UNITEDHEALTH GROUP®

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Phoebe W. Brown
Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street NW
Washington, DC 20006-2803

Via email: comments@pcaobus.org

Re: PCAOB Rulemaking Docket Matter No. 051, Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations ("Proposal")

Dear Ms. Brown:

This letter is submitted on behalf of UnitedHealth Group Incorporated ("UnitedHealth Group" or the "Company"), a health care and well-being company with a mission to help people live healthier lives and help make the health system work better for everyone. Our two distinct and complimentary business platforms – Optum and UnitedHealthcare – are working to help build a modern, high-performing health system through improved access, affordability, outcomes and experiences for the individuals and organizations we are privileged to serve. Our workforce of nearly 400,000 people serves the health care needs of 151 million people worldwide and generated revenues of nearly $325 billion in 2022, leading to a market capitalization of approximately $475 billion as of the date of this letter. We are writing in response to your request for comments regarding the Proposal.

Overview

The Public Company Accounting Oversight Board ("PCAOB" or "Board") has proposed rule changes to an auditor's consideration of a company's noncompliance with laws and regulations, including fraud, under the objective of promoting audit quality and consistency and improving investor protections.

UnitedHealth Group appreciates the importance of a robust compliance program that aligns with existing regulatory standards. However, as further outlined in our letter, we do not support the Proposal due to the following reasons:

- The existing disclosure framework and compliance programs are appropriate, and the Proposal is unnecessary and will likely reduce audit quality and thereby not benefit investors.
- The Proposal damages longstanding attorney-client privilege norms and exposes companies to additional and unnecessary risks.
- The Proposal will inappropriately expand auditor responsibilities to those largely handled by lawyers, duplicating many procedures already being performed by management, thereby significantly increasing audit costs while reducing audit quality.
- The Proposal is inconsistent with well-established and applied materiality concepts, which help guide effective governance practices and financial reporting.
- The Proposal will unnecessarily burden management and audit committees and obscure focus on significant or material matters.

We believe the Proposal would have the opposite effect of its objective by inundating audit committees, and potentially investors, with immaterial information and distracting them from more important and material information, all while imposing significant costs and unnecessary burdens on companies, audit committees, and auditors.

Existing Disclosure Framework and Compliance Programs are Appropriate

Disclosure Framework

We believe the current framework for preparers to disclose contingencies under Accounting Standards Codification ("ASC") Topic 450 provides investors necessary information on material contingencies existing at a company. Under this framework, probable contingencies must be accrued for, and disclosed when material, while potentially material contingencies which are reasonably possible must also be disclosed. The proposed requirements would no longer align audit requirements with existing United States Generally Accepted Accounting Principles ("US GAAP") or U.S. Securities and Exchange Commission ("SEC") disclosures, potentially causing immaterial and/or less useful information to be disclosed and create unproductive auditor interactions and also increased costs. Additionally, the auditor would likely be communicating immaterial matters to audit committees for areas in which they do not directly possess the requisite expertise.

Rulemaking decisions impacting company disclosures are better suited for the Financial Accounting Standards Board ("FASB") or SEC directly, as those governing bodies are directly responsible for financial statement disclosures required by companies. Information regarding a company's risks, forward-looking information, and disclosure of contingencies under ASC Topic 450 is already required and included in a company's SEC filings. This proposed rule does not appear to facilitate additional decision-useful disclosures and thereby will not enhance investor protection.

Compliance Programs

Auditors currently test compliance program controls at an appropriate and effective level that does not blur the line of management's versus the auditor's role, which would occur if the Proposal were adopted. In addition, amendments to the U.S. Sentencing Guidelines, implementation of Sarbanes-Oxley, and increased focus on environmental, social, and governance (ESG) issues have further enhanced companies' compliance programs.

Compliance programs are typically continually enhanced and often by way of both internal and external subject matter experts. Like many other companies, we engage external consultants to assess the enterprise compliance program and conduct regular internal assessments to ensure it meets or exceeds various regulatory requirements and guidelines, including those provided by the U.S. Department of Health and Human Services Office of Inspector General, Centers for Medicare and Medicaid Services, Federal Deposit Insurance Corporation, and Department of Justice. Many aspects of our compliance program and those of other companies, including prevention, detection, and remediation of non-compliance, are already subject to regulatory reviews.

Our compliance program is overseen by senior leadership and the Audit and Finance Committee and is audited by our internal audit department, which reports its findings to the Audit and Finance Committee. These efforts ensure that we comply with applicable laws and regulations and help our Board of Directors fulfill its oversight responsibility under *In re Caremark Int'l, 698 A.2d 959 (1996)*. Based on these considerations, we believe the compliance program obligations that currently exist at companies, including board oversight, are sufficient in addressing the risks of material noncompliance that impact the financial statements.

The Proposal Damages Longstanding Attorney-Client Privilege Norms and Exposes Companies to Additional and Unnecessary Risks

The Proposal would undermine the ability of corporations to make appropriate use of longstanding attorney-client privileges and protections. Attorney-client privilege holds a deeply respected and fundamental position within the U.S. legal system, has been historically and consistently affirmed by the U.S. Supreme Court, and is a necessary mechanism for ensuring that sound and confidential legal advice may be obtained. The Proposal as written appears to not consider or appreciate attorney-client privilege. Specifically, it presumes entirely that an auditor will have access to materials and information that may be protected under attorney-client privileges, which would certainly create resulting risks to companies.

A requirement that auditors collect evidence without regard for attorney-client privileges would promote premature and potentially incorrect conclusions regarding noncompliance, create a chilling effect on corporate communications with their counsel for fear that the information will no longer be treated as confidential, impose unnecessary strains on management's investigation processes, and undermine the public policy principles underlying attorney-client privilege. Any attempt by a company to make use of its attorney-client privilege protections could limit the auditor's ability to obtain sufficient audit evidence, introducing the potential for scope limitations and potentially even modifications to the auditor's opinion.

The Proposal Will Inappropriately Expand Auditor Responsibilities to Those Largely Handled by Lawyers

Auditors do not possess legal skills or licenses and US audit firms are prohibited from providing legal services. Thus, audit teams do not have the expertise required to comply with the Proposal and will, therefore, need to hire or engage legal specialists. The time and expertise needed to identify all laws and regulations, to which a company is subject, and further assess if each could reasonably have a material effect on the financial statements is significant. This Proposal goes much deeper, requiring a comprehensive compliance audit of all company activities on a local, state, federal, and global scale. The Proposal also appears to assume there is little to no judgment in the assessment of compliance. Even if an audit firm hires external counsel to assist, an audit partner, typically someone who is not licensed to practice law, will be charged with ultimately understanding, interpreting, and communicating an accurate legal opinion – an unlikely task, especially for industries where laws and regulations are evolving and undergoing interpretation.

All these factors would result in substantial increases to the cost of an audit, which would ultimately be reflected in increased audit fees for companies. Furthermore, the Proposal would likely lead to a significant increase in liability exposure for audit firms, the costs of which would ultimately be borne by investors and consumers. For large companies, it is plausible that audit fee increases could be many millions of dollars.

Additionally, the significant time and effort likely needed by auditors, to comply with the proposed changes, would stress overall more material and important audit procedures. This reallocation or reprioritization of audit efforts would likely reduce audit quality and shift efforts away from material areas of focus. The evolving and often complicated nature of many compliance-related matters would also likely create significant end of engagement audit efforts, potentially delaying audit opinions and jeopardizing company compliance with applicable filing deadlines and, thereby, ultimately harming investors.

The Proposal is Inconsistent with Well-Established and Applied Materiality Concepts

The current auditing framework uses the principles of reasonable assurance and a well-defined concept of materiality as an effective means of ensuring the disclosure of material contingencies and risks facing a company. However, the Proposal imposes a vague "reasonably could" threshold that is not clear nor addressed elsewhere in PCAOB standards or practice, contradicting the well-established, concept of materiality that aids auditors in allocating time and resources to areas of the financial statements that contain more risk. This proposed threshold would allow for minimal auditor judgment, remove the risk-based scoping element of an audit, and call into question the objective of an audit, which is to obtain reasonable, not absolute, assurance on the financial statements taken as a whole.

The Proposal also requires auditors to communicate certain matters to audit committees unless the matter is "clearly inconsequential." We are not aware of any other widely recognized governance standard premised upon a "[not] clearly inconsequential" standard. The nature of the auditor's assessment of whether an item is not "clearly inconsequential" could cause many matters to be reported out of an abundance of caution as indirect financial statement impacts can be, in theory, far reaching (e.g., loss of customers, reputational damage, etc.) and based on conjecture. This would create a significant increase in volume of new communications to audit committees for items that are not material, or unlikely to be material, and have the effect of causing the auditor to opine on forward-looking information as opposed to today's standard, point in time.

The Proposal Will Unnecessarily Burden Management and Audit Committees

Management

We believe companies would incur significant one-time and ongoing costs and effort to respond to and comply with the increased audit requirements, including significant investments in subject matter expertise to aid auditing firms in meeting these new obligations. This would be especially burdensome for large, multi-national companies and companies in highly regulated industries. The process of creating an auditor-friendly centralized repository of all laws and regulations that "could reasonably have a material effect" would be extremely difficult, time consuming, and costly, and would require the implementation of new technologies and processes.

The Proposal would also have the effect of requiring management to reframe its compliance-related communications to audit committees directly in response to auditor characterizations of *potential* noncompliance, an approach that de-emphasizes management's business acumen and responsibility in evaluating and reporting on *actual and likely* business impacts. In addition, management would be required to re-engineer the existing design, implementation, and operating effectiveness of internal controls over financial reporting relating to compliance. Significant time and effort would be needed to educate audit firms and their staff on the entire population of laws and regulations that may impact a company, conduct walkthroughs of newly scoped in processes and controls, and respond to additional audit requests. We do not believe the Proposal sufficiently considers the significant burden this would place on companies or the audit process, and fails the cost-benefit threshold.

Audit Committees

Under the Proposal, the increase in communication requirements between auditors and audit committees would be unnecessary, overly burdensome, and inconsistent with current and longstanding governance protocols. In many organizations, audit committees regularly receive multiple and timely updates on material noncompliance matters. For example, our Audit and Finance Committee regularly receives a Chief Legal Officer report, a Chief Compliance Officer report, a General Auditor report, an Enterprise Risk Management report and other routine reports, and has various other update meetings, including in

executive sessions with our senior risk leaders and external auditors. Given the proposed requirement for auditors to initially communicate *potential* noncompliance to audit committees prior to evaluating *if it has in fact even occurred* (which is often initially unclear due to varying legal interpretations and views) or the potential financial statement impact, we expect the volume of communications to increase significantly, be overly burdensome and immaterial, and potentially unmanageable and less effective for highly regulated companies.

Additionally, by requiring an initial communication before an evaluation of the financial impact, auditors would be effectively assuming the role of management in determining the timing and substance of communications to audit committees, potentially ahead of management. Even the perception of an auditor performing a management function is inconsistent with auditor independence principles and would not improve investor confidence and value. These implications directly contradict the Proposal's stated objective.

Furthermore, we question whether the Board has sufficiently conducted outreach or studied the impact the Proposal would have on relevant stakeholders, especially audit committees. For example, public company audit committees would have to adjust already-crowded agendas to allow for a disproportionate amount of time focused on matters which merely meet an immaterial "not clearly inconsequential" standard. There is no evidence to suggest investors are supportive of this shift in governance direction and the unintended implications of the Proposal stand in contrast to longstanding principles underlying board member fiduciary duties requiring them to provide oversight of matters that are *in fact material*.

Conclusion

For the reasons stated above, we do not support the Proposal. If the PCAOB ultimately continues to move forward with this project, we urge the Board to conduct further outreach with companies, audit committees, audit firms, and investors to better understand the necessity of further changes to the auditing requirements, cost and time implications for public companies, and if the proposed changes would be useful to investors.

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We appreciate your consideration of our comments on the Proposal and welcome any further discussion the Board may wish to have with us.

Sincerely,

Thomas E. Roos
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