

August 15, 2023

Sent via e-mail: comments@pcaobus.org

Office of the Secretary
Public Company Accounting Oversight Board 1666 K Street, NW
Washington, DC 20006-2803

Re: Proposing Release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments; PCAOB Rulemaking Docket Matter No. 051

Dear Office of the Secretary:

The comments below are submitted solely in my personal capacity. They aim to address a few aspects of your proposal addressing auditors' responsibilities when there are known or suspected non-compliance with laws and regulations (NOCLAR) involving companies they audit.

Although currently a retired CPA/auditor with over 40 years in public practice and as a former chair of NASBA and the Colorado State Board of Accountancy, I currently serve voluntarily in advisory roles with both the International Ethics Standards Board for Accountants (IESBA) and the International Auditing and Assurance Standards Board (IAASB). I have also previously served as a member of the AICPA's Auditing Standards Board. In these capacities I have been actively engaged in the NOCLAR debate for many years.

NOCLAR is a complex area involving many serious issues. I applaud the PCAOB's courage to take it on because of the public interest implications. Auditors play a critical role as gatekeepers in our financial system. When there is a NOCLAR, there should be clear guidance over actions and responsibilities professional auditors must take. Because of ambiguities within extant standards, that clarity has been at least partially missing and has contributed to a persistent expectations gap with the public. I agree with the PCAOB that we should and can do better in serving society.

Much of the NOCLAR debate has to do with achieving the appropriate balance of auditor responsibility to the public, investors, regulators, and the "clients" they audit. Of course, that involves some judgment, but the public interest must be the highest priority, a duty emphasized in the title Certified Public Accountant. Unfortunately, the duty has blurred over the years with auditors seeing the companies they audit as their primary concern.

Confidentiality standards within the profession have contributed to much of the blurring. Indeed, auditors have been accused of hiding behind confidentiality to the detriment of those they claim to serve. As evolved, there have been some, including myself believing this deep-seated cultural bias within the profession must be rethought. The term, "client" needs to be redefined to make sure the public is included. The current version of messaging "client" in professional literature has resulted in misplaced priorities. NOCLAR projects are part of the process of rethinking and messaging who the real client is.

Having read some of the comment letters you have already received, it appears much of practitioner concern over NOCLAR is additional cost and scope. While there will be some additional cost and scope, I believe investors are willing to incur both because they have repeatedly called for more informative reporting of contingencies such as NOCLAR. I urge you to consider more than cost and scope in your deliberations. Further, as explained below I don't believe cost and scope will be as great as perceived. Auditors are already doing much of what is called for by NOCLAR.

It is clear the profession generally opposes NOCLAR provisions in almost any form, but based on my experience, many audit firms are already doing much of what is called for by NOCLAR as part of their own ongoing internal policies over risk assessment and client acceptance/continuance. They recognize the importance of making NOCLAR judgement calls from a risk/liability management standpoint. It is vital to their survival.

Auditors just don't want to be told they have specific NOCLAR responsibilities requiring them to document and report to others where their own decisions have already led them. There is some irony to this, otherwise, they would not have adopted internal policies for their own safety and survival. They simply want to keep the information to themselves so they can't be accused of breaching "client" confidentiality and risk losing "clients". Consequently, the public interest takes a back seat to the interest of audit firms and their "clients".

On a different note, I believe there is a gap in extant standards inasmuch as an auditor can simply resign from an engagement over serious NOCLAR concerns without a responsibility to say anything to anyone about it. We have seen over many years that when auditors resign the underlying cause is not typically transparent in Form 8-Ks. The audited company and the auditor simply agree to disagree over routine matters (like fees, timing, scope, accounting disagreements) and do not touch on NOCLARs. Consequently, the investing public and regulators are uninformed as to NOCLAR issues that are nevertheless critical to them. This does not reflect well on auditors as gatekeepers and does not mitigate the expectations gap.

Given the foregoing my question to the PCAOB is whether your proposal goes far enough from a public interest standpoint? For example, in your proposal, when there is suspected NOCLAR all communication ends with the audit committee or board of directors. In egregious cases such as Enron, WorldCom, Madoff, and recently FTX and other crypto scandals, could earlier NOCLAR communication beyond the audit committee have minimized massive investor losses? Are there cases when it is appropriate for regulatory notification to take place by the auditor?

These are just a few thoughts, but I want to convey strong support for your direction of travel and encourage your moving ahead to reach an appropriate balance of handling public interest issues leading to greater transparency to that same public. I can only hope that the PCAOB NOCLAR standard is at least as stringent as those already adopted by the IAASB, IESBA and ASB. Hopefully much stronger.

Again, I must emphasize these views are solely my own.

I appreciate the opportunity to comment on your proposal.

Sincerely,

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cc: PCAOB
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