

August 17, 2017

Ms. Sherry Hazel  
Audit and Attest Standards  
American Institute of Certified Public Accountants  
1211 Avenue of the Americas  
New York, NY 10036-8775  
Dear Ms. Hazel:

We appreciate the opportunity to comment on the Auditing Standards Board's (ASB) Proposed Statement on Auditing Standards (SAS), *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*.

Overall, we are in support of the proposed SAS as it appears to provide clarity to the responsibilities of both management and the auditor, as well as provide clearer objectives and directives related to the audit procedures performed. We believe this will help make ERISA plan audits more consistent and lead to stronger compliance as issues are identified. While this will likely increase costs to some plans, the majority of the procedures outlined in the proposed SAS should already be incorporated into plan audits in response to the risk assessments. The plans who will have the most significant increase in price will likely be those whose auditors were not already incorporating appropriate procedures into their audits.

In addition to our overall views on the proposed ASU, we have responded directly to the questions posed in the Exposure Draft as follows:

#### **Issue 1—Required Procedures When an ERISA-Permitted Audit Scope Limitation is Imposed**

Generally, we believe that the procedures and guidance in paragraph 20 will achieve the desired objectives. However, we do not believe it is appropriate to require the auditor to evaluate disclosures related to the certified information, as outlined in paragraph 20d. In order to audit the form and content of the disclosures, practitioners need to understand the investments, including their risks, methods of valuation, appropriate classification within the fair value hierarchy, and proper recognition of investment-related activity, among others. To do so, the practitioner would need to apply additional procedures (such as testing the underlying assumptions and methods used to estimate the fair value). These additional procedures, along with the procedures identified in the proposed amendments, constitute full-scope audit procedures. As a result, these procedures are contradictory to this ERISA permitted scope limitation. If the scope exception applies to investments and investment-related activity, it should also extend to the related disclosures.

#### **Issue 2—The Form and Content of the Auditor's Report on ERISA Plan Financial Statements with the ERISA-permitted Audit Scope Limitation**

Overall, we support the proposed amendments to revise and clarify the form and content of the auditor's report. However, we believe the report should contain "except for" language, similar to that required for nonpervasive scope limitations in extant AU-C section 705. The primary user of the ERISA plan financial statements is the Department of Labor (DOL), which is required by ERISA to provide relief for the audit of investment and investment-related activity in the auditor's procedures. The primary user thus understands the scope limitation, including its purpose and implications, and

has indicated a disclaimer of opinion does not meet its needs due to the confusion it causes among some auditors regarding the procedures they are required to perform. Therefore, a qualified opinion, as opposed to a disclaimer of opinion, provides a better representation to the users of the financial statements regarding responsibilities and procedures performed. A qualified opinion also provides clearer reporting to both the practitioner and the readers regarding procedures required to be performed, responsibilities assumed and the opinion reached.

As noted under Issue 1 above, the procedures set forth related to the certified investment information are full scope procedures and would not be sufficient to provide an opinion regarding whether the form and content of the certified investment information presented and disclosed in the financial statements are in accordance with U.S. generally accepted accounting principles. If the scope exception applies to investments and investment-related activity, it should also extend to the related disclosures. Therefore, we believe item (d) in the Auditor's Responsibility section of illustration 3 (paragraph A148) should be deleted.

Under the Basis for Limitation on the Scope of Audit paragraph, we suggest clarifying that the referenced Code of Federal Regulations sections contain the provisions whereby the trustee or custodian certifies that the information is complete and accurate, as this will better enable the readers to understand why the practitioner is not auditing this information. This could be achieved by combining the two paragraphs in this section.

In the last paragraph of Management's Responsibilities for the Financial Statements and the Limitation on the Scope of the Audit, we suggest including that management is responsible for obtaining necessary determination letters, when applicable, and ensuring that the plan document is in compliance with the Internal Revenue Code (and any changes thereto).

### **Issue 3—Modifications to the Opinion in the Independent Auditor's Report**

We agree that reference to AU-C section 705 in the event of the items described in paragraphs 31 and 34 is appropriate. The guidance presented in AU-C section 705 is sufficient to address the circumstances. Modifying AU-C section 703 to provide further changes to the opinion for ERISA plan financial statements in the event of these circumstances would be unnecessarily complex, as the impact of any future amendments to AU-C section 705 would need to be considered as they relate to AU-C section 703. This also further solidifies the reasoning to use a qualified opinion for ERISA plan financial statements when there is a DOL limited scope exception imposed, rather than use of a disclaimer of opinion.

### **Issue 4—Required Emphasis-of-Matter Paragraphs**

We are not in agreement that all of the situations identified are appropriate for the inclusion of emphasis-of-matter paragraphs. AU-C section 706 indicates that "emphasis-of-matter paragraphs should be included when the auditor considers it necessary to draw users' attention to a matter or matters presented or disclosed in the financial statements that are of such importance that they are fundamental to users' understanding of the financial statements." In our opinion, the majority of the items listed in paragraph 116 would not qualify under this definition. We do believe that in the event a minimum funding waiver is pending before the Internal Revenue Service, a necessity may arise for an emphasis-of-matter paragraph as this could be a situation that meets the above definition.

Furthermore, paragraph 116 refers to “significant” plan amendments and “significant” changes in the nature of the plan, which is undefined. As a result, there may be instances in which practitioners will unnecessarily include such paragraphs.

The intent of this requirement seems primarily to put the DOL on notice regarding such events and is not relevant to all users of the plan’s financial statements. We believe an amendment to the Form 5500 regarding such inquiries would be more practical.

#### **Issue 5—Reporting Internal Control Deficiencies**

We are in agreement that reporting internal control matters to those charged with governance is sufficient and do not believe inclusion in the auditor’s report is necessary. Given that the plan’s financial statements are made public and that some of the internal control comments may include information that is highly sensitive or proprietary in nature, there is a risk that such information would become available to an entity’s competitors and be used in an undesirable way, or result in the loss of customers.

#### **Issue 6—Certain Requirements for Audits of ERISA Plan Financial Statements and Related Required Report on Specific Plan Provisions Relating to the Financial Statements**

Overall, we are in agreement that the procedures identified in paragraphs 15-16 will improve the consistency and quality of audit work performed. The risk lies primarily in the areas management can influence (such as the amount withheld for salary deferrals, calculation of the employer matching contribution, and use of forfeitures). Many of these procedures should already be incorporated into the procedures being performed as a result of the risk assessments made. However, certain items may be clearly immaterial, such as plan expenses and forfeitures. For example, paragraph 15b requires testing whether expenses and fees were properly recorded in participant accounts. In the majority of cases, plan expenses and fees are not material and it seems unnecessary to require such procedures when the financial statements would not be materially misstated. Therefore, we believe the practitioner should be able to apply some level of materiality to this testing.

We also believe that provisions surrounding loans should be performed (subject to materiality), for example, whether the amounts withheld from participants’ paychecks are in accordance with the loan amortization schedule and did loan repayments commence timely.

We recommend the results of these procedures be presented in a separate report, which we would encourage the ASB to recommend the DOL not include in the publicly available portion of the plan’s Form 5500 filing on the DOL’s website, as there may be sensitive information that management would not like disclosed to its competitors or customers, or that would be misunderstood by participants. We also recommend that the SAS require findings be placed in context, by indicating the number of instances of noncompliance identified and the number of items tested, and that the illustrative report in paragraph A148 be modified accordingly.

The additional required procedures should not result in significant additional costs, as most of the procedures should already be performed in response to the identified risks. The cost could be mitigated by factoring in materiality, as noted above. Additional costs will be incurred relative to the drafting of the findings in the auditor’s report or a separate letter. Given that information will be sensitive, there will likely be several rounds of edits between the client and the auditor before a final conclusion on wording is reached.

### **Issue 7—Required Procedures Relating to the Form 5500**

We are not in agreement with the second sentence of paragraph 37, as we do not believe there should be any situations in which it is not possible to obtain a draft of the Form 5500 prior to the release of the auditor's report. The primary purpose of the audit is to attach the auditor's report to the Form 5500 filing. Therefore, if the Form 5500 is unavailable, there is no need to release the auditor's report prior to that time. We believe that providing practitioners with an exception such as this would lead some practitioners to believe that it is an acceptable practice to release their report prior to reviewing the draft Form 5500. Therefore, it should be a requirement that the practitioner review a draft of the Form 5500 prior to report release.

Practitioners will often review a draft of the Form 5500 and provide the client and its Form 5500 preparation service provider with edits. If those edits are not made, or are not made properly, discrepancies can occur without the auditor's knowledge. Therefore, we believe the guidance provided in paragraphs 43-45 is appropriate.

### **Issue 8—Proposed New Reporting Standard and Amendments to Other AU-C Sections**

We are in agreement that a separate AU-C section 703 would provide more meaningful information to practitioners performing ERISA plan audits. However, changes to other AU-Cs will necessitate the consideration of the impact on AU-C 703 and, therefore, we recommend referencing other AU-Cs as frequently as possible to reduce redundancy. For example, reference to AU-C section 705 is appropriate in instances where there are additional scope limitations or departures from U.S. generally accepted accounting principles. It is not necessary to include such guidance within AU-C 703.

### **Issue 9—Proposed Effective Date**

We are not in agreement with the proposed effective date, as we do not believe this will provide practitioners with sufficient time to educate their clients. Furthermore, many practitioners rely on third-party service providers for guidance on such amendments to U.S. generally accepted accounting principles and we do not believe this date would give them sufficient time to update their modules. We believe an effective date for ERISA plan audits of financial statements for periods ending on or after June 30, 2019 would be more ideal.

We appreciate the opportunity to submit these comments for your consideration and look forward to the ASB's consideration of feedback on the proposed ASU and decisions regarding the next steps.

Sincerely,

*Berry Dunn McNeil & Parker, LLC*

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