I want to thank Austin McComb and Clara Fryer, interns in my office during the summer and fall of 2020, respectively, for their valuable work on this statement.

^[2] See Press Release, SEC, SEC Appoints New Chairman and Board Members to PCAOB (Dec. 12, 2017) (available at <https://www.sec.gov/news/press-release/2017-230>). One of these appointees left the Board in October 2019. See Press Release, SEC, PCAOB Board Member Kathleen Hamm to Complete Term (Oct. 11, 2019) (available at <https://www.sec.gov/news/press-release/2019-210>).

^[3] PCAOB, Strategic Plan 2018-2022, 2018 (available at <https://pcaobus.org/About/Administration/Documents/Strategic%20Plans/PCAOB-2018-2022-Strategic-Plan.pdf>). The Board reaffirmed the 2018 Strategic Plan and incorporated it into its 2020 budget in an open meeting on November 19, 2019. See PCAOB Approves 2020 Budget, Reaffirms Strategic Direction, Nov. 19, 2019 (available at <https://pcaobus.org/News/Releases/Pages/PCAOB-approves-2020-budget-reaffirms-strategic-direction.aspx>)

See also J. Robert Brown, Jr., Board Member, PCAOB, *The Investor Advisory Group, Investor Protection, and the Mission of the PCAOB*, PCAOB Investor Advisory Group, Washington, D.C. (Nov. 8, 2018) (available at <https://pcaobus.org/News/Speech/Pages/brown-investor-advisory-group-investor-protection-PCAOB-mission.aspx>); Kathleen Hamm, former Board Member, PCAOB, *Driving Audit Quality Forward: PCAOB 2.0*, International Corporate Governance Network New York Conference 2018, New York, NY (Oct. 22, 2018) (available at <https://pcaobus.org/News/Speech/Pages/Driving-Audit-Quality-Forward-PCAOB-2-0.aspx>).

^[4] See PCAOB, *Updates to Research and Standard-Setting Agendas* (Sept. 8, 2020) (available at <https://pcaobus.org/Standards/research-standard-setting-projects/Pages/default.aspx>).

^[5] Most, if not all, of the PCAOB's published standard-setting and research agenda items, for over a decade, were routinely discussed with the PCAOB's Advisory Groups. In its periodic standard-setting and research agenda updates, the PCAOB staff noted that the "standard-setting agenda is informed by the PCAOB's oversight activities, monitoring of the environment, consultation with the Board's Standing Advisory Group ("SAG"), input from the Board's Investor Advisory Group ("IAG"), discussion with the U.S. Securities and Exchange Commission ("SEC") staff, and other factors." See PCAOB, OCA, Standard-Setting Agendas, Oct. 14 -15, 2009; Oct. 2010; Sept. 30, 2011; Mar. 2012; Nov. 2012; Mar. 31, 2013; Dec. 10, 2013; Dec. 31, 2013; Mar. 31, 2014; June 30, 2014; Sept. 30, 2014; Dec. 31, 2014; Mar. 31, 2015; Sept. 30, 2015; Dec. 31, 2015; Mar. 31, 2016; June 30, 2016; Sept. 30, 2016; Dec. 31, 2016; Mar. 31, 2017; June 30, 2017; Dec. 30, 2017; Mar. 31, 2018; and June 30, 2018. The PCAOB staff did not issue standard-setting updates subsequent to June 20, 2018.

^[6] See PCAOB, Release No. 2003-006: Establishment of Interim Professional Auditing Standards (Apr. 18, 2003) (available at https://pcaobus.org/Rulemaking/Interim_Standards/Release2003-006.pdf). See also Order Regarding Section 103(a)(3)(B) of the Sarbanes-Oxley Act of 2002, Securities Exchange Act Release No. 47745 (Apr. 25, 2003) (available at <https://pcaobus.org/Rulemaking/Pages/InterimStandards.aspx>).

^[7] See *infra* notes 30-33.

^[8] See PCAOB, Release No. 2019-003: Potential Approach to Revisions to PCAOB Quality Control Standards (Dec. 17, 2019) (available at <https://pcaobus.org/Rulemaking/Pages/docket-046-quality-control.aspx>).

^[9] This objective was considered by some investors as excessively narrow. See *infra* note 38.

^[10] Strategic Plan, *supra* note 3, at 9 ("As investors request and preparers provide financial information in different forms, the expectations of an audit are evolving. Through external engagement, and in coordination with the SEC, we will seek to better understand investors' expectations and will consider the related risks and opportunities for our oversight activities.").

[11] Strategic Plan, *supra* note 3. In response to the PCAOB's draft strategic plan in 2018, many commenters encouraged the Board to move forward with its standard-setting agenda and identified issues that we are now removing from the agenda. See Letter from CFA Institute to PCAOB, Strategic Plan 2018-2022 (Aug. 31, 2018) (available at https://pcaobus.org/About/Administration/StrategicPlanComments/4_CFA%20Institute.pdf) ("Investors – as well as other stakeholders – are interested in changes in the PCAOB's standard-setting and research agendas as the long-term nature of such projects provides insight into the direction of the Board and the organization more broadly. As it relates to the research agenda, investors are keenly interested in work related to alternative performance measures (e.g., Non-GAAP measures and other metrics) as well as on emerging forms or reporting (e.g. ESG, sustainability). These are areas where investors are continuing to see a burgeoning number of metrics and disclosures without a great deal of comfort on the quality of such information. As we note above, assurance over XBRL information is another area of interest to investors."). See also Letter from AFL-CIO to PCAOB, Strategic Plan 2018-2022 (Sept. 10, 2018) (available at https://pcaobus.org/About/Administration/StrategicPlanComments/28_AFL-CIO.pdf) ("...we urge the PCAOB to continue moving forward with its standard setting agenda and its oversight activities.").

[12] For the views of investors and their representatives in this area, see PCAOB, Investor Advisory Group, IAG Meeting Archive (available at <https://pcaobus.org/About/Advisory/Pages/IAGMeetingArchive.aspx>). See also PCAOB, Comments on PCAOB Draft Strategic Plan 2018-2022 (available at <https://pcaobus.org/About/Administration/Pages/Comments-Draft-Strategic-Plan-2018-2022.aspx>); PCAOB, Comment Letters for Docket 046 (available at <https://pcaobus.org/Rulemaking/Pages/Docket046Comments.aspx>).

[13] The value of this disclosure requirement has become increasingly apparent. These reporting obligations are the only comprehensive source that allows investors to learn whether a portion of the financial statements are audited by a firm in a jurisdiction where the PCAOB is denied access to inspect. See PCAOB, China-based Referred Work (available at <https://pcaobus.org/International/Pages/China-Referred-Work.aspx>).

[14] See Order Granting Approval of Proposed Rules on the Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, and Departures from Unqualified Opinions and Other Reporting Circumstances, and Related Amendments to Auditing Standards, Securities Exchange Act Release No. 81916; File No. PCAOB-2017-01 (Oct. 23, 2017) (available at <http://www.sec.gov/rules/pcaob/2017/34-81916.pdf>). For more on the history of this project, including all of the historical documents, see PCAOB, Rulemaking Docket 034 (available at <https://pcaobus.org/Rulemaking/Pages/Docket034.aspx>).

[15] See The Commission on Auditors' Responsibilities: Report, Conclusions, and Recommendations, at 128 (1978) (available at http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcdn.com/collection/papers/1970/1978_0101_CohenAuditors.pdf) ("[I]n January 1974, the chief accountant of the SEC requested consideration of the auditor's responsibility for other information in documents containing audited financial statements. The committee issued SAS No. 8, *Other Information in Documents Containing Audited Financial Statements*, in December 1975.").

[16] See Item 2.02 of Form 8-K (requiring submission of releases that disclose "material non-public information regarding the registrant's results of operations or financial condition for a completed quarterly or annual fiscal period"); see also Conditions for Use of Non-GAAP Financial Measures, Exchange Act Release No. 47226, Securities Act Release No. 8176 (Jan. 22, 2003) (available at <https://www.sec.gov/rules/final/33-8176.htm>).

[17] J. Robert Brown, Jr., Board Member, PCAOB, *Preventing Audit Extinction*, Data Amplified 2019 Conference, Shanghai, China (Oct. 24, 2019) (available at <https://pcaobus.org/News/Speech/Pages/Preventing-Audit-Extinction.aspx>). This topic has been discussed by the IAG and the SAG on multiple occasions. See PCAOB, *Auditor's Role Regarding Other Information and Company Performance Measures, Including Non-GAAP Measures* (last updated Oct. 1, 2018) (available at <https://pcaobus.org/Standards/research-standard-setting-projects/Pages/other-information-non-GAAP.aspx>) (noting discussions at meetings of both organizations held in 2016 and 2017).

[18] Under current PCAOB standards, auditors do not have responsibilities to perform procedures related to information presented in corporate earnings releases, investor presentations, or other communications, such as calls with analysts and information on the company's website. The PCAOB issued a proposed standard in 2013 in connection with the proposal on the auditor's reporting model. Both the IAG and SAG encouraged the Board to move forward with making the auditor's responsibilities for non-GAAP measures more rigorous than the current requirements and indicated that the matter should be considered a high priority for the Board. See PCAOB, *Investor Advisory Group Meeting* (Oct. 24, 2017) (available at <https://pcaobus.org/News/Events/Pages/2017-IAG-meeting.aspx>); PCAOB, *Standing Advisory Group Meeting* (Nov. 29-30, 2017) (available at <https://pcaobus.org/News/Events/Pages/SAG-meeting-Nov-2017.aspx>). The Center for Audit Quality has also noted that "some companies are voluntarily seeking assurance from auditors on their ESG information" and that "the [U.S. Securities and Exchange] Commission may consider seeking investor input and other stakeholder input as to the value of auditor involvement in these disclosures..." Letter from The Center for Audit Quality to the U.S. Securities and Exchange Commission, Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information; File Number S7-01-20 (Apr. 28, 2020) (available at <https://www.thecaq.org/wp-content/uploads/2020/04/2020-S-K-Comment-Letter-FINAL-for-submission-4-23-20.pdf>). In September 2020, the World Economic Forum defined common metrics and disclosures to address comparability and consistency in the reporting of ESG and recommended that such metrics "should be capable of verification and assurance, to enhance transparency and alignment among corporations, investors and all stakeholders". (See *Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation*, World Economic Forum, Sept. 22, 2020, available at http://www3.weforum.org/docs/WEF_IBC_Measuring_Stakeholder_Capitalism_Report_2020.pdf).

[19] For a discussion of concerns over non-GAAP in a COVID-19 environment, see Nikou Asgari, *Pandemic Spawns New Reporting Term 'Ebitdac' to Flatter Books*, Fin. Times (May 13, 2020) (available at <https://www.ft.com/content/5467518c-1b68-4712-9e74-e7cc949d8002>). See also So Young Ho, *SEC Official Warns Banks Against Misleading Non-GAAP Metrics During COVID-19 Pandemic*, Thomson Reuters (Sept. 21, 2020); SEC, *Coronavirus (COVID-19) – Disclosure Considerations Regarding Operations, Liquidity, and Capital Resources* (June 23, 2020) (available at <https://www.sec.gov/corpfin/covid-19-disclosure-considerations>). Ceres put out a report recommending that the "other information" standard be amended to require audit firms to consider climate related disclosures included in SEC filings. See Ceres, *Addressing Climate as a Systemic Risk*, June 2020, at 33 <https://www.ceres.org/sites/default/files/reports/2020-06/Financial%20Regulators%20FULL%20FINAL.pdf> ("The PCAOB could amend its standard on 'other information' to require auditors read companies' climate-related disclosures and consider whether and, if so, how those disclosures bear on the fairness of their financial statements. While auditors are not required to read any disclosures outside the 10-K and 10-Q, companies now routinely provide significantly broader disclosures on their performance using a range of forums including, importantly, their sustainability reports. By reading these disclosures, auditors will gain a more rounded sense of a company's performance and will be better able to identify material misstatements in the financial statements. Building on this idea, the PCAOB should update its standards to require specific procedures to identify the risk of material misstatement in financial statements due to inaccurate or omitted climate-related matters.").

[20] The IAG and SAG actively discussed this matter. See PCAOB, *Standing Advisory Group Meeting* (Nov. 29-30, 2017) (available at <https://pcaobus.org/News/Events/Pages/SAG-meeting-Nov-2017.aspx>); see also PCAOB, *Standing Advisory Group Meeting, Materials and Archived Video* (Nov. 29-30 2017) (available at <https://pcaobus.org/News/Events/Pages/SAG-meeting-Nov-2017.aspx>).

[21] See Transcript, PCAOB, Investor Advisory Group Meeting, Oct. 24, 2017, at 303-04 (statement by T. Grant Callery) (available at <https://pcaobus.org/News/Events/Documents/10242017-IAG-meeting/IAG-transcript-Oct-2017.pdf>). For concerns raised by investors over the standard, see *IAG Working Group: Auditor's Consideration of a Client's Noncompliance with Laws and Regulations* (Oct. 24, 2017) (available at <https://pcaobus.org/News/Events/Documents/10242017-IAG-meeting/WG-slides-NOCLAR.pdf>).

[22] The topic has come up at the SAG on four occasions and at the IAG on two occasions. See PCAOB, *Past SAG Meetings* (available at <https://pcaobus.org/Standards/SAG/Pages/SAGMeetingArchive.aspx>); PCAOB, *IAG Meeting Archive* (available at <https://pcaobus.org/About/Advisory/Pages/IAGMeetingArchive.aspx>).

[23] See PCAOB, AS 2415: *Consideration of an Entity's Ability to Continue as a Going Concern* (available at <https://pcaobus.org/Standards/Auditing/Pages/AS2415.aspx>).

[24] The PCAOB staff explained: "We have removed Going Concern from the standard-setting agenda and Other Information and Noncompliance with Laws and Regulation from the research agenda. Following significant work on these projects, we have concluded there is not a need at present to change our standards or take other action on these topics."

[25] Other than some conforming rule changes, our standard-setting agenda includes quality control and "Supervision of Audits Involving Other Auditors." Both are areas where the IAASB has issued proposals to amend the international standards. See J. Robert Brown, Jr., Board Member, PCAOB, *Statement on Concept Release for Potential Approach to Revisions to PCAOB Quality Control Standards: The Role of Investors and the Public in the Revisions to PCAOB Quality Control Standards*, PCAOB, Washington, DC (Dec. 17, 2019) (available at <https://pcaobus.org/News/Speech/Pages/Brown-statement-concept-release-potential-approach-PCAOB-quality-control-standards.aspx>) ("in considering a potential framework for revisions to the QC standards, our Concept Release relies heavily on the International Standard on Quality Management 1 (ISQM 1), a draft proposal issued by the International Auditing and Assurance Standards Board (IAASB)."); see also IAASB, *Proposed International Standard on Auditing 600 (Revised): Special Considerations — Audits of Group Financial Statements (Including the Work of Component Auditors)* (Apr. 27, 2020) (available at <https://www.iaasb.org/publications/proposed-international-standard-auditing-600-revised-special-considerations-audits-group-financial>). The addition of "Audit Evidence" on the PCAOB's standard-setting agenda follows the IAASB's projected revision of ISA 500, Audit Evidence. See IAASB, *REVISION OF ISA 500, AUDIT EVIDENCE*, Project Update (Sept. 3, 2020) (available at <https://www.iaasb.org/news-events/2020-09/iaasb-issues-new-project-update-isa-500-audit-evidence>). Our inclusion of technology on the research agenda tracks the agenda of the international standard setter. See IAASB, Data Analytics Working Group (DAWG), *Technology* (available at <http://www.iaasb.org/projects/technology>).

[26] See 15 U.S.C. § 7211(a) (mission of PCAOB "to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent [audit reports](#)"). See also Bill Gradison & Ron Boster, *The PCAOB's First Seven Years: A Retrospection*, 4 *Current Issues in Auditing* A9, A12 (2010) (describing the mission as "precise and unambiguous" and noting that "the Board's statutory mandate is to protect investors, not issuers or their management, nor their external auditors.").

[27] See Mark Maurer, *How International Auditing Rules Are Shaping Standards in the U.S.*, Wall St. J. (Jan. 20, 2020), available at <https://www.wsj.com/articles/how-international-auditing-rules-are-shaping-standards-in-the-u-s-11579532400>.

[28] See *supra* note 8, at 5 ("We are considering using Proposed ISQM 1 as a starting point for a future PCAOB QC standard."). See also *id.* ("Due to the foundational nature of QC systems, we believe that it would not be practical to require firms to comply with fundamentally different QC standards. Unnecessary differences in QC standards could even detract from audit quality by diverting firms' efforts from focusing on matters of fundamental importance to effective QC systems.").

[29] Megan Zietsman, Chief Auditor, PCAOB, *Introductory Remarks at the Annual Auditing Conference at Baruch* (Feb. 26, 2020) (available at <https://www.cpajournal.com/2020/02/26/regulators-and-standards-setters-2/>) ("Clearly, the PCAOB standards are old. They haven't been substantially overhauled since they were adopted as interim standards back when the PCAOB was established. For example, they don't even take into account how technology is transforming not only how audits are being done, but how firms are using technology as part of quality control and broadly as part of running their businesses.").

[30] Following adoption of the federal securities laws, the SEC opted to leave the standard-setting process in the hands of the profession. See *In re McKesson & Robbins, Inc.*, Summary of Findings and Conclusions, File No. 1-1435, Exchange Act Release No. 2707, Accounting Series Release No. 19 (1940) (available at https://egrove.olemiss.edu/cgi/viewcontent.cgi?article=1106&context=acct_fed) ("We have carefully considered the desirability of specific rules and regulations governing the auditing steps to be performed by accountants in certifying financial statements to be filed with us. Action has already been taken by the accounting profession adopting certain of the auditing procedures considered in this case.").

[31] United States General Accounting Office, GAO/AIMD-96-98, *The Accounting Profession, Major Issues: Progress and Concerns* (Sept. 1996) (available at <https://www.govinfo.gov/content/pkg/GAOREPORTS-AIMD-96-98/pdf/GAOREPORTS-AIMD-96-98.pdf>) ("User participation in setting . . . auditing standards . . . are significant continuing concerns.").

[32] Even before creation of the PCAOB, there was recognition that auditing standards required reconsideration. See *The Panel on Audit Effectiveness, Report and Recommendations* (Aug. 31, 2000) (also known as the "O'Malley Commission") (recommending that standards be made "more specific and definitive"). The unrevised "interim" standards are easy to identify. They are the ones written in non-gender neutral language.

[33] *Accounting Reform and Investor Protection, Hearings Before the S. Comm. on Banking, Hous., and Urban Aff.*, 107th Cong. (Feb. 26, 2002) (testimony of Lynn Turner, Chief Accountant, SEC) (during era of self-regulation, standards "written to protect the accounting firms in case they get in trouble on an audit."); *quoting* Testimony of John C. (Sandy) Burton, Chief Accountant, SEC (1978) ("As long as you leave that standard setting process in the hands of the firms and the firm's legal counsel, you are going to get standards written to protect them in court, as opposed to standards written to ensure that they do audits that will protect the public."). See also GAO/AIMD-96-98, *supra* note 31, at 14 ("In practice, audit standard setting has been primarily the domain of the accounting profession. In that respect, auditing standards have been influenced by auditors' liability concerns.").

[34] PCAOB, Release No. 2003-005: *Statement Regarding the Establishment of Auditing and other Professional Standards* (Apr. 18, 2003) ("the Board will establish a schedule for the review of all Interim Professional Auditing Standards. The Board intends to commence this review as soon as possible.") (available at https://pcaobus.org/Rulemaking/Docket%20004/2003-04-18_Release_2003-005.pdf).

[35] In the absence of standard updates by the PCAOB, these interim PCAOB standards or requirements are frozen in place as they existed in 2003 even if the standards were subsequently updated by AICPA. Take for example the attestation standards used in connection with service providers retained under SEC Regulation AB. Compare PCAOB, *Compliance Attestation, AT Section 601* (available at <https://pcaobus.org/Standards/Attestation/Pages/AT601.aspx>) with AICPA, *Statement on Standards for Attestation Engagements* (available at <https://www.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/ssae-no-18.pdf>). In addition, we continue to mandate adherence to the requirements of the SEC Practice Section but only for those firms who were members in 2003. See PCAOB, Release No. 2003-006, *supra* note 6 ("because the Board intends the Interim Quality Control Standards to preserve existing standards as they apply currently, consistent with Section 103(a)(3) of the Act, those Interim Quality Control Standards adapted from the AICPA SEC Practice Section requirements apply only to those firms that are members of the AICPA SEC Practice Section").

[36] See *supra* note 8, at 8 ("Since the PCAOB's current QC standards were first developed and issued by the AICPA, the auditing environment has changed significantly. The current QC standards were developed in the context of the self-regulatory peer review system in place at that time and not with a view to the external regulatory oversight and enforcement environment that has since arisen, including through the establishment of the PCAOB. Nor do the standards consider other key developments affecting audit and assurance practices and QC systems. . .").

[37] See *supra* note 8, at 5. This is the objective of our current and dated standard on quality control. See PCAOB, QC § 20.03 (available at <https://pcaobus.org/Standards/QC/Pages/QC20.aspx>). A somewhat more detailed approach described as "broadly consistent" with the concept release was proposed by international standard setters and included in our concept release on quality control. See *supra* note 8, at 11 ("This objective is broadly consistent with the objective in current PCAOB standards, but is more detailed.").

[38] Some have questioned whether this objective will in fact assure "quality." See Letter from CFA to PCAOB, PCAOB Release No. 2019-003, *Concept Release, Potential Approach to Revisions to PCAOB Quality Control Standards* (Mar. 16, 2020) (available at https://pcaobus.org/Rulemaking/Docket046/014_CFA.pdf) ("While it is certainly true, as discussed above, that PCAOB inspection reports suggest that many firms struggle to meet even this low bar, surely we should be setting a higher goal for firm's QC systems. The objective of ISO 9001, in contrast, is to ensure high quality processes, products and services. If the PCAOB isn't willing to set that higher bar, in terms of the objective of the standard, it should stop calling this a quality control system and label it instead as what it is, a basic compliance system.").

[39] See J. Robert Brown, Jr., Board Member, PCAOB, *Grading the PCAOB: Transparency, Accountability and Investor Protection*, Council of Institutional Investors, Minneapolis, Minn. (Sept. 17, 2019) (available at <https://pcaobus.org/News/Speech/Pages/Brown-Grading-the-PCAOB-Transparency,-Accountability-and-Investor-Protection.aspx>).

[40] The SEC periodically holds public roundtables on specific issues. See SEC, *SEC Staff to Host July 9 Roundtable on Emerging Markets* (May 19, 2020) (available at <https://www.sec.gov/news/press-release/2020-116>). The public can typically view the roundtables live or access them through a posted webcast. See SEC, *SEC Webcasts* (available at <https://www.sec.gov/news/webcasts.htm>). The last public roundtable held by the PCAOB appears to have been in 2014. See PCAOB, *Public Meeting on Auditor's Reporting Model* (Apr. 2-3, 2014) (available at https://pcaobus.org/News/Events/Pages/04022014_PublicMeeting.aspx).

[41] See *Accounting Reform and Investor Protection, Hearings Before the S. Comm. on Banking, Hous., and Urban Aff.*, 107th Cong. (Mar. 6, 2002) (Prepared Statement of Bevis Longstreth, Member of the O'Malley Commission, Former Commissioner of the SEC, 1981-1984, Retired Partner, Debevoise & Plimpton; "Among the short-comings of the present system are the following: . . . 3. Lack of transparency").

[42] The Board convened a Standing Advisory Group to advise on the development of auditing and related professional practice standards. The SAG included auditors, investors, audit committee members, public company executives, and others. See PCAOB, *Standing Advisory Group* (available at <https://pcaobus.org/Standards/SAG/Pages/default.aspx>).

[43] See PCAOB, *Standing Advisory Group Members* (available at <https://pcaobus.org/Standards/SAG/Pages/Current.aspx>).

- [44] Nineteen individuals served on that inaugural group. See PCAOB, *Investor Advisory Group Members* (available at https://pcaobus.org/About/Advisory/Pages/Investor_Advisory_Group_Members.aspx). The last meeting of the IAG was held on November 8, 2018. The delay has had other consequences. The terms of the existing members of the IAG have expired with no replacements selected.
- [45] In 2019, the PCAOB established a Liaison for Investors, Audit Committees, and Preparers to serve as the direct point of contact for and liaison to investors, audit committees, and preparers. A useful step, a single individual performing this function for all of the stakeholders of the PCAOB cannot effectively replace the depth of exchange or the educational role played by the IAG and SAG in meetings open to the public.
- [46] The last SAG and IAG meetings were in November 2018. See *Past SAG Meetings*, *supra* notes 5, 18, 20, 22.
- [47] Commenters responding to the PCAOB's December 2019 Concept Release expressed concern about a "uniformity for uniformity's sake" or follow rather than lead approach:

"The PCAOB offers an insufficient rationale for deferring to an incomplete and untested international standard..."

"If, instead of sending the message that it will follow IAASB's lead wherever it leads, the PCAOB were to make clear that it is going to pursue a rigorous standard regardless of the extent to which it diverges from the international standard, it could not only benefit U.S. investors, it might even help to limit the extent to which IAASB is prepared to water down its proposal in response to industry concerns."

See *supra* note 38.

[48] We did form a task force on technology that included some investor representatives. See PCAOB, *Data and Technology Task Force* (available at <https://pcaobus.org/Standards/research-standard-setting-projects/Pages/Data-Technology-Task-Force.aspx>).

[49] The role of the PCAOB has improved trust in the financial disclosure process. See Brandon Gipper, Christian Leuz, & Mark Maffett, *Public Audit Oversight and Reporting Credibility: Evidence from the PCAOB Inspection Regime*, Working Paper 21530, National Bureau of Economic Research, Revised, Nov. 2019, at 38 ("overall, our study provides evidence on the capital-market effects of the PCAOB regime and suggests that public audit oversight can have capital-market benefits by enhancing the credibility of financial reporting.").