



HOT TOPIC SUPPLEMENT

PCAOB NOCLAR

Public roundtable debates proposal

March 2024



Some consensus, but discussions underscored the substantial work that remains before the Board can issue a final standard.

On March 6, 2024, a diverse group of auditors, preparers, legal experts, investors, and professors gathered for a virtual roundtable hosted by the PCAOB. The focal point of the dialogue was the PCAOB's NOCLAR proposal. The roundtable aimed to foster public outreach and facilitate discussions on various aspects of the proposal as the PCAOB staff strives to develop an operable standard that adequately safeguards investors' interests.

The scope issue

There was no clear consensus on a workable, appropriate threshold to define auditors' responsibility for identifying the relevant population of laws and regulations or their role in detecting noncompliance.

Investor panelists addressed auditor concerns that the proposal would require auditors to identify all laws and regulations relevant to an entity and to detect all instances of NOCLAR by clarifying they do not expect that outcome. However, although there was general agreement that specific words in the standard matter because they can be subject to differing interpretation, there were varying perspectives on what language could be used address concerns previously raised by auditors. Further, there was considerable debate as to whether the proposal would require compliance audits for the laws and regulations within whatever population results from applying a threshold to detect noncompliance.

Auditors shed light on their current practices under the existing auditing standard, particularly in identifying and evaluating potential NOCLAR that could result in the accrual of loss contingencies or might necessitate disclosure in the financial statements. Other panelists elaborated on the existing expectation gap between what auditors do and expectations of those relying on their report.

The panel discussion on costs and benefits underscored the need to resolve the scope issue before conducting a valid cost/benefit analysis.

Some common ground

Despite the divergence in views on the proposal's key aspects, there were several areas with some level of accord. No panelist denied that the current standard – which was adopted on an interim basis more than 20 years ago from the even older AICPA standards that existed at that time – requires modernization and that auditors can contribute more as it relates to auditing NOCLAR.

Further, most of the discussion focused on the gating issues of the scope and objectives of the proposed amendments, and not on what they would have auditors do to evaluate instances of potential NOCLAR once identified. There seems to be less controversy over auditors' responsibilities to evaluate potential NOCLAR than their responsibilities to detect NOCLAR.

The panelists also agreed that, while additional clarification is needed in the proposed amendments, any final standard or associated release should not alter an entity's ability to use the attorney-client privilege and work product doctrines to avoid disclosure of privileged information. A final standard should also clarify that the auditor can use the entity's process over identifying noncompliance as a starting point for their assessment – noting that the auditor should obtain an understanding of that process and test the relevant controls. However, the proposal's requirements for auditors and the requirements of management within the financial reporting and regulatory frameworks remain misaligned.

Where that leaves us

The varied perspectives on the proposal's key concepts, expressed at the roundtable and in submitted comment letters, underscore the significant challenges that remain in developing an updated NOCLAR standard. The briefly reopened comment period, ending March 18, will likely yield additional suggestions and highlight persisting concerns that were on display during the roundtable.

The PCAOB will need to consider the feedback as part of its due process. Several panelists suggested that the PCAOB leverage its inspections process and target teams to gain further insight into the problem it aims to address, and to identify existing inconsistencies and best practices in auditing NOCLAR prior to the issuance of a new standard.

The PCAOB's standard-setting agenda indicates that a final standard is anticipated in 2024. However, this timeline will depend on the Board's redeliberation of the feedback, the extent of changes made to the proposal, and the Board's decision on whether to re-propose. Whether re-proposal is necessary was yet another area where the panelists were divided.

KPMG LLP appreciates the opportunity to have participated in the roundtable discussion and looks forward to continued dialogue to support the development of a NOCLAR standard that best serves the public interest.

Contact us

Doug Besch
Chief Auditor, Dept. of
Professional Practice

dbesch@kpmg.com

Hershell Cavin
Partner, Dept. of
Professional Practice

hwcavin@kpmg.com

Halie Creps
Partner, Dept. of
Professional Practice

ccreps@kpmg.com

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