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Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street NW
Washington, D.C. 20006-2803

Re: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations And Other Related Amendments

Dear Office of the Secretary:

RSM US LLP (RSM, "we") values the opportunity to offer our comments on the Public Company Accounting Oversight Board's (PCAOB) *Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations And Other Related Amendments* (the proposal). RSM is a registered public accounting firm serving middle-market issuers, brokers and dealers.

Overall Comments on the Proposal

We generally support the modernization of the PCAOB's auditing standards; however, the substance of this proposal raises several concerns related to the expected approach to implementing such a heightened focus on noncompliance with laws and regulations. The proposal imposes a significant expansion on the scope of a financial statement audit, requires significant expertise which management or legal experts are better suited to provide and may create confusion between the roles and responsibilities of management as opposed to those of the auditor.

While the proposal states the intent of the changes is to prevent investor harm resulting from noncompliance with laws and regulations, we believe this proposal may harm investors by imposing unreasonable expectations on auditors, management and audit committees alike. We echo the concerns expressed by Board Members DesParte¹ and Ho² that the proposal does not achieve the intended goals because of numerous unintended consequences.

Scope of the Proposed Standard

We have several concerns related to the scope of the proposed standard. Based on the requirements in the proposal, the anticipated scope of procedures exceeds that of a financial statement audit. As the proposed standard would remove the distinction between items with a direct and indirect impact on the financial statements, the matters which require potential evaluation for noncompliance would be expanded to include various operational, environmental, privacy and other matters. Beyond identification of such matters, the auditor would be responsible for considering whether each law or regulation could reasonably have a material effect on the financial statements. However, the assessment that a matter or potential matter is not material to the financial statements requires extensive procedures to initially identify potential laws or regulations and understand the aspects of all identified laws or regulations, as

¹ Refer to [Statement on Proposal to Amend PCAOB Auditing Standards Related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments](#) made by Board Member Duane M. DesParte on June 6, 2023

² Refer to [Statement on Proposed Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations](#) made by Board Member Christina Ho on June 6, 2023

well as evaluating the potential impact of a matter or potential matter. This proposed change would result in a significant scope expansion for a financial statement audit.

The proposal requires the auditor to “plan and perform procedures to identify the laws and regulations with which noncompliance could reasonably have a material effect on the financial statements.” In Board Member DesParte’s statement on the proposal, he explained, “In my view, this is a significant scope expansion; and to meet this requirement, auditors would be required to embed compliance attestation procedures into the financial statement audit. This is well beyond both the scope of the financial statement audit and the auditor’s core competency; and will trigger the need — at great cost — to significantly increase the use of lawyers and other specialists on many, if not all PCAOB audit engagements on a recurring basis.”³ We agree with Board Member DesParte’s perspective that auditors would need to implement significant attestation procedures which are outside the scope of a financial statement audit in order to meet the proposed requirements of this proposed standard.

As proposed, the requirements related to communication of noncompliance matters includes drawing conclusions that are outside the scope of financial reporting. Such communications may cause confusion for both audit committee members and investors about the auditor’s role in identifying and assessing matters of noncompliance. In accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 450-20-25-1, *Loss Contingencies*, an accrual for loss contingencies, including for legal matters and noncompliance with laws and regulations, is only to be recorded in the financial statements if a loss is probable and can be reasonably estimated. Likewise, in accordance with ASC 450-20-50-3, disclosure of a loss contingency should be made if there is at least a reasonable possibility that a loss or an additional loss may have been incurred. The requirement to communicate to the audit committee matters of noncompliance which could reasonably have a material effect on the financial statements prior to meeting any of the related financial reporting criteria may cause confusion. Additionally, many instances of noncompliance or potential noncompliance that may impact a company have a vast range of potential outcomes, from inconsequential to material. While auditors generally rely on the expertise of a company’s legal counsel or a specialist, these experts often are not able to provide clear judgment on which matters may or may not result in a material impact on the financial statements until a matter is close to resolution. The requirement to identify and communicate matters which could reasonably have a material effect on the financial statements exceeds both financial reporting requirements and a reasonable expectation of expertise available to make such assessments.

Although the preamble to the proposed standard notes that the scope “would not represent every law or regulation to which the company is subject,”⁴ the proposal uses the phrase “could reasonably have a material effect”⁵ to describe which laws and regulations should be identified and considered by the auditor. As noted by Board Member Ho, “To identify all the laws and regulations with which noncompliance could reasonably have a material effect on the financial statements, an auditor must first identify all the laws and regulations applicable to the public company. It is this threshold requirement which causes me the greatest concern and for which the proposal does not seem to fully address.”⁶ We agree with Board Member Ho’s statement and confirm that for an auditor to assess whether noncompliance with a law or regulation “could reasonably have a material effect,” the auditor would need to assess a complete population of laws to which the company is subjected. As the preamble to the

³ Refer to [Statement on Proposal to Amend PCAOB Auditing Standards Related to a Company’s Noncompliance with Laws and Regulations and Other Related Amendments](#) made by Board Member Duane M. DesParte on June 6, 2023

⁴ Refer to release text, page 22

⁵ Refer to release text, page 5

⁶ Refer to [Statement on Proposed Amendments to PCAOB Auditing Standards related to a Company’s Noncompliance with Laws and Regulations](#) made by Board Member Christina Ho on June 6, 2023

proposal states that this is not the intent of the proposed standard, it is imperative to revise the threshold for consideration.

Investor Impact

While the preamble to the proposed standard notes the intention to provide increased protection for investors, the proposed standard may result in adverse consequences for investors.

The introduction of the proposed standard notes that “Auditors have a fundamental obligation to protect investors through the preparation and issuance of informative, accurate, and independent auditor’s reports...”⁷ As we previously noted in our comment letter related to the PCAOB’s Proposed Auditing Standard, *General Responsibilities of the Auditor in Conducting an Audit and Proposed Amendments to PCAOB Standards*, there is an existing disconnect between auditors and investors related to the role auditors play in investor protection, including the level of reliance an investor should place on an auditor’s report in relation to all information relevant to a company. The auditor’s report is a valuable source of information for investors, but it cannot be the sole source of protection for investors. Including additional legal and regulatory compliance procedures within the scope of an audit, when those compliance procedures are beyond the scope of a financial statement audit, could lead to a greater disconnect between the auditor’s responsibilities and the investor’s impression of the intent of an audit of financial statements. If a company’s management, audit committee or investors believe these procedures are relevant and meaningful for their organization, those organizations should consider engaging specialists to perform additional compliance attestation services.

Additionally, as noted previously, the requirements of the proposed standard impose a significant increase in the scope of procedures to be performed. This increase in scope would create a significant cost burden for companies subject to these audit requirements, which could affect investors’ returns. Audit fees would undoubtedly increase due to 1) additional internal time spent implementing, documenting and evaluating these requirements, 2) a significant increase in the auditor’s utilization of attorneys, legal experts and other specialists to make assessments related to the scope of laws and regulations for each company and 3) additional litigation risk caused by the exacerbated expectation gap described above. Additionally, while the companies subject to audit may already employ or contract with specialists in these areas, management would need to increase their internal compliance functions, design additional internal controls over financial reporting and increase their use of management specialists. Therefore, companies would experience an increase in both audit fees and their own personnel costs and (or) legal fees, and these costs could affect investors’ returns.

Audit Committee Impact

The communication requirements of the proposed standard would result in a significant increase in overall volume of communications in addition to time spent by auditors, company management and audit committees to prepare, evaluate and respond to such communications. Paragraph .10 of the proposed standard states, “When the auditor identifies or otherwise becomes aware of information indicating that noncompliance with laws and regulations (whether or not perceived to have a material effect on the financial statements), including fraud, has or may have occurred, the auditor must, as soon as practicable and before the issuance of the engagement report, communicate the matters to:

- a. The appropriate level of management; and

⁷ Refer to release text, page A1-1

- b. The audit committee, unless the matter is clearly inconsequential or has been communicated as provided for in the note to paragraph .13 below.”⁸

While communication is key when material matters which directly impact the financial statements are identified and resolution is necessary, the requirements in this proposal are overly broad and include communication as soon as practicable for any matter which has or may have occurred, regardless of the consideration of materiality. The use of “as soon as practicable” is unclear. This could be interpreted to mean as soon as the auditor becomes aware of such matters, as soon as the auditor has performed procedures to obtain sufficient information to determine if the matter has (or may have) occurred or as soon as the auditor has been able to identify the impact of the matter and worked with management to identify the nature, cause and impact of the matter. This could result in inconsistencies in practice. On one end of the spectrum, some auditors may prematurely communicate to audit committees a significant number of matters which may subsequently be identified as inconsequential matters. It is important that the communication requirements do not result in the auditor communicating frivolous matters, which may inundate the audit committee with information that is not material to the financial statements, as this could ultimately detract from the audit committee’s perception of the value of the auditor’s communications and distract from other important communications. On the other end of the spectrum, if some auditors interpret the meaning of “as soon as practicable” differently than the Board does, they may not communicate sufficient or timely information to make a meaningful impact to investors as the Board intended.

Auditor Qualifications

The requirements within this proposal set an expectation for the auditor to exercise judgment and expertise in matters for which auditors are not experts. The Board intentionally removed language from extant AS 2405 focusing on the limits of an auditor’s skillset. While we understand the Board’s position to remove such language, we disagree with that position and we feel it is imperative for the Board to recognize that the limitation does still exist. Simply removing the language does not make it untrue.

Although the proposal acknowledges that auditors may need to retain attorneys or other legal experts to assist in the identification of relevant laws and regulations, the proposal does not acknowledge the extent that auditors would require and ultimately rely on the use of such specialists. Auditors understand and are capable of performing their responsibilities regarding laws and regulations which may have a direct impact on financial reporting. However, the auditor is not qualified to assess all potential laws and regulations which may impact a company. If the auditor engages specialists to assess the potential population of laws and regulations for consideration, this would likely require many experts across various disciplines, jurisdictions and specialties. For example, a large international company would be subject to many sets of laws and regulations across various jurisdictions. Such consideration would require assessment of reporting and operational laws and regulations across many countries with varying levels of complexity.

Feedback from the Legal Community

It is unclear in the proposal or other information related to this proposal whether or not the PCAOB has engaged with the American Bar Association or other similar groups of attorneys or legal experts to provide feedback on whether or not legal experts would be able to assist the auditor with the procedures necessary to identify laws relevant to the companies, evaluate their applicability and provide guidance on potential magnitude in relation to financial reporting. For example, would attorneys be willing and able to provide their expertise to the extent required by the proposed standard without violating attorney-client privilege? Would attorneys have the expertise to identify all relevant laws and regulations for a company

⁸ Refer to release text, page A1-7

and assist in their evaluation in relation to the financial reporting requirements? Could the legal community provide cost estimates for such services relevant to the PCAOB's economic analysis? We strongly suggest the PCAOB perform specific outreach beyond the exposure draft and comment letter process to ensure all impacted stakeholders are fully aware of the proposal and have both the ability and expertise to participate in the financial reporting ecosystem as will be required.

Roles and responsibilities

The proposed standard appears to blur the line between management and auditor responsibilities. As noted by Board Member Ho, "...the proposal introduces ambiguities regarding auditor obligations to investors, by transforming the auditor's role from one of providing reasonable assurance to one of performing a management function. The securities laws and their implementing regulations do not require a public company's management to identify all laws and regulations that the public company is subject to, and this proposal seeks to fill that void by requiring auditors to do so. This approach could undermine the long-established accountability framework whereby management prepares and discloses financial information, auditors provide an independent certification on the disclosures, and regulators provide oversight of the public companies and auditors. This accountability framework has been established since 1934 and is part of the bedrock of the trust built in our capital markets."⁹ We echo this statement and believe requiring the auditor to perform assessments beyond those required by management¹⁰ is a fatal flaw of the proposed standard. Defining auditor responsibilities to include providing reasonable assurance on matters which management is not responsible to prepare or attest to is not appropriate in the context of a financial statement audit.

We provide further detail on these areas, as well as other comments, in our responses to the specific questions set out below.

Comments on Specific Questions Posed by the Board

Given the short timeframe of the comment letter period combined with the vast scope and complexities of the proposal, we were not able to fully vet questions 51, 52, 54, 55, 56, 57, 58, 66, and 68 and thus have not included or responded to them below.

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

The proposed definition of "noncompliance with laws and regulations" is not sufficiently clear, as the proposed definition is very broad and is not aligned with the concept of financial reporting. While the definition includes reference to "any law, or any rule or regulation having the force of law," the Executive Summary to the proposal acknowledges that the auditor is not expected to identify and evaluate all possible laws and regulations to which the company may be subjected. Use of the word "any" in this definition appears to contradict this expectation.

The release states on page 89, "In our view, our proposed definition of 'noncompliance with laws and regulations' is generally consistent with the definitions of 'illegal act' in Section 10A and existing AS 2405... The proposed definition would create more clarity while generally not changing the scope of the

⁹ Refer to [Statement on Proposed Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations](#) made by Board Member Christina Ho on June 6, 2023

¹⁰ Management is required to state their responsibility for establishing and maintaining an adequate internal control structure over financial reporting and assessing the effectiveness of that internal control structure. In taking such responsibility and performing such assessment, internal control over financial reporting is defined by section 13(a) and 15(d) of the Securities Exchange Act of 1934.

existing standard.” We disagree with this statement, as we believe the definition is not consistent, significantly increases the scope and creates confusion rather than clarity.

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?

No, the rationale for including fraud in the definition of noncompliance with laws and regulations is not sufficiently clear and creates confusion as to which standard the auditor is required to follow if there is a fraud related to noncompliance with laws and regulations.

3. Is additional clarification necessary regarding the scope of the meaning of a company’s noncompliance with laws and regulations? If so, please describe or provide examples of the types of noncompliance where additional clarification is needed.

Yes, as included in our response to question 1, modification to the scope to include both consideration of materiality and consideration in relation to the financial statements is necessary.

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

No, the introduction to proposed AS 2405 is not sufficiently clear. Paragraph 1 includes no concept of materiality or reference to the relation of the standard to financial reporting. However, paragraph 3 rightfully includes references to materiality, yet still omits relation to financial reporting. Both paragraphs should be updated to clarify that the standard is bound within the auditor’s responsibility to express an opinion on the fairness on which financial statements present, in all material respects, financial position, results of operations and cash flows in conformity with generally accepted accounting principles.¹¹

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

The objectives for proposed AS 2405 are not sufficiently clear, based on the description of the scope and the lack of reference to materiality. While noncompliance, including fraud, is understandably a concern of management, the audit committee and investors alike, not all matters require significant attention. Management is responsible for the design and implementation of programs and controls to prevent and detect fraud. If management, with the oversight of the audit committee, determines that controls are appropriate and responsive to certain types of immaterial noncompliance, including fraud, the auditor should not be responsible for evaluating or communicating such matters with management and the audit committee.

For example, at a company with retail operations, there may be identified instances of employees who misappropriate assets from the store or steal money from the cash register. If management has implemented controls to identify and respond to such matters, identification by the auditor of this immaterial fraud should not require significant evaluation or communication to the audit committee. The proposed paragraph .04 d would nonetheless require the auditor to consider this instance of fraud. Evaluation of trivial matters will likely result in a detriment to audit quality, as the engagement team spends additional time and resources on trivial matters. Further, if the auditor frequently communicates trivial matters to the audit committee in compliance with the communication requirements in proposed AS 2405, the immaterial matters may detract from the quality and weight of communications from the auditor.

¹¹ PCAOB AS 1001, *Responsibilities and Functions of the Independent Auditor*

We recommend the objective of proposed AS 2405 be more closely aligned with the objectives described in extant International Standards on Auditing (ISA) 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*, issued by the International Auditing and Assurance Standards Board (IAASB) or with those described in extant AU-C 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*, as clarified by the Auditing Standards Board (ASB). The objectives of these standards account for the important distinction between laws and regulations that could have a direct effect versus an indirect effect on the financial statements. While they do not limit the requirements of the auditor to only the laws and regulations that could have a direct effect, they provide reasonable guidelines to ringfence the laws and regulations that could have an indirect effect for which auditors must perform certain procedures.

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

Please see our response to question 5.

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?

The proposed requirement is not sufficiently clear, nor is it appropriate. As discussed above in our overall comments, the threshold of “identification of laws and regulations with which noncompliance could reasonably have a material effect on the financial statements” is not a defined or established concept within auditing standards and is overly broad. This concept will not be clear to auditors, management, audit committees or investors and will likely be interpreted differently by each stakeholder. Ultimately, this will contribute to a greater expectation gap between auditors and investors.

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?

We are still evaluating whether it would be possible for auditors, without the assistance of specialists, to identify those laws and regulations applicable to the company with which noncompliance could reasonably have an indirect material effect on the financial statements. To make that determination, we must have further discussions with members of the legal community, issuers and industry groups. Discussions that we have had thus far have revealed that the legal landscape is vast and complex, and often issuers do not and cannot possibly know every applicable law and regulation.

For argument’s sake, if auditors are able to identify those laws and regulations with which noncompliance could reasonably have an indirect material effect on the financial statements, this would only be achievable with significant cost and additional procedures. Making such an assessment would require a number of procedures which are both outside the scope of a financial statement audit and outside of an auditor’s training and competency.

In order for an auditor to perform this type of assessment, the auditor would first need to identify all laws and regulations applicable to the company, as explained above. Beyond the need to identify the laws and regulations applicable to a company, the assessment of those which “could reasonably have a material effect on the financial statements” would require a sufficient understanding of the law to determine what would represent noncompliance as well as the potential impact of such noncompliance (i.e., what types of fines, penalties or other consequences could result from noncompliance as well as the likelihood of the consequences coming to fruition). For example, a company may not be in compliance with certain

Occupational Safety and Health Administration (OSHA) laws and regulations. This could potentially lead to someone being injured. How would an auditor determine the potential financial effect of such noncompliance? Factors to consider would include medical expenses (which could vary by the quantity and types of potential injuries) and potential fines by OSHA if detected. How could auditors evaluate the likelihood and magnitude of such noncompliance with such variability, intricate complexities and subjectivity?

The auditor would also have to obtain significant operational understandings that are generally not required or necessary to perform a financial statement audit. After obtaining such understandings, the auditor would have to evaluate the company's operations to determine compliance with the identified laws and regulations. For any instances of potential noncompliance identified, the auditor would then consider if the matter could reasonably have a material effect on the financial statements. Each of the steps described, other than the final evaluation, require significant legal expertise, lengthy procedures and robust gathering of audit evidence and documentation. As many of the laws and regulations with which a company may be subject are not related to financial reporting, the auditor is not qualified to understand what may constitute noncompliance or to assess if the company has displayed noncompliant actions. Such an assessment would result in extensive use of and reliance on legal experts or other specialists before the auditor can reasonably be expected to exercise their own professional judgment.

As an example, consider an audit of a convenience store chain that provides gasoline sales. Gasoline sales are regulated by multiple laws and regulations. One such law or regulation may be related to the accuracy of the volume of gasoline pumped and charged to the customer. If this is identified in management or the auditor's assessment of laws and regulations relevant to the company, how would the auditor then determine whether noncompliance could reasonably have an impact on the financial statements? Presumably there would be fines or penalties for inaccurate operations, but to what level would an auditor investigate to determine the potential impact? Would sensitivity analysis of the potential fines relevant to materiality be required? Would the auditor be required to engage experts in the field of operational compliance to evaluate the company's operating processes relative to gas pumps? The process to relate this back to an ultimate potential financial statement impact would be onerous with a benefit not surpassing the cost incurred.

While an auditor is expected to be familiar with the applicable financial reporting framework and the related laws and regulations that may impact that framework, the scope of laws and regulations that would be applicable under the proposed standard reach much further. Consideration of all types of operational, health and safety, local, state, federal and international laws and regulations falls outside of the auditor's responsibility to opine on the financial statements as a whole in relation to the relevant financial reporting framework.

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.

A key aspect in executing an appropriately designed audit is exercising professional judgment to identify risks of material misstatement and designing procedures which are responsive to the identified risks. When performing risk assessment and identifying risks, auditors consider both internal and external factors which may contribute to increased risk, including consideration of laws and regulations that may impact the entity. However, this consideration of laws and regulations as part of the risk assessment process focuses on those which are likely to impact financial reporting. For example, an entity that operates in a highly regulated environment is more likely to have an identified risk of material misstatement related to compliance with laws and regulations. Based on the identification of such risk, the

auditor may determine it is appropriate to incorporate certain compliance procedures or other analysis to determine if the company operates within the given framework.

The auditor should not be required to create a catalog of the laws and regulations which apply to the company, analyze compliance and assess the impact of potential noncompliance for any such matters identified. Such identification, analysis and assessment exceeds the scope of an audit; contradicts the risk assessment process included in PCAOB AS 2110, *Identifying and Assessing Risks of Material Misstatement*; goes beyond an auditor's area of expertise; and blurs the line between audit procedures and a management function.

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?

The requirement to assess and respond to the risks of material misstatement due to noncompliance is not sufficiently clear. While the preamble to the proposal states that this requirement is intended to elevate this requirement from a presumptively mandatory requirement to an unconditional responsibility, the expected extent of procedures to assess and respond to risks of material misstatement is unclear.

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?

The proposed requirement is overly broad. As discussed above, the scope of "those laws and regulations with which noncompliance could reasonably have a material effect on the financial statements" needs to be amended.

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?

In general, we support principles-based auditing standards accompanied by relevant, practical examples. We believe principles-based and nimble auditing standards give auditors the tools they need to perform the most effective audits regardless of the size of the firm or complexity of the issuer. As an auditor's professional judgment is a key aspect of designing and executing an appropriate audit, there are no specific procedures that the auditor should be required to perform to assist in the identification of noncompliance. Defining specific procedures may not be applicable to all companies and may result in ineffective procedures being performed for the purposes of compliance with the standard. Overall, the auditor should be permitted to exercise professional judgement to determine what procedures provide sufficient appropriate audit evidence based on the facts and circumstances of each audit engagement.

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?

Please see our response to question 12.

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?

There are not additional procedures to address.

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.

We are not aware of technology-assisted audit procedures to assess and respond to risks of material misstatement due to noncompliance.

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?

As noted above, it is not sufficiently clear.

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?

As noted above, we are not aware of a requirement for management to identify and evaluate all laws and regulations relevant to the company and their potential impact on financial reporting. As such, we do not believe the requirements for the auditor to understand such a process are clear.

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

No, the proposed requirements related to reading publicly available information about the company are not sufficiently clear. The newly updated lead-in to the list of considerations includes that "the auditor should perform 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". Paragraph .04 of AS 2110 states that "The auditor should perform risk assessment procedures that are sufficient to provide a reasonable basis for identifying and assessing the risks of material misstatement..." It is unclear how an auditor would determine what the phrase "might reasonably be expected" or "have a significant effect on the risks of material misstatement" mean. Neither of these phrases are defined or included in the remainder of AS 2110.

The scope of publicly available information required to be read is significantly increased from what is required in the extant standards. As written, auditors will now be required to read social media postings of all executive officers to determine whether or not they are related to company information. We have concerns that for an auditor to demonstrate completeness that all information listed in the note was evaluated would be overly burdensome and costly. Beyond the completeness of such information, how could the auditor sufficiently evaluate the relevance and reliability of such information?

Relatedly, “social media” is not defined in the proposed standard and it is unclear what this encompasses. For example, is a private Facebook account required to be considered under the proposed amendments? If so, how would an auditor possibly access that information? Additionally, there are several platforms, apps, websites, blogs, etc. that span the global internet – some are very prevalent while others have a much smaller user base and may not be known by the auditor. Is it limited to social media that is prevalent in the United States, or does this expand to the rest of the world? How could an auditor possibly discover all publicly available information? Further, are AI-generated platforms considered “social media” or public information? What would be the requirements for evaluating the credibility of such information?

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

Please see our comments above related to the concerns with the language “could reasonably have a material effect on the financial statements” which are also relevant to these proposed updates.

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?

We are concerned that this statement is overly broad and not bounded by materiality or relationship to the financial statements.

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

No.

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?

No, it is not clear what would constitute an operating strategy or strategies as included in the new requirement and what documentation the auditor would perform for such an evaluation.

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?

No.

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

We remain concerned that the focus of procedures is the determination by the auditor on the effect of the potential noncompliance, not the evaluation of the auditor of management’s assessment of the effect of the potential noncompliance. The auditor should be auditing the considerations prepared by management, not performing the considerations.

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?

Given this is a cross-reference within the standards, it is sufficiently clear.

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?

As included in question 24, we have concerns with the requirement for the auditor to perform procedures that should be performed by management, rather than perform audit procedures.

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?

No.

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?

When evaluating information to determine whether noncompliance may have occurred, it would be premature to consider the impact of potential noncompliance that may have occurred on other information in documents containing auditing financial statements.

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?

No, this requirement is not appropriate or sufficiently clear. The auditor is opining on the presentation of the financial statements as a whole; requiring the auditor to determine the appropriateness of remedial action of senior management in relation to likely noncompliance is not appropriately designed within the context of a financial statement audit. The material impact of the noncompliance on the financial statements is appropriately within the purview of the auditor. However, requiring the auditor to determine whether the remedial actions taken by management on items not directly related to the financial statements were timely and appropriate is not proper. For example, one item included in the proposed note to the paragraph related to whether management took appropriate disciplinary action against involved personnel. The evaluation of what is "appropriate disciplinary action" should not be the auditor's determination.

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

Please see our overall comments above, under the *Audit Committee Impact* subsection.

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

Please see our overall comments above, under the *Audit Committee Impact* subsection.

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?

No.

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?

Please see our overall comments above, under the *Audit Committee Impact* subsection.

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?

Please see our overall comments above, under the *Audit Committee Impact* subsection.

35. Does the requirement to communicate the results of the auditor’s evaluation of information indicating noncompliance with laws and regulations has or may have occurred pose any particular challenges? If so, how should the proposed requirement be changed?

Please see our overall comments above, under the *Audit Committee Impact* subsection.

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?

No, the auditor has a duty of confidentiality. Communication to investors should be made through the auditor’s report. Additional information beyond what is included in the audited financial statements should be made by management.

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

No, the lack of relation to materiality or the financial statements make this inoperable.

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 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?

No, the lack of relation to materiality or the financial statements make this inoperable.

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

No.

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?

There should not be a requirement for communication in the auditor's report regarding specific aspects of a company's noncompliance with laws and regulations. A requirement to include communication of noncompliance matters could be confusing to management, audit committees and investors alike. FASB ASC 450-20-25-1 addresses the requirement to recognize or disclose loss contingencies, which includes legal matters and noncompliance with laws and regulations, if the outcome of such events is probable and the impact of the loss is reasonably estimated. Likewise, in accordance with ASC 450-20-50-3, disclosure of a loss contingency should be made if there is at least a reasonable possibility that a loss or an additional loss may have been incurred. Based on the circumstances described within proposed AS 2405.19, the auditor's report may include a modification for a matter that is not recorded or disclosed in the financial statements which are prepared in accordance with U.S. GAAP. Including matters in the auditor's report that go beyond the scope of financial reporting will cause a disconnect in information and confusion for investors.

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?

There should not be specific incremental requirements, other than existing 8-K reporting requirements, related to communication of an auditor's withdrawal or resignation from the audit engagement specific to circumstances when noncompliance has been identified.

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?

As noted above, we are concerned with the thematic inclusion of determination by the auditor of the impacts of fraud rather than the evaluation of the auditor of management's determination of the impacts of activities of the company. This shift of responsibility from management to the auditor is not aligned with the foundations of auditing.

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.

As noted above, we are concerned with the thematic inclusion of determination by the auditor of the impacts of fraud rather than the evaluation of the auditor of management's determination of the impacts of activities of the company. This shift of responsibility from management to the auditor is not aligned with the foundations of auditing.

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?

We strongly encourage the PCAOB to perform specific outreach to those stakeholders commonly engaged as auditor's specialists. Given the short timeframe of the comment letter period combined with the vast scope and complexities of the proposal, we did not have the ability to perform our own outreach

to understand what procedures such specialists would deem necessary to provide the included written assertions or whether such specialists would be willing to provide such assertions within the scope of their work.

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

Yes.

46. What steps or procedures do auditors currently take or perform to comply with Section 10A obligations when information related to noncompliance is identified during an interim review?

The procedures performed are determined by the auditors' professional judgment and are not standard for all instances of compliance with Section 10A.

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?

The addition of this inquiry to paragraph .18c is not clear due to the reference to "laws and regulations that could reasonably have a material effect on the interim financial statements." We have discussed the challenges regarding the clarity of this phrase from an auditor's perspective.

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

The proposed amendment is sufficiently clear; however, such requirements may not be practicable to implement. As discussed in relation to the communication requirements included in proposed AS 2405, it is unclear at what stage the auditor is expected to communicate matters of noncompliance with management and the audit committee. It is important to clarify these expectations and the potential impact on interim review reports.

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

Please see our overall comments above under the *Audit Committee Impact* subsection regarding the use of the term "as soon as practicable." We have the same concerns regarding the term used in proposed AS 4105.32.

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?

No.

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

We agree from a structure perspective that including content as a footnote to AS 2805 rather than separately in AI 21 is more discoverable and useful to the auditors. However, we have concerns that the footnote language highlights the disparity of the proposed standard between the auditors' requirements to perform procedures and management's representation related to "matters that have come to management's attention," as discussed previously.

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

A number of the proposed amendments will be associated with substantial cost increases. Due to the significant scope expansion of the proposal combined with the unclear expectations of certain requirements, the cost is not quantifiable. Based on the stated objectives in the proposed standard, expected associated costs are as follows:

- Identifying laws and regulations with which noncompliance could reasonably have a material effect on the financial statements – This will result in substantial cost increases for both auditors and companies subject to audit. Due to the implicit requirement that a complete population of laws and requirements would be necessary for consideration, the auditor would require the use of various legal experts. As attorneys generally have areas of specialty and cannot reasonably be expected to provide sufficient detail of all laws and regulations outside of their areas of expertise, auditors will require input from various specialists on all audit engagements subject to these requirements. Further, the companies subject to these requirements likely employ their own in-house or general counsel. Similar to the assistance required by auditors, companies may also have to engage additional specialists outside of their general counsel to assist in responding to audit requests related to the procedures to be performed.
- Assessing and responding to the risk of material misstatement of the financial statements due to noncompliance with those laws and regulations – After the population of laws and regulations is identified in accordance with the first objective, the auditor, along with their specialists, will spend a significant amount of time assessing the population and determining appropriate responses to identified risks of material misstatement. Due to the expansive nature of the population of laws and regulations to be considered, this will cause a substantial increase in audit hours and consequently a substantial increase in audit fees which are likely to be passed on to the company.
- Identifying whether there are instances of noncompliance with laws and regulations that have or may have occurred – Performing analysis to specifically identify any instances of noncompliance from the population of laws and regulations identified will require an increase in the amount of audit procedures performed. Additionally, this analysis will likely require assistance from lawyers, legal experts or other specialists, as matters of noncompliance are not always easy to identify. For example, compliance with laws and regulations may include interpretations or uncertainties. In such instances, an auditor would likely not have the requisite knowledge to understand or identify potential instances of noncompliance without the assistance of specialists.
- Communication when the auditor becomes aware of or otherwise identifies instances of noncompliance, regardless of if the effect of the noncompliance is perceived to have a material effect on the financial statements – Communication of matters will not likely have a significant financial impact, as the majority of the costs would be associated with gathering the information to be communicated. Costs would mainly consist of the time spent by auditors, management, and the audit committee. However, based on the requirement to communicate with management and the audit committee regardless of if a matter is perceived to have a material effect on the financial statements, there is a likelihood that the volume of communication will increase. This could subsequently cause an overload of information for the audit committee and ultimately hurt the amount of value placed on auditor communications from the audit committee.

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?

As noted above, the proposed expansion of the auditor's responsibilities is not practical or cost effective.

We are concerned that small- and medium-sized public accounting firms and smaller issuers may not be capable of implementing these new requirements in a cost-effective manner. The standard is not scalable for smaller issuers. The comprehensive evaluation of laws and regulations would not necessarily be proportionate to the revenues or complexities of the company. Thus, the standard would be disproportionately costly for smaller issuers.

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?

Please refer to our response in question 59, which addresses our concerns with the proposed requirements for auditors to assess risks of material misstatement due to noncompliance with laws and regulations.

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?

There are substantial expected costs related to the increased need for the use of auditor's specialists, as noted in our overall comments.

These costs could be mitigated by modifying the scope of the standard to focus on materiality and the direct impact of noncompliance with laws and regulations on the financial statements.

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

Please see our response to question 60.

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?

Please see our responses above.

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?

Please see our responses above.

67. The Board requests comment generally on the alternative approaches described in this release that we considered, but are not proposing. Are any of these approaches, or any other approaches, preferable to the approaches that we are proposing? What reasons support those approaches over the approaches we are proposing? Would any other alternatives better promote investor protection, efficiency, competition, or capital formation?

We agree that there is room for improvement regarding investor protection from repercussions of noncompliance with laws and regulations. However, as articulated throughout this letter, we believe the proposal does not effectively or efficiently achieve this goal. We believe there are alternative approaches that should be considered. As described in the release, “the Board’s policy tools include alternatives to standard setting, such as issuing additional interpretive guidance or an increased focus on inspections or enforcement of existing standards.” However, we believe the Board has additional tools, including influencing policy change from other regulatory bodies, such as the Securities and Exchange Commission (SEC) and the United States Congress, particularly the House Financial Services Committee.

We highly encourage the Board to leverage their value of collaboration¹² and engage in productive discussions with various stakeholders, including investors, auditors, management, audit committees, auditor’s specialists, attorneys or legal experts, the SEC, and members of Congress, on how to best improve investor protection on this matter from a holistic perspective rather than with a limited view of what is within the realm of possibilities within audit standard setting. We believe audit standard setting is only one piece of the intricate puzzle.

Regarding alternative approaches described in the release, please see our overall comments and our response to question 1.

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?

Given the significant concerns raised by the proposal, we do not believe it would be appropriate to comment on the timing of compliance in its current state. In order for Board to achieve their goal of investor protection and uphold their values of collaboration and accountability, we believe it is necessary for the Board to respond to the concerns of stakeholders through the redeliberation and, ultimately, re-proposal of amendments to standards for the auditor’s consideration of possible noncompliance with laws and regulations.

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

Please refer to our response to question 69.

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¹² Collaboration is one of the PCAOB’s values listed on its website with the following description: “We are dedicated to a culture of collaboration and inclusiveness, which we foster by encouraging openness, accessibility, trust, and respect. We embrace a diverse set of experiences, skills, perspectives, and backgrounds, which enriches our work and enhances the effectiveness of our efforts.” <https://pcaobus.org/about/mission-vision-values>

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We would be pleased to respond to any questions the PCAOB or its staff may have about our comments. Please direct any questions to Adam Hallemeyer, Deputy Chief Auditor, at 619.641.7318, or Sara Lord, Chief Auditor, at 612.376.9572.

Sincerely,

RSM US LLP

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