

**From:** THOMAS SPITTERS <tom.spitters@hotmail.com>  
**Sent:** Sunday, August 6, 2023 2:07 PM  
**To:** Comments  
**Cc:** THOMAS SPITTERS  
**Subject:** [EXT]: P.C.A.O.B. Rulemaking Docket Matter No. 51.

Office of the Secretary Phoebe W. Brown

August 6, 2023

Public Company Accounting Oversight Board

1666 "K" Street, NW

Washington, D.C. 20006 – 2803

Cf. P.C.A.O.B. Docket Matter No. 051, Release 2023 – 003, Accounting Standard 2405, "Illegal Acts by Clients"; and AS 2110, "Identifying and Assessing Risks of Material Misstatement"; organizational wrongdoing, Foreign Corrupt Practices Act and related

Dear P.C.A.O.B. Secretary Phoebe W. Brown :

This proposed Release, P.C.A.O.B. Release 2023 – 003, and related amendments having to do with illegalities, or non – compliance violations and their direct and indirect effects on the financial statements as well as the direct and indirect effects of rules and regulations; attempts to address in a systemic and orderly way a redress or remediation of the risk of, and then any material misstatement to the financial statements of public issuers. Addressing issues of non – compliance with respect to financial statement presentation promises to enhance audit quality, audit performance and precision while applying risk – adjusted guidance as proposed by this Release, including computing or technology – assisted audit procedures. This Release as proposed guidance is the result of the efforts to correct organizational wrongdoing given entity – level violations of the U.S. Foreign Corrupt Practices Act of 1977 and similar statutes. The views of this commenter as expressed are not a substitute for responses to some seventy questions published inviting written answers in this proposed guidance. However, in this brief writing, this commenter does believe the intents and purposes of the proposed guidance and related guidance do more to protect investors, and to provide more direct and definite information and direction for auditors to augment the quality of the performance of their audits as evaluated by the authorities considering legal violations and other non - compliance issues and questions of the entities they audit.

An illegality or non – compliance as illustrated in this Release is presented as "An act or omission, intentional or unintentional, by the company whose financial statements are under audit, or by the company's management, its employees, or others that act in a company capacity or on the company's behalf, that violates any law, or any rule or regulation having the force of law. Noncompliance with laws and regulations includes fraud as described in paragraph .05 of AS 2401, *Consideration of Fraud in a Financial Statement Audit*. Noncompliance with laws and regulations does not include personal conduct by the company's personnel unrelated to the business

activities of the company." This definition represents a change from the previous definition in the existing AS 2405 ("violations of laws or governmental regulations. Illegal acts by clients are acts attributable to the entity whose financial statements are under audit or acts by management or employees acting on behalf of the entity. Illegal acts by clients do not include personal misconduct by the entity's personnel unrelated to their business activities") Under the proposed guidance, non – compliance of a material nature invites application of this Release in the case in which the non – compliance is significant enough to financial statement disclosures to require examination. The proposed Release allows for responses to non – compliance in a thoroughgoing and useful document and this commenter commends highly the authors and editors of this document in all respects. This Release provides for the consideration of additional risk adjusted considerations in the audit, including for the integrated audit, and given again additional computing, technical and technology – assisted audit procedures that are available to identify and address non – compliance given subject rules, regulations, standards and other guidance.

Given the discussion points above, this commenter perceives an opportunity and possibility for audit planning phase risk – adjusted assessment and control self – assessment procedures -- targeted analytical procedures and limited audit sampling, e.g., of cash, accounts receivable, inventories, and liabilities along with information – gathering and processing according to open source reports, media and other materials in the planning phase of the audit that will continuously address in a risk – adjusted way the questions provoked on the subject of legal and operational non – compliance in this Release, and having to do with material disclosures in the financial statements. This commenter suggests that a beginning control self – assessment will provide for, and in an integrated audit as well, ongoing constructive communications with the audit committee on the subject of non – compliance in the course of the audit as well as with respect to audit risk and its elements and whether non - compliance has or may have occurred and whether management has taken sufficient and reasonable, timely remedial action (this provided the auditor is not precluded in the work of identifying and evaluating non – compliance and related procedures.) This includes questions of non – compliance in view of sufficient and reliable evidence within the scope of but not limited to violations of rules, regulations, standards and the law; material non - compliance, internal controls non - compliance, related parties infractions (AS 2410.11 as proposed to be amended), fraud, other non - compliance and other misstatement risks (as communicated to the audit committee), non – compliance considerations given previous audit results, results of inquiries of legal counsel, and interim information (in AS 4105.18, .23, and .32 as proposed to be amended) as well as other items not previously considered and this includes the procedures in AS 2110.11 and proposed AS 2110.15. In this way, the auditor bears unconditional responsibility to properly plan and perform the audit in all necessary, significant and reasonable areas; including determinations as to the occurrence of material non - compliance and whether or not it is likely that non - compliance occurred; material non – compliance given the risks of material misstatement including the nature, timing and extent of audit procedures as applied; in view of non - compliance and of management objectives and the fair and transparent presentation of the financial statements in accordance with the proper financial reporting framework. This includes as stated previously the uses as proper and reasonable of technical audit tools and practice aids as well as technology - assisted audit procedures that are available to identify possible non - compliance.

It is perhaps to the best interests of regulators and in the best interests of investors and financial statement users to give the Board and the S.E.C. wide discretion with respect to AS 2405 and AS 2110 (and P.C.A.O.B. Standards as amended shown in Appendix 2 and Appendix 3 of the proposed guidance) in examining, evaluating and sanctioning in matters of non - compliance with laws and regulations; patterns thereof as well as non - compliance information; and to include relevant and pertinent language about this in the engagement acceptance documentation (perhaps modifications in the management responsibilities section of P.C.A.O.B. Auditing Standard No. 16 "Matters Included in the Audit Engagement Letter", and further modification of AS 1301 "Communications with Audit Committees".) Wide discretion should be given to the Board and the Commission encompassing the evaluation and judgment of the results of auditor - assessed risks and evaluations as to legal non - compliance as well as internal control non - compliance in pre - engagement analysis to include preliminary audit procedures in the planning phase; and including representations and disclosures by responsible entity management and other governance about the financial statements under audit

as to entity compliance and non - compliance, including fraud and any indications of non - compliance, in the management representation letter that requires disclosures on compliance and non - compliance with applicable laws, regulations, rules and standards. This avoids the sort of specious and unwarranted scrutiny, looking for ambiguities, discrepancies or inconsistencies in the guidance by stakeholders of the proposed guidance that might occur once AS 2405 and related documentation and guidance are finalized and implemented. The wide discretion over non - compliance that could reasonably be expected to have a material effect on the financial statements is proposed as applying to all regulated issuers as well as broker and dealers. This addresses the foundational objective of the auditor's examination of financial statements in expressing an opinion as to whether the financial statements are free of material misstatement and avoids an interpretation of AS 2405 as a seeming change in the objective or objectives of the audit, including the integrated audit, from representational faithfulness, relevance and reliability more toward examining and evaluating the financial statements in order to address direct and indirect material matters adversely affecting the financial statements such as intentional and un - intentional errors, omissions, misapplication of guidance and standards, non - compliance and fraud.

This assessment and control self – assessment procedure in the audit planning phase calls for the auditor to design and implement; and with awareness and reasonable expectations in these matters of non - compliance, errors, omissions, and fraud; proper audit responses with respect to results the auditor would be expected to achieve in the audit according to the proposed standard given these considerations without undue emphasis on, e.g., non - compliance and fraud. This assessment procedure in the planning phase of the audit encompasses the possibility of the proper use of specialists such as specialists in non - compliance and fraud, and with specialized skill or knowledge, in possible prospective findings about material information indicating legal non - compliance, and would include also the uses of reports, materials and documentation from state and federal authorities whereas these will further assist in the planning phase of the audit, preliminary risk assessments (and thereby risks of material misstatement) and analytical procedures as well as findings about non – compliance in its various guises. By this Release as well and given its requirements for compliance in view of possible violations, the additional question of transparency signifies the inclusion of disclosures illustrating not only legal non - compliance but statements as to the possible direct and indirect effects of non - compliance on the entity's business operations.

This commenter also views this Release as possibly inviting lack of incentives to implement the proposed AS 2405 given perceived and pro forma utilities and costs of the new rules and regulations. Investors can be harmed by the requirements that AS 2405 proposes given unanticipated and possibly disparaging audit and regulatory findings and lower share prices as well as loss of reputations of entities in investor holdings -- this given the signals sent by audit information that is more restrictive, subtracting or even neutral about the entity. If the proposed guidance is not thoroughly and carefully implemented and integrated with existing audit procedures, also given non - compliance findings as the result of this proposed guidance, auditors could possibly lose audit clients and could face other pressures including actual reputational loss. The additional requirements of AS 2405 invite again a potential interaction, even conflict, between the interests of the financial statement preparer and the interests of the audit client and the interests of investors. Given the foregoing and the writing in AS 2405 on the subject of non – compliance and its direct and indirect effects on the financial statements, this commenter suggests that implementation of the proposed AS 2405 be conducted with the benefits and the burdens invited by the same and with wide discretion given to the P.C.A.O.B. and the S.E.C. as to the enforcement of rules and standards, the evaluation of audit quality and audit findings and the judgment of the Commission and the P.C.A.O.B. given any non - compliance involved as encompassed by this guidance.

By,

# *Thomas H. Spitters, C.P.A.*

Thomas H. Spitters, C.P.A.

San Francisco, CA 94104 – Email : [tom.spitters@hotmail.com](mailto:tom.spitters@hotmail.com) – Telephone : (415)800-4499

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