
Auditing Standard 16 Developments

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The Public Company Accounting Oversight Board's new Auditing Standard 16—*Communications with Audit Committees*—remains pending before the Securities and Exchange Commission. Only a handful of comments on the standard have been filed. The [comment letter](#) filed by the United States Chamber of Commerce objected to AS 16 on the principal ground that the PCAOB did not conduct an adequate cost-benefit analysis to support applying AS 16 to emerging growth companies, as defined in the Jumpstart Our Business Startups (JOBS) Act. The JOBS Act exempts emerging growth companies from new PCAOB auditing standards, unless the SEC affirmatively finds that applying the standard to audits of such companies “is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.” Interestingly, [the PCAOB filed a written response](#) disagreeing with some of the Chamber's comments. The deadline for SEC action on the standard is December 17.

Meanwhile, audit committees, companies and their advisers should focus on the new standard's requirement that the auditor inquire of the audit committee “whether it is aware of matters relevant to the audit, including but not limited to violations or possible violations of laws and regulations.” Auditors already have responsibilities to implement audit procedures to consider the effect of possible legal violations by the audit client. Section 10A of the Securities Exchange Act imposes obligations on public company auditors with respect to the detection, investigation and reporting of illegal acts. Current Auditing Standard 12 requires auditors to make inquiries of audit committees regarding matters related to fraud, alleged fraud or suspected fraud affecting the company, as well as tips or complaints about the company's financial reporting (including through the whistleblower hotline) and the audit committee's responses to such tips and complaints. Similarly, management is required to provide information in response to inquiries from the auditors about compliance with laws and regulations and to make certain representations regarding legal compliance in its management representation letter. AS 16 adds another formal step to this process. Audit committees will need to respond forthrightly to the auditor's inquiries but at the same time should be carefully advised about how to respond. Among other things, committee members will need to ensure that they present information in a way that does not risk encroaching on attorney-client or attorney work-product privileges.

