



JOHN A. ZECCA
EXECUTIVE VICE PRESIDENT,
CHIEF LEGAL, RISK AND
REGULATORY OFFICER
1100 NEW YORK AVENUE, N.W.
SUITE 310 EAST TOWER
WASHINGTON, DC 20005

April 9, 2024

Phoebe W. Brown
Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street
Washington, DC 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 051

Dear Ms. Brown:

Nasdaq, Inc. (“Nasdaq”)¹ appreciates the opportunity to provide a supplemental comment letter on the Public Company Accounting Oversight Board’s (“PCAOB”) proposed amendments to its auditing standards related to a company’s noncompliance with laws and regulations (the “Proposal”).² Nasdaq operates 19 exchanges in the United States, Canada, the Nordics, and Baltics, across several asset classes including derivatives, commodities, cash equity, debt, structured products and ETPs. Our U.S. exchange, The Nasdaq Stock Market LLC, is home to over 4,000 listings in the United States, and is mandated to protect investors and the public interest as a self-regulatory organization. Additionally, as a public company, Nasdaq itself would be directly impacted by the Proposal. Thus, Nasdaq brings a unique, global perspective to provide feedback on the Proposal.

Nasdaq submitted a comment letter to the PCAOB on August 11, 2023 expressing concerns that the Proposal would massively expand the scope of an audit and drive up costs for public companies and investors without a concomitant benefit to investors, thereby incentivizing firms to stay private and curtailing access to capital.³ On March 6, 2024, the PCAOB held a virtual roundtable (the “PCAOB

¹ Nasdaq (Nasdaq: NDAQ) is a global technology company serving corporate clients, investment managers, banks, brokers, and exchange operators as they navigate and interact with the global capital markets and the broader financial system. We aspire to deliver world-leading platforms that improve the liquidity, transparency, and integrity of the global economy. Our diverse offering of data, analytics, software, exchange capabilities, and client-centric services enables clients to optimize and execute their business vision with confidence.

² *Proposing Release: 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), PCAOB Rulemaking Docket Matter No. 051 (the “Proposal”).

³ See Letter from John Zecca, Executive Vice President, Chief Legal, Risk and Regulatory Officer, Nasdaq, Inc. to Phoebe W. Brown, Office of the Secretary, PCAOB, dated August 11, 2023, available at:

Roundtable”) in order to obtain additional insight on the Proposal from stakeholders regarding, among other things, auditors’ competence to assess noncompliance with laws and regulations and the economic impacts of the proposal.⁴ In connection with the PCAOB Roundtable, the PCAOB also solicited additional comment on the questions and topics discussed. Nasdaq submits this supplemental comment letter to address certain questions raised at the PCAOB Roundtable.

Nasdaq continues to be concerned that the Proposal represents a sweeping expansion of auditors’ duties and drastically re-writes what is relevant to financial reporting. Auditors will need to develop or hire legal experts in every area of law in virtually every country and jurisdiction in the world in order to fulfill their duties under the Proposal. If they are not able to, they will need to merge with other auditors or go out of business. This could have a deleterious effect on smaller audit firms, smaller companies, and ultimately, investors.

Our listed companies share these concerns. In October 2023, Nasdaq solicited the views of our issuers on several regulatory proposals that are poised to reshape the issuer experience in the months and years ahead. Over 200 companies participated, with 80% of respondents serving in the roles of CEO, CFO or General Counsel of micro-, small-, mid- and large-cap companies. Respondents ranked the Proposal as their number one concern, even above new SEC climate and cyber rules. Our survey found that:

- 69% of companies fear that the proposal will drive up costs for their company, and investors will pay the price with lower returns.
- 60% believe that auditors lack the expertise to analyze these legal issues.
- 46% believe the proposal disproportionately impacts smaller companies and audit firms, which would stifle competition and further concentrate the auditing process.
- 41% believe the proposal would require auditors to perform or duplicate management's duties, and could impact federal securities law and attorney client privilege.
- 37% believe the PCAOB lacks authority to enact these sweeping reforms.

We remain concerned that the PCAOB has made no meaningful effort to quantify the cost, impact or value from the Proposal, and that concern was expressed by several other commenters.⁵ During the

https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-051/126_nasdaq.pdf?sfvrsn=520c3afb_4.

⁴ See PCAOB Briefing Paper, *Roundtable Discussion of Proposed Amendments to PCAOB Auditing Standards Related to a Company’s Noncompliance with Laws and Regulations* (February 26, 2024), available at: https://assets.pcaobus.org/pcaob-dev/docs/default-source/news/events/noclar-roundtable/noclar-roundtable-briefing-paper.pdf?sfvrsn=6a0fd9a2_3.

⁵ See Center for Audit Quality, *CAQ Analysis of PCAOB Proposed Amendments to PCAOB Auditing Standards related to a Company’s Noncompliance with Laws and Regulations (NOCLAR) and Other Related Amendments* (November 2023), available at: https://thecaqprod.wpenginepowered.com/wp-content/uploads/2023/11/caq_comment-letter-analysis-noclar_2023-11.pdf (“The PCAOB does not provide or quantify the potential costs associated with the proposal.”); see also Skadden, *Comments Raise Concerns About PCAOB’s Proposal To Expand the Scope of Audits and the Role of Auditors* (September 14, 2023), available at: <https://www.skadden.com/insights/publications/2023/09/comments-raise-concerns->

PCAOB Roundtable, the PCAOB sought to obtain specific information on costs from the panelists, but certain panelists argued that it is difficult to quantify the cost and benefits of the Proposal because the PCAOB has not clarified the objectives and scope of the proposal. Further, the PCAOB Roundtable lacked meaningful representation from companies impacted by the Proposal. Only one company (NuScale Power Corporation) was on the panel, and its General Counsel Bob Temple shared that the company is an EGC that does not need to comply with SOX 404(b) yet, and their audit cost over \$1 million last year. When SOX 404(b) kicks in next year, it will increase their audit costs significantly, but Mr. Temple is not able to quantify that expected increase. Mr. Temple expressed concerns that the Proposal would impose additional costs, but he could not quantify those costs with certainty.

Nasdaq shares that uncertainty, and believes many of our issuers do too. In Nasdaq's own experience, our audit fees for 2021 were \$5,354,450, and grew to \$6,764,899 in 2022.⁶ Based on Nasdaq's discussions with industry experts, we are concerned that the level of expertise and additional work required under the Proposal could significantly increase our current audit fees. For example, each of our 19 exchanges operates in highly regulated environments worldwide, and 13 of those exchanges are listing venues for companies with unique listing rules in the jurisdictions in which they operate. We have hired and developed in-house legal, compliance, regulatory and risk experts to ensure that we are complying with current, or able to comply with anticipated, laws and regulations relevant to our business. However, it would be difficult for an auditor without any experience in these areas to evaluate the risks of noncompliance to our various businesses, and we expect auditors would face similar difficulties evaluating other companies operating in highly regulated, niche industries. For example, auditors of biotech and other drug companies operating in multiple jurisdictions and banks could face similar difficulties.

Industry veterans share this concern. Notably, the only two CPAs on the PCAOB dissented from the Proposal, expressing concerns about the unprecedented breadth and scope of the Proposal. As former Board Member DesParte aptly observed, the Proposal "unreasonably and at great cost expands the scope of the audit to incorporate extensive new compliance attestation procedures and will require legal acumen and expertise well beyond the auditor's core competency."⁷ Similarly, Board Member Ho noted that "[a]uditors are CPAs, not legal experts. The new requirements will significantly expand auditors' need for expertise from lawyers, legal experts, and possibly other specialists, resulting in a substantial increase in audit fees."⁸

[about-pcaobs-proposal](#) ("The PCAOB recognized in the proposing release that the amendments "would result in additional, potentially substantial costs to auditors and the companies they audit," but the board did not attempt to quantify the additional costs.").

⁶ See Nasdaq, *2023 Proxy Statement* (April 28, 2023), at 122, available at: <https://ir.nasdaq.com/static-files/a67a4033-510b-42f5-a1a8-b1bbab129e7e>.

⁷ See Board Member Duane M. DesParte, *Statement on Proposal to Amend PCAOB Auditing Standards Related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments* (June 6, 2023), available at: <https://pcaobus.org/news-events/speeches/speech-detail/statement-on-proposal-to-amend-pcaob-auditing-standards-related-to-a-company-s-noncompliance-with-laws-and-regulations-and-other-related-amendments>.

⁸ See Board Member Christina Ho, *Statement on Proposed Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations* (June 6, 2023), available at: <https://pcaobus.org/news-events/speeches/speech-detail/statement-on-proposed-amendments-to-pcaob-auditing-standards-related-to-a-company-s-noncompliance-with-laws-and-regulations>.

Nasdaq believes that any incremental benefits to investors must be balanced against the costs and burdens to companies. On this measure, the Proposal is dramatically unbalanced. A survey conducted by the Center for Audit Quality in February 2024 found that 68% of institutional investors surveyed believe that the cost to implement the Proposal is too high.⁹ Investors are not convinced that the costs imposed by the proposal would be outweighed by any benefits, and the PCAOB should consider whether a more targeted approach focused on evaluating management’s process for identifying instances, and the risk, of non-compliance, would enhance investor protection without imposing disproportionate costs on issuers and investors.

Conclusion

Nasdaq believes that auditors play an essential role in the health and vibrancy of the public company model, assuring investors that the financial statements of publicly listed companies can be trusted. Publicly traded companies are one of the most dependable bright spots in the global economy, fostering innovation, driving growth, and creating investment opportunities for individuals and institutions alike. But the environment public companies operate in is anything but consistent. Today, public companies are forced to contend with everything from geopolitical and economic uncertainty to increased shareholder expectations and scrutiny. Amid these external pressures, regulatory standards can be what makes or breaks the public company model. Nasdaq has long advocated on issues impacting publicly traded companies, and remains committed to elevating the experience of all issuers—large and small—to support the continued health and relevancy of the public company model.

While Nasdaq supports the PCAOB’s goals of modernizing auditing standards and enhancing investor protection, the sweeping breadth of the Proposal cannot be understated. It would establish the PCAOB as the overseer of all corporate compliance and responsibility, which it lacks statutory authority to do. Further, this type of “expert will solve all problems approach” creates a false sense of security, as has been demonstrated in the past, for example, with rating agencies in the financial crisis and audit firms in the accounting scandals of the early 2000s. We strongly encourage the PCAOB to withdraw the Proposal and conduct a comprehensive cost-benefit analysis before reissuing any proposed rules, with careful consideration to the impact to smaller and newly-public companies and smaller audit firms.

⁹ See Center for Audit Quality, *Institutional Investor Survey Research Findings Q1 Survey* (February 2024), available at: https://www.thecaq.org/wp-content/uploads/2024/02/caq_institutional-investor-survey-q1-2024_2024-02.pdf.

Thank you for your consideration of our comments. Please feel free to contact me with any questions.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "John A. Zecca". The signature is written in a cursive style with a large initial "J" and "Z".

John A. Zecca