



Nov. 2, 2023

Erica Y. Williams, Chair, Public Company Accounting Oversight Board  
Office of the Secretary  
1666 K Street, NW  
Washington, DC 20006-2803  
[comments@pcaobus.org](mailto:comments@pcaobus.org)

Re: PCAOB Rulemaking Docket Matter No. 053

Dear Ms. Williams:

The Accounting & Auditing Steering Committee (the committee) of the Pennsylvania Institute of Certified Public Accountants (PICPA) appreciates the opportunity to provide feedback on the *Proposed Amendments to PCAOB Rule 3502, Governing Contributory Liability*. The PICPA is a professional CPA association of about 20,000 members working to improve the profession and better serve the public interest. Founded in 1897, the PICPA is the second-oldest CPA organization in the United States. Membership includes practitioners in public accounting, education, government, and industry. The committee is composed of practitioners from both regional and small public accounting firms and members serving in financial reporting positions. The committee's general comments and comments to selected questions included in the due process document are included below.

General Comments – The committee understands that high-quality audits are the underpinnings to a robust capital market system and is supportive of changes that help achieve that objective. The committee does not believe that the proposed changes will achieve that objective. Rather than work to understand the current challenges that the audit profession faces and adapting the standards to better leverage technological solutions to improve audit quality, the PCAOB is proposing the use of the fear of punitive actions to “incentivize” higher audit quality. The committee does not support this proposal. The committee believes that implementing this proposal would exacerbate the serious staffing pipeline issue facing the audit profession. We are concerned that the fear of punitive actions will incentivize high-quality talent to avoid the audit profession and would contribute to higher turnover of existing audit professionals. This trend would incontrovertibly lead to lower audit quality, higher fees, and a large number of delistings. We believe that this result is completely contrary to the PCAOB's stated objectives.

#### Comments to Specific Questions

- Question 1. Are the regulatory concerns discussed above clear and understandable?

The committee finds the rationale for the regulatory concerns in the executive summary and the reasons for the proposed amendments to be questionable. The proposed changes presuppose that accounting firms and audit professionals intentionally fail to meet professional standards and are not exercising reasonable care (the standard for negligence) as indicated by the use of the word “recklessly” in the current standards. Specifically, on page 7, the document notes that auditors “may not exercise reasonable care (the standard for negligence) if they know that they cannot be held individually liable by the PCAOB for a firm's primary violation unless an act or omission by them amounts to an 'an extreme

departure from the standard of ordinary care for auditors’ (the standard for recklessness).”

The committee vehemently disagrees with this position and does not agree that assessing additional fines and punishments on individuals will somehow incentivize audit professionals to more fully comply with professional standards. While there is always room for improvement, audit professionals take PCAOB inspection comments and enforcement actions seriously.

Instead, the committee believes that the proposed changes, if enacted, would serve as a catalyst for highly competent auditing professionals and for college students to choose other opportunities outside the accounting profession, further disrupting an already strained pipeline of professionals. This result would have an even greater negative impact on audit quality and likely would result in an increase in audit fees.

Furthermore, the rule says the change would better align with the Sarbanes-Oxley Act, but it does not articulate which issues are being addressed. Are there cases where the language did not suffice to hold persons accountable? Using the current language in the standards, the PCAOB has been able to assess significant fines and penalties against firms and individuals, and these disciplinary actions have resulted in many professionals being terminated from their positions and causing certain firms to forego auditing entities requiring PCAOB-registered auditors.

The proposal says that the PCAOB cannot protect investors to the fullest extent of the Sarbanes-Oxley Act, but it does not provide sufficient detail with respect to the behavior that they are trying to capture. The committee notes that the proposed amendments are “expected to generate efficiencies in enforcement activities ... by enabling the PCAOB to bring negligence-based cases against firms and the relevant associated persons, rather than perpetuating the status quo in which only the Commission can bring such cases.” Comments on page 20 make it clear that the PCAOB, by proposing these changes, is looking to have jurisdiction over certain matters that currently fall under the Securities and Exchange Commission’s (SEC’s) jurisdiction. There are also other entities that monitor CPAs, including regulatory agencies in each state. Information on how many of the cases that the PCAOB believes that they do not currently reach are referred to another body for action would be helpful in understanding the rationale for the change. Increasing PCOAB’s jurisdiction is not a strong rationale for making a change that could significantly and negatively impact the accounting pipeline.

The committee further questions whether this proposed change would hold accountants more liable than other professionals. If so, why should that be the result?

The committee agrees with the following comments included in KPMG’s response to the Feb. 11, 2005, PCAOB Rulemaking Docket Matter No. 017: *Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*, and believes they remain applicable in response to this proposal:

“First, given the vast body of technical rules and guidance to be applied, along with the difficulties inherent in the application of those rules in real time and to complex fact patterns, penalizing negligent conduct would be oppressive and draconian. There is no reason to believe that Congress feels that such penalties are necessary. Simple

negligence as an articulated level of intent justifying PCAOB sanctions appears nowhere in Section 105(c) the source of the Board's authority to sanction persons who violate the Act, certain securities laws, or rules of the SEC or the Board. On the contrary, the only place where the Act discusses levels of intent as prerequisites for the imposition of sanctions is in Section 105(c)(5), where Congress expressly limits the imposition of certain penalties to cases of intentional, knowing, or reckless conduct, or to repeated instances of negligent conduct. The signal from Congress is that the Board should be wary of imposing sanctions not grounded on intentional conduct.

Second, the practical implications of incorporating a negligence standard into the Final Rule would be sweeping and severe. Such a standard would expose hundreds of thousands of individuals in the accounting field to the risk of severe sanctions for actions that might in some remote way be tied to a violation of the Act or of the securities laws. Even a tightly limited negligence standard (which we respectfully suggest the Proposed Rule as drafted is not) would inject a great deal of uncertainty into even the most mundane decisions that auditors make every day, and would place intolerable pressure on the difficult judgment calls that those who operate in this highly technical field must make on a regular basis. A "negligence" rule is particularly ill-suited for retrospective judgments about compliance with "professional standards," and such a rule would operate as an invitation for after-the-fact attacks on conduct that was, at the time, objectively reasonable.”

- Question 3. Would addressing the regulatory concerns discussed above incentivize associated persons to more fully comply with the applicable law's rules and standards that the Board is charged with enforcing against registered firms?

As discussed above, the committee does not agree that firms need additional “incentives” to more fully comply with applicable laws’ rules and standards that the Board is charged with enforcing against registered firms.

The committee supports the requirement to hold individuals accountable for reckless behavior, but strongly opposes a lowering of the threshold to negligence. If these proposed changes are enacted, the committee believes there would be a significant negative impact on the ability of firms to recruit and retain the talent needed to complete audits. Auditors, in good conscience, try to comply with professional standards, complex rules, and difficult and subjective judgments that require auditors to stand back and look at the audit conclusion as a whole. The committee notes that audit engagements are performed by teams of auditors and subject matter experts; as a result there are many contributing pieces to the overall audit conclusion. The committee believes the onus should primarily be on the firm, as the firm is responsible for designing and implementing a system of quality control to ensure engagements are performed in accordance with professional standards. The committee is also concerned that the proposed changes would open every engagement team member to potential liability. This would have obvious negative effects on the ability of firms to recruit and retain the talent needed to perform high quality engagements. It is also important to keep in mind that high-quality, real-world auditing cannot be learned in a classroom and that there are less-experienced staff on every audit as hands on

training and education are an integral part of the auditing firm model. This liability proposal threatens this hands-on learning model and jeopardizes the future of many young accountants.

The PCAOB's inspection process is also a concern. The committee questions the ability of the inspection process to conclude that an associated person has contributed to a firm's negligence-based violation. The determination of whether a deficiency is included in a PCAOB inspection report is often subjective, and the PCAOB inspection process does not include an appeals process to a body that includes current practitioners. In many cases, firms agree with the PCAOB inspectors' findings just to move the process along. In the event that the liability threshold is lowered, changes should be made to the inspection process to ensure a robust appeals process. The comments on page 26 suggest that the revised guidance could result in "excessive monitoring and self-protective behavior, leading to an inefficient allocation of time and resources." The comments go on to note that "individuals may spend more time on a task than is necessary to accomplish it at the appropriate level of due care. Similarly, individuals may excessively document the nature of their task performance to demonstrate compliance in a future proceeding. Time spent on unproductive, self-protective activities may detract from other important obligations and directly impact audit quality." The committee agrees that this would be a likely outcome because in many cases the practitioners and PCAOB inspectors differ in their perspectives on what constitutes sufficient documentation. The committee also notes that this proposed standard would significantly raise the level of audit effort on difficult-to-value items and challenging estimates because inspectors have the benefit of hindsight without being able to evaluate whether a judgment was reasonable at the time it was made.

The committee agrees that audit quality can and should improve, and we do support a PCAOB standard-setting project to identify the barriers to firm use of technology tools on audits (e.g., barriers in the PCAOB audit standards or in the inspection process). The committee believes that technological advancements and audit tools would better assist firms in improving audit quality.

- Question 5. Is it clear and understandable how the proposed amendments to Rule 3502 advance the Board's statutory mandate to protect investors?

The committee does not believe the proposed amendments would advance the Board's statutory mandate to protect investors. As previously discussed above, the committee believes that enacting the proposed amendments would be deleterious to the public interest by decreasing the pipeline of qualified auditors and raising audit fees.

- Question 7. Are the proposed amendments to Rule 3502's liability language (as seen in Appendix A) clear, understandable, and appropriate?

The committee does not believe the proposed amendments to Rule 3502's liability language are appropriate. (See additional comments at Questions 1 and 3.)

- Question 8. Should the Board retain the "directly and substantially" modifier to describe the connection between an associated person's contributory conduct and a firm's violation? Are the meanings of each of "directly" and "substantially," respectively, clear and understandable?

The committee supports retaining the “directly and substantially” modifier to ensure that only those responsible for a violation are held accountable. Without the modifier, the term “contributory” could be interpreted too broadly, potentially encompassing all members of an audit engagement. This would be punitive to those on the engagement team who were otherwise attempting to comply with professional standards.

At the same time the committee finds the meanings of these terms “directly” and “substantially” to be subjective. What does it mean to have a direct contribution to the firm’s violation? For example, if a staff person makes a mistake in testing that is not picked up by detail, general or partner review – who had the direct contribution? All of them? The staff? The partner? Similarly, what if the violation is a number of smaller errors throughout the audit? Would everyone be off the hook since no single person or action represented a substantial contribution?

Overall, the committee disagrees with the proposed approach to targeting individuals for punitive actions. Modifiers that attempt to target specific actions would be helpful but the meanings for these modifiers need to be clearly articulated. We recommend limiting the contributory liability to egregious actions.

- Question 9. Are there other phrases or terms that the Board should consider to modify “contribute,” or other limitations that the Board should incorporate into the proposed rule? If so, what are they?

The committee believes that the proposed contributory liability standard should not apply to a professional who spends only a de minimis amount of time on an engagement (e.g., a quality control specialist). The committee supports added language to clarify that the liability would only extend to a professional having a substantive level of participation on the engagement.

- Question 13. Are there other benefits and costs of the amendments that the Board should consider?

We believe that the proposed revisions would drive firms away from auditing entities that would subject the firm to PCOAB registration requirements. (See additional comments at Question 3.)

- Comment on Questions 13 through 17.

The committee does not believe that the proposed revisions should move forward without clear data that could provide more clarity with respect to the projected impact of the proposed revisions being requested in questions 13 through 17 (including the impact on the accounting pipeline, the expected cost of additional liability, increase in audit fees, etc.). Further, the PCAOB’s arguments that defense costs would be lowered due to an increase in the volume of cases to defend and that the existing SEC liability exposure should be adequately factored into current audit fees are not based in fact.

- Question 16. Are there additional unintended consequences that might result from the proposed amendments?





The committee believes that the number of firms performing audits that would require PCAOB registration would precipitously fall. In addition, those firms that remain would find it increasingly difficult to attract and retain the talent needed to perform these audits.

- Question 17. As noted above, associated persons may currently face secondary liability for negligent conduct in actions by the Commission. Notwithstanding that current possibility, could the proposal discourage participation by associated persons in the audit profession?

Yes. The committee believes that if the proposed changes are enacted, associated persons would be discouraged from participating.

- Question 22. Would the economic impacts be different for smaller firms or EGCs? If so, how?

The committee believes that the proposed changes would have a greater impact on smaller firms, which have fewer resources to defend personnel and navigate the uncertain liability environment. Therefore, these firms are more likely to cease auditing entities that require PCAOB registered auditors.

We appreciate your consideration of our input to the *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability*. We are available to discuss any of these comments with you at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Walck". The signature is written in a cursive, flowing style.

Rebecca Walck, CPA  
Chair, PICPA Accounting & Auditing Steering Committee