



March 18, 2024

By email: comments@pcaobus.org

Ms. Phoebe W. Brown
Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

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

Dear Ms. Brown:

The Investment Company Institute¹ and the Independent Directors Council² are writing to supplement our prior comments on the Public Company Accounting Oversight Board's (PCAOB) proposed amendments to auditing standards related to a company's noncompliance with laws and regulations.³ Recently, the PCAOB staff published a [briefing paper](#) and hosted a [public virtual roundtable](#) to obtain

¹ The [Investment Company Institute](#) (ICI) is the leading association representing regulated investment funds. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$33.4 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$9.2 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, London, and Hong Kong and carries out its international work through [ICI Global](#).

² The [Independent Directors Council](#) (IDC) serves the US-registered fund independent director community by advancing the education, communication, and public policy priorities of fund independent directors, and promoting public understanding of their role. IDC's activities are led by a Governing Council of independent directors of ICI member funds. There are approximately 1,600 independent directors of ICI-member funds.

³ See Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations And Other Related Amendments, PCAOB Release No. 2023-003 (June 6, 2023)(the NOCLAR Proposal), *available at* https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-051/pcaob-release-no.-2023-003---noclar.pdf?sfvrsn=fe43e8a_2.

Ms. Phoebe W. Brown

March 18, 2024

Page 2 of 3

additional insights from commenters, stakeholders, and experts as they work toward a final recommendation to the Board. In addition, since the filing of our [letter](#) in August 2023, IDC and ICI staff, and independent directors from a variety of fund complexes met with Board Members of the PCAOB and their counsel and advisers. We appreciate the willingness of the Board Members and PCAOB staff to engage in discussions about the NOCLAR Proposal, as well as the PCAOB's decision to reopen the comment file on this important proposal.

We are writing to emphasize that our views have not changed since the submission of our August 2023 letter to the PCAOB. We continue to have strong concerns about the NOCLAR Proposal as it would apply to audits of registered investment companies and business development companies (Funds) and, therefore, urge the PCAOB to expressly exclude audits of Funds from the scope of the NOCLAR Proposal. We incorporate by reference our letter dated August 7, 2023.⁴

As you may recall from our letter, key points supporting an explicit carve out include the following:

Funds differ from public operating companies in meaningful ways. Unlike publicly-traded operating companies, Funds typically do not have employees, do not engage in complex operations or the production of goods, materials, or services, and do not contend with the complexities associated with manufacturing, supply chains, or other common issues that operating companies face. A Fund is a separate legal entity, distinct from its investment adviser. A Fund holds a pool of stocks, bonds, and other investments or cash, and therefore has less complex, more standardized financial reporting and corresponding audits, as compared to those of operating companies.

In addition, Funds already are subject to a robust compliance regulatory framework, including the SEC compliance program rule designed to ensure strict oversight and prevention of noncompliance with the federal securities laws. Funds are subject to independent oversight by a board of directors and must comply with stringent disclosure and reporting requirements. Funds also are subject to SEC inspections and examinations, including on compliance matters.

We are especially concerned that the NOCLAR Proposal does not include any economic analysis of its impact on Funds and their shareholders. We understand audit firms would incur both initial startup and additional ongoing costs associated with documenting their analyses and reporting to Fund managers, Fund boards, and Fund audit committees. The costs for this increased workload would likely be passed on to Fund shareholders, reducing shareholder returns without providing offsetting benefits.

As a result of the foregoing, if the NOCLAR Proposal were applied to Funds, it would be overly broad and duplicative and could lead to significant unintended impacts, including substantially increased costs that

⁴ See Letter from Jason Nagler, ICI Senior Director, and Lisa Hamman, IDC Associate Managing Director, to Phoebe W. Brown, PCAOB Secretary, dated August 7, 2023, available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-051/89_ici-idc30ed5ea3-1458-4bb0-8406-f96c215fd137.pdf?sfvrsn=57f07b2e_4.

Ms. Phoebe W. Brown

March 18, 2024

Page 3 of 3

would be borne by Fund shareholders.

Recognizing Funds' unique structure and the comprehensive legal framework to which they are subject, the PCAOB previously sought specific feedback on whether it should treat Funds differently from operating companies for purposes of rulemaking,⁵ and it has done so on several occasions.⁶ The PCAOB should act similarly in this case for the reasons stated above.

In short, while we support sensible regulation that aims to protect Fund shareholders and help them make informed investment decisions, we believe that the NOCLAR Proposal goes too far, and should not apply in the Fund context. We urge the PCAOB to exclude Funds from the NOCLAR Proposal. If you have any questions, please contact Jason Nagler, at (202) 961-5506 or jason.nagler@ici.org or Lisa Hamman, at (202) 371-5405 or lhamman@ici.org.

Sincerely,

/s/ Jason J. Nagler

/s/ Lisa Hamman

Jason J. Nagler
Senior Director
Accounting and Compliance
Investment Company Institute

Lisa Hamman
Associate Managing Director
Independent Directors Council

cc: Erica Y. Williams, PCAOB Board Chair
Christina Ho, PCAOB Board Member
Kara M. Stein, PCAOB Board Member
Anthony C. Thompson, PCAOB Board Member
George R. Botic, PCAOB Board Member
Barbara Vanich, PCAOB Chief Auditor
Paul Munter, SEC Chief Accountant
Jenson Wayne, SEC Division of Investment Management, Chief Accountant

⁵ See, e.g., PCAOB, *Discussion – Audit Quality Indicators* (Nov. 14, 2014) at 6, Question 14, available at https://pcaobus.org/Information/Documents/11142013_AQI_Discussion.pdf.

⁶ See, e.g., The Auditor's Report on an Audit of Financial Statements when the Auditor Expresses an Unqualified Opinion and Related Amendments to PCAOB Standards, PCAOB Release No. 2017-001 (June 1, 2017) at 106 (excluding investment companies other than BDCs from requirements relating to communications of critical audit matters), available at <https://pcaobus.org/Rulemaking/Docket034/2017-001-auditors-report-final-rule.pdf> and Establishment of Accounting Support Fee, PCAOB Release No. 2003-003 (Apr. 18, 2003) at A2-vi (recognizing the relatively less complex nature of investment company audits in assessing them accounting support fees at ten percent of the amount operating companies pay) available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket_002/2003-04-18_release_2003-003.pdf?sfvrsn=f1030cd7_0.