



August 7, 2023

Ms. Phoebe W. Brown
Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

VIA EMAIL TO: comments@pcaobus.org

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:

I 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 I appreciate the opportunity to comment; however, the Exposure Draft raises a series of practical concerns for our Company and would result in an unjustified increase in our compliance costs. I have served on the board of NuScale Power Corporation (and previously NuScale Power, LLC) since August 1, 2019, and I chair the company's Audit Committee. I also serve on the boards of MannKind Corporation, Quantum Digital Solutions Corporation and Systems & Technology Research Corporation; as well as a Trustee and Chairman Emeritus of the California Institute of Technology. I am the past CEO, President and Chairman of Northrop Grumman Corporation, Chairman and Director of General Motors Corporation, Director of Fluor Corporation and Chairman and Director of Avery Dennison Corporation.

I start by endorsing the comments filed by the U.S. Chamber of Commerce regarding the Proposal in their comment letter filed in Docket Matter No. 051, dated August 2, 2023. I follow by emphasizing a few concerns of our own, but which I believe are widely shared by companies that would have the burden of trying to comply with Proposal.

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>

The Proposal does not use precise terminology or otherwise reasonably limit 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. 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.² 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*"³ – 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 expansive⁴ 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. I am 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 only ones who would benefit from such onerous requirements are the audit firms who would dramatically increase their work scope and fees to ensure compliance.

The Proposal also threatens the attorney client privilege, a fundamental element of the relationship between public companies and their legal counsel. Compliance with 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 bad choices: (1) voluntarily share information and legal analyses with the auditor on any noncompliance with relevant laws and regulations,

² Exposure Draft, p. A1-2.

³ Exposure Draft, p. A1-7.

⁴ Exposure Draft, p. 24.

thereby waiving privilege, or (2) refuse to share the requested information with the auditor, in which case the auditor might be unable to complete their audit.

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 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.

Finally, the companies that I oversee as a Board member and as an Audit Committee member have existing and stringent responsibilities for compliance with applicable laws and regulations, as well as appropriate 'checks' against noncompliance. They are subject to various federal and state regulatory authorities with the responsibility to examine, monitor and enforce these laws and regulations. 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kent Kresa", with a long horizontal flourish extending to the right.

Kent Kresa

Chairman, Audit Committee, NuScale Power Corporation