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March 18, 2024

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

Via Email to comments@pcaobus.org

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

Supplemental submission to original letter dated August 7, 2023

Dear Office of the Secretary:

Grant Thornton LLP appreciates the additional opportunity to comment on PCAOB Rulemaking Docket Matter No. 051, *Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments*. We commend the Board for reopening the comment period and hosting the virtual roundtable to solicit additional feedback on the proposal. Our firm takes our role in investor protection seriously, and we continue to support the Board's project to modernize its interim standards. The roundtable hosted on March 6, 2024 was a useful next step in the PCAOB's outreach efforts to inform the further development of a balanced and operational auditing standard related to a company's noncompliance with laws and regulations (NOCLAR), along with clear implementation and application guidance for auditors. We believe the roundtable starkly illustrated the wide-ranging interpretations of the proposal as drafted—which may not align with the intentions and expectations of the Board—as well as a general misunderstanding of the auditor's current responsibilities and actions with regard to a company's NOCLAR. Such divergence of views demonstrates that the requirements, as proposed, are not sufficiently clear and may not therefore be in the public's best interest. We encourage the Board to continue to obtain stakeholder feedback and perform further outreach to inform revisions to the proposal.

We continue to believe it is possible for auditors to do more than what is required today, but such actions should not come at considerable costs to stakeholders. We believe that certain roundtable participants provided specific, actionable feedback that would enhance considerably the operability of the proposed requirements and possibly clarify the Board's intent. We strongly believe that reevaluating and revising the originally proposed requirements is essential to the Board providing an auditing

standard that is consistently understood and applied, including how it is interpreted in inspection. Robust guidance from the PCAOB's Office of the Chief Auditor could also contribute to appropriate, consistent application of the requirements.

We submit, for the Board's consideration, our comments based on the topics covered in the "PCAOB Staff Briefing Paper: Roundtable Discussion of Proposed Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations," dated February 26, 2024.

Panel I: Identification

With regard to the topics and questions discussed in the first panel, we offer the following views along with reactions to the discussion:

- We generally agree with the views expressed by Mr. John Coates during the roundtable, including comments about (a) using existing language similar to that in the SEC's MD&A framework or in the FASB's ASC 450, *Contingencies*, (b) being more precise with expectations of what is incremental from today's requirements, and (c) identifying laws and regulations more generally as opposed to each statute or regulation individually. We believe he proposed practical and balanced solutions that we encourage the Board to explore and utilize in reconsidering the proposed requirements.
- We believe a balance can be struck by keeping the foundational expectations of auditors rooted in Section 10A of the Securities Exchange Act of 1934 (Exchange Act) while enhancing inquiries and other risk assessment procedures to increase the likelihood that the auditor will become aware of NOCLAR that has an indirect and material effect on the financial statements. We provided a list of recommended procedures in our original comment letter dated August 7, 2023.
- We heard comments during the roundtable about certain interpretations of requirements not being the Board's intention. If these interpretations are indeed not the Board's intention, it would be in the public's best interest for the Board to provide clearer requirements, along with robust application guidance, that better reflect the Board's intentions and expectations. It is not sufficient to rely on commentary provided by Board members or even on the additional discussion provided in proposing or adopting releases, as such an approach would not enhance audit quality in this area.

Panel II: Considerations for an Auditor's Assessment of Noncompliance and Other Legal Considerations

We offer the following views and reactions related to the second panel discussion:

- The manner in which audit firms currently comply with PCAOB requirements and Section 10A of the Exchange Act is highly dependent on the nature of the illegal act and on the facts and circumstances surrounding both the initial incident as well as management's and the audit committee's response to the incident. In concert with firm legal counsel and forensic support, when appropriate, the engagement partner exercises professional judgment to obtain sufficient appropriate audit evidence on which to conclude whether the financial statements are materially misstated and to ultimately determine whether the firm has Section 10A reporting

responsibilities. Such judgment is applied all while balancing the appropriate level of audit evidence with any assertion of attorney-client privilege made by the client.

- Mr. Alan Wilson raised key considerations regarding the legal aspects of the proposal, including the criticality of working with the legal profession to consider how the proposal would affect attorney-client privilege. Today, inquiries of legal counsel related to unasserted claims and contingencies, which are performed based on the American Bar Association's Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, also provide evidence related to material misstatements associated with NOCLAR.
- Currently, legal counsel negotiates the extent of any waiver of privilege and limits it to a particular matter. We anticipate that under the new requirements as proposed, a broader, more general waiver of privilege will be necessary for the auditor to comply with the proposed requirements, which could be detrimental and costly for preparers. Mr. Wilson expressed similar views during the panel.

Panel III: Economic Impacts

We are unable to meaningfully quantify the potential costs of implementation because of the different ways in which the scope of work required under the proposal may be interpreted. The views provided here and in our original comment letter were informed by our careful consideration of the proposed requirements in the context of the (i) initial implementation by audit firms, including educating preparers and audit committees; (ii) practical execution by engagement teams in various scenarios, such as an issuer with a robust compliance function versus an issuer that does not have a robust compliance function; and (iii) potential inspection challenges that could be created by inconsistent implementation of ambiguous requirements, which could result in different inspection questions or results based on the adoption by each respective audit firm.

We believe this panel discussion plainly illustrates the notion that there are two sides to every story, and the truth often lies somewhere in between. We are sympathetic to the views expressed during the panel regarding the perceived lack of economic analysis that accompanied the proposal. We would like to see the PCAOB's Office of Economic and Risk Analysis develop a more robust consideration of potential costs and benefits that reflects the intended scope of work under the proposal and includes the additional information provided by roundtable panelists, where appropriate.

Way forward

Based on our observations throughout the various panel discussions, we noted a few key takeaways in considering a way forward. Eliminating the notion of "detection" from the auditor's responsibilities and procedures will help level-set the Board's (and investors') expectations of where auditors would spend their time under the new rulemaking. As indicated in the roundtable, users and investors do not expect the auditor to monitor or otherwise proactively look for instances of noncompliance with indirect laws, such as those related to waste disposal or workplace safety signage. Additionally, reconsidering the threshold for identifying laws and regulations, while retaining the appropriate notion of direct and indirect effect, is necessary to create a standard that is clear and consistently implemented.

As noted in the opening of our letter, we encourage the Board to continue its outreach efforts. Despite certain views expressed during the roundtable regarding the audit profession, we believe the profession is committed to the public's best interest, and it is our desire to build in quality and operationality at the outset of each new auditing standard. We believe a reproposal, even with a short comment period, could facilitate ensuring that the Board's intentions are well understood by stakeholders, which ultimately would help meet the original objectives of this project.

In addition to clarifying the language related to the auditor's requirements, we believe it will be essential for the Board to provide robust implementation guidance, and we request the Office of the Chief Auditor to consider making itself available for questions and consultations, similar to the approach taken with the PCAOB's auditor reporting changes. We also believe there is an opportunity for the PCAOB to perform stakeholder education to assist in reducing the current expectations gap regarding NOCLAR and the auditor's related responsibilities.

We would be pleased to discuss our comments with you or participate in additional outreach the Board may choose to undertake. If you have any questions, please contact Jeff Hughes, National Managing Partner of Assurance Quality and Risk, at (404) 475-0130 or jeff.hughes@us.gt.com or Jennifer Cavanaugh, Chief Auditor, at (312) 602-8715 or jennifer.cavanaugh@us.gt.com.

Sincerely,

/s/ Grant Thornton LLP