



August 7, 2023

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

Re: PCAOB Rulemaking Docket No. 051

Dear Board Members:

The Audit and Assurance Services Committee of the Illinois CPA Society (“Committee”) is pleased to comment on the PCAOB’s proposed auditing standard for *A Company’s Noncompliance with Laws and Regulations* and amendments to other PCAOB auditing standards. (Docket Matter No. 051), dated June 6, 2023. The organization and operating procedures of the Committee are reflected in the attached Appendix A to this letter. These comments and recommendations represent the position of the Audit & Assurance Services Committee of the Illinois CPA Society rather than any members of the Committee, the organizations with which such members are associated, or the ICPAS Board.

#### **GENERAL COMMENTS:**

As a Committee, we are supportive of efforts to continue to improve audit quality and support the intention to “modernize and strengthen auditing standards.” We believe both the public and the auditing profession are well-served by high quality audit standards and whole-heartedly agree that “auditors have a fundamental obligation to protect investors through the preparation and issuance of informative, accurate, and independent auditor’s reports.” We offer our comments on the amended auditing standards for the auditor’s consideration of a company’s noncompliance with laws and regulations, including fraud (“NOCLAR”).

The independent auditor’s report notes the responsibility of the auditor is to “plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud.” Management has the responsibility for the accounting and financial reporting processes of a company, under the oversight of the audit committee, and ensuring such accounting is consistent with the principles promulgated by regulators and standard setters. The auditor performs a critical role within this setting.

We note this overarching framework of management, audit committee, standard setters, regulators and auditors to provide context to our response to the Board’s concern that “...companies’ noncompliance with laws and regulations may lead to sanctions, fines, and civil settlements, resulting in substantial financial damage to investors, especially when such noncompliance goes undetected for longer periods of time.” Investors are justly concerned by the negative consequences of companies “...from such noncompliance, including lower future earnings and increases in the cost of capital.”

As described within the proposal, “the Board believes that improving auditing standards can: (i) protect investors from the resulting harm of noncompliance with laws and regulations when the effect of such noncompliance has a material effect on the financial statements and (ii) improve audit quality through the auditor’s identification of noncompliance with laws and regulations that could reasonably result in a material effect on the financial statements.” However, auditors alone are incapable of protecting investors from the



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harm of a company's NOCLAR. While we are supportive of efforts to improve auditing standards for the auditor's consideration of a company's NOCLAR, we do not believe the standards, as proposed, improve audit quality and the auditor's established responsibility.

We agree with Board member Christina Ho's statement on the proposed amendments: "This expansion could cause considerable confusion on the appropriate role of auditors, undermine the time-tested accountability framework, and reduce the resilience of the already highly concentrated audit marketplace." Further, we agree with Board member Duane DesParte's statement on the proposed amendments: "[This] expands the scope of the audit to incorporate extensive new compliance attestation procedures and will require legal acumen and expertise well beyond the auditor's core competency." We believe the dissension of the two CPA board members to be particularly noteworthy. Their knowledge and expertise earned through working in accounting and auditing is indispensable to the development of high-quality auditing standards.

We do not believe the proposed amendment's scope, objective, and guidance is sufficiently clear. The standard, as proposed, reflects a significantly modified and novel understanding of the financial statement auditor's responsibility. Our direct response is limited to the following questions.

#### **PCAOB QUESTIONS AND COMMITTEE RESPONSES:**

Question 1: Is the proposed definition of "noncompliance with laws and regulations" sufficiently clear? If not, why not?

Response: Yes, we believe that the definition is sufficiently clear.

Question 2: Is the rationale for including fraud, as described in AS 2401, within the proposed definition of noncompliance with laws and regulations sufficiently clear? If not, why not?

Response: No, we do not believe the rationale for including fraud is sufficiently clear. AS 2401 notes that "fraud is a broad legal concept and auditors do not make legal determinations of whether fraud has occurred. Rather, the auditor's interest specifically relates to acts that result in a material misstatement of the financial statements." By subsuming the definition of fraud into NOCLAR, non-material financial statement fraud would be treated the same as all NOCLAR. Auditors, by themselves, do not have skills, knowledge and experience to identify "any law, or any rule or regulation having the force of law."

Question 4: Is the introduction to proposed AS 2405 sufficiently clear? If not, how should the introduction be clarified?

Response: No, we do not believe the proposed introduction to be sufficiently clear. The inclusion of fraud can be confusing as it is addressed through its own standard. Moreover, the phrase "could reasonably have a material effect" is not reasonably tailored and we refer to our response on Question 5. We also believe it would be appropriate to retain the distinction between direct and indirect NOCLAR, perhaps with more guidance as to how to consider the impact of indirect NOCLAR when performing risk assessment and designing further audit procedures.

Question 5: Are the objectives for proposed AS 2405 sufficiently clear? If not, how should the objectives be clarified?

Response: No, we do not believe the objectives for proposed AS 2405 are sufficiently clear. Implicit in the first objective is the assumption that an auditor must establish an inventory of all such laws and regulations.



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At just the federal level, we note that hundreds of statutes are passed in each biennial legislative session. In fact, the Library of Congress acknowledges it is “frequently asked to estimate the number of federal laws in force... [and notes] to tally this number is nearly impossible.”<sup>1</sup> This is just statutory law. Executive agencies issue their own administrative laws and regulations. At the time this response was prepared, regulations.gov listed nearly 200 proposed regulations with comments due within one week and over 1,000 active major rule dockets. Moreover, this is just at the federal level and omits the 50 states, 1 federal district and 5 populated territories. Each of which can have its own political subdivisions, such as counties, parishes, cities, townships, towns, villages and other municipalities. Law and rulemaking activities occur at every level of governance in the United States. Moreover, these considerations do not address foreign jurisdictions. For companies with global operations, they are likely subject to an even more complicated legal landscape. Even if a legal specialist were to be engaged to perform the creation of such an inventory, we do not consider it possible for an auditor to effectively evaluate all laws to determine if they “could reasonably have a material effect on the financial statements.”

Within the second objective, the auditor is to assess and respond to the risk of material misstatement due to NOCLAR. As auditors are not attorneys, it would be necessary to engage legal specialists, at significant cost, to detect and evaluate potential instances of noncompliance. Moreover, it is unclear whether attorneys would be able to provide such an evaluation consistent with their own standards of professional conduct. We believe further outreach to attorneys and other specialist communities is necessary to determine their ability to assist auditors in accordance with the proposed standard.

Within the third objective, the auditor is called upon to identify whether there are instances of noncompliance. Analogous to the Board’s fraud standard, we believe that noncompliance is a broad legal concept and auditors do not make legal determinations of whether noncompliance have or may have occurred. Auditors obtain information about noncompliance from attorneys (both internal and external counsel) who have expertise in law and full knowledge of all relevant facts. Attorneys are unable to provide complete information both as a practical matter (see above the extent to which the ability of anyone to respond to all laws and regulations) and an ethical matter (attorneys are bound by the long-recognized testimonial privilege for attorney-client communication and the auditor is not party to that privilege). Auditors also obtain information about noncompliance from others, such as internal audit and other attest engagements specially designed to identify compliance issues, to the extent such are engaged by the company. We believe information obtained from these parties are subject to similar practical limitations.

Question 6: Are there other objectives that should be included in proposed AS 2405? If so, what would those objectives be?

Response: No, we do not believe there are any other objectives that should be included.

Question 7: Is the proposed requirement for auditors to identify laws and regulations applicable to the company with which noncompliance could reasonably have a material effect on the financial statements sufficiently clear? If not, why not?

Response: No, we do not believe the proposed requirement is sufficiently clear. As previously noted, auditors are not attorneys and do not have sufficient legal training to make legal determinations. As a result, without the use of attorneys or other legal specialists, we do not believe auditors would be able to make such conclusions. We believe the extent AS 2405 appropriately notes “an auditor ordinarily does not have sufficient

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<sup>1</sup> Call, Jeanine. "How Many Federal Laws Are There?" *In Custodia Legis - Law Librarians of Congress*, Library of Congress, 12 Mar. 2023, [blogs.loc.gov/law/2013/03/frequent-reference-question-how-many-federal-laws-are-there/](https://blogs.loc.gov/law/2013/03/frequent-reference-question-how-many-federal-laws-are-there/).



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basis for recognizing possible violations of such laws and regulations.” It is not clear how the new standard would provide for auditors to have a sufficient basis for that conclusion.

Question 8: Will auditors be able to identify those laws and regulations applicable to the company with which noncompliance could reasonably have a material effect on the financial statements? If not, why not?

Response: We refer to our response on Question 5. We do not believe it is possible for auditors to identify all laws and regulations applicable to the company with which noncompliance could reasonably have a material effect on the financial statements. While there are certain laws, rules and regulations with known penalties, for many others, especially those considered indirect under the extant standard, it would be harder to assess whether NOCLAR could have a material effect. We believe that more application guidance would be necessary should the standard be issued as proposed.

Question 9: Are there additional procedures that should be required for auditors to perform to identify those laws and regulations applicable to the company with which noncompliance could reasonably have a material effect on the financial statements? If so, describe.

Response: We do not believe additional procedures should be required.

Question 10: Is the proposed requirement for auditors to assess and respond to the risks of material misstatement due to noncompliance with laws and regulations sufficiently clear? If not, why not?

Response: No, we do not believe the proposed requirement is sufficiently clear. While we appreciate the reasons the Board outlined in the exposure draft to eliminate the distinction between direct and indirect effect, we believe the proposal has the potential to go far beyond the objectives of a financial statement audit. The proposed requirement can be construed as substantiating a company’s compliance with laws and regulations. We do not consider this to be achievable. We believe it is appropriate to retain the direct and indirect effect and that more examples and application guidance would assist auditors with risk assessment. We believe that eliminating the direct and indirect distinction could result in significant audit effort being spent on laws, regulations and rules that could never really have a material impact on the financial statements.

Question 11: Is the proposed requirement that auditors identify whether there is information indicating that noncompliance (with those laws and regulations with which noncompliance could reasonably have a material effect on the financial statements) has or may have occurred sufficiently clear? If not, why not?

Response: No, we do not consider the requirement sufficiently clear. We suggest the Board consider defining specific procedures over laws and regulations whose noncompliance would have an indirect effect on the financial statements, but not to the detriment of direct and material NOCLAR. We believe procedures, such as inquiry of management, the audit committee or those charged with governance about whether the company is in compliance with laws and regulations, inquiry of general counsel, inquiry of compliance officers/department, inspecting board minutes, inspecting internal audit or other attestation reports, inspecting regulatory communications and requesting legal letters from external counsel, are clearer.

Question 12: Are there other specific procedures the auditor should be required to perform to assist them in identifying whether there is information indicating that noncompliance (with those laws and regulations with which noncompliance could reasonably have a material effect on the financial statements) has or may have occurred? If so, what are those procedures?

Response: No, we do not consider specific procedures necessary.



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Question 13: Are there other examples of procedures which might assist the auditor in identifying laws and regulations with which noncompliance could reasonably have a material effect on the financial statements or alert the auditor to information indicating that noncompliance has or may have occurred that should be included? If so, what are they?

Response: No, we do not note other example procedures that should be included. We do, though, express concern about the broad scope of the provided examples.

Question 14: Are there other procedures that auditors perform today that should be required to assist the auditor in (1) identifying laws and regulations with which noncompliance could reasonably have a material effect on the financial statements, (2) assessing and responding to risks of material misstatement due to noncompliance with those laws and regulations, or (3) identifying information indicating that noncompliance with those laws and regulations has or may have occurred? If so, what are they?

Response: We do not consider other procedures that auditors perform today that should be required. Often such procedures may be incorporated as part of the auditor's introduction of unpredictability into testing consistent AS 2201. Incorporating them into all circumstances may make them rote and predictable by management.

Question 15: Are auditors using technology-assisted audit procedures to assess and respond to risks of material misstatement due to noncompliance with laws and regulations or to identify information indicating that noncompliance with laws and regulations has or may have occurred? If so, describe those audit techniques.

Response: We are not aware of any significant adoption of technology-assisted audit procedures with respect to NOCLAR.

Question 16: Is the proposed approach to include the requirements related to understanding (1) the laws and regulations that govern the determination of the form and content of the financial statements and (2) those other laws and regulations with which the company's noncompliance could reasonably have a material effect on the financial statements sufficiently clear? If not, why not?

Response: With respect to laws and regulations where a company's noncompliance results in a direct and material misstatement of the financial statements, such as tax pension and securities laws, we believe that the proposed approach is sufficiently clear. However, with respect to other laws and regulations, such as those described in the proposal relating to occupational safety, health, antitrust, and environmental laws, we note auditors may not be equipped to handle these matters as they do not have legal training. Those with legal training, like attorneys, may be unable to quantify the potential impact of noncompliance with each law, rule or regulation. Moreover, we note interpretations of these laws and regulations can change rapidly subject to court decision. As previously noted, we believe further outreach to attorneys and other specialist communities is necessary to determine their ability to assist auditors to comply with the proposed standard.

Question 17: Is the proposed approach to include the requirements related to understanding management's related processes for identifying laws and regulations with which noncompliance could reasonably have a material effect on the financial statements and for preventing, identifying, investigating, evaluating, and communicating compliance in AS 2110 sufficiently clear? If not, why not?

Response: With respect to requirements related to understanding management's related processes for identifying laws and regulations, we believe that the proposed approach is sufficiently clear. However, we believe they may not always be applicable or appropriate based on the facts and circumstances of individual



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engagements. We believe such procedures are subject to auditor judgement in determining the most effective way to gain such an understanding.

Question 18: Are the proposed requirements related to reading publicly available information about the company sufficiently clear? If not, why not?

Response: While we believe the proposed requirement to reading publicly available information is sufficiently clear, we are concerned with the implementation of such a requirement with the proliferation of social media platforms and the blurring of professional and personal activity on the internet. We recommend the following revision to the proposed standard:

.11 As part of obtaining an understanding of the company as required by paragraph .07, the auditor should consider performing the following procedures to understand the events, conditions, and company activities that might reasonably be expected to have a significant effect on the risks of material misstatement:

- Reading publicly available information about the company, including such information disclosed by the company or its executive officers about the company, relevant to the evaluation of the likelihood of material financial statement misstatements and, in an integrated audit, the effectiveness of the company's internal control over financial reporting;

Note: Publicly available information disclosed by the company or its executive officers about the company includes company-issued press releases; company-prepared presentation materials for analysts or investors; and public statements made or issued by the company or its executive officers, including on the company's website or the company's ~~or its executive officers'~~ social media accounts. Publicly available information about the company also includes information from sources external to the company, such as media reporting and analyst reports.

Question 19: Are the proposed additional requirements in AS 2110 regarding inquiries of others within the company sufficiently clear? If not, why not?

Response: We believe the requirements are sufficiently clear but also believe it is appropriate to direct inquiries to general counsel and compliance department, if applicable.

Question 20. Is the requirement to inquire about whether correspondence exists with the company's relevant regulatory authorities regarding instances, or alleged or suspected instances, of fraud or other noncompliance with laws and regulations that could reasonably have a material effect on the financial statements and the nature of such correspondence sufficiently clear? If not, why not? Would this requirement change auditors' current practices of communicating directly with regulators about the company when appropriate and necessary? If so, how?

Response: We believe the requirement to inquire about correspondence with regulatory authorities is sufficiently clear and consistent with general practice under AS 2805.

Question 21: Are there other examples of the application of procedures that should be included for clarity? If so, please describe those examples.

Response: We find the use of examples helpful to auditors; however, we have no specific additional examples to include at this time.



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Question 22: Are the proposed requirements and examples regarding understanding changes to the company's operating strategy and the impact on the company's accounting principles and disclosures sufficiently clear? If not, why not?

Response: We believe the requirement to understand changes in the company's operating strategy is sufficiently clear and this is consistent with the practice of many auditors. We note, though, the example to "grow, modify or discontinue business operations" may be so broad as not be useful to auditors.

Question 23: Are there additional procedures the auditor should be required to perform to identify noncompliance with laws and regulations that are not currently contemplated by the proposed amendments? If so, what are the procedures?

Response: We do not consider additional procedures necessary.

Question 24: Is the proposed approach to evaluate instances of noncompliance that has or may have occurred sufficiently clear? If not, why not?

Response: We consider the proposed approach to evaluate instances of noncompliance has or may have occurred is sufficiently clear. We are concerned, though, that the proposed approach represents a significant expansion in the auditor's responsibilities. The extant standard recognizes "[w]hether 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 important context and concept are absent from the proposed standard. The proposed standard's Note 1 says "The auditor should consider whether specialized skill or knowledge is needed to assist the auditor in evaluating the noncompliance." Under AS 1210, the role of a specialist is to *assist* the auditor in obtaining and evaluating audit evidence *that will allow the auditor to reach a conclusion* regarding the relevant assertion of a significant account or disclosure. Then, the auditor would be concluding whether NOCLAR has occurred and may be required to engage in the unauthorized practice of law.

Question 25: Is the proposed requirement for auditors to consider whether specialized skills or knowledge is needed to assist the auditor in evaluating noncompliance that has or may have occurred sufficiently clear? If not, why not?

Response: No, we do not consider the requirement for auditors to consider whether specialized skills or knowledge is needed to be sufficiently clear. As noted in the response to Question 24, a specialist assists an auditor. As auditors engaged to perform audits of public companies, we are unable to conclude about whether NOCLAR has occurred, and the proposal all but requires subordination of judgment to the specialist.

Question 26: Are the procedures the auditor may perform to obtain an understanding of the nature and circumstances of potential noncompliance and to determine whether it is likely the noncompliance occurred sufficiently clear? If not, why not? What additional procedures, if any, should be added?



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Response: With consideration of our related responses herein, we consider the procedures to determine whether it is likely the noncompliance occurred sufficiently clear and do not consider additional procedures necessary.

Question 27. Are there other procedures that the auditor should be required to perform when evaluating information indicating that noncompliance with laws and regulations has or may have occurred? If so, what are those procedures?

Question 28: When evaluating information that may be indicative that noncompliance has or may have occurred, should the auditor consider the impact of that information on other information in documents containing the audited financial statements? If not, why not?

Response: We share Board member DesParte's concern that the proposed standard appears to extend the existing requirements in AS 2710 to management's disclosures outside the audited financial statements. The example in the release describes an auditor performing procedures to determine whether the annual report contained a material misstatement of fact based on inflated key performance metrics. As described in AS 2710, "[t]he auditor's responsibility with respect to information in a document does not extend beyond the financial information identified in his report, and the auditor has no obligation to perform any procedures to corroborate other information contained in a document." If the Board believes the auditor should be responsible for more than the financial information in other documents, we encourage the Board to add such a project to its standard-setting agenda.

Question 29: Is the proposed requirement to determine whether senior management has taken timely and appropriate remedial action, including any impact on the auditor's report sufficiently clear? If not, why not?

Response: No, we do not believe the proposed standard is sufficiently clear on what constitutes timely remediation. However, we believe that auditors are able to determine whether management's remedial action is appropriate, of which timeliness is one component.

Question 30: Are the proposed communication requirements sufficiently clear? If not, why not?

Response: No, we do not believe the proposed communication requirements are sufficiently clear. We note several concerns with the proposed standard. First, the requirement to communicate "as soon as practicable" includes the footnote that such communication "could result in the auditor communicating the matter prior to the completion of the auditor's evaluation of the information indicating that noncompliance has or may have occurred." We believe that while such communication should be made prior to the issuance of the auditor's report, the "as soon as practicable" standard is imprecise and may result in an undue rush to make the communication instead of understanding the potential NOCLAR. Second, the requirement to communicate "the possible effect of the noncompliance of the financial statements and other information in documents containing the audited financial information" may not be practicable. For instance, if a company had NOCLAR related to environmental regulation, the auditor may not be able to determine the possible effect on the financial statements within the timeline prescribed. There could be a contingent liability for remediation, but it would be outside of the scope of the auditor's responsibility to come to management or the audit committee with the determination of the probability and estimability of such a liability. That is the responsibility of management, which is then evaluated by the auditor for appropriateness of recording and disclosure. Third, we believe that an "as soon as practicable" requirement could be construed that the auditor is performing a monitoring function for management and could impair independence.

Question 31: Should the auditor's communication requirements differ when the information about noncompliance is identified by management, as compared to when identified by the auditor? Would the





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proposed exceptions for previous communications help in avoiding duplicative communications? Should the auditor communications be expanded or narrowed? If so, how?

Response: We believe the primary responsibility for communicating NOCLAR to the audit committee falls to management. Accordingly, we believe auditors would be required under extant standards to communicate inconsistencies in reporting NOCLAR such as under risk assessment, integrity, disagreements with management, etc.

Question 32: Are there any additional matters related to noncompliance with laws and regulations that should be communicated to management and the audit committee? If so, what?

Response: No, we do not believe additional NOCLAR matters should be communicated to management and the audit committee.

Question 33: Does the timing of the proposed communications (that is, “as soon as practicable”) to management and the audit committee pose any particular challenges to the auditor? If so, how should the proposed requirement be changed?

Response: We refer to our response to Question 30.

Question 34: Is it appropriate to require the auditor to have a subsequent communication to management and the audit committee to communicate the results of the auditor’s evaluation of information indicating noncompliance with laws and regulations has or may have occurred? If not, why not? Does this communication pose any particular challenges? If so, what are they?

Response: As we previously noted, it is not the auditor’s responsibility to make legal determinations regarding NOCLAR. Management is responsible for the fair presentation of the financial statements and communication to the audit committee of NOCLAR. The auditor could consider management’s evaluation and resolution, communication with the audit committee, tone towards compliance, etc. in subsequent periods as part of risk assessment related to a matter.

Question 36: Are there other communications the auditor should make (for example, to the PCAOB or other regulatory body, investors, other stakeholders)? If so, what should those communications include and who should those communications be made to?

Response: We do not believe it would be appropriate for the auditor to communicate to others, except as otherwise required by law, outside of the auditor’s report.

Question 37: Is the proposed requirement for the lead auditor to obtain the written affirmations from the other auditor sufficiently clear? If not, why not?

Response: We believe the proposed requirement is sufficiently clear, subject to the limitations to both the lead and other auditor previously noted in this letter with respect to NOCLAR. That is, the affirmation of the other auditor is of limited value given the inherent limitation in an auditor’s ability to evaluate and conclude on all NOCLAR.

Question 38: Are the proposed communication requirements if either the lead auditor or other auditor identifies or otherwise becomes aware of any instances, or alleged or suspected instances, of fraud or other



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noncompliance that may be relevant to the audit work being performed sufficiently clear? If not, why not? Should additional communication requirements be considered, and if so, what are the requirements?

Response: We believe the proposed requirement is sufficiently clear, subject to the limitations to both the lead and other auditor previously noted.

Question 39: Are there additional auditor reporting considerations that should be considered? If so, what are they?

Response: We do not believe additional auditor reporting considerations should be considered.

Question 40: Should the proposed standard include a requirement for communication in the engagement report regarding specific aspects of a company's noncompliance with laws and regulations? If so, what should that communication include?

Response: No, we do not believe the proposed standard should include a requirement for communication in the engagement report with respect to NOCLAR. As we previously described, we believe it would be outside of the competence of auditors to perform procedures associated with the proposed standard and do not believe it would be appropriate to incorporate them into the auditor's report. Further, communication of NOCLAR that does not have a direct effect would reduce the significance of what is reported—whether the financial statements are free from material misstatement. We note that while there have been many high profile NOCLAR events, there has not been an associated volume of restatements. This suggests that even with hindsight, the restatement thresholds of subsequent events have not been met with respect to what could/should have been known at an earlier period.

Question 41: Should specific requirements be retained related to an auditor's withdrawal or resignation from the audit engagement in circumstances when likely noncompliance with laws and regulations has been identified? If so, which requirements?

Response: We believe it is appropriate to remove the requirements specifying report modifications and withdrawals regarding a company's NOCLAR. We agree with the Board that the decision to accept or withdraw from an engagement is subject to judgment and highly dependent on the facts and circumstances of any particular instance.

Question 42: Is the proposed incorporation of the requirements to document the auditor's consideration of fraud in a financial statement audit into AS 1215 sufficiently clear? If not, what changes are necessary and why?

Response: We believe the proposed incorporation of the requirements into AS 1215 are sufficiently clear, subject to our previously described concerns.

Question 43: Is the proposed documentation requirement in AS 1215.12h sufficiently clear? If not, what changes are necessary and why? Are there any specific challenges related to this documentation requirement? If so, please describe.

Response: We believe the proposed incorporation of the requirements into AS 1215 are sufficiently clear, subject to our previously described concerns.



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Question 44: Are the proposed requirements to amend the understanding with an auditor's specialist – whether employed or engaged by the auditor – sufficiently clear? If not, why not?

Response: As we previously noted, the conclusion of whether there is fraud or NOCLAR is often a legal determination and beyond the competence of auditors. It is also beyond the competence of many specialists that assist the engagement team. Moreover, many specialists are subject to their own standards of professional conduct which may not permit them to make such affirmative declarations. If a specialist's standards prohibit such affirmation, the auditor is left in an unenviable situation: retain the specialist and not comply with the proposed standard or dismiss the specialist. Under the proposed requirements, the Board could be interpreted as making sweeping claims of indirect jurisdiction over these specialists. Accordingly, we are not supportive of the proposed amendments to the standard.

Question 45: Are the amendments to AS 2410 sufficiently clear? If not, why not?

Response: We believe the amendments to AS 2410 are sufficiently clear.

Question 47: Is the addition of the management inquiry in proposed paragraph .18c of AS 4105 sufficiently clear? If not, why not? Are auditors making this inquiry currently?

Response: We believe the proposed amendment is sufficiently clear and believe similar inquiries are, in general, already being made.

Question 48: Is the proposed amendment to AS 4105.23 sufficiently clear? If not, what changes are necessary and why?

Response: We believe the proposed amendment to AS 4105.2 is sufficiently clear, subject to the limitations and concerns previously expressed.

Question 49: Is the timing for any required communications in proposed AS 4105.32 reasonable? If not, what changes are necessary and why?

Response: We refer to our response to Question 30.

Question 50: Should an interim review requirement be added for the auditor to make specific inquiries regarding the company's ongoing investigations related to noncompliance with laws and regulations? If so, what should those specific inquiries be?

Response: No, we do not believe it necessary to add an interim review requirement to make such inquiries.

Question 51: Is rescinding AS 6110 appropriate? Does this standard continue to be used by auditors? If so, what are the specific provisions that are used by auditors and when is this standard used?

Response: Yes, we believe it would be appropriate to rescind AS 6110 as such work is generally performed under other standards.

Question 52: Is rescinding AI 13 appropriate, or does the interpretation contain specific guidance necessary to apply PCAOB standards? If so, what is that specific guidance?



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Response: Yes, we believe it would be appropriate to rescind AI 13 and do not believe it contains necessary specific guidance.

Question 53: Is rescinding AI 21 and replacing its content with a footnote in AS 2805 appropriate? If not, why not?

Response: Yes, we believe rescinding AI 21 is appropriate.

Question 57: Are there other benefits and costs not addressed above that we should consider?

Response: We believe the benefits are overstated and the costs understated for the proposed standard.

While the Board recognizes “the proposed standard would likely result in the expenditure of considerable additional audit effort,” the release says the Board does not believe the additional costs would rise to that of a compliance audit but notes the costs “nonetheless may be substantial.” If approved in its current form, we would anticipate considerable cost to develop methodologies to comply with the standard, train auditors and attorneys, substantially increase attorney and other specialist (e.g., environmental) involvement on engagements, and to perform associated procedures. While we do not believe we would be able to quantify such costs, we believe they would result in considerable costs both to auditors and issuers, both through increased audit fees and in time to prepare for and respond to the audit process.

It is also unclear if the expected benefits from the proposed standard would be realized. The Board draws attention to several high-profile incidents of NOCLAR and investor loss. However, the proposed standard for auditing, by itself, is not capable of preventing the noncompliance or coercing its reporting. Financial reporting exists within a system where management is responsible for reporting on results. Consider the release’s example of a company with operations in a jurisdiction where bribery may be more common or with in an industry with a history of FCPA violations. Even if the auditor were to identify a potential issue, it may not be any quicker for the company to determine whether to record or disclose a contingent loss as it is often necessary to perform investigations and gather all relevant facts. While someone could argue it is more important to “get the information out there,” publishing inaccurate or incomplete information can be just as damaging and introduce unwarranted volatility. And even if that was desirable, that becomes an issue for the financial reporting standards.

Question 59: Which proposed amendments are likely to be associated with more substantial costs? Are the costs quantifiable?

Response: We believe the exposure draft with respect to NOCLAR not only creates substantial costs, as noted in our response to Question 58, but also adds a compliance element that is not the domain of financial statement auditors and would be better served with a separate compliance requirement. Further, we believe the potential independence impairment caused by the auditor becoming a monitoring function is not in the public interest.

Question 60: Is the expansion of the auditor’s responsibilities to identify information indicating noncompliance with laws and regulations has or may have occurred without regard to the effect of such noncompliance on the financial statements practical and cost effective to implement? Are small/medium firms equipped and capable of implementing these new requirements? If not, why not?

Response: We refer to our previous comments and note that we do not believe the proposed standard is practical and, accordingly, do not believe it can be cost effective to implement. Every firm, regardless of size, would be



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significantly impacted by the proposed standard with the burden being even more acutely felt by small/medium firms.

Question 61: Will the proposed requirement for auditors to assess the risk of material misstatement, including risks of material misstatement due to noncompliance with laws and regulations, change how auditors assess risks of material misstatement and design related audit responses? If so, how and to what extent?

Response: We believe the proposed standard has the potential to change how auditors assess risks of material misstatement. The perceived compliance audit nature of the proposed standard could result in risk assessment being performed over each business line, jurisdiction, and/or regulatory authority, etc.

Response 62: Are there substantial costs associated with an increased need to use auditor's specialists to assist the auditor in evaluating noncompliance that has or may have occurred as a result of the proposed requirements? If so, are the costs quantifiable? Are there any applicable means of mitigating or reducing such costs?

Response: We refer to our response to Question 57.

Question 63: Would the economic impacts be different for smaller firms or emerging growth companies? If so, how?

Response: We presume the risk of emerging growth companies is higher than for larger, more established companies in the same industry/business. As a result, the cost would disproportionately burden the smaller firms or emerging growth companies. One could also assume that the market already has this increased inherent operational risk priced into their securities; therefore, additional audit/compliance costs would have a depreciating effect on market, capital, and shareholder values.

Question 64: The Board requests comment generally on the potential unintended consequences of the proposal. Are the responses to the potential unintended consequences discussed in the release appropriate? Are there additional potential unintended consequences that the Board should consider? If so, what are the potential unintended consequences and what responses should be considered?

Response: Within the release, the Board notes an unintended consequence is auditors retaining "legal counsel or other specialists even when doing so is unnecessary to obtain sufficient appropriate audit evidence." The release notes "auditors may overreact in this manner if they believe that the proposed amendments require the auditor to make legal determinations or might subject the auditor to increased liability." As noted in our response to Questions 24 and 25, we are particularly concerned the proposed standard would all but require significantly increased specialist involvement, including the use of attorneys. Such use of attorneys and other specialists is called "excessive (i.e., inefficient)" in the release but the proposed standard does not provide clear guidance that would indicate when a specialist is not necessary.

We also note a potential unintended consequence is to further exacerbate issues within the profession. Our society and members continue to look for opportunities to grow the pipeline of talent entering the profession. The proposed standard, with significant expansion of scope and subjectivity, will result in more frequent litigation and dampen perceptions resulting in the profession being less attractive.

We further note a potential unintended consequence is to create an inappropriate level of expectation and false sense of security for investors. As we previously described, we believe it would be outside of the competence of auditors to perform procedures associated with the proposed standard. Accordingly, if investors believe that



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auditors are capable of doing something they cannot, they may ultimately decrease their trust in the true responsibility of the auditor with respect to the financial statements being free from material misstatement. Such a lack of trust could erode market confidence.

We further note a potential unintended consequence is to delay the timely issuance of accurate financial information. We consider that if the proposed standard is adopted and the associated requirements are commonly understood there is a risk of false allegations. Whether such allegation are caused by a good faith misunderstanding of the facts and circumstances, an overreaction or attempted market manipulation, we believe false allegation would delay the issuance of the report with unknown financial implications to the market.

With respect to the potential unintended positive outcomes identified within the release, we do not believe enhanced auditor attention on NOCLAR would generate increased corporate attention. We note the examples of “cleaner air or water through better compliance with restrictions on polluting activities” and “more accountable governance through better compliance with prohibitions on bribing foreign officials” are areas with substantial criminal and civil penalties. Further, we note many of the high-profile NOCLAR events are in areas that have specific governmental or other compliance attestation and/or other monitoring requirements that have failed to detect the events in many situations. It is not clear that enhanced attention from the financial statement auditor in these areas would result in changing behaviors. Accordingly, we do not believe the proposed standard would generate incremental value and trust to the market or be in line with the expectations of investors.

Question 65: The Board also requests comment on the potential unintended consequences of the proposal on competition in the market for audit services. How and to what extent could competition be affected by the proposal? How would smaller firms be affected? Would audit fees be meaningfully affected by the proposal? Would the availability of qualified auditors in the market be meaningfully affected by the proposal?

Response: With consideration and supported by our responses herein, it is recognized by the Board that audit fees will be greatly impacted by firms of all sizes. This would require a global effort/reliance in many cases, of which established expertise in respective jurisdictions, even within global networks, is not likely to be actionable within a few years notice across all PCAOB registered firms. It would not be unreasonable to assume that only the largest firms would have timely access to the specialists needed to conduct such work. Smaller firms would be financially forced to obtain such services externally, often at significant third-party premium. As a result of heightened risk, lack of expertise, lack of overall resources, etc. it would also not be unreasonable to envision an audit market for public company audits that is limited to only global network firms. On the surface, some financial statement users could see that as a benefit; however, engagement fees would likely increase due to lack of competition. Further, we consider it more likely than not that global network firms would be unable to cost-effectively acquire sufficient staffing resources to effectively audit significant more market share. This causes significant concentration risk to the global audit market and increases the cost of participating in capital markets, without comparable benefit.

Question 66: Are there any factors specifically related to audits of brokers and dealers that may affect the application of the proposal to those audits? If so, what are those factors and how should they be considered?

Response: With consideration of our other responses herein, we believe that broker and dealers should be excluded from application of this proposal. Brokers and dealers are already subject to compliance examinations by their respective regulatory authorities (SEC, FINRA, etc.) on a recurring, rotating, and/or risk-based method as determined appropriate by their oversight bodies. Brokers and dealers audit reports also include specific compliance opinions with consideration of respective SIPC/FINRA rules, and existing



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standards require consideration of related audit procedures in issuing such opinions. We believe requiring the proposed audit procedures with respect to NOCLAR for brokers and dealers would be duplicative in nature and only add additional costs, to entities that are mostly smaller privately-held companies. Requiring this of brokers and dealers would imply that the SEC, FINRA, etc. are unable to effectively monitor its memberships' NOCLAR under the current regime and that financial statement auditors are better suited, which we do not believe is accurate of the current brokers and dealers regulatory oversight environment.

Question 69: Would requiring compliance for fiscal years beginning after the year of SEC approval provide challenges for auditors? If so, what are those challenges, and how should they be addressed?

Response: As this proposed standard raises significant questions that will need to be addressed, we believe judicious consideration is necessary prior to the adoption of a standard. Moreover, we believe other stakeholders' considerations (management, audit committee, legal, investor, regulator and standard setter), will need to be incorporated as well. Considering the overlap and interaction with the FASB accounting and the SEC regulatory standards, we consider further investigation critical. Only after resolving these fundamental concerns and issues can an effective date be determined. Upon SEC approval of a revised standard, it is our perspective this would be a multi-year investment to build the resources and specialist skillset in place to be able to perform the required procedures.

70. How much time following SEC approval would audit firms need to implement the proposed requirements?

Response: We refer to our response to Question 69.

The Committee appreciates the opportunity to express its opinion on this matter. We would be pleased to discuss our comments in greater detail if requested.

Sincerely,

**Michael Ploskonka, CPA**

Chair, Audit and Assurance Services Committee

**Amber Sarb, CPA**

Vice Chair, Audit and Assurance Services Committee



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APPENDIX A

AUDIT AND ASSURANCE SERVICES COMMITTEE  
ORGANIZATION AND OPERATING PROCEDURES  
2023 – 2024

The Audit and Assurance Services Committee of the Illinois CPA Society (Committee) is composed of the following technically qualified, experienced members. The Committee seeks representation from members within industry, education and public practice. The Committee is an appointed senior technical committee of the Society and has been delegated the authority to issue written positions representing the Society on matters regarding the setting of audit and attestation standards. The Committee's comments reflect solely the views of the Committee, and do not purport to represent the views of their business affiliations.

The Committee usually operates by assigning Subcommittees of its members to study and discuss fully exposure documents proposing additions to or revisions of audit and attestation standards. The Subcommittee develops a proposed response that is considered, discussed and voted on by the full Committee. Support by the full Committee then results in the issuance of a formal response, which at times includes a minority viewpoint. Current members of the Committee and their business affiliations are as follows:

**Public Accounting Firms:**

**National:**

Scott Cosentine, CPA  
Timothy Delany, CPA  
De Vries, Erik, CPA  
Kara Fahrenbach, CPA  
Emily Hoaglund, CPA  
James R. Javorcic, CPA  
Kelly Kaes, CPA  
Michael Potoczak, CPA  
Jon Roberts, CPA  
Amber Sarb, CPA

Ashland Partners & Company LLP  
RSM US LLP  
CohnReznick LLP  
Plante Moran, PLLC  
KPMG LLP  
Mayer Hoffman McCann P.C.  
Grant Thornton LLP  
Marcum LLP  
BDO USA, LLP  
RSM US LLP

**Regional:**

Elda Arriola, CPA  
Andy Kamphius, CPA  
Genevra D. Knight, CPA  
Matthew Osiol, CPA  
Michael Ploskonka, CPA

Roth & Co., LLP  
Vrakas CPAs + Advisors  
Porte Brown LLC  
Topel Forman LLC  
Selden Fox, Ltd.

**Local:**

Kelly Buchheit, CPA  
Lorena C. Engelman, CPA  
Mary Laidman, CPA  
Carmen F. Mugnolo, CPA  
Jodi Seelye, CPA

ORBA  
CJBS LLC  
DiGiovine, Hnilo, Jordan & Johnson, Ltd.  
Mugnolo & Associates, Ltd.  
PKF Mueller, LLP

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