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

VIA E-MAIL: comments@pcaobus.org

Re: Proposing Release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations ("NOCLAR") and Other Related Amendments; PCAOB Rulemaking Docket Matter No. 051 (the "Proposal")

Dear Office of the Secretary:

The Williams Companies, Inc. ("Williams" or the "Company"), a Fortune 500 energy infrastructure company primarily engaged in the gathering, processing and transportation of natural gas and natural gas products, submits these comments to the Public Company Accounting Oversight Board ("PCAOB") regarding the Proposal.

Williams has significant concerns about and objections to the Proposal, including the following:

- The Proposal disregards the role of issuers' boards of directors, and specifically the Williams Board, management teams, and each employee, contractor, and supplier regarding NOCLAR;
- The Proposal incorrectly expands the role of an independent registered public accounting firm by requiring them to provide legal and regulatory compliance services that not only are outside their core competencies, but also are squarely within the core competencies of other professionals who already provide the services contemplated by the Proposal;
- The Proposal jeopardizes the attorney client privilege; and
- The Proposal is too broad in scope and imposes undue burden and cost on companies.

We urge the PCAOB to withdraw the Proposal in light of these concerns. A failure to do so will jeopardize the important work of independent registered public accounting firms in auditing public company financial statements by imposing needless duplication, wasteful processes, and significant additional costs on the current well-functioning audit process.

I. The PCAOB Proposal disregards the role of the Williams Board, management team, and each employee regarding NOCLAR, which will be disruptive if not harmful to many of our current compliance efforts.

The broadening in scope of the audit standards to cover all laws and regulations, to expand risk assessments, to test for NOCLAR without regard to materiality and to report potential incidents

to the Audit Committee without regard to whether that is even the best governing body to receive such reports disregards the thought and significant effort put in by everyone at Williams related to compliance with very little justification or reward.

A. At Williams, monitoring compliance with all laws, regulations and Company policies starts with the Board of Directors, extends to management, including our Ethics and Compliance Program, and ultimately rests with each employee, contractor, and supplier.

As explained in the Company proxy statement, our Board oversees the overall performance and risk management of the Company, focusing on the major risks inherent in our business. The Board's role includes oversight of our corporate governance and the conduct of the Company's business in accordance with the highest ethical standards and in compliance with laws, regulations, and other standards. The Board exercises its oversight, in part, through the creation and approval of governance policies and best practices, meeting regularly with and without management, and incorporating feedback received from stockholders. The Board delegates some of this responsibility to one of four standing Board committees.

Our Audit Committee has oversight over, among other things, the independent auditor, financial reporting, compliance related to financial matters, risk assessment and management, internal audit, and cybersecurity risk management protocols. This includes reviewing Code of Business Conduct complaints or other investigations related to financial and accounting matters.¹ Our Governance and Sustainability Committee has oversight over, among other things, our Ethics and Compliance Program, including the implementation and effectiveness of the program and policies and procedures regarding compliance with the Code of Business Conduct.² This includes annually reviewing and recommending that the full Board amend as necessary our Code of Business Conduct and Code of Conduct for Suppliers and Contractors, which sets the ethical conduct expectations for our Company, contractors, and suppliers.³ Given the importance of

¹ See Audit Committee Charter at IV.L. & M. ("Establish and oversee procedures for (i) the receipt, retention, treatment, processing and resolution of complaints received by the Company regarding accounting, internal accounting controls or auditing matters, and (ii) the confidential anonymous submission by employees of the Company of concerns regarding questionable accounting, internal accounting controls, or auditing matters. ... Review with the Chief Ethics and Compliance Officer or General Counsel, as needed, any actual and alleged violations of the Company's codes of conduct, including reviewing with the General Counsel any matters involving criminal or potential criminal conduct (unless the General Counsel is implicated in such matter). Notwithstanding the foregoing, the Manager, Ethics and Regulatory Compliance has the direct authority to report and is authorized to promptly communicate to this Committee or the Governance and Sustainability Committee, as applicable, any actual and alleged violations of the codes of conduct, including any matters involving criminal or potential criminal conduct.")

² See Governance and Sustainability Charter at IV.B.16. & 17. ("Oversee and review risks relating to the Company's ethics and compliance program, including the Company's codes of conduct, and annually review the codes of conduct, the Company's policies and procedures regarding compliance with these codes, and the results of the Code of Business Conduct and Ethics survey. ... At least annually, meet to review the implementation and effectiveness of the Company's ethics and compliance program with the General Counsel and/or the Chief Ethics and Compliance Officer (if such person is not the General Counsel). Notwithstanding the foregoing, each of the General Counsel, the Chief Ethics and Compliance Officer (if such person is not the General Counsel) and the Manager of Ethics and Regulatory Compliance has the direct authority to report and is authorized to promptly communicate to this Committee or the Audit Committee, as applicable, any actual and alleged violations of the code of conduct, including any matters involving criminal or potential criminal conduct.")

³ *Id.* at IV.B.16.

environmental, health and safety (“EH&S”) matters in our industry, our Board has established a separate Board committee with responsibility for such matters. Our EH&S Committee has oversight over, among other things, compliance with applicable and proposed legislation, regulations, and orders and conformance with industry standards and best practices.⁴ The EH&S Committee members include directors with operational expertise, and the responsibilities include the following:

- Providing oversight for the Company’s EH&S practices, including compliance with legal and regulatory requirements, and evaluating EH&S matter as part of the Company’s business operations and strategy.⁵
- Monitoring efforts to create a culture of continuous improvement in the Company’s EH&S practices and efforts to develop and effectively implement EH&S systems, programs, and policies.⁶
- Reviewing critical incidents regarding the Company’s assets or operations and overseeing management’s monitoring and enforcement of Company policies to protect the health and safety of employees, contractors, customers, the public and the environment.⁷
- Reviewing and monitoring significant regulatory audits, findings, orders, reports and/or recommendations issued by or to the Company related to EH&S matters.⁸

All three of these committees receive reports from third parties to assist with their oversight. The Audit Committee obviously works with both our internal auditors and external auditors, but other board committees receive reports from third parties as well. As reported in our 2023 Proxy Statement, we sought a third-party assessment of our Ethics and Compliance Program and presented the results to the Governance and Sustainability Committee in January 2023. The EH&S Committee has been systematically reviewing the results of audits conducted by third party and internal specialists regarding compliance with company policies and applicable laws and regulations through our Safety Culture Assessment program and various other compliance audits. This is in addition to the Committee reviews of any trends or significant incidents that occur, and any fines, penalties and judgments received by the Company and the resulting discussions regarding remediation and efforts to avoid incidents in the future.⁹

Management also plays an important role in implementing the processes and procedures designed to mitigate risk and assisting the Board in the exercise of its oversight function. This includes the identification of risks, including risks related to NOCLAR, the creation of processes and procedures to manage those risks, the regular evaluation of the adequacy and implementation

⁴ See EH&S Committee Charter at IV.A.

⁵ *Id.* at IV.B. & E.

⁶ *Id.* at IV. C., D., & E.

⁷ *Id.* at IV. F.

⁸ *Id.* at IV.H.

⁹ See, e.g., EH&S Committee Charter at IV.F. (“Review and monitor any critical incidents respecting the Company’s assets or operations involving: a fatality or a life threatening injury to a person; any pipeline ruptures resulting in significant property damage or loss of product; any confidentially reported events (e.g. Action Line, on-line reporting, etc.) relating to EHS matters; or any incidents involving personnel and public safety, property damage, environmental damage or physical security that have the potential to severely and adversely impact the Company’s reputation and or business continuity”).

of such processes and procedures, and regularly reporting to the Board or Board committees. There are many examples of this process at work, including the following:

- Williams maintains an Ethics and Compliance Program overseen by our Chief Ethics and Compliance Officer who reports directly to two Board committees regarding compliance. Our Chief Ethics and Compliance Officer chairs the Ethics Advisory Panel with representatives from across the Company that meets regularly to oversee the effectiveness of the Ethics and Compliance Program, review comparative benchmark metrics, and recommend enhancements as needed as well as overseeing employee resources and the annual employee training on our Code of Business Conduct. The ethics and compliance team works closely with the legal and government affairs functions to monitor enforcement activity by regulatory stakeholders and understand legislative and regulatory developments. Williams has more than 80 employees that work in our ethics and compliance, legal, and governmental affairs departments, most of whom touch compliance in some way and many of whom work on compliance full time.
- Our Environmental, Health and Safety Policy, reviewed and approved by our EH&S Committee, outlines our commitment to protect the environment and integrate environmental considerations into our daily business activities. Every employee and contractor are responsible for adhering to this policy. We put this policy into action with the Williams Integrated Management Systems (“WIMS”), which serves as our Company-wide platform for providing requirements, guidelines, procedures, standards, and specifications, many of which go beyond applicable laws and regulations, to manage and reduce operational and environmental risk. We undergo internal and third-party audits of our compliance with WIMS. Williams has more than 240 employees that work in our Safety and Operations and EH&S/permitting groups, many who devote full time to compliance-related matters.

Ultimately, compliance with laws, regulations and Company policies is the responsibility of each Williams employee, contractor, and supplier. Compliance is part of the metrics we use to measure our annual incentive cash awards that most of our employees are eligible to receive. Whether it be stop work authority, reporting through various avenues, including our anonymous hotline, or completing training to better understand how to comply with the multitude of laws and regulations that govern our Company, we all work together for successful compliance and to run our business with integrity and accountability.

B. The PCAOB Proposal requires an independent registered public accounting firm to look over the shoulder of the Williams Board of Directors, management team, and all employees, contractors, and suppliers to monitor for NOCLAR.

First, the PCAOB proposes tasking the independent registered public accounting firm with identifying all laws and regulations with which noncompliance “could reasonably have a material effect” on the financial statements.¹⁰ The independent registered public accounting firm

¹⁰ Proposal at 28 (“In order to achieve the proposed standard’s objectives, proposed AS 2405 would require the auditor to plan and perform procedures to: (1) identify the laws and regulations with which noncompliance could

would then incorporate potential noncompliance with the identified laws and regulations into its risk assessment procedures to assess the risk of material misstatement of the financial statements arising from a company's noncompliance with the identified laws and regulations.¹¹ To do this the auditor would need to obtain an understanding of the company and its environment, including the regulatory environment; and obtain an understanding of management's processes related to:

- Identifying laws and regulations with which noncompliance could reasonably have a material effect on the financial statements.
- Preventing, identifying, investigating, evaluating, communicating, and remediating instances, or alleged or suspected instances of fraud or other noncompliance with laws and regulations.
- Receiving and responding to tips and complaints from internal and external parties regarding noncompliance; and
- Evaluating potential accounting and disclosure implications of noncompliance with such laws and regs, including fraud.¹²

Next, the independent registered public accounting firm would have to identify whether noncompliance may have occurred through enhanced procedures and testing, including understanding the nature of potential noncompliance and determining whether it is likely that noncompliance occurred.¹³ Management inquiry by itself would not provide sufficient evidence that all instances of noncompliance that could reasonably have a material effect on the financial statements have been identified and properly represented in the financial statements in accordance with the applicable financial reporting framework, which is the process used by auditors now in detecting illegal activity outside the preparation of the financial statements.¹⁴

If the auditor becomes "aware of information indicating that noncompliance with laws and regulations (whether or not perceived to have a material effect on the financial statement)" has or may have occurred, the auditor must take the following actions:

- Communicate that information to management and the audit committee (and in certain cases the entire board) as soon as practicable.
- Perform procedures to understand the nature of the matter.
- Evaluate whether in fact noncompliance has occurred.

reasonably have a material effect on the financial statements; (2) assess and respond to risks of material misstatement of the financial statements due to noncompliance with those laws and regulations; and (3) identify whether there is information indicating noncompliance with those laws and regulations has or may have occurred.").

¹¹ *Id.*

¹² *Id.* at 38-39.

¹³ *Id.* at 28.

¹⁴ *Id.* at 31-32; *see also id.* at 32 ("For example, if an auditor identified the FCPA as a law that could reasonably have a material effect on the financial statements because the company's operations are in a jurisdiction where bribery may be more common, or the company or its competitors have a history of FCPA violations, the auditor in planning and performing procedures would understand management's processes around FCPA compliance, test relevant controls that were put in place to maintain compliance with the FCPA, or perform cash disbursement testing designed to identify potential bribes. These would be in addition to inquiring of management and other employees about whether any FCPA violations, or alleged or suspected violations, have been identified. These types of procedures could be performed on a standalone basis or simultaneously with other planned procedures (i.e., internal control testing of cash disbursements in an integrated audit or detail testing of cost of goods sold or other expenses).").

- If likely noncompliance is identified, determine the possible effect on the financial statements and assess the implications for other aspects of the audit.
- If likely noncompliance is identified, determine whether senior management has taken timely and appropriate remedial action.¹⁵

The proposal appears to require auditors to undertake these significant steps even in cases where it appears unlikely that the identified conduct will have a material effect on the financial statements. The independent registered public accounting firm would notify the audit committee even in cases where noncompliance itself is still in question.

C. The proposed expanded role of an independent registered public accounting firm will be disruptive if not harmful to the compliance efforts at Williams.

Williams believes the Proposal could harm its current compliance efforts. For example, consider how the Proposal might disrupt Company compliance with EH&S-related laws and regulations. First, the Proposal seems to suggest the independent registered public accounting firm independently recreate much of the work Williams has done related to compliance with EH&S-related laws and regulations, including identifying all laws and regulations that could in any scenario sometime in the future have a material effect on the Company’s financial statements and then independently work to ferret out any potential noncompliance regardless of materiality. This disregards the volume of policies and individuals working in this space already to make sure the Company is in compliance.¹⁶ Williams has entire teams whose careers have been dedicated to understanding and complying with EH&S-related laws in part due to the large

¹⁵ *Id.* at 20-21 (“Proposed AS 2405 would also establish requirements for the subsequent evaluation and communication of instances of noncompliance with laws and regulations that have or may have occurred—regardless of whether the effect of the noncompliance is perceived to be material to the financial statements—when the auditor identifies or otherwise becomes aware of information indicating noncompliance with laws and regulations.”); *see also id.* at 23 (“When the auditor has identified, or otherwise becomes aware of, information indicating that noncompliance has or may have occurred, the auditor would be required to obtain an understanding of the nature and circumstances of any such noncompliance and determine whether it is likely that noncompliance has occurred. If it is likely, the auditor would be required to determine possible effects on the financial statements and the implications of such likely noncompliance on other aspects of the audit. At the same time, the auditor would be required to communicate, as soon as practicable, the matter (i.e., the information indicating that noncompliance with laws or regulations, including fraud, has or may have occurred) to the appropriate level of management and the audit committee. After the auditor has completed the evaluation of the information indicating noncompliance has or may have occurred, the auditor would determine the effect of any likely noncompliance on the engagement report and the ongoing relationship with the company. The auditor would also be required to communicate the results of that evaluation to management and the audit committee, including the effect on the engagement report.”); *see also id.* at 46 (“We believe that the auditor should be required to determine whether senior management has taken timely and appropriate remedial action to address the noncompliance. This requirement would assist auditors in discharging their obligations under Section 10A, which, as discussed above, imposes communication requirements upon the auditor if the issuer’s senior management fails to take such remedial action and other circumstances are present.”).

¹⁶ Proposal at 41 (referring to the requirement to determine whether noncompliance is likely to have occurred and stated: “The proposed standard notes that inquiry alone is not sufficient to determine that noncompliance is not likely to have occurred, but inquiries may be sufficient to determine that likely noncompliance has occurred.”); *see also id.* at 39 (referring to the requirement to assess the risk of material misstatement to the financial statement due to noncompliance and noting: “Auditors need to exercise professional skepticism when making and evaluating inquiries of management and others. For example, management may indicate that identified noncompliance has been investigated and remediated, but the auditor would still plan and perform procedures to obtain appropriate audit evidence in order to evaluate the noncompliance and would not solely rely on management representations with respect to the noncompliance.”).

volume of applicable laws and regulations and in part because many of these laws and regulations are not easily understood or applied. The PCAOB, however, suggests that the independent registered public accounting firm simply learn all the EH&S-related laws or hire a specialist that will help them understand all these laws and regulations and test whether Williams is complying with them, as if this was a simple task and Williams gave no thought to who should work on its compliance efforts in any particular area and why. The effect may be that our EH&S compliance efforts become dedicated to educating the auditors rather than honing and applying expertise that already exists to prevent NOCLAR or that we have less resources to dedicate to our EH&S compliance efforts because we must now dedicate resources to duplicative compliance monitoring. Another consequence may be that the independent registered public accounting firm begins dictating what the company needs to focus on related to EH&S policies and compliance rather than the management charged with running the business and that the auditor-directed emphasis will be untethered from the years of experience we have built in house. Inevitably, conflict and differences of opinions will arise between the independent registered public accounting firm and any hired specialists and the Company and its experts regarding the gray areas related to interpreting laws and regulations, determining whether noncompliance has occurred and crafting the appropriate remediation. The appropriate process for addressing such matters of opinion and charting the best course of action is not the role of the independent registered public accounting firm.

Second, the Williams Board, elected by its shareholders, has chosen to delegate oversight of EH&S related compliance to the EH&S Committee not the Audit Committee. The Williams Board has carefully recruited directors, many of whom have operational expertise key to effectively understanding and monitoring compliance in EH&S matters. The PCAOB Proposal effectively reassigns oversight of EH&S compliance to the Audit Committee in disregard of the decisions made by the Williams Board to delegate oversight of EH&S-related compliance to the EH&S Committee by requiring all reports of potential noncompliance to go to the Audit Committee. Here again, this may focus our EH&S compliance efforts on educating the Audit Committee rather than honing and applying expertise that already exists to prevent NOCLAR. Additionally, our Audit Committee already has significant time commitments without receiving a litany of immaterial and unsubstantiated reports from the independent registered public accounting firm about potential NOCLAR. Some commentators have even begun suggesting audit committees at public companies are overcommitted. Nor does the PCAOB account for the fact that we already disclose to the Audit Committee and to investors material contingencies and environmental matters if they meet threshold reporting requirements set forth by the Securities and Exchange Commission or are material to our financial statements.¹⁷ Thus, in effect, the Proposal may cause us to focus more of our EH&S compliance efforts on immaterial matters simply because there may be potential noncompliance reported to the Audit Committee. Finally, the PCAOB did no analysis on what third parties are already monitoring compliance in this space, including those that may already be reporting to our EH&S Committee.

As we consider the scope of the Proposal, we believe the above example is not unique but indicative of issues that will appear in most areas where the auditors attempt to step outside the realm of the financial statements. Another readily available example is oversight of our Ethics

¹⁷ 17 CFR 229.103.

and Compliance Program, which our Board has delegated to the Governance and Sustainability Committee. different issues. The suggestion that having someone with no expertise second guess the carefully curated expertise of Company management and employees and ultimately the Company Board and that such efforts will have enough impact on the prevention of NOCLAR to justify the tremendous burden of these shadow compliance audits is unreasonable.

II. The Proposal incorrectly expands the role of an independent registered public accounting firm to include knowledge and expertise outside an accountant’s core competencies.

Williams has tremendous respect for the professionalism and seasoned judgement that the independent registered public accountants display in our audit engagement. However, as discussed above, accountants do not have the qualifications to identify all the laws and regulations applicable at any point in time to a public company. Nor are they qualified to assess noncompliance with every law and regulation or determine the appropriate remedy for noncompliance. The independent registered public accounting firm cannot be a specialist, risk manager, auditor, investigator, judge, and jury all at once especially in areas outside its core competencies.

III. The Proposal jeopardizes the attorney client privilege.

Disclosures by the Company to the independent registered public accounting firm in many cases will waive the attorney-client or attorney work product privileges that underpin our legal system. Williams agrees with the many commentators who note that the Proposal raises significant concerns about how the Company can maintain these privileges while providing the confidential information requested by the independent registered public accounting firm necessary to adhere to the Proposal.

IV. The Proposal is too broad in scope and imposes undue burden and cost on companies.

Companies of all sizes are subject to a vast array of laws and regulations with which they must comply, including federal, state, and local laws in each domestic and foreign jurisdiction in which they operate. These laws and regulations continually evolve, and cover a myriad of areas including corporate governance, securities, markets, trade, contracts, taxes, consumers, employment, health, safety, environmental, privacy, intellectual property, mergers, acquisitions, and foreign corrupt practices among others. The PCAOB did not adequately evaluate the additional manpower and legal costs the Proposal will impose on issuers.

Williams believes that both the time and expense involved with such legal exercise will be substantial and duplicative. We have no doubt the Proposal will result in an increase in both internal and external legal costs associated with our audit and external audit fees. This view is informed by our current experience, which includes the employment and retention of a large number of legal specialists to work on compliance-related matters. These additional fees will not be one-time fees as there can be no doubt that the applicability and significance of each law or regulation will continually change as a company’s business changes and as regulators emphasize different issues.

V. Conclusion

Williams appreciates the opportunity to share its thoughts and information with the PCAOB regarding the Proposal. We respectfully request the PCAOB reconsider the Proposal and the push to hold independent registered public accounting firms responsible for tracking an issuer's noncompliance with all laws and regulations. We believe such efforts would be a tremendous burden on both the auditors and the issuers at a significant cost without a corresponding benefit.

Respectfully,

Rose M. Robeson
Audit Committee Chair
The Williams Companies, Inc.

Respectfully,

T. Lane Wilson
Sr. Vice President
and General Counsel