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BRIEFING

PCAOB Proposes to Eliminate the 135-Day Negative Assurance Limit in U.S. Comfort Letters

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The Public Company Accounting Oversight Board (**PCAOB**) has proposed to eliminate the prescribed 135-day limit on auditors' ability to give negative assurance on subsequent changes in comfort letters for U.S. securities offerings with an approach that is linked to the date by which the financial statements for the next annual or interim results are required to be filed with the U.S. Securities and Exchange Commission (**SEC**). The proposal could offer greater flexibility when planning capital raisings, as auditors would no longer be bound by the existing 135-day limit on which negative assurance regarding subsequent changes in specified financial statement line items can be provided to underwriters in connection with their due diligence defense. For non-SEC reporting issuers accessing the capital markets through Rule 144A transactions, however, the practical implications of this proposal may depend on the financial reporting cadence of the issuer and the auditor's discretion in extending negative assurance beyond the 135-day limit.

Background

Auditor comfort letters are customarily given in securities transactions where an offering document containing financial information about an issuer and/or guarantor has been provided to potential investors. Comfort letters form an important part of an underwriter's due diligence defense, and among other things, (i) state that the financial information included in the offering document is accurately extracted from the audited or reviewed financial statements and (ii) provide negative assurance regarding subsequent changes in specified financial statement line items. Subsequent change negative assurance will typically state that, as a result of performing certain procedures, nothing has come to the attention of the auditors that would cause them to believe that there had been an increase or decrease to specified financial statement line items relative to the most recent audited or reviewed financial statements. For offerings into the U.S., either pursuant to an SEC registration statement or under Rule 144A of the U.S. Securities Act of 1933, as amended (**Rule 144A**), negative assurance has been limited by AS 6101, *Letters for Underwriters*

and Certain Other Requesting Parties (**AS 6101**) to a date that is less than 135 days from the end of the most recent period for which financial statements were audited or reviewed. At 135 days or more, the auditor is limited to reporting procedures performed and findings obtained.

What Would Change?

On November 3, 2026, the PCAOB proposed amendments (**PCAOB Proposa**l) (available here) to AS 6101 that would replace the 135-day limit on negative assurance on subsequent changes with an approach linked to SEC financial statement filing deadlines. The proposal comes against the backdrop of the May 5, 2026 proposal from the SEC (**SEC Proposal**) to allow reporting companies currently filing quarterly reports on Form 10-Q to elect instead to file a single semiannual report while retaining annual reporting on Form 10-K. If the SEC Proposal were adopted, and an SEC reporting issuer took the option to move to semiannual reporting, an auditor would be prevented from providing negative assurance on subsequent changes during longer portions of the year under the existing 135-day limitation. The proposed PCAOB amendments would allow auditors to provide such negative assurance as of a date after the end of the most recent audited or reviewed period and before the deadline for filing financial statements for the next annual or interim period. If the issuer fails to file the required statements on time, negative assurance would not be available on subsequent changes as of a date on or after the missed filing deadline and the auditors will be limited to procedures performed and findings obtained instead.

Importantly, this is not a proposed 225-day or other replacement day count. It is a move to a filing-deadline-based framework. The PCAOB considered retaining fixed counts, including a 225-day convention for semiannual reporting, but did not choose that approach on the basis that the introduction of additional day counts could increase complexity and create the potential for future inconsistencies between PCAOB and SEC requirements.

The PCAOB Proposal clarifies that while auditors may provide negative assurance as to subsequent changes beyond the previous 135-day limitation, they are not required to do so, and also identifies circumstances that auditors may take into account in declining to provide negative assurance, including the length of time between the end of the most recent audit or review and the date on which negative assurance is sought; the effectiveness of internal controls; changes in senior management or key personnel; a restatement of financial statements; and management's ability to respond to enquiries about changes in financial statement items through the specified date.

A longer permitted period would therefore not necessarily translate into a longer period of available negative assurance. Auditors could provide negative assurance on some items but report only procedures and findings on others. The proposal would not remove the need to agree to the scope of comfort with the auditors, nor determine what financial information investors require in the offering document.

Unregistered Offerings Under Rule 144A

Although unregistered offerings to U.S. institutional investors under Rule 144A are not subject to the statutory due diligence defense applicable to registered offerings, underwriters still seek U.S.-style comfort as part of a registered-offering-type due diligence process to address potential antifraud exposure under the U.S. federal securities rules. When providing negative assurance, auditors have relied on the 135-day limit under AS 6101. The PCAOB Proposal does not expressly explain how a filing-deadline-based test would operate for Rule 144A issuers that are not subject to SEC periodic reporting requirements; however, the release addresses AS 6101 engagements in connection with SEC registration statements **and other securities offerings**. Its relevance is therefore not confined to SEC-registered issuances. Nevertheless, a Rule 144A / Regulation S label does not, by itself, determine the auditing or comfort standard that governs a particular engagement. If the PCAOB Proposal were adopted, it is unclear whether auditors would mirror the new limits when providing comfort letters in Rule 144A transactions. Accordingly, a non-SEC reporting issuer wishing to access the U.S. capital markets may need to prepare quarterly financial information to fit within the offering window, regardless of its financial reporting cadence or any local law or listing requirements.

Practical Implications

Although the elimination of the 135-day limit on negative assurance on subsequent changes could ease existing timing constraints on capital raising, auditors would retain discretion over whether to provide negative assurance, with practice varying across firms and transactions.

Accordingly, the PCAOB Proposal should not be read as giving issuers an unlimited comfort window, or as automatically substituting its home-exchange deadline or an indenture reporting date for a SEC deadline. Those questions require clarification in the final framework and agreement with the auditor on the applicable engagement standard. A home-market publication date, a covenant to deliver accounts and a SEC filing deadline should not be treated as interchangeable without that analysis.

For non-SEC reporting Asia-Pacific issuers, this is an important potential consultation point: such issuers should therefore not seek to revisit an agreed comfort timetable or cancel a planned interim review solely in reliance on the PCAOB Proposal.

Issuers and underwriters would need to engage with their auditors early in the offering process to consider whether additional financial information

would need to be prepared for review and what circumstances could lead to the auditor refusing to provide negative assurance on a longer timeline.

Comments on the PCAOB Proposal are due by January 4, 2027. Any final amendments would require PCAOB adoption and SEC approval.

Key Changes Summary

Feature	Existing AS 6101	PCAOB Proposal / Practical Implication
Subsequent change negative assurance	Requested assurance date must be less than 135 days after the latest audited/reviewed period end	Date must precede the next required annual/interim filing deadline; applicability and deadline must be identified
Missed next filing deadline	Fixed 135-day restriction applies	No negative assurance as of a date on or after the missed deadline under proposed paragraph .47 of AS 6101
Auditor obligation	Negative assurance is not mandatory	Unchanged; proposal highlights risk and information factors
Audit/review foundation	Audit or review baseline is required	PCAOB audit/review linkage retained; no replacement with informal updates
Alternative comfort	Procedures performed and findings obtained	Remains available, subject to the engagement; not equivalent to negative assurance
Non-SEC reporting issuers	Applicable comfort framework must be established	No clear non-reporting issuer deadline example; no automatic extension should be assumed
Financial statement currency	Separate offering disclosure assessment	Not amended by this proposal
Status	Current standard continues to govern	Proposal only; PCAOB adoption and SEC approval required



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