



November 2, 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. 053

Dear Board Members:

The Audit and Assurance Services Committee of the Illinois CPA Society (“Committee” or “we”) appreciates the opportunity to respond to PCAOB Rulemaking Docket Matter No. 053, *Proposed Amendments to Rule 3502 Governing Contributory Liability*, dated September 19, 2023. The organization and operating procedures of the Committee are reflected in Appendix A attached 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:

We support the PCAOB’s efforts in protecting the public interest and promoting audit quality; however, we have certain concerns regarding the necessity, application, and overall impact of the profession of the amendments as proposed. The consequences of the proposed amendments may have significant impacts on the profession as a whole (see further discussion below). While we responded to select questions found in the proposal, some of these concerns may address other requests for comment as well. The Committee represents a diverse group of auditors with respect to firm demographic and role, including members of academia and the consulting profession. As such, we feel that we bring a unique perspective to respond to this proposal and appreciate your consideration of our thoughts herein.

PCAOB QUESTIONS AND COMMITTEE RESPONSES:

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

Response: Yes, we believe the regulatory concern related to Rule 3502’s inconsistency between the liability threshold for firms (negligence) versus that of individuals (recklessness) and its connection to the ability to pursue enforcement actions against individuals associated with a firm’s negligence is clear. Additionally, the issue related to a contributory individual’s association with “any” registered public accounting firm makes sense.

We agree with the PCAOB’s statement that, “[i]t logically follows that when a registered firm is found to have acted negligently, it is likely that such negligence is attributable to a natural person’s negligence.” The firm is the sum of its parts, but it is likely that the action of one or more individuals as opposed to the firm as a whole contributed to or allowed the violation to occur. We do not necessarily believe, though, that the individual or individuals are solely responsible for such violations when negligence is the standard, which is articulated in our responses below.

Question 3: Would addressing the regulatory concerns discussed above incentivize associated persons to more fully comply with the applicable laws, rules, and standards that the Board is charged with enforcing against registered firms?



Response: Though the proposed change may address an inconsistency within the extant rule, we do not believe it would necessarily further incentivize individuals.

As firms only function through individuals who ultimately act of their own accord, we agree with the PCAOB's premise that negligence links back to associated individuals who do not exercise reasonable care. However, we also know that the firm has an integral role in shaping the auditor through its training, quality control program, the tools and methodology it requires adherence to, and its internal monitoring efforts. As such, we believe that the firm should be held to a higher standard as it sets the "tone at the top," no different than the relationship between management and employees in the entities that we audit. The ultimate failure or negligence likely stems more from the actions of the firm as a whole with its training and monitoring of its audits vs. the negligence of any individual auditor (national office or client server). In fact, during the conduct of an audit, engagement team members are using the firm's policies and tools and there may even be instances in which the engagement leader is required to act or conclude in a certain manner as a matter of firm policy. Thus, we question if there is a need to decrease the threshold for individual liability when the individual is ultimately linked to the audit and the firm.

When a firm violates its professional standards, it is subject to findings in PCAOB inspection reports and, when negligent, potential charges, fines, and sanctions from the PCAOB. These are public information and, specific to PCAOB inspection reports, the recent changes made to the format and presentation provide the public with detailed information related to the findings identified on individual audits. To the extent that Part II findings are disclosed, it provides even further insight into the firm's quality control program and more holistic issues present at the firm with respect to audit quality. PCAOB inspection reports have the potential to significantly impact the reputation of the firm both positively and negatively, and charges, fines and sanctions generally have an adverse impact. The fact that the PCAOB publicly highlights firm quality control observations in Part II of its inspection reports appears to indicate that there is a higher threshold for competence, quality, and responsibility at the firm level.

Part I.A and Part II findings have an indirect impact on the individuals in the firm, including those that served on those audits, that may take the form of reduced responsibility (e.g., removal of designations, limitations on clients served), lost clients and downgraded performance indicators. Ultimately, the firm's "tone at the top" and preventative measures (e.g., standards compliant tools, required trainings, engagement reviews) generally guard against collective and individual negligence. Therefore, the firm's approach to prevent and actions that respond to instances of negligence may impact the individual more, as the firm's actions may more directly dictate an individual's future. If the intention of increased individual liability is to support a greater commitment to due professional care and audit quality, we propose this can be achieved through holding the firm to the negligence standard and through firm level comments, as remediation efforts often include training, tools, methodology changes, and firm actions specific to individuals to directly respond to the shortcomings.

As such, we question if the decreased threshold from recklessness to negligence will directly impact audit quality in a meaningful manner and if the benefits to the public interest outweigh the costs that we outline below with respect to reputation and appeal of the audit profession.

It is also unclear as to whether there would be instances in which an individual would be subject to liability and not the firm. If that is likely not the case, we feel that the impact of the finding would be felt under the extant standard when the firm is found negligent and takes responsibility to address the violation. The sentiment of many commentors on the original proposed standard stands (refer to FN 17 of the proposal):

"Their objections were based principally on the view that negligence might be an ill-suited liability standard "in light of the complex regulatory requirements with which auditors must comply" and out of concern that such standard "would allow the Board, or the SEC, to proceed against associated persons who in good faith, albeit negligently, have caused a registered firm to violate applicable laws or standards."



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

Response: The Committee acknowledges that the use of *negligence* and *recklessness* differ within the extant PCAOB rule (firm vs. individual) and between the PCAOB rule and the SEC rules and regulations. Nonetheless, we have concerns regarding how the negligence-based standard for individual liability would be applied and how that application may differ from the SEC's application.

The PCAOB standards include many references to *due professional care* and that appears to be foundational to the definition of negligence presented in the proposed rule (underpinned by the discussion of "reasonable care" in the background material). Many firm PCAOB inspection reports, particularly Part II findings, contain reference to the lack of due professional care as being a contributory factor in the violation.

The proposed standard retains the phrase "directly and substantially." We believe this language aims to delineate between any of the violations of the due professional care standards vs. those that would contribute to personal liability in the context of the proposed rule. It is unclear, however, if the application of these terms will be applied differently moving forward in light of the proposed amendments. With many firms having findings related to due professional care that are public through Part II of inspection reports, we are unsure if it is expected that many of those would fall under the category of negligence and result in personal liability. Further, this may be confusing for investors and users, if due professional care findings are significant enough for public disclosure in Part II findings, but not enough to result also in charges, fines, or sanctions.

While our committee is not primarily comprised of legal professionals, it was unclear from the proposal the extent to which legal professionals were consulted when drafting the proposal and the actual impact it would have on the number of violations identified. Once again, with so many references to due professional care in the PCAOB standards and a broad definition of "directly and substantially", we have concerns surrounding the consistency with which the definition will be applied and how the public will be able to understand the difference between due professional care findings that they may see in PCAOB inspection reports and other press releases.

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

Response: See response above for Question 7 regarding the clarity of "directly" and "substantially" terminology use.

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

Response: The proposal discusses incentivizing appropriate due professional care and behavior, but such *negligent* or *reckless* auditors may in fact be those that are the least risk averse and would be inclined to continue auditing despite this additional personal liability risk. The most risk averse auditors, those who may employ the most due professional care and professional skepticism, may be those that leave or do not enter the profession in the first place. A firm's national office and risk management personnel serve an integral role in developing, training, and monitoring auditors, and to potentially discourage those individuals from serving in such roles if there is the potential for increased contributory liability could have a major impact on audit quality. We encourage the PCAOB to consider this when determining if the amendments are appropriate for the profession at large.

Question 14: Are there any data sources that could provide a quantitative estimation of the expected benefits and costs? If so, please provide the names of such sources.



Response: While we did not identify additional data sources for use in developing a quantitative estimate of expected costs or benefits, we believe that a more in-depth investigation of available information would better illustrate the actual need for or benefit of any rule change. Table 1 (found within the proposal) illustrates the historic rate of Rule 3502 violations as a percentage of firms sanctioned over the last 13 years. The discussion notes that *“in nearly two-thirds of cases in which a firm was charged with a violation, no contributory actor was held accountable under Rule 3502.”* However, though likely presumed, this analysis does not delve into whether the 158 cases without Rule 3502 charges could have merited or supported a Rule 3502 charge associated with individual negligence had the option been available. This evaluation (even if over a shortened period – i.e., over the last five rather than 13 years) would allow an estimate of the actual increase in the number of Rule 3502 charges under the proposed amendments.

Additionally, with the increased focus on firm quality control, information on whether firms themselves took substantial internal action against individuals associated with issues leading to firm sanctions (regardless of whether Rule 3502 charges existed) would be beneficial in determining the need for the expansion of Rule 3502’s scope. Consequently, we would encourage the PCAOB to conduct a survey regarding the resulting internal impact of its enforcement actions at the firm level on associated individuals before proceeding.

Finally, absent any measure of the impact on audit quality and the public interest, we do not feel that the proposed change to the extant standard is warranted.

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

Response: It is clear from recent surveys and studies¹ and our own experience in academia and the audit profession that the talent pool and pipeline is a major concern. Notably, enrollments in bachelor’s and master’s degree programs have been declining over the past decade and experienced a significant decline recently in 2020-2021.² As such, any efforts made by standards setters that directly or indirectly impact the appeal of the profession are of interest. We appreciate the need to protect the public interest, but that can only be done with high quality auditors available to execute the audit work. We fear that proposed standards/amendments, such as the recent Noncompliance with Laws and Regulations (NOCLAR; PCAOB Rulemaking Docket Matter No. 051) and the rule change discussed here, may deter qualified and experienced individuals from remaining in the profession or joining the profession as they feel that the personal responsibility and liability is too great in comparison to other career paths.

Board members Duane DesParte and Christina Ho expressed these same concerns about the proposal, particularly that:

“...the proposal might not present a workable or fair framework for contributors’ liability due to unique challenges from the nature of auditing.

Ho said the consequences of the proposed changes could spur junior auditors to leave the profession, prompting less qualified people to rise to fill important audit roles. “I am concerned that a failure to signal audit expectations [about future charges] upfront in the proposal may exacerbate the accounting talent crisis....”³

¹ <https://www.shrm.org/hr-today/news/all-things-work/pages/the-cpa-shortage.aspx>
<https://www.journalofaccountancy.com/news/2023/jul/accounting-talent-shortage-is-focus-of-new-advisory-group.html>

² Association of International Certified Professional Accountants (2023). *2023 Trends Report*. Retrieved from: [2023 Trends Report | Professional Insights | AICPA & CIMA \(aicpa-cima.com\)](https://www.aicpa-cima.com/2023-trends-report) 10/24/2023.

³ <https://www.wsj.com/articles/pcaob-proposes-expanded-liability-for-individual-auditors-involved-in-firm-violations-a940f300>



These are the same two individuals that expressed concern regarding and dissented on the NOCLAR proposal. As CPAs, both provide important perspective, insight on how the public accounting profession operates, and what regulations are inherently viable and reasonable. If they, as current, tenured CPAs, have concerns over the reputation of the profession, which could further exacerbate the present talent problem, we feel that their insights should be strongly discussed and considered. The combination of the proposed NOCLAR amendments and this proposed rule change would significantly increase the scope, responsibility, and liability of individual auditors, and may have an overall negative impact on the profession, which could lead into an unintended negative impact on the public at a time when demand for accountants and auditors is expected to rise at a rate greater than the demand for overall workers.⁴

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

⁴ United States Bureau of Labor Statistics (2023). *Occupational Outlook Handbook*. Retrieved from: [Accountants and Auditors : Occupational Outlook Handbook: : U.S. Bureau of Labor Statistics \(bls.gov\)](https://www.bls.gov/occupational-outlook-handbook/) 10/24/2023.



ILLINOIS CPA SOCIETY

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
Erik De Vries, 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

Industry/Consulting:

Sean Kruskol, CPA

Cornerstone Research

Educators:

Meghann Cefaratti, PhD

Northern Illinois University

Staff Representative:

Heather Lindquist, CPA

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