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Houston, TX 77024

Marathon Oil Corporation

VIA EMAIL

August 4, 2023

Ms. Phoebe W. Brown
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* (PCAOB Release No. 2023-003, June 6, 2023; PCAOB Rulemaking Docket Matter No. 051)

Dear Ms. Brown:

We write regarding the Public Company Accounting Oversight Board's ("PCAOB" or "Board") Exposure Draft ("Exposure Draft" or "Proposal") on *Company's Noncompliance with Laws and Regulations* ("NOCLAR").[1] While we appreciate the opportunity to comment, the Exposure Draft raises a series of practical concerns for our company and the business community.

We are concerned that the Proposal transforms the nature and scope of auditor responsibilities, turning financial statement audits into wide-ranging investigations of potential instances of NOCLAR. Auditors perform a vital function in U.S. markets, ensuring the integrity of financial statement information that ultimately facilitates effective capital deployment. Changing the nature of the audit to serve as an examination of NOCLAR would add a host of new responsibilities and requirements for auditors, unnecessarily deviating from the purpose of an audit, and diverting auditors from their core responsibilities.[2]

These new auditor responsibilities would fundamentally alter the audit function and would insert auditors into our legal and management functions and decisions. As examples, auditors may be put into a position to second-guess our legal counsel(s) regarding whether noncompliance may have occurred. With respect to the management function, the requirement that auditors perform "enhanced risk assessment procedures"[3] could result in auditors second-guessing how we allocate our financial and human resources. This would not

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[1] Proposing Release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments. Available at: https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-051/pcaob-release-no.-2023-003---noclar.pdf

[2] Indeed, PCAOB Chair Erica Williams recently published an op-ed in *The Wall Street Journal* stating that the quality of audits must be improved, without acknowledging that the PCAOB has put forward a proposal that would add a host of strenuous new requirements and expectations for auditors. *See*: Erica Williams, "We Audit the Auditors, and We Found Trouble." *The Wall Street Journal*. Jul. 24, 2023. Available at: https://www.wsj.com/articles/we-audit-the-auditors-and-we-found-trouble-accountability-capital-markets-c5587f05

[3] Exposure Draft, p.21.

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only blur responsibility between the legal, management and audit functions, but would divert our auditor's time, attention, and resources away from auditing our financial statements. It would also divert our management and employee time and resources, along with the time of our audit committee, away from financial reporting to focus on NOCLAR.

The Proposal does not use precise terminology or otherwise reasonably limit or clarify the Proposal's NOCLAR requirements. The Proposal would establish an obligation for the auditor to plan and perform procedures to identify *all* laws and regulations with which noncompliance "could reasonably" have a material effect on financial statements. We agree with Board Member DesPartes that wording in the Proposal "… suggests the auditor would be expected and held accountable to identify any and all information that might indicate instances of noncompliance of any law or regulation across the company's entire operations, without regard to materiality."[4] And then, it would create a duty for auditors to assess and respond to the risks of material misstatements related to those regulations to determine whether noncompliance has or may have occurred.[5] Further, it would insert auditors into our processes related to preventing, identifying, investigating, evaluating, communicating, and remediating instances of noncompliance, which encompass our operating controls and transcend financial reporting and internal control over financial reporting.

The "could reasonably" standard is unbounded and imprecise and would not provide auditors with a practical filter or guide for which laws and regulations to evaluate. The Proposal does not provide sufficient clarity on how auditors should determine which among the many, often complex and highly technical, laws and regulations that apply to our company globally "could reasonably have a material effect on the financial statements." Further, the conditional terminology employed by the Proposal – such as "likely," "may," and "might" – including a requirement to report to the audit committee "information indicating that noncompliance . . . *may have* occurred"[6] – would create serious challenges in determining precisely which instances of NOCLAR to prioritize, while burdening our audit committee in the process.

The vague and intentionally expansive[7] terminology used by the Exposure Draft would drive new liability concerns for auditors, creating a more unfocused and ineffective risk mitigation environment that would push our legal, compliance, and audit costs even higher.[8]

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[4] See *Statement on Proposal to Amend PCAOB Auditing Standards Related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments* by Duane M. DesParte (June 6, 2023).

[5] Exposure Draft, p. A1-2.

[6] Exposure Draft, p. A1-7.

[7] Exposure Draft, p. 24 ("As with the existing definition of 'illegal acts,' the Board intends 'noncompliance with laws and regulations' to have a broad meaning and to encompass violations of any law or any regulation having the force of law. We expect the auditor to focus on all types of noncompliance, whether the violations concern financial or operational issues or involve intentional or unintentional conduct.")

[8] According to the National Bureau of Economic Research (NBER), the average U.S. firm spent between 1.3 and 3.3 percent of its total wage bill on regulatory compliance between 2002 and 2014, reflecting a growth rate of 1 percent a year, roughly *half* of the average annual GDP growth rate over the period. For specific industries, such as transit, manufacturing, and financial services, these rates were even higher. Moreover, the research conducted focused only on the *labor costs* of regulatory compliance, not the capital expenditure costs, lost profits by creating compliance risk, and outsourced compliance costs such as accounting services. *See*: NBER, "Tracking the Cost of Complying with Government

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We are very concerned that the expansive scope of audits, in accordance with the proposed requirements, would significantly increase both our audit costs and our internal costs – without any clear corresponding benefit.

Further, auditors do not have the level of expertise needed to complete the kind of expansive review of all laws and regulations that apply to our company as would be required by the Proposal. Auditors are not lawyers; and they do not have the other specialized skills that may be needed to assess compliance with laws and regulations that lack a financial statement focus. Importantly, the market for such specialized expertise – whether legal or other – is limited. Accordingly, in addition to higher audit fees, additional costs will be imposed on us by the proposed approach because public audit firms will seek to hire qualified audit, legal, and other specialized staff from the very same sources as we do. This will create new risks and costs for our company as we seek to retain or replace our existing qualified staff.

The Proposal also threatens the attorney client privilege, a fundamental element of the relationship between public companies and their internal and external legal counsel. The Proposal would inevitably lead the auditor to request information from their public company client to help the auditor assess indications of noncompliance with relevant laws and regulations. In such cases, the public company audit clients would have two unpalatable choices: (1) voluntarily share information and legal analyses with the auditor on any noncompliance with relevant laws and regulations, thereby waiving privilege, or (2) refuse to share the requested information with the auditor, in which case the auditor might delay completion of their audit. Accordingly, companies would be put in the difficult position of either waiving the attorney-client privilege or risking that the audit would not be completed. Currently, public companies ask their outside counsel to provide annual audit response letters to their auditors, identifying matters that pose risk to the public 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 (or at least to second guess) the legal judgment of counsel regarding the existence or likelihood of a legal or regulatory violation. This process would create a material risk of conflict with a company's internal and external counsel with concomitant threats to the company's privilege and to the orderly, timely, and cost-effective completion of the audit process.

Regulation." Feb. 2023. Available at: https://www.nber.org/digest/20232/tracking-cost-complying-government-regulation

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Finally, our company has existing and stringent responsibilities for compliance with all applicable laws and regulations, as well as a series of appropriate 'checks' against noncompliance. We are subject to various federal and state regulatory authorities with the responsibility to examine, monitor and enforce these laws and regulations.[9] Moreover, given the many and varied private rights of action available against companies like ours in the United States, we are subject to even further scrutiny for noncompliance. Auditors have rightly played a role in identifying illegal acts by clients as part of financial statement audits under the existing PCAOB standard. But auditors should not be expected to do the combined work of lawyers, management, and regulatory and law enforcement authorities in rooting out noncompliance related to *all* laws and regulations.

We appreciate your attention to our concerns and look forward to seeing these items addressed in any finalized standards.

Sincerely,

/s/ Rob L. White
Rob L. White
Vice President, Controller and Chief Accounting Officer
Marathon Oil Corporation

[9] Indeed, the unclear reporting standard in the Proposal raises the prospect that auditors will be expected to make decisions on compliance that could diverge both substantively and procedurally from a company's regulators' consideration of the same issues.