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August 7, 2023

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

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

Dear Office of the Secretary:

**FORVIS, LLP** (FORVIS) appreciates the opportunity to respond to the PCAOB's proposal, *Amendments to PCAOB Auditing Standards Related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments (the "Proposal")*. FORVIS ranks among the top 10 public accounting firms in the nation, with nearly 6,000 dedicated professionals and clients in all 50 states, as well as internationally, and is a member of Praxity, AISBL, a global alliance of independent firms.

FORVIS is also an active participant in many profession-wide endeavors, including, but not limited to, participating on various committees, task forces, and working groups of the Center for Audit Quality (the CAQ). We have again worked with the CAQ as it developed its response to the PCAOB's Proposal. FORVIS' comments below are intended to supplement the views expressed in the CAQ's comment letter.

Our responses are also framed by our experiences serving primarily middle-market public issuers, employee benefit plans subject to a Form 11-K filing requirement, and non-issuer broker-dealers, and include our concerns regarding the potential implications the Proposal could have for firms below the top six Global Network Firms (GNFs) as it relates to our responsibilities to identify noncompliance with laws and regulations ("NOCLAR").

**General Comments**

Stated in the PCAOB's Proposal is the concern that current procedures performed by an auditor related to NOCLAR are limited to those addressing laws and regulations with a direct effect on the financial statements to the exclusion of those with an indirect, but potentially material, effect on those same financial statements. We understand this concern, but we believe any potential changes should be done in the context of a) the auditor's role (contrasted to that of management);

b) skill set and core competencies of the auditor; and c) a company's internal control over financial reporting.

While we would generally be supportive of an effort to increase awareness and consideration of NOCLAR in traditional audit procedures such as performing walkthroughs, auditing estimates, or in making inquiries of management (including expansion into operational management), the Proposal goes well beyond those types of procedures. For instance, the Proposal unreasonably expands the auditor's responsibilities with regard to NOCLAR and transforms the auditor's role from one of providing reasonable assurance on the financial statements and disclosures to one of performing procedures more akin to those performed in a compliance audit, while also going well beyond what would even currently be required in a typical compliance audit (or perhaps even permitted within the scope of a compliance audit). Further, such procedures may require specialized skills and knowledge beyond those of the financial statement auditor.

### ***Management's Responsibilities Related to NOCLAR***

As proposed, the standards seem to shift the detection of and accountability for NOCLAR from management (and the audit committee) to the auditor. Although we agree with the importance of addressing the impacts of NOCLAR on investors, we believe that others in the financial reporting ecosystem, including importantly the Financial Accounting Standards Board and U.S. Securities and Exchange Commission (SEC), need to make coordinated and concurrent changes to the accounting and disclosure standards or related regulations, *e.g.*, ASC 450 – *Contingencies*, and components of Regulations S-K and S-X. Company management would then be able to adopt and apply those standards and regulations to their financial reporting processes. Only after that can an auditor conclude, in the context of a financial statement audit, on whether management's application of the standards and regulations resulted in the preparation of financial statements that are free of material misstatement and, when applicable, on the effectiveness of the company's internal control over financial reporting in this area.

### ***Legal Resource Needs/Capacity***

We believe that in order to comply with the expanded scope of the Proposal, firms may need to hire internally or engage additional external legal or other specialized resources for assistance. While the largest multinational audit firms may have dedicated in-house counsel and a cadre of attorneys who may or may not be equipped to assist with such matters in addition to other external resources available on short notice to provide legal assistance, we believe many firms below the top six do not currently have those dedicated resources in house.

In addition, public companies may have a presence in multiple jurisdictions, and legal requirements vary among those jurisdictions. Therefore, to comply with the expanded scope of this Proposal, audit firms may need to find additional appropriate resources with the knowledge, skills, and experience in each jurisdiction where a client has significant operations, *e.g.*, to be able

to evaluate indirect or potential material instances of NOCLAR. This will result in significant additional costs to both audit clients as well as the firms performing their audits to ensure that adequate resources are in place to be able to evaluate NOCLAR in every jurisdiction in which an entity operates.

In addition, engaging external legal resources would add an additional layer to the audit process in that firms will have to source appropriate, skilled resources that will likely add additional audit time. In addition, firms would also need to consider their own internal conflict-of-interest processes before engaging legal resources which could also reduce the pool of qualified individuals with which they would even be permitted to engage to evaluate NOCLAR.

### ***Impact on Smaller Public Companies, 11-K Filers, and Broker-Dealers***

Based on our client base subject to PCAOB auditing standards, we would also like to share the following observations:

- The proposed standard may have a disproportionate effect on audits of smaller public companies, including non-issuer broker-dealers. For example, consider a scenario where a handful of NOCLAR instances relevant to a given law or regulation may not be reasonably expected to have a material effect on the financial statements of a larger public company; however, that same number of instances with the same law or regulation could reasonably be material to a much smaller entity. The audit effort required under the proposed standard may actually be relatively higher on the auditors of smaller public companies due to much lower audit materiality thresholds. In addition, many of the smaller entities that we audit do not have full-time in-house counsel and their “compliance” programs, while likely commensurate with their size and assessed risk, may not be sufficient in nature relative to the expanded expectations of the Proposal, especially in comparison to larger public companies with greater resources and ability to cover overhead expenses. The auditor of a smaller public company may be starting in a very different place under the proposed standard relative to the auditor of a larger public company given the aforementioned factors.
- The proposed standard may also have a disproportionate effect on audits of companies in regulated industries, *e.g.*, financial institutions including community banks, insurance companies, and non-issuer broker-dealers, or other regulated entities, *e.g.*, benefit plans filing a Form 11-K. These entities face a myriad of regulatory matters, frequently with multiple regulators. For example, with regard to Form 11-K employee benefit plans, we believe that in order to properly apply all of the terms and conditions of this Proposal, firms will need to engage SEC counsel, employment law specialists, and *Employee Retirement Income Security Act of 1974* (ERISA) specialists, which represent three different types of legal specialists. This would result in additional cost and complexity to audit these plans. Similar concepts would apply with the various regulators of financial institutions, *e.g.*, the

applicable regulators among the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Consumer Finance Protection Bureau.

### ***Potential 11-K Exemption***

We strongly believe that the PCAOB should consider additional outreach and research of the cost/benefits of this Proposal before proceeding with any changes to the standards. However, if the Board does decide to move forward, we believe they should at least consider some scope exceptions.

For instance, as noted in the preceding section, the proposed standard may have a disproportionate effect on audits of companies in regulated industries, including employee benefit plans filing a Form 11-K. To properly apply all of the terms and conditions of this Proposal, we believe firms will need to engage different types of specialists, including SEC counsel, employment law specialists, and ERISA specialists. This would result in additional complexity and cost to audit these plans.

We also understand the Board believes the proposed standard can improve audit quality through identification of noncompliance with laws and regulations; however, harm from noncompliance is already addressed through what is required to be reported by the Department of Labor (DOL) in the financial statements and supplemental schedules.

Additionally, the auditor is required to report all reportable findings in writing, as defined in AU-C Section 703, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to the Employee Benefits Security Administration* (ERISA). This would include instances of noncompliance, items relevant to those charged with governance, and other deficiencies significant enough to warrant management's attention.

If the Board continues to move forward, despite the comments and feedback received from stakeholders, we strongly encourage the Board to exempt filers of Form 11-K from this standard.

### ***Impact to Public Company Registrants***

Entities employ a risk-based approach for determining where to deploy their risk management capital, and the requirements of the proposal are moving toward a zero-tolerance approach, which could be cost prohibitive and is contrary to a risk-based oversight approach. We believe this Proposal could also result in PCAOB registrants needing to hire additional resources with the proper skills, knowledge, and expertise in each jurisdiction that they operate in to properly evaluate any alleged or suspected instances of NOCLAR, rather than being able to apply a risk-based approach to where they decide to deploy legal resources. Many of FORVIS' public company clients are middle-market businesses that have back-office resources, e.g., accounting, finance, and legal departments, that are structured equivalent to their operations as discussed above.

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For these reasons noted above, we do not believe the costs to adopt this Proposal are sufficiently scalable and place an undue burden on firms and public company clients without a commensurate increase in audit quality.

### **Additional Comments – Proposal Period/Comment Letter Response Process**

As noted in our comment letter on *A Firm's System of Quality Control and Other Proposed Amendments to PCAOB Standards, Rules and Forms* proposal, to ensure all respondents and stakeholders are given adequate time to review and comment on PCAOB proposals in the future, we suggest providing longer comment periods, especially in situations where the proposed changes will have a significant impact on the profession. The Proposal is nearly 150 pages long and takes time to sufficiently review and vet through various departments and leadership structures, and we found (and heard from similarly situated firms) a comment letter response period of 60 days to be challenging for firms that may be impacted the most significantly by these proposed changes. It should also be noted that the Proposal was issued with a comment period overlapping quarterly reviews for the majority of public clients, and firms then need to reallocate resources during an already busy time of year to respond to these proposals. We would not want the tight response deadlines and timing of these proposals to preclude firms from being able to thoughtfully participate in the PCAOB's standard-setting outreach efforts.

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In closing, although there are opportunities to enhance auditors' responsibilities in the area of NOCLAR, and FORVIS is supportive of efforts in this area, we are opposed to the provisions of this Proposal as currently drafted. While the auditing profession can do more in relation to NOCLAR, it is but one participant in the financial reporting ecosystem. The requirements of the Proposal fall solely on the auditing profession and are not consistent with the risk-based objectives of a financial statement audit and seem to go beyond the concept of providing reasonable assurance.

We appreciate the opportunity to comment on the Proposal and are pleased to discuss any questions the Board and its Staff may have concerning our comments. If you have any questions related to this response and would like to discuss further, please email Jeff Rapaglia, National SEC Services Partner, at [Jeff.Rapaglia@forvis.com](mailto:Jeff.Rapaglia@forvis.com) or Greg Faucette, National Financial Reporting Partner, at [Greg.Faucette@forvis.com](mailto:Greg.Faucette@forvis.com).

Sincerely,

**FORVIS,LLP**