

August 7, 2023

SENT VIA EMAIL: 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:

We appreciate the opportunity to share our views and provide input on the Public Company Accounting Oversight Board's (PCAOB or the Board) proposing release: Amendments to PCAOB Auditing Standards relate 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).

Moss Adams LLP is the largest accounting and consulting firm headquartered in the western United States, with a staff over 4,300, including more than 400 partners. Founded in 1913, the firm serves public and private middle-market business, not-for-profit, and governmental organizations across the nation through specialized industry and service teams.

We support the Board's intentions to revise PCAOB standards to modernize and strengthen auditing standards related to the auditor's consideration of noncompliance with laws and regulations (NOCLAR). However, the PCAOB Release unreasonably expands the auditor's responsibilities for matters of NOCLAR. We do not believe the scope of the PCAOB Release is operational and will result in substantial cost to issuers. We have two overriding concerns with the PCAOB Release and strongly suggest the Board provide a risk-based approach to consider noncompliance to better align with auditor expertise and to provide scalability.

Scope and Requirements of the PCAOB Release Surpass Auditor Expertise

The proposed expansion of auditor requirements to identify and evaluate noncompliance combined with the extensive scope of laws and regulations to consider surpass auditor expertise. In particular, the requirement for the auditor to reach an independent determination of whether noncompliance has likely occurred requires legal expertise that auditors do not have.

Evaluating Potential NOCLAR and Determining Probability of Effect on the Financial Statements

The PCAOB Release presents a profound change in the auditor's responsibilities regarding matters of NOCLAR in that it will require auditors to inventory laws and regulations, identify whether there is information indicating noncompliance has or may have occurred, and evaluate and communicate each potential instance of noncompliance. The proposed requirements do not properly take into account an issuer's existing compliance functions.

The application of each of these steps, inventorying, identifying, and evaluating, require legal and potentially other expertise well beyond the role of the CPA. The evaluation of potential noncompliance requires a determination of probable effect on the financial statements; such determinations are legal matters for which auditors are not trained. The requirements to inventory relevant laws and regulations and to identify instances of noncompliance as outlined in the proposed rule are a management function. We have serious concerns that the proposed requirements blur the role of the auditor from providing reasonable assurance over the financial statements to that of a management function, asserting compliance with laws and regulations. The PCAOB Release puts explicit requirements on the auditor which go beyond what management is currently required to assess and consider. For example, the PCAOB Release requires auditors to identify and evaluate instances of noncompliance with laws and regulations that have or may have occurred regardless of material effect. That requirement encompasses laws and regulations with which noncompliance would have a direct or an indirect effect on the financial statements. However, an issuer's internal control over financial reporting is required to consider compliance with the applicable laws and regulations directly related to the preparation of financial statements. Thus, there appears to be a misalignment between management and auditor responsibilities as they pertain to NOCLAR.

Further, the PCAOB Release requires the auditor to consider adequacy of financial statement disclosure for the possible effect of the likely noncompliance. Many such potential matters are currently discussed in Management's Discussion and Analysis (MD&A); however, it is unclear whether the auditor would be required to evaluate the sufficiency of the disclosures within the MD&A or if the Board intends to coordinate with the Securities and Exchange Commission to require expanded footnote disclosures by issuers within the financial statements. Clarification as to what disclosures are expected or intended is critical to consistent application.

Extensive Scope

The myriad of laws and regulations captured by proposed requirements magnifies the limitation of CPAs' skills, knowledge or expertise to address compliance. The PCAOB Release indicates that the definition of NOCLAR is intended to capture the many types of noncompliance for which an issuer may be held responsible, including in any disciplinary or administrative proceeding, or any civil or criminal action. The laws and regulations to which a company must adhere includes Federal, state, and local requirements and potentially international jurisdictions. The volume of laws and regulations to consider further compounds when considering the various subject areas within each of those jurisdictions and the rapid pace at which new laws and regulations are enacted. For example, most companies are subject to areas including taxation, corporate governance, securities, contracts, privacy, employment, and safety. Further, for specific industries additional areas would need to be considered such as health, environmental, intellectual property, mergers, acquisitions, and foreign corrupt practices. While management has responsibilities to identify and comply with applicable laws and regulations, requiring auditors to have or obtain, either internal or external to their firms, such knowledge exceeds the role of the CPA.

Issuers that operate in international jurisdictions have additional complexities to consider. The US legal and regulatory processes for establishing rules and exercising enforcement are robust and stable, however, that is not the case in all foreign jurisdictions. In jurisdictions where the laws and regulations are in flux or when the application and enforcement actions are a political exercise, the criteria for which the auditor would independently evaluate are fluid and subjective making compliance identification and evaluation extremely problematic.

Exacerbating the scope issue, the PCAOB Release proposes auditors assess instances of noncompliance that may or may not have occurred and regardless of materiality. The low threshold applied to matters the auditor is responsible for evaluating and communicating introduces a potentially huge volume of information to consider.

If the Board proceeds without significant revisions to the scope of NOCLAR and the responsibilities of the auditor, we anticipate considerable pressures on talent to perform such procedures. Finding legal expertise in the multitude of areas of compliance will be challenging for audit firms as there will be significant demand for such services. In niche industries, it is likely that auditors will compete with issuers for such expertise. Securing legal expertise in foreign jurisdictions poses additional challenges including finding foreign firms and attorneys with the appropriate expertise and willingness to comply with US-based laws, particularly in jurisdictions with highly politicized legal and regulatory processes and enforcement.

We suggest the auditor's role focus on more robust requirements pertaining to consideration of noncompliance during risk assessment and evaluation of management's policies, controls and procedures around the identification of and compliance with laws and regulations as it relates to their financial reporting. A risk-based approach provides scalability which the proposal is lacking.

NOCLAR Requirements Could Diminish Audit Quality

If the Board proceeds as proposed and firms can secure appropriate staff and attorneys as specialists to assist with NOCLAR requirements we still have concerns that the NOCLAR requirements, given their scope and extent, could diminish audit quality rather than enhance it.

Detraction from Focus on Areas of Most Risk and Significance

The PCAOB's shift to have auditors inventory laws and regulations, identify, evaluate and communicate matters of noncompliance that have or may have occurred will result in CPAs having to gain expertise in areas currently outside their education, training, and certification. The expectation that auditors have or acquire deep knowledge over such a vast expanse of information may result in shifting expertise on the various components of assurance required in an audit (for example, knowledge of accounting principles, financial controls, industry expertise.) The auditors' focus should address areas of most risk and significance. Having to identify and evaluate each potential instance of NOCLAR significantly increases the scope of the auditor's responsibilities and requires a significant expansion in expertise which puts such a focus at risk.

Delayed Information to the Market

While certain of the procedures management and firms will need to perform to comply with NOCLAR could be done at an interim date, many procedures will likely have to be performed after year-end as part of the final close process. Careful consideration should be given to the impact any new requirements would have as the performance of such procedures after the fiscal year-end increases the risk in delaying timely information to the market. Given the scope of the proposed requirements, issuers and auditors will have

considerable information related to compliance to evaluate creating an additional burden to meet filing deadlines. Thus, we encourage the Board to reconsider the perceived benefits of the proposed procedures against the potential delay of information to the market.

Pressure on Talent

As previously mentioned, we have macro concerns regarding the pressure for legal talent to comply with the proposed requirements, particularly within unique or unusual compliance areas. If the auditor is required to evaluate matters and determine possible effect, securing legal advice in such subjects could be challenging for clients that are operating in very specialized or highly regulated industries.

We appreciate the opportunity to comment on the PCAOB Release. As the Board gathers feedback from other interested parties, we would be pleased to discuss our comments or answer any questions that the Board may have regarding the views expressed in this letter. If you require further information regarding our response, please contact Laura Hyland, Senior Manager in our Professional Practice Group, at 206-748-4911 or by email at Laura.Hyland@mossadams.com or Michael Spencer, Partner in our Professional Practice Group, at 408-916-0589 or by e-mail at Michael.Spencer@mossadams.com.

Sincerely,

