

September 8, 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 ("NOCLAR"); PCAOB Rulemaking Docket Matter No. 051

Dear Office of the Secretary:

The Accounting Principles and Auditing Standards Committee (the Committee) of the Florida Institute of Certified Public Accountants (FICPA) respectfully submits its comments on the referenced proposed amendments to the auditing standards of the PCAOB. The Committee is a technical committee of the FICPA and has reviewed and discussed the above-referenced proposed amendments. The FICPA has more than 18,500 members, with its membership comprised primarily of CPAs in public practice and industry. The Committee is comprised of twenty-two members from local or regional firms, large multi-office firms, sole practitioners, international firms, academia, and industry. The response below reflects only the views of the Committee. The Committee has the following comments outlined below.

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

We, as committee members, share the concerns raised by PCAOB Board Members Duane DesParte and Christina Ho in the PCAOB's June 7, 2023, open meeting.ⁱ

Specifically, we are concerned that:

- The proposed scope is too broad.
- The proposal does not sufficiently consider a company's existing compliance function and the shared responsibility of the board of directors, the audit committee, the internal audit department, the chief compliance officer, and the general counsel.
- Auditors are not legal experts and as a result the proposed amendments would expand the auditor's role to include knowledge and expertise outside their core competencies, with increased reliance on the use of internal and external legal experts.
- The proposal will substantially increase the cost of the audit without a commensurate benefit.

- The operability of the proposed guidance is too broad in scope which results in an insufficiently operable application framework.

We believe that:

1. Any proposed amendments should keep the auditor primarily focused on NOCLAR that could directly or indirectly have a material impact on the financial statements, such as penalties or loss contingencies.
2. Any proposed additional requirements of the auditor should be risk-based and consider the role the company's existing compliance program and internal control environment 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 is too broad.

The proposed requirement that auditors identify "laws and regulations with which noncompliance could reasonably have a material effect on financial statements"² is vague. Given that public companies are subject to a vast number of laws and regulations, and the largest companies in highly regulated industries can be subject to a multitude of new laws and regulations in a single reporting period, they typically have extensive compliance processes in place to perform this exact function. The results of those processes are often regularly reported to the members of the Board of Directors including the audit committee, as well as to the external auditors for their input regarding the process and evaluation of any significant matters.

The proposal does not sufficiently consider a company's existing compliance function and the shared responsibility of the board of directors, the audit committee, the chief compliance officer, the internal audit department, and the general counsel.

We believe that it takes 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. 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, and the general counsel. We suggest a better approach could be one that is risk-based, where the auditor considers the role the company's compliance program and internal control environment plays in detecting non-compliance with laws and regulations that could be material to the audited financial statements.

Auditors are not legal experts and as a result the proposed amendments would expand the auditor's role to include knowledge and expertise outside their core competencies, with increased reliance on the use of internal and external legal experts.

In addition to being unnecessary and burdensome, the proposed amendments would expand the auditor's role to include skills, knowledge, and expertise outside the auditor's core competencies and expertise. The teams of in-house attorneys and outside counsel employed by publicly traded companies are better suited to monitor, identify, and investigate potential violations of laws and regulations.

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

The PCAOB acknowledges in its proposal that auditors may need to retain a range of legal experts to comply with the proposed standards but offers no projected cost beyond “these costs could be substantial.” An additional effort should be made to study the costs and benefits of the proposal.

The operability of the proposed guidance is too broad in scope which results in an insufficiently operable application framework.

The operability of the proposed amendments, which is intended to decrease risk and increase value to the financial and business communities around legislative standards, will place the burden of compliance with laws and regulations upon auditors in an already constrained pipeline of CPA talent and add additional responsibilities to those in the profession. Without additional scope and language additions around the requirements of management and those charged with governance within public companies, the auditors cannot currently assess the operating effectiveness of internal controls related to potential non-compliance with laws and regulations. In order to provide the standards and framework to which public companies are required to design and implement internal controls relating to compliance with laws and regulations, the Committee believes there need to be major revisions and additions to the proposal.

Alternative Considerations:

Legal and regulatory non-compliance with laws and regulations can result in a material cost to investors and the evaluation of such potential non-compliance is the obligation and responsibility of management. This evaluation is also part of management’s risk assessment process that is associated with its internal control environment. As such, we do not think it would be unreasonable for the PCAOB to consider adding requirements for auditors as part of their procedures surrounding management’s internal controls over its legal and regulatory risk assessment process as part of existing requirements in an audit of internal controls over financial reporting (ICFR).

The Committee appreciates the opportunity to respond to the proposed amendments to the auditing standards of the PCAOB. Members of the Committee are available to discuss any questions you may have regarding the responses in this letter.

Respectfully submitted,

FICPA Accounting Principles and Auditing Standards Committee

¹ See public statements from Board Members [Duane DesParte](#) and [Christina Ho](#).

² See proposed AS 2405.06.
