

August 3, 2023

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 Matter No. 51**

Dear Office of the Secretary:

We are pleased to provide comments to the Board and Staff on the recently issued Proposing Release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments (the "Proposal").

Baker Tilly US, LLP ("Baker Tilly," "we," or "our") is currently an annually inspected public accounting firm auditing only slightly over 100 issuers, approximately 30 of which are employee benefit plan audits filing on Form 11-K. Our issuer audit practice consists primarily of smaller reporting companies in various industries, including financial institutions. We also perform audits of broker-dealers.

Although we are a top-10 ranked firm, our organization is in the PCAOB's category of a non-affiliated firm ("NAF"), which is substantially different from a Global Network Firm ("GNF").

**General Comments Regarding the Board's Standard Setting Agenda**

We generally welcome the Board's efforts to modernize PCAOB auditing and quality control standards and rules; however, we are concerned that the pace of change is too rapid, and the scope is too significant. Each individual project on the Board's standard setting agenda represents incremental effort for audit firms and, in turn, costs to issuers and investors. We share Board Member DesParte's concern that the ambitious agenda – and this project in particular – may contribute to a widening expectations gap.<sup>1</sup> While each individual project includes an economic analysis, we believe it is imperative that the impact of this and other projects are considered in aggregate, not just individually. For NAF firms like Baker Tilly, mustering the resources to effect all of the changes represents a significant burden as well as a resource allocation constraint, as the same personnel that would be tasked with implementing new standards are also responsible for supporting engagement teams during audits, supporting the PCAOB's inspection process, conducting internal inspections, and designing, implementing, and monitoring remediation plans, among other responsibilities. While firms can and have hired additional resources to assist with these initiatives, the needs continue to increase with each new standard issued. We are concerned that the pace of standard setting and related risks may cause middle-

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<sup>1</sup> [Statement](#) of Board Member DesParte, June 6, 2023.

market audit firms to exit the public company audit market or significantly reduce their portfolios, thereby reducing competition in the market and narrowing the choices available to issuers, potentially harming investors in the process. To that end, we also share the concerns of Board Member Ho, who noted the Proposal:

... contain[s] a breathtaking expansion of the auditors' responsibilities, which I believe will hurt investors. This expansion could cause considerable confusion on the appropriate role of auditors, undermine the time-tested accountability framework, and reduce the resilience of the already highly concentrated audit marketplace.<sup>2</sup>

As a matter of public policy, we do not believe this is the intention of the Board, but the potential for unintended consequences is high with respect to this Proposal, particularly when added to the other standards on the Board's agenda, as well as the related impact of new SEC rules or FASB standards.

### Comments specific to the Proposal

We have concerns with many aspects of the Proposal, which generally relate to costs relative to benefits, and the skillsets needed to comply with the Proposal. We summarize these concerns as follows:

- While we welcome modernization of extant standards, we believe the Proposal goes well beyond modernization and adds significant burdens for auditors and costs to issuers and investors.
- We are unclear as to the specific problem the Board is attempting to address with this Proposal. We are not aware of an uptick in financial statement restatements related to unrecorded liabilities related to noncompliance with laws or regulations. It does not appear to be a pervasive issue so we are concerned the incremental benefit to investors will be far outweighed by the costs. The Board seems to be seeking absolute assurance on this issue, as the Proposal essentially requires auditors to assess hypothetical instances of noncompliance that *may* be material.
- The proposal has the potential to turn every audit into a forensic or compliance exercise. We do not believe that is an auditor's role in the financial reporting supply chain. Rather, it is a matter for management and the board of directors. Consequently, to the extent this issue has merit, we believe it would be best considered by legislators, followed by SEC rulemaking. For example, the SEC's climate disclosure reporting proposal calls for new disclosures by issuers, followed by independent attestation by an individual or firm, which is not required to be the same as the financial statement audit firm.<sup>3</sup> We believe a separate compliance attestation regarding NOCLAR may be a better route than embedding this as a new performance responsibility in the scope of a financial statement audit. AICPA attestation standards, particularly AT-C Section 315, appear to provide a logical framework for reporting on compliance with laws and regulations. AT-C Section 315 also includes important distinctions we encourage the Board to consider.

First, AT-C Section 315 requires that the laws or regulations subject to the attestation engagement be *specified*. In stark contrast, the Proposal puts the onus on the auditor to identify and assess laws or regulations with which noncompliance could reasonably have a material effect on the entity's financial statements. Second, AT-C Section 315 includes preconditions for an engagement that require management's assumption of responsibility and other steps, depending on the level of service of the

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<sup>2</sup> [Statement](#) of Board Member Ho, June 6, 2023.

<sup>3</sup> SEC Release Nos. 33-11042; 34-94478, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*.

engagement. For example, in an examination-level engagement, AT-C 315.09(b) includes a precondition that, “management evaluates the entity’s compliance with specified requirements,” and paragraph .10 goes on to require a written assertion from management regarding its compliance with the specified requirements.

We believe these points are consistent with Board Member Ho’s observation that the Proposal “introduces ambiguities regarding auditor obligations to investors, by transforming the auditor’s role from one of providing reasonable assurance to one of performing a management function.”<sup>4</sup> We wholeheartedly agree that it will be difficult for an auditor to perform the analysis required by the Proposal if management is not required to do so by current SEC regulations.

We recognize that SEC rulemaking would significantly delay the Board’s desired timeline, but we believe this would be a much more appropriate and practical course of action. We are also concerned with potential learning curve challenges for auditors, as assessing compliance with laws and regulations unrelated related to financial reporting is not even a part of the Uniform CPA Examination.

- The universe of potentially applicable laws and regulations is vast, especially for a company operating in multiple foreign jurisdictions. While auditors are certainly qualified to audit the financial reporting and internal controls of such foreign operations, assessing the effect of potential noncompliance with laws and regulations in each jurisdiction in which an entity operates is simply not in the expected skillset of a financial statement auditor. The Proposal acknowledges audit firms will need to employ or retain legal experts, which we believe will be required in nearly every audit engagement. Obtaining this expertise in-house will be challenging if not impossible for NAF firms, and the costs of outside legal expertise will be excessive, potentially more than the current financial audit fee. In some cases, we believe the hours and fees of legal experts could far outweigh the hours and fees of the auditor, which calls into question whether PCAOB Rule 3211 might need to be amended to separately report the hours of external specialists such as attorneys. The Proposal represents a fundamental shift in the core purpose of an audit and even raises concerns about how an audit engagement partner could take final responsibility for the audit report if such a large proportion of the engagement hours or fees relates to legal experts.
- In addition to the costs of internal or external legal specialists, there is no doubt that significant additional time will be required to complete audit engagements. Timelines to properly plan and perform an audit are already tight, particularly for accelerated filers; we believe the incremental requirements of the Proposal will lead to significant time pressures and more delayed filings, to the detriment of investors who need timely financial reporting.

Despite the obvious significant effort by the Office of the Chief Auditor (“OCA”) and staff, we believe there is a critical need for a reset to conduct more research on this issue, including outreach to issuers, audit committees, audit firms of all sizes, legal experts, the SEC, standard setters from the AICPA and IAASB, and the investor community. We note the June 29, 2023 meeting of the PCAOB Standards and Emerging Issues Advisory Group (“SEIAG”) contained only a brief overview and limited discussion of the Proposal; we believe a much deeper exploration of this Proposal by the talented and diverse members of the SEIAG would be helpful and informative to the Board and OCA staff. Comment letters are certainly an important part of the standard setting process, but we believe all stakeholders will benefit from more intentional discussion of the practical implementation challenges and economic impacts of the Proposal.

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<sup>4</sup> [Statement](#) of Board Member Ho, June 6, 2023.

We thank you for the opportunity to present our views on the Proposal and appreciate your consideration. We would be pleased to discuss these comments further with you.

Sincerely,

*Baker Tilly US, LLP*

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