

POLICY STATEMENT

I. Introduction

The Sarbanes-Oxley Act (the "Act") and Board Rules require firms and associated persons to cooperate in connection with PCAOB inspections and investigations.^{3/} In certain situations, a firm or associated person might cooperate with PCAOB investigations beyond compliance with those obligations. Cooperation beyond what is required to comply with legal and regulatory obligations can contribute significantly to the success of the Board's mission of protecting investors and furthering the public interest in the preparation of informative, accurate and independent audit reports. Such extraordinary cooperation might help the Board's staff to discover potential violations earlier and allow the Board to conclude investigations in a more

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the Board is publishing this statement in order to encourage extraordinary cooperation and to inform firms and associated persons of these practices.

^{3/} Section 102(b)(3) of the Act requires every firm applying for PCAOB registration to supply (1) a consent to cooperate in and comply with any request for testimony or the production of documents made by the PCAOB in the furtherance of its authority and responsibilities under the Act, (2) an agreement to secure and enforce similar consents from each associated person of the firm, and (3) a statement that the firm understands and agrees, among other things, that its cooperation and compliance shall be a condition to the continuing effectiveness of the firm's registration with the Board. Even if a firm fails to provide those items with its application, it is not relieved of the obligations to cooperate in and comply with Board requests made in furtherance of the Board's authority and responsibilities under the Act. Moreover, two Board Rules address cooperation by registered firms and associated persons. Board Rule 4006, *Duty to Cooperate with Inspectors*, applies to inspections, and requires a registered firm and any associated person of that firm to cooperate with any Board inspection by providing information requested in Board inspections and providing access to the firm's records. Rule 4006 also requires that information provided to the Board be truthful and not misleading. Sections 105(c)(4) and (5) of the Act and Board Rule 5300(a) govern sanctions for noncooperation with an inspection. Section 105(b)(3) of the Act and Board Rule 5110, *Noncooperation with an Investigation*, apply to investigations, and provide that the Board may sanction a firm or associated person for failing to cooperate with a Board investigation. The forms of cooperation covered by Rule 5110 are enumerated in paragraphs (1)-(3), with paragraph (4) providing a catch-all provision for failure to cooperate generally. Section 105(b)(3) of the Act and Board Rule 5300(b) govern sanctions for failure to cooperate with an investigation.

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efficient and timely manner, thus reducing the risk that such violative conduct will be repeated and result in more significant harm to investors, and assisting the Board in identifying audit reports that may be inaccurate. For that reason, extraordinary cooperation in connection with Board investigations may be considered by the Board's Division of Enforcement and Investigations (the "Division") in its disciplinary recommendations to the Board, and by the Board in determining whether to accept settlement offers.

II. What is extraordinary cooperation?

Extraordinary cooperation is voluntary and timely action – beyond compliance with legal or regulatory obligations – that contributes to the mission of the Board. There are three broad types of cooperation that (alone or taken together) might merit cooperation credit: self-reporting; remedial or corrective action; and substantial assistance to the Board's investigative processes or to other law enforcement authorities.

Self-Reporting relates to conduct upon learning of violations. A firm or associated person may earn credit for self-reporting by making voluntary, timely and full disclosure of the facts relating to violations before the conduct comes to the attention of the Board or another regulator.^{4/} Self-reporting is more valuable the earlier it is provided.^{5/}

^{4/} If self-reporting is required by legal or regulatory obligations, it is not voluntary and is not eligible for cooperation credit. Thus, for example, self-reporting is not voluntary if made after receipt of a regulatory inquiry (e.g., any request, demand or subpoena for the same information or documents from the Board, the U.S. Securities and Exchange Commission, Congress, any other federal, state, local or foreign authority, or any self-regulatory organization). Likewise, self-reporting is not voluntary if required by Section 10A(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j-1(b)], *Audit requirements- Required response to audit discoveries* (which addresses an auditor's obligation to report the illegal acts of the audit client) and Rule 10A-1 thereunder. As a result, if the auditor discovers or detects an illegal act during either a quarterly review or annual audit, and is required to report it pursuant to Section 10A, the auditor would not be eligible to earn credit for self-reporting.

^{5/} When firms or associated persons self-report to the PCAOB, the Board encourages them to self-report by directly contacting the Division of Enforcement and

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Remedial or Corrective Actions are voluntary, timely and meaningful actions designed to reduce the likelihood and risk that similar violations will recur, as well as actions to correct violative conduct. For example, a firm might earn credit by promptly and voluntarily modifying and improving its quality controls or other internal policies and procedures to prevent recurrence of the violative conduct.^{6/} A firm might take remedial or corrective action by re-assigning or limiting the activities of those individuals responsible for violations (which might include members of the audit team, as well as persons outside the audit team, including persons in firm management), and in appropriate cases by terminating or imposing discipline upon the responsible individuals. A firm's remedial or corrective action might also include promptly notifying its audit client or its audit committee (as appropriate) of the violative conduct and cooperating with the client, so that the client can (if necessary) take steps to comply with the federal securities laws and regulations (e.g., by engaging an auditor to re-audit the financial statements affected by an auditor's independence violations). A firm's remedial or corrective action also might include appropriately compensating those adversely affected by the firm's violations.

Substantial Assistance to the Board's investigative processes or to other law enforcement authorities includes timely and voluntarily providing information or documents that might not have been discovered absent that cooperation, or beyond that sought by the Board's staff via accounting board demands and requests, and beyond what is required pursuant to legal and regulatory reporting requirements. For example, a firm might substantially assist the Board by conducting a timely, thorough, objective and competent internal investigation into the violative conduct when it was discovered, and informing the Division's staff of the pertinent facts discovered in the internal investigation. A firm or associated person might substantially assist another law enforcement authority's investigative processes by self-reporting to that authority, or providing it with the facts discovered in an internal investigation.^{7/}

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Investigations, or by providing information and documents via the Board's tips hotline: <http://pcaobus.org/Enforcement/Tips/Pages/default.aspx>. See also fn.7.

^{6/} The nature and extent of any such modifications and improvements would be taken into account by the Board in determining what credit the firm might earn. A firm's improvements in response to quality control criticisms or defects identified by the Board in its inspections process would not qualify for credit.

^{7/} Note that other law enforcement authorities, including the U.S. Department of Justice and the U.S. Securities and Exchange Commission, have issued

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III. How might extraordinary cooperation be credited?

Credit for extraordinary cooperation in PCAOB matters may be reflected in a variety of ways. Credit may be reflected by reducing charges and sanctions imposed in settlement against the cooperating firm or associated person. Extraordinary cooperation could, in some cases, lead to language in settlement documents noting the cooperation and its positive effect on the final settlement by the firm or associated person. In exceptional cases, depending on the facts and circumstances involved, the level of extraordinary cooperation could lead to no disciplinary action at all against a firm or associated person.

IV. Other Factors

There exists some tension between the Board's interest in encouraging (and crediting) extraordinary cooperation and its interest in holding firms and associated persons fully accountable for their violative conduct. The Board's cooperation policy is intended to balance that tension, encouraging cooperation with the Board and its staff while maintaining accountability for violative conduct. Thus, whether a firm or associated person provided extraordinary cooperation is only one factor that will be considered in determining the appropriate disciplinary response to violative conduct. Other factors also may impact the appropriate regulatory response to any particular violative conduct, including the nature of the misconduct and its root causes (including whether it was deliberate, the result of recklessness, negligence, or honest mistake), whether there were repeated violations or a pattern of misconduct, the duration of the misconduct, and the existence of prior disciplinary history. For firms, whether supervisors or firm management directed, tolerated or remained willfully blind to the violative conduct may impact the appropriate regulatory response. Also for firms, self-policing and the implementation of quality controls prior to the discovery of the violative conduct, including the establishment of effective compliance procedures, an effective internal whistleblower and complaint system, and an appropriate tone at the top, may impact the appropriate regulatory response. For associated persons, their role in the violative conduct and their knowledge, education, training, experience in auditing,

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cooperation policies and initiatives, crediting cooperation in those authorities' proceedings. The U.S. Securities and Exchange Commission's cooperation initiative, applicable to that agency's investigations and enforcement actions, is described at <http://sec.gov/spotlight/enfcoopinitiative.shtml>. The Division coordinates with these agencies and other regulators, as permitted by the Act.

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and position of responsibility at the time the violations occurred may impact the appropriate regulatory response. The specific facts and circumstances of each case will be considered to determine whether (and how) the firm or associated person should receive credit for extraordinary cooperation.

V. Conclusion

The PCAOB was established by Congress to oversee the audits of public companies (and broker-dealers) in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. Extraordinary cooperation can contribute significantly to those interests by, among other things, allowing the Board to address possible audit or other violations sooner, reducing the risk that such violative conduct will be repeated and result in more significant harm to investors, and assisting the Board in identifying audit reports that may be inaccurate. Also, crediting extraordinary cooperation may shorten investigations and reduce the burdens on the Board's resources, thus allowing the Board to focus on other potential auditor misconduct for the protection of investors. Providing this guidance and publicly acknowledging extraordinary cooperation may encourage firms and associated persons to provide extraordinary cooperation, and may provide insights into how extraordinary cooperation is credited.