

March 18, 2024

**SENT VIA EMAIL: [comments@pcaobus.org](mailto:comments@pcaobus.org)**

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

RE: PCAOB Rulemaking Docket No. 051

Dear Office of the Secretary:

Moss Adams appreciates the opportunity to share our views and provide further input on the Public Company Accounting Oversight Board's ("PCAOB" or the "Board") proposing release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations And Other Related Amendments as presented and outlined in its PCAOB Release No. 2023-003 ("PCAOB Release").

We previously commented on the PCAOB Release in our letter dated August 7, 2023. In that letter, we expressed concern regarding the scope and requirements of the proposed standard and stated our belief that the proposed requirements surpass auditor expertise and require the auditor to reach an independent determination of whether noncompliance with laws and regulations (NOCLAR) has likely occurred. Further, we indicated that there appears to be a misalignment between management and auditor responsibilities as they pertain to NOCLAR. We reaffirm our observations and comments outlined in our original comment letter but wish to further comment on certain of the matters discussed specifically at the virtual roundtable held on March 6, 2024.

We appreciate the PCAOB Staff holding the virtual roundtable and related public outreach as a mechanism to further explore this very important topic. We are supportive of the PCAOB's efforts to engage in stakeholder outreach to obtain input on the PCAOB Release as well as other projects on the PCAOB's standard setting agenda.

### **Observations from March 6, 2024, virtual roundtable**

#### ***Scope of existing and proposed requirements***

After listening to the feedback provided during the roundtable, we continue to have concerns over a wide range of issues related to the proposed standard and strongly suggest the Board provide a risk-based approach to consider noncompliance to better align with auditor expertise and to provide scalability. We support the Board's intentions to revise PCAOB standards to modernize and strengthen auditing standards related to the auditor's consideration of NOCLAR. However, the proposed standard

unreasonably expands the auditor's responsibilities for NOCLAR. We do not believe the scope of the proposed standard is operational and contend it will result in substantial cost to issuers.

The feedback of the roundtable participants confirms that there is confusion and disagreement with respect to what the responsibilities of the auditor would be under the proposed standard. As an example, at least one participant stated their belief that the requirements outlined in the proposed standard are not substantially different from the requirements in existing PCAOB standards, while others supported our view that that the scope of the proposed standard considerably expands the auditor's responsibilities and that the scope is both significant and problematic.

A significant, if not the majority, of the discussion in the virtual roundtable was focused on fraud – specifically a goal of trying to either prevent or identify earlier instances of fraud. While the Board included fraud within the definition of NOCLAR, we note the Board currently has a mid-term project specific to fraud. We believe the proposed NOCLAR standard shouldn't be primarily driven by the desire for fraud detection. We also question whether these significant proposed modifications to the auditing standards, by themselves, can be the solution. An audit is designed to obtain reasonable assurance about whether financial statements are free of material misstatements, whether due to fraud or error. It is not designed to prevent the occurrence of NOCLAR or fraud. Moving towards having an audit be a "preventive" measure would result in the auditor assuming a management function and would be a significant expansion of the historic role of an audit. We strongly suggest the scope of the proposed standard focus on NOCLAR and that any standard-setting related to the area of fraud be encompassed in the Board's forthcoming project.

We also have concerns that changes to the auditing standards may not be able to achieve the desired outcome by themselves. We encourage the PCAOB to consider all aspects of the financial reporting ecosystem and work with other parties such as the SEC and FASB to take a comprehensive approach to developing a solution. For example, if the desired outcome is earlier disclosure or recognition of provisions for NOCLAR, changes could be required to US GAAP, specifically the recognition, measurement, and disclosure criteria in Accounting Standards Codification ("ASC") 450, Contingencies. The solution may also be achieved, in part, through enhanced Regulation S-K or Regulation S-X disclosure requirements to be mandated by the SEC.

***"Words matter" –***

Numerous participants in the virtual roundtable commented that the specific words that end up in any final standard are extremely important. Given that auditors will be inspected by the PCAOB and held to the level of performance the PCAOB believes the standard is designed to uphold, it is vital that the requirements of the standard are clear and unambiguous. We note that the proposed standard includes terminology such as "could reasonably," "may," "might," and "likely". Clarification is necessary to language used in the proposed standard as it introduces ambiguities in the application of determining the effect on the financial statements.

***Management approach***

The virtual roundtable did reveal consensus amongst the various stakeholder groups represented that the auditor should use the work of management as the starting point for their procedures around NOCLAR. While we are generally supportive of that approach, we note that there is significant disparity amongst public companies with respect to the robustness of their regulatory compliance programs. Larger public companies have greater resources and often more robust internal controls and regulatory compliance programs. Therefore, small to mid size public companies who have limited resources or don't have robust regulatory compliance programs will likely incur a disproportionate share of costs associated with complying with any proposal.

***Economic Analysis***

We do not believe the PCAOB has adequately studied the costs and benefits of, and the alternatives to, the proposed standard. We believe further study and evaluation are needed to weigh the costs and benefits as well as consider the potential unintended consequences, which is discussed further below. The proposal states that “[a]uditors would likely need to expend considerable additional audit effort to identify relevant laws and regulations under the proposed standard” and that “the costs associated with the proposed amendments...may be substantial”, yet the proposal fails to provide or quantify the potential costs. We also believe, that until there is consensus as to the scope of proposed standard and clarity as to a company's responsibility to provide information to the auditor, it is not possible to quantify either the costs or benefits. Any such analysis also needs to consider the viability of proposed requirements meeting the objective of reducing NOCLAR. The PCAOB and other regulators should also consider impact of any proposals on capital formation and the costs and benefits of U.S. public company listings, particularly for smaller companies.

***Disproportionate effect on small- and medium-sized audit firms***

We believe there will likely be unintended consequences of the proposed standard on competition in the public audit marketplace including reducing competition amongst firms and likely consolidating more public company audits with the large global networks and national firms. Most small and medium-sized firms do not have the ability to hire as many firm specialists as the large global networks and national firms. As such, small and medium-sized firms would have to engage more external specialists and rely heavily on their expertise to comply with the additional requirements of the proposed standard. This could result in significantly higher costs to small and medium-sized audit firms and may result in more firms resigning from public company audits and ultimately higher audit costs for SEC registrants, potentially pushing small and medium-sized registrants out of the U.S. capital markets.

***Need for re-proposal***

We believe that the nature of the changes needed to the proposed standard, as reflected in the comments previously submitted to the PCAOB and additional points discussed above, warrants re-exposure. The proposed standard is expected to have a significant impact to both public companies and the public company auditing profession and giving stakeholders sufficient time and transparency to have a clear, operable standard should be prioritized. Our recommendation is to allow for a full and transparent evaluation of the cascading effect of any changes made, especially given the importance of the specific words used.



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We appreciate the opportunity to provide further comment on the PCAOB Release. If you require further information regarding our response, please contact Kathie Hennessey, Director in our Professional Practice Group, at 206-302-6973 or by email at [kathie.hennessey@mossadams.com](mailto:kathie.hennessey@mossadams.com) or Jake Vossen, Partner in our Professional Practice Group, at 303-226-7004 or by e-mail at [jake.vossen@mossadams.com](mailto:jake.vossen@mossadams.com).

Sincerely,

*Moss Adams LLP*