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August 7, 2023

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

Re: Proposing Release: 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:

This letter represents the views of Corteva (NYSE: CTVA) regarding the Public Company Accounting Oversight Board's proposal, *Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments ("NOCLAR")*.

We support the PCAOB's mission to protect investors by modernizing auditing standards that support the performance of continued high-quality audits in today's complex business environment. However, we are concerned that the proposed amendments do not advance that mission. They risk reducing audit quality and lessening investor protections while unnecessarily increasing the cost and complexity of audits.

We share the concerns raised by PCAOB Board Members Duane DesParte and Christina Ho in the PCAOB's June 7, 2023, open meeting[1], along with the Society of Corporate Governance and the American Bar Association.

Specifically, we are concerned that the proposal:
- Is overly broad;
- Will add burdens to audit committees that will compromise audit quality;
- Goes beyond the professional expertise of auditors;
- Does not adequately consider the harm to legal privilege; and
- Has not adequately evaluated the increase in the cost of the audit without a commensurate benefit.

We believe that:

1. Any change should keep the auditor focused on NOCLAR that could materially impact the financial statements, such as material penalties or loss contingencies.

2. Any requirement of the auditor should be risk-based and consider the role the company's compliance program plays in detecting NOCLAR that could be material to the audited financial statements.

To expand upon our position, we offer the following rationale:

The proposed scope of the proposal is overly broad.

[1] See public statements from PCAOB Members Duane DesParte and Christina Ho.

The proposed requirement that auditors identify "laws and regulations with which noncompliance could reasonably have a material effect on financial statements"[2] is duplicative, unnecessary, and overly complex, while exceeding the mandate for auditors' responsibilities beyond Section 10A of the Securities Exchange Act of 1934 (the "Exchange Act").

As of the end of 2022, Corteva was doing business in approximately 140 countries with over 10 million customers and operated globally 85 production facilities and 150 research and development facilities. Within each country we do business or operate in there are various provincial, state, county and other local laws, regulations, and ordinances. These laws include, but not limited to, various national, international and local frameworks around antitrust, anti-corruption, consumer protection, corporate governance, environmental protection, data privacy, financial reporting and transactions, political activities, property ownership, intellectual property, occupational health and safety, tax, trade compliance, employee relations, and employee benefits. Additionally, we operate in a highly complex regulatory environment surrounding the production, registration, transport, labeling, sale and use of biotechnology, genetically modified seeds, and crop protection active ingredients, which can vary greatly across the world and require highly specialized knowledge that even many sophisticated law firms do not have a deep understanding. By our estimation, highly regulated global companies like, Corteva, are easily subject to hundreds of thousands of laws at any given time.

Given that public companies, like Corteva, are subject to a vast number of laws and regulations, and the companies in highly regulated industries can be subject to hundreds of new laws and regulations in a single quarter that may also be highly industry specific, they already have extensive enterprise risk management, compliance, and stewardship processes and programs that perform the identification process encompassed by the proposal. The results of which are regularly reported to the Board, our audit committee, as well as to our internal and external auditors for the input regarding the process and evaluation of any significant matters. The proposal does not sufficiently leverage a company's existing compliance function or take into account the shared responsibility of the board of directors, the audit committee, internal audit, the chief compliance officer, and the general counsel in identifying material risks and deploying effective risk management strategies.

We believe oversight of a company's compliance with laws and regulations is primarily the shared responsibility of the board of directors, the audit committee, the chief compliance officer, general counsel, and internal audit. While the proposal expresses skepticism related to public company risk management processes, according to a recent survey, the top three detection methods of frauds (approximately 70%) were as a result of tips, internal audit, and management review.[2]

Company management, audit committees, auditors, and regulators working in concert to foster a system that supports both high-quality financial statements and audits, all for the protection of investors. We suggest a better approach would be aligned with Section 10A of the Exchange Act, or at least remain risk- based, where the auditor considers the role the company's compliance program plays in detecting non- compliance with laws and regulations that are material to the audited financial statements.

The proposal will add burdens to audit committees that may compromise audit quality.

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[2] See Association of Certified Fraud Examiners report, *Occupational Fraud 2022: A Report to the Nations*.

The proposal substantially expands the scope of audits and audit committee communications beyond accurate financial reporting to general legal compliance without regard to how public companies have selected to delegate corporate risk oversight for legal and regulatory matters between their boards and committees. More specifically, the proposal adds additional obligations to communicate with management and audit committees when the auditor identifies or otherwise becomes aware of information indicating that noncompliance, including fraud, has or may have occurred, and would be required to make an initial communication to management and audit committees upon becoming aware of possible noncompliance, even when the auditor has not yet determined whether the noncompliance has or is likely to have occurred and the associated financial statement impacts.

Concerns with overloading audit committees with responsibilities beyond their commitment to oversight of high-quality, reliable financial reporting is long standing, and continues to be tested with the inclusion of relatively new and developing frameworks for cybersecurity and environmental, social and governance reporting within the audit committee's scope of duties.[3] The wide expansion of audit scope and audit committee communications under this proposal threatens audit quality and distracts from the audit committee's core mission to ensure high-quality, reliable financial reporting.[4]

We ask that the PCAOB consider these costs and unintended consequences further. Audit committees, while they can access legal expertise, are generally composed of financial, not legal experts, and need to be able to respond and react quickly to meet current financial reporting deadlines. While audit committees are focused on legal and regulatory matters as they impact financial reporting, financial reporting controls and fraud, they should not be viewed as the repository for all matters of legal and regulatory compliance. Our company, like many other public companies, has delegated oversight for various areas of significant legal and regulatory risk between its Board and its various committees in a manner assessed to be appropriate under its enterprise risk management programs and practices, which take into consideration the various expertise and core mission of the Board holistically and each of its committees.

Therefore, we recommend the PCAOB proposal is revised to ensure that audit scope and mandatory audit committee communications continue to support the ultimate mission of audit committees to ensure high-quality financial reporting through the detection of illegal acts that would have a direct and material effect on the determination of financial statement amounts, rather than expanding into areas of potential or immaterial non-compliance.

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[3] See, e.g., White, Mary Jo White, SEC Chair, *Key Address at the 2015 AICPA National Conference: Maintaining High-Quality, Reliable Financial Reporting: A Shared and Weighty Responsibility* (Dec. 9, 2015)(The audit committee is another critical gatekeeper in the chain responsible for high-quality, reliable financial reporting. . . Having served on the audit committee of a public company, I know first-hand how much work and responsibility the job requires. And, since my service even more is being demanded, with many audit committees now being charged with overseeing additional risks, including incredibly important areas such as cybersecurity. I have growing concerns about the amount of work required by some audit committees. The increasing workload may dilute an audit committee's ability to focus on its core responsibilities . . .Audit committees must be entirely committed to financial reporting.) Ryan, Vincent, *Overburdened Audit Committees Threaten Quality of External Audits*, CFO.com (finding that "audit committees, in general, are drowning in information and data, having been handed an almost endless list of oversight responsibilities" outside of their "primary responsibility" oversight of financial reporting and independent audit processes); Munter, Paul, SEC Chief Accountant, *Opening Remarks at the Baruch College 21st Annual Financial Reporting Conference: A Conversation with Paul Munter and Richard Jones,* The CPA Journal (May 4, 2023)("[T]here are more demands that are being put on audit committees, sometimes on topics that are outside of their core responsibility to oversee the financial reporting process and external audit process. I think audit committees need to be continuously vigilant to make sure that have enough time on their agendas to focus on their core mission and serve as a key gatekeeper for the protection of investors—and that they don't let these other important topics crowd out time that they need to focus on their core responsibilities." Center of Audit Quality, *Audit Committee Practices Report: Common Threads Across Audit Committees* (Jan. 2022) ("Audit committees are being challenged by increased complexity in their core responsibilities, as well as scope creep across other areas within their organizations.")

[4] Ashraf, Musaib and Choudhary, Preeti and Jaggi, Jacob, *Are Audit Committees Overloaded? Evidence From the Effect of Financial Risk Management Oversight on Financial Reporting Quality* (July 20, 2023). Available at SSRN: http://dx.doi.org/10.2139/ssrn.3433389 ("Our evidence is consistent with practitioner concerns that noncore duties can distract the [audit committee] from performing its core duties and thus impair financial reporting quality. . . We also find evidence consistent with the perspective of regulators and stock exchanges that greater AC duties can benefit financial reporting but that this benefit is contingent on those duties relating directly to financial reporting oversight (e.g., internal controls).")

Auditors are not lawyers, and the proposal unfairly asks them to make evaluations beyond their professional expertise.

Existing AS 2405.03 articulates the limitations on auditors' ability to evaluate legal issues.[5] This language was deleted in the proposal and replaced with the expansion of the auditor's role as legal compliance reviewer, which includes skills, knowledge, and expertise outside the auditor's core competencies and expertise in accounting and auditing. This can include drawing legal conclusions, which could raise issues with respect to the unauthorized practice of law and auditor independence.

We should expect, if adopted, false alarms related to potential non-compliance will be common, and this could not only impact required financial disclosures, but harm companies through requests for work papers including legal assessments and regulatory inquiries. While the proposal asserts that the expertise gaps of auditors may be addressed via outside legal advisors and other specialists, some areas of regulatory work are particularly nuanced and take place in highly concentrated industries, where few firms may have the necessary specialized expertise and most, if not all, may be conflicted by their representation of other public companies or their competitors. Therefore, we continue to believe teams of in-house attorneys and outside counsel employed by publicly companies and familiar with their operations and regulatory nuisances are best suited to identify and investigate potential violations of laws and regulations on behalf of public, their boards of directors, and respective independent committees.

The proposal assumes that over time audit firms will develop this expertise and be able to reduce costs and burdens to companies over time. However, this this assumes a stability and certainty of the law that does not exist. Whether a company has violated a law or regulation can depend on many things, including the underlying factual circumstances, uncertainties in the law, including the absence of case law and regulatory guidance, the availability of defenses, and the enforcement posture of the applicable government authority. Certainty regarding whether a violation has occurred may ultimately remain unclear until a matter is adjudicated.

We recommend that the current language of existing AS 2405.03 should remain as part of any revised proposal. Additionally, the proposal should be revised to address these professional limitations to ensure that the audit scopes remain risk-based and focused on NOCLAR that could materially impact the financial statements, such as material penalties or loss contingencies.

The proposal does not consider the potential harms to legal privilege.

The proposal requires the auditors to "identify the laws and regulations with which noncompliance could reasonably have a material effect on the financial statements" and to "identify whether there is information indicating noncompliance with those laws and regulations has or may have occurred."

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[5] Current AS 2405.03 ("Whether an act is, in fact, illegal is a determination that is normally beyond the auditor's professional competence. An auditor, in reporting on financial statements, presents himself as one who is proficient in accounting and auditing. The auditor's training, experience, and understanding of the client and its industry may provide a basis for recognition that some client acts coming to his attention may be illegal. However, the determination as to whether a particular act is illegal would generally be based on the advice of an informed expert qualified to practice law or may have to await final determination by a court of law.")

This second step would lead the auditor, as already acknowledged by some of the Big 4 accounting firms[6], to request privileged information from the public company to assist the auditor in assessing indications of noncompliance with relevant laws and regulations. Public companies, and where applicable, their independent committees (including audit committees) running independent investigations, would have two unpalatable choices: waiving privilege by voluntarily sharing information and legal analyses with the auditor on any noncompliance with relevant laws and regulations, or rendering the public company unable to file its annual report on time with the SEC and/or go effective on registration statements in order to issue securities in the public markets because it refused to share the requested information with the auditor, thereby delaying completion of their audit. Accordingly, public companies would be put in the difficult position of either waiving the attorney-client privilege or risking that their audit would not be completed.

Public companies ask their outside counsel to provide annual audit response letters to their auditors, identifying matters that pose risk to the company at a defined materiality threshold and/or relate to compliance with particular laws. This existing process facilitates the sharing of information with auditors that is needed to complete their audit, and includes relying on representations from outside counsel, who are best equipped to assess the nature and extent of a company's potential exposure based on noncompliance with a particular law or regulation, while at the same time maintaining attorney-client privilege.

The proposal would require auditors, who lack the training and expertise to assess compliance with relevant laws and regulations, to supplement and even supplant the legal judgment of counsel regarding the existence or likelihood of a legal or regulatory violation. This process would create a material threat to the company's privilege and to the orderly, timely, and cost-effective completion of the audit process.

The proposal will substantially increase the cost of the audit without a commensurate benefit.

While the PCAOB acknowledges in its proposal that auditors may need to retain a range of legal experts to comply with the proposed standards, the proposal offers no specifics on the projected cost analysis beyond "[t]hese costs could be substantial." The Big 4 accounting firms have acknowledged that the proposal will substantially increase costs of audits - directly through their engagement of more specialists and expanded audit scopes, and indirectly through the company's need to engage more counsel and add resources to address the audits.[7] While the proposal indicates that audit firms have incentives to find efficiencies, it fails to acknowledge that audit firm switching costs for public companies is already high and will actually be higher under these new standards, since switching now would require a deeper and costly re-education of the replacement auditor on the Company's compliance framework.[8]

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[6] See, e.g., Ernst & Young, *To the Point: PCAOB – Proposal No. 2023-06* (June 29, 2023)("The proposal could lead auditors to request more information from registrants that could be subject to the attorney-client privilege or another legal protection . . . Failure of registrants to provide that information could impact the auditor's ability to obtain sufficient audit evidence."); See also PwC National Office, *In depth, PCAOB proposes significant expansion of auditor responsibilities No. US2023-05* (June 29, 2023) ("Legal advice, at times provided under attorney-client privilege, is often necessary to determine whether noncompliance has occurred . . .").

[7] See, e.g., Ernst & Young, *To the Point: PCAOB – Proposal No. 2023-06* (June 29, 2023); KPMG, *Hot topic PCAOB proposal* (July 2023); PwC National Office, *In depth, PCAOB proposes significant expansion of auditor responsibilities No. US2023-05* (June 29, 2023)

[8] See, e.g., Business Roundtable, *Letter to PCAOB on PCAOB Rulemaking Docket Matter No. 37 Concept Release on Auditor Independence and Audit Firm Rotation (2012)(*finding 60% of surveyed public companies would have "significant difficulty switching from their Big 4 accounting firm and two-thirds were using at least two other Big 4 firms for other non-audit services). The current proposal also does not consider whether the increased scope will favor the Big 4 over other alternatives, who are likely better positioned to invest in technologies and infrastructure to address the expanded audit scope outlined in the proposal. Nor does it evaluate investor preferences around further challenges the proposed standards would create to audit firm rotation.

Risk assessments and implementation preparedness related to the expected SEC climate disclosure rules and the European Union's Corporate Sustainability Reporting Directive is expected to cost our company well-into the seven figures with our advisors. Based on this recent experience and others, we believe if auditors can't rely on the company's existing risk assessments and must analyze compliance with the universe of the company's regulatory frameworks, cost effective audits will be untenable under the current proposal.

Additionally, the proposal overstates the value the auditing standards will have on enhancing company compliance programs as it does not acknowledge that many regulatory frameworks, such as the U.S. Sentencing Guidelines or EPA's policy on environmental audits, provide companies meaningful incentives to establish strong compliance programs and disclose violations of law. While the proposal rightly recognizes that public companies may be driven to enhance their compliance programs and controls, the economic analysis does not consider that most of these resources will not be spent on enhancing a compliance program's effectiveness, but simply improving its ability to timely respond to auditor questions and testing procedures, or that control enhancements may simply be made to clear a NOCLAR risk identified by an auditor, but will not have reduced the company's material risks related to financial reporting.

We encourage the PCAOB to further study the holistic costs and benefits of the proposal.

We appreciate the opportunity the PCAOB has provided to share our views on the impacts of the proposal to audit committees and public companies.

Sincerely,

Cornel B. Fuerer
Senior Vice President, General Counsel and Company Secretary

cc: Patrick Ward, Audit Committee, Chair