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

RE: Proposed Statement on Auditing Standards, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*

Dear Ms. Hazel:

We appreciate the opportunity to provide comments on the Auditing Standards Board's (the Board) proposed Statement on Auditing Standards, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA* (Proposed Standard). We are supportive of the Board's efforts to promote consistency of auditor responsibilities, as a matter of public interest, when auditing ERISA employee benefit plan (ERISA plan) financial statements.

We agree with the Board that inconsistent behaviors exhibited by some auditors in not obtaining a proper understanding of the auditors' responsibilities when management imposes an ERISA-Permitted audit scope limitation (Audit Scope Limitation) has contributed to a decline in overall audit quality. Some of the requirements in the Proposed Standard are likely to improve the quality of ERISA plan audits, including those regarding management's acknowledgement of responsibility for obtaining an appropriate certification as a condition for electing the Audit Scope Limitation, and the auditor's considerations of the Form 5500.

We believe the objectives and specific requirements in the Proposed Standard may be extending the auditors responsibility beyond what is required by ERISA and the relevant DOL Rules and Regulations (hereafter referred to as DOL Rules and Regulations). Moreover, expanding the audit requirements to including reporting on findings places the responsibility for the identification of deficiencies in plan operations on the auditor rather than the plan administrator.

For reasons which will be further discussed in our detailed responses, we are not supportive of the following aspects of the Proposed Standard:

- We believe the limited procedures included in the Proposed Standard provide insufficient clarity as to what is expected of auditors, and forming an opinion when the account balances and classes of transactions certified (unaudited) are material and pervasive would be inconsistent with AU-C section 705, *Modifications to the Opinion in the Independent Auditor's Report*. Further, we believe a reporting model similar to AU-C section 600, *Special Considerations – Audits of Group Financial Statements, including the Work of Component Auditors* when dividing responsibility among auditors, to describe an opinion based on audit procedures and certified information may be misunderstood by users of the financial statements.

However, we do recognize the unique nature of the Audit Scope Limitation, and accordingly, the auditing standards should be amended for these unique engagements, with specificity of

procedures to be performed, and transparency of such procedures to the users of the EBP plan financial statements, and the auditors' reports thereon.

- The Proposed Standard should not repeat, for some paragraphs twice, the requirements and application guidance that is already part of other relevant sections of the existing auditing standards, most significantly AU-C section 700. Auditors are responsible for applying the body of auditing standards to ERISA plan audits, and we believe following the reporting standards should not be any different. Instead, this Proposed Standard should be limited to differences or incremental requirements, such as the procedures and form and content of the auditors' report for Audit Scope Limitation engagements.
- The focus areas included in paragraphs 15 – 16 of the Proposed Standard may mislead auditors and financial statement users by emphasizing certain plan provisions and operational matters over others that may be equally important but not specified in the Proposed Standard. We believe that there may be an unintended consequence of inadequate response if auditors use these requirements as a checklist in lieu of performing an appropriate risk assessment, particularly because the Proposed Standard uses the words “irrespective of the risks of material misstatement”. In addition, we do not support the proposed requirement to report findings from testing specific plan provisions in the auditors' report because we do not believe it is appropriate for the auditors' report to be the primary source of information about the plan to regulators and plan participants. Findings should be directed to those charged with governance.
- We believe it is not in the public interest to change auditor reports for ERISA plans as a result of this Proposed Standard to then require further change to the reports when other changes to the auditors' reports become effective.

Way Forward

In addition to focusing on the transparency of auditor reporting, we believe this is the Board's opportunity to reset its expectations through specific requirements, for all ERISA plan audits irrespective of Audit Scope Limitation. Many of our suggestions build on the interpretative guidance in the AICPA's Audit and Accounting Guide Employee Benefit Plans (the Guide). We offer the following recommendation and would be pleased to assist the Board with incorporating them into the Proposed Standard:

- There should be an explicit requirement to obtain an understanding of the plan document provisions, and how the plan uses service organizations (for example, recordkeepers, claims processors, and trustee agreements) in applying AU-C section 315, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement* (AU-C section 315) to identify and assess the risk of material misstatement in the financial statements. The basic building blocks for an ERISA plan, as the entity subject to audit, are the plan document and other relevant service agreements as they represent the ERISA plan's operating policies and procedures and therefore shape the entity and its environment. For a plan to retain its qualified status, the plan must satisfy specified provisions of the Internal Revenue Code (the Code) in both form and operation. That means that the provisions in the plan document (form) must satisfy the requirements of the Code and that those plan provisions must be

followed (operations). Again, we believe the plan document is the basis from which management establishes its policy and procedures, including the selection and application of accounting policies, and is essential to auditor's applying the requirements of AU-C section 315. The Proposed Standard might include specificity in applying these provisions of AU-C section 315 to an ERISA plan, including application material where applicable. Moreover, most ERISA plan's control environments are influenced by third parties. Service organizations play a key role in how the plan's policies and procedures comply and support processing transactions in accordance with the plan document. Often, the service organization is authorized by the plan administrator to initiate, execute, and account for the processing of transactions without specific authorization of individual transactions. Paragraph 9 of AU-C section 402, *Audit Considerations Relating to an Entity Using a Service Organization*, states that when obtaining an understanding of the user entity in accordance with AU-C section 315, the user auditor should obtain an understanding of how the user entity uses the services of a service organization in the user entity's operations, including the nature of the services provided by the service organization and the significance of those services to the user entity, including their effect on the user entity internal control.

The Proposed Standard should explicitly state that the understanding of the entity comes from understanding all relevant documents and agreements and how the plan uses, and controls or monitors the services of the service organization in its operations.

- AU-C section 250, *Consideration of Laws and Regulations in an Audit of Financial Statements* (AU-C section 250), addresses the auditor's responsibility to consider laws and regulations in an audit of financial statements. AU-C section 250 contemplates, as is the case for ERISA plan audits, that the effect on financial statements of laws and regulations varies considerably and indicates that the provisions of some laws and regulations have a direct effect on the financial statements in that they determine the reported amounts and disclosures in an entity's financial statements. Paragraph 13 of AU-C section 250 indicates that the auditor should obtain sufficient appropriate audit evidence regarding material amounts and disclosures in the financial statements that are determined by the provisions of those laws and regulations generally recognized to have a direct effect on their determination. Paragraph .A10 of AU-C section 250 emphasizes that "the auditor's responsibility regarding misstatements resulting from non-compliance with laws and regulations having a direct effect on the determination of material amounts and disclosures in the financial statements is the same as that for misstatements caused by fraud or error." Once again we believe that specific requirements for the application of the above paragraphs could be included in the Proposed Standard, including application material as necessary. The Proposed Standard should require the auditor communicate findings identified by the audit to those charged with governance unless they are clearly inconsequential.
- We acknowledge that some auditors currently limit the substantive audit procedures to testing cash transactions, without consideration as to how the plan document guides the flow of business transactions and selection of accounting policies. To address this we believe that the Proposed Standard should provide more specific requirement and application material building on AU-C section 330, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained* (AU-C section 330). We support a principles

based approach to audit procedures responsive to relevant assertions, which based on the plan provisions: (1) the auditor determines if there is a risk of material misstatement at the assertion level related to material class of transactions, account balance and disclosure in accordance with AU-C Section 315 and (2) for each identified class of transaction, account balance or disclosure relevant substantive testing is expected to be performed to the extent applicable to support plan document compliance. For example,

- Whether the participants meet the eligibility requirement based upon the provisions of the plan instrument which may affect the completeness, accuracy, occurrence, rights and obligations and presentation and disclosure assertions.
- Whether transaction amounts are calculated in accordance with the provisions of the plan instrument, including, but not limited to, formula, vesting, eligible compensation, and limits which may affect the completeness, accuracy, occurrence, rights and obligations and presentation and disclosure assertions.
- Whether transactions are recorded in the appropriate individual accounts based upon the plan provisions (e.g. contributions applied to the applicable participant's account in a defined contribution plan) which may affect the occurrence, rights and obligations, and presentation and disclosure assertions.

In addition to providing our responses to the specific issues highlighted for respondents to the exposure draft, we have included editorial comments to specific paragraphs and the illustrative reports in Appendix A and B, respectively.

Issue 1 – Required Procedures When an ERISA-Permitted Audit Scope Limitation is Imposed

Respondents are asked to provide their views on whether (1) the procedures and guidance will achieve the objectives of enhancing execution and consistency in these engagements and if not, why; and (2) any procedures that should be required are missing, and if so, describe them.

We believe that the unique nature of the Audit Scope Limitation requires explicit requirements for auditor performance, which is challenging when the auditing standards are generally principles based. The required procedures in paragraphs 20 – 21 of the Proposed Standard too broadly expands the auditors' responsibility for the certified information in Audit Scope Limitation engagements and the requirements are too subjective to achieve consistent application. Our view is based on an objective read of the DOL Rules and Regulations, experience, and the proposed auditors' report language for this unique engagement.

Consider the following excerpts from DOL Rules and Regulations:

ERISA 103(3)(A) (with emphasis) - **“Except as provided in subparagraph (C),... conduct such an examination of any financial statements of the plan, ... to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual reports by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles ...** Such examination shall be

conducted in accordance with **generally accepted auditing standards**, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. **The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(3) of this section ...present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole.**

ERISA 103(3)(C) (with emphasis) **The opinion required by subparagraph (A) need not be expressed** as to any statements required by subsection (b)(3)(G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are **certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.**

29 CFR § 2520.103-5 Transmittal and certification of information to plan administrator for annual reporting purposes *Certification* - An insurance carrier or other organization, a bank, trust company, or similar institution, or plan sponsor, as described in paragraph (b) of this section, shall certify to the **accuracy and completeness** of the information described in paragraph (c) of this section by a **written declaration** which is signed by a person authorized to represent the insurance carrier, bank, or plan sponsor. **Such certification will serve as a written assurance of the truth of the facts stated therein.** *Example of Certification.* The XYZ Bank (Insurance Carrier) hereby certifies that the foregoing statement furnished pursuant to 29 CFR 2520.103-5(c) is complete and accurate.

Other relevant sections of the DOL Rules and Regulations state that the content of the certification is to be based on the ordinary business records of the certifying entity. Therefore, if the plan administrator has determined that the conditions of limiting the scope of the audit have been met, which includes obtaining an appropriately worded certification, then the DOL Rules and Regulations do not impose further audit requirements with respect to that information. We agree that the regulatory requirements support including the paragraphs in the Proposed Standard requiring management to agree to their responsibilities as part of engagement acceptance, and then reaffirming as part of management's representations are appropriate.

Since the Audit Scope Limitation was adopted in 1974, there have been significant changes in the types of investments held by ERISA plans and a proliferation of financial industry regulations that have changed the way qualified institutions, as defined by the DOL Rules and Regulations, operate. Plan administrators and auditors have long experienced challenges determining whether the certifying institution was in fact appropriate (because of complex legal structures and agent arrangements), whether the language used by the certifying institution complied with ERISA (because it varies greatly by certifying institution), and whether the scope of the certification was sufficient, including whether the information is at fair value as of the reporting date.

Unfortunately, practice has evolved to where the determination of whether the certification is appropriate for the circumstances has often been relegated from the plan administrator to the auditor. Further, interpretive guidance in the Guide as to the auditors' responsibilities may not have been consistently applied as paragraph 21 of the Proposed Standard exists in the Guide (paragraph 8.170). In practice, the challenge has been how to apply becoming "aware" that the

certified information is incomplete, inaccurate, or otherwise unsatisfactory. Auditors with relevant EBP audit experience generally have knowledge about the business practices of the certifying institutions beyond what is specific to any individual plan circumstances which often creates disconfirming evidence. Additionally, auditors have limited guidance as to the appropriate audit response when the ability to accept the certification is questioned. We believe that the Proposed Standard should have provided better clarity to auditors in these circumstances.

In applying the auditing standards to other scope restriction circumstances, if the auditor has nevertheless accepted an engagement knowing that the restriction on audit scope exists and could result in a modified or disclaimer of opinion, the auditor would have no further obligation to evaluate management's basis for the scope restriction or to perform audit procedures for assertions related to the scope restriction. While it may be in the interest of plan participants to have auditors identify potential problems with the certification, putting management's responsibility on to auditors and creating an auditing standard that has unnecessary differences with the principles in other auditing standards, may also create confusion which is not in the interest of either the public or the profession. Instead, we believe there would be a significant benefit to audit quality and consistency of application if the Proposed Standard reset expectations regarding auditor responsibilities and the expected procedures for the certified information based on the requirements in DOL Rules and Regulations, rather than on how practice has evolved.

We recommend the following for the Board's consideration:

- The Proposed Standard should be expanded to explicitly state how the auditor performs the risk assessment assessment procedures required by AU-C section 315 in an Audit Scope Limitation engagement. Paragraph 6 says the audit need not extend to information related to certified investment information, but the Proposed Standard is not explicit as to what other aspects of the auditing standards apply, and how they apply to the unique circumstance. Paragraph 8.169 of the Guide, contains the statement that the auditor has no responsibility to obtain an understanding of control relevant to the certified information and limits responsibility to the enumerated procedures. This limitation is highlighted in paragraph 102 which states "...with respect to the certified investment information that management instructed the auditor not to audit, the auditor did not assess the risks of material misstatement nor did the auditor consider internal control over the certified investment information...". We believe part of the audit quality issues may relate to inconsistencies in applying AU-C section 315 because the understanding of controls is only one aspect of risk assessment. How management complies with the plan's regulatory requirements including the requirements to select appropriate service providers, determine the scope of the audit, and the selection of accounting principles appropriate for the entity, among others, are essential elements of risk assessment procedures required in all audits.
- The term "evaluate" is too subjective and, as used in 20(b) could be misinterpreted to mean that the auditor is expected to do more than perhaps is intended or otherwise required. To implement our recommendation for paragraph 20(b) we suggest:

Inquire of management how it assessed that ~~evaluate management's assessment of whether~~ the entity issuing the certification is a qualified institution and the certified investment information is complete and accurate as required by ~~under~~ DOL Rules

and Regulations so that the scope of the audit may be limited.

- In our consideration of what additional procedures should be performed on certified investment information when management imposes an Audit Scope Limitation, we believe that the objectives of the accountant in accordance with AR-C section 80, *Compilation Engagements*, are more on point. Specifically, we recommend the Board consider the procedures in AR-C 80.13 in which the accountant reads the financial statements in light of the accountant's understanding of the financial reporting framework and the accounting policies adopted by management (which is consistent with our recommendation with regard to risk assessment procedures) to consider whether the financials statement appear to be free from obvious material misstatements. We suggest the following modification to paragraph 20(c):

Agree ~~Compare~~ the certified investment information with the related information included in the ERISA plan financial statements and related disclosures to the same amounts included in the financial statements and disclosures.

- While we acknowledge that paragraph .20(d) is similar to existing guidance, we do not believe that the auditor should be responsible for evaluating the form and content of the certified investment disclosures or inspecting supporting documentation for the types of investments held by the plan when not auditing the information and underlying transactions. Further, from experience, we believe there is significant diversity in practice with regard to the certified information that the Proposed Standard should directly address. Some auditors believe that the conclusion may be achieved by reading the financial statements for apparent inconsistencies or errors and omissions. Others may believe they have to obtain evidence, for example, in support of the fair value hierarchy disclosures. Regardless, if the balances and transactions are not audited, we believe the auditor does not have a basis to report on form and content.

The auditor's responsibility should be limited to inquiries of management to understand the nature of the investments and the related disclosures because if not performing audit procedures on account balances or classes of transactions, there will be insufficient evidence to conclude on the form and content of disclosures. We suggest the following modification to paragraph 20(d):

Read the certified information included in the financial statements and disclosures for purposes of considering whether the financial statements are appropriate in form and free from obvious material misstatements based on an understanding, through inquiry of management, the types of investments held by the ERISA plan and how it assessed that evaluate whether the form and content of the ERISA plan financial statement disclosures related to the information prepared and certified by a qualified institution are in accordance with the applicable financial reporting framework.

- The requirement in paragraph 21, based on paragraph 8.170 of the Guide, has contributed to the inconsistent auditor response to certified information as it lacks specificity as to both the rationale for why the auditor has a responsibility for the completeness, accuracy, or otherwise satisfactory nature of the certification, and if we assume there is such responsibility, what is the appropriate audit response. We believe that, at a minimum, application material similar to

guidance in paragraphs 8.170-8.174 of the Guide is needed. Additional application material should be developed to include topics such as revision of engagement letters and revision of risk assessment procedures.

- Similar to AU-C section 700.58 and paragraph .87 of the Proposed Standard, another requirement should exist for the auditor to request management to similarly label the certified investment information as unaudited or covered by qualifying institution certification. This would provide the users of the financial statements with a better appreciation of the pervasiveness of the certified information in furtherance of the goal of transparency in these engagements.

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

Respondents are asked to provide feedback on whether the form and content of the proposed auditor's report, including the form and proposed content of the new opinion (1) provides improved transparency with respect to reporting on an audit of ERISA plan financial statements when an ERISA-permitted scope limitation exists, if not how could it be revised; (2) will improve the auditor's understanding of his or her responsibilities in a limited scope audit resulting in potential improvements in audit quality and if not, why; (3) better describes management's responsibilities for the financial statements, and if not why; and (4) provides sufficient clarity to users with respect to the auditor's responsibilities and matters reported, and if not, why.

As previously stated, we believe there is a public interest benefit for greater transparency in these unique engagements. We support the objective for auditor reporting on these engagements but do not agree with the proposed wording that effectively divides the responsibility for the opinion between the audit evidence directly obtained and from the certified investment information. However, with the objective of transparency in mind, we offer another alternative for the Board's consideration.

We are supportive of the language in paragraph 96 that improves transparency with respect to management's responsibilities for determining whether a limitation on the scope of the audit is appropriate in the circumstances. In an information letter dated May 17, 2002, in response to a request for further guidance regarding the wording of certifications and types of assets, the DOL, in providing non authoritative guidance to common fact patterns challenging plan administrators, cautioned that the plan administrator remains responsible to determine whether the conditions for Audit Scope Limitation have been satisfied and that the certified information is appropriate to satisfy the plan administrator's obligation to report the current value of plan assets.

We are also supportive of the additional description in paragraph 102 of the auditors' responsibilities in these engagements, subject to conforming our suggestions in Issue 1 for 20 (b) to (d) to 102(b) to (d).

Our recommendation to the proposed requirement, illustrated using an illustrative report in paragraph .A148, also assumes other changes to limit the required procedures to inquiries as we have suggested (strike-through deletion; underlined are additions).

Auditors' Responsibility (including Responsibility for the Certified Investment Information)

With respect to the certified investment information that management instructed us not to audit, ~~we did not assess the risks of material misstatement nor did we consider internal control over the certified investment information. Our procedures were limited to the following:~~

- a. Obtaining and reading the certification.
- b. Inquiring of management how it assessed that evaluating management's assessment of whether the entity issuing the certification is a qualified institution and the certified investment information is complete and accurate as required by under the Employee Retirement Income Security Act of 1974 DOL Rules and Regulations so that the scope of the audit may be limited.
- c. Agreeing Comparing the certified investment information with the related information presented and disclosed in the financial statements to the same amounts included in the financial statements and disclosures.
- d. Reading the certified information included in the financial statements and disclosures for purposes of considering whether the financial statements are appropriate in form and free from obvious material misstatements based on an understanding, through inquiry of management, the types of investments held by the Plan and how it assessed that the financial statement disclosures related to the information prepared and certified by a qualified institution are in accordance with the applicable financial reporting framework. evaluating whether the form and content of the certified investment information presented and disclosed in the financial statements are in accordance with accounting principles generally accepted in the United States of America.

~~Other than with respect to the certified investment information our audit procedures were not limited for other amounts and disclosures in the financial statements.~~

Auditors' Opinion with the ERISA-Permitted Audit Scope Limitation on the Financial Statements

In our opinion, based on our audit which included the limited procedures described in the Auditor's Responsibility (Including Responsibility for the Certified Investment Information) section of this report that were applied to the certified investment information and based on our use of the certification of the investment information that ~~were instructed not to audit~~, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of ABC 401(k) plan as of December 31, 20X2 and 20X1, and the changes in net assets available for benefits for the year ended December 31, 20X2, in accordance with accounting principles generally accepted in the United States of America.

Other Matter Relating to the Certified Investment information

The limited procedures applied to the certified investment information were insufficient to provide sufficient appropriate audit evidence on which to base an opinion, and accordingly, we do not express an opinion on such information.

Issue 3 – Modifications to the Opinion in the Independent Auditor’s Report

Respondents are asked for their views about the proposed interaction of AU-C section 705 and AU-C section 703 when the ERISA-permitted audit scope limitation is imposed by management including (1) whether the guidance in paragraphs .31 and .34 of the proposed SAS (i) is clear with respect to the auditor’s responsibilities for addressing the circumstances described above, and (ii) achieves the objective of providing transparent reporting to the users, and if not, suggested revisions; and (2) the form and content of the example reports (nos. 5-7) illustrating qualified and disclaimers of opinion regarding the application of the guidance in paragraphs .31 and .34.

We believe that use of the Audit Scope Limitation language in paragraph 94b should be precluded when other reasons for a modified opinion exist because we believe including that language might obscure the reasons for the report modification. We believe that it is in the public interest to only permit the use of the Audit Scope Limitation language when no other matters are identified, and paragraphs 34, .A62 and .A64 should preclude reference to the Audit Scope Limitation in the basis for modified opinion. To illustrate our view, consider the background facts for paragraph .A148 Illustration 7. This illustration assumes the auditor has disclaimed because of the inability to accumulate sufficient appropriate audit evidence because of insufficient books and records. We believe this is confusing because the reasons for the disclaimer are inconsistent. Management has insufficient records, and yet has a basis to assert that the certification is appropriately complete and accurate.

However, we would not object to adding application material to suggest that an emphasis-of-matter paragraph referencing the note to the financial statements where management describes the certification, the limitation on the scope of the audit, and what is included in the certified information is permitted.

In addition, we believe that auditors should be precluded from issuing a report on findings (paragraphs 119–124 of the Proposed Standard) when issuing a disclaimer of opinion in accordance with AU-C section 705. As further discussed in our response to Issue 6, in such a circumstance, we believe it is not in the public interest to have the auditor issue findings related to an audit where the auditor disclaimed an opinion because the circumstance that resulted in an inability to reach a conclusion may also affect the findings report.

Issue 4 - Required Emphasis-of-Matter Paragraphs

Respondents are asked to consider whether the situations identified are appropriate for requiring the inclusion of emphasis-of-matters paragraphs in the auditor’s report.

Respondents are also asked to consider whether there are additional situations that should result in a required emphasis-of-matter paragraph.

We do not support the requirement to include an emphasis-of-matter paragraph in the auditors' report if any of the situations in paragraph 116 of the Proposed Standard exist.

We acknowledge that the identified situations are intended to highlight specific situations that a reader of the financial statements, and the auditors' report thereon, may find useful. However, we believe that the situations are not so unique as to require emphasis over and above any other financial statement disclosure, and therefore the examples provided in AU-C section 706.A2 along with the required emphasis-of-matter paragraphs listed in Exhibit B of AU-C section 706 are sufficient for ERISA plan audits. Moreover, EBP financial statements do not have extensive disclosure requirements, which tends to elevate the importance of all disclosures. We believe there is also a risk in these audits that an emphasis-of-matter paragraph might be used to supplant for lack of sufficient disclosure.

Issue 5 - Reporting Internal Control Deficiencies

Respondents are asked to provide feedback on whether (1) The current reporting of internal control deficiencies to those charged with governance is sufficient; and/or (2) there are other reporting considerations the ASB should evaluate.

We agree with the Board conclusion that it is not necessary to include a description of any significant deficiencies or material weaknesses in internal control identified in the auditors' report on the financial statements. Because there is no current requirement beyond obtaining an understanding of control activities relevant to the audit, including additional communications that may be misinterpreted is not in the public interest. We believe the communication of internal control matters should continue to be only to those charged with governance, as required by AU-C section 265, who have sufficient understanding of the context of such communications.

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

(1) Respondents are asked to provide feedback about the required procedures discussed in paragraphs .15–.16, and the reporting of findings discussed in paragraphs .119 - .124 of the proposed SAS, including views regarding the following: With respect to the required procedures in paragraphs .15-.16

- a. Will these requirements enhance the consistency and quality of audit procedures relating to matters that could have a direct effect on the financial statements, including related disclosures, and if not, why?*
- b. Does the proposed SAS provide appropriate guidance on achieving these requirements including*
 - i. Which provisions of the plan instrument should be tested; and*

- ii. To what extent testing should be performed?*
- c. What procedures related to other plan provisions or specific areas of the financial statements should be included in the required testing to enhance the usefulness of the proposed reporting of the findings?*
- (2) *With respect to reporting on the findings resulting from performing procedures related to the areas in paragraphs 119-124, whether there are opportunities to enhance the proposed requirements and guidance including whether:*
- a. Including the list of individual areas tested is appropriate and if so whether there are other items that should also be included (if not, why not).*
- b. The requirement to exclude findings that are “clearly inconsequential” is appropriate, and if so is there guidance the ASB can consider to drive consistency in application in practice?*
- c. The findings should also include any matters identified by management or the plan administrator? [Note: As currently drafted, the proposed SAS requires the auditor to include findings that were noted as part of the auditor’s work performed in relation to paragraphs 15–16.]*
- d. The reporting illustrations included in the Exhibits to the proposed SAS specific to reporting the findings are clear and result in sufficient information to the user of the report?*
- e. There may be unintended consequences from including the findings in the auditor’s report, and if so, what those unintended consequences may be and how might they be mitigated?*
- f. There are alternatives to reporting the findings in the auditor’s report that would achieve the objectives related to enhancing audit quality?*
- (3) *Whether the required additional procedures and reporting of findings will result in additional costs, and if so, views as to the extent of those costs and whether they outweigh the potential benefits of enhanced audit quality?*

For the reasons outlined below, we believe that the requirements in paragraphs 15–16 and related required reporting on findings in paragraphs 119-124 of the Proposed Standard should not be part of a final standard without significant changes:

- Without additional guidance as to the nature, timing, and extent of such procedures, we believe the procedures will not enhance the consistency and quality of audit procedures relating to matters that could have a direct effect on the financial statements, including related disclosures.
- We believe that there will be unintended consequences if auditors use these requirements as a checklist in lieu of applying the entire body of auditing standards. Should this occur, other

relevant classes of transactions, accounts or disclosures may not be appropriately tested because they are not specifically included in paragraphs 15 – 16 of the Proposed Standard. For example, there are no required procedures for benefit obligations, yet the risk that the correct benefit formula is used in determining the obligation is likely a risk. Instead, we believe the Proposed Standard should build on the requirements of AU-C sections 315 and 330, specifically requiring the auditor to obtain an understanding of how the provisions of the plan document affect classes of transactions, account balances or disclosures and then procedures should be responsive to the assessed risk of material misstatement.

- We believe, that as drafted, it may not be clear to auditors that the objectives of these required procedures already exists in other AU-C sections and, if the other sections are correctly applied when addressing the risk of material misstatement, the application of these paragraphs may result in unnecessary redundancy in an audit of an ERISA plan.
- With regard to the required reporting of findings described in paragraphs 119 -124, we are concerned for the following reasons:
 - The term “clearly inconsequential” is not defined in the Proposed Standard. AU-C section 450.05 uses clearly trivial in the context of accumulating monetary misstatements. Paragraph 450.A2 includes relevant application material for considering clearly trivial and inconsequential. We recommend that the Board add application material referencing these paragraphs to assist auditors in the application of the concept.
 - The lack of required elements when describing findings (for example, disclosing the number of instances of findings in relation to the sample size) may mislead users of the financial statements as to the magnitude of the finding(s) to the financial statements taken as a whole. Lack of specificity in reporting findings has continued to be a practice issue in compliance audits in accordance with AU-C section 935, *Compliance Audits*.
 - Users of the financial statements may incorrectly assume that the financial statement audit includes a compliance audit because of the reported findings, or believe there are no issues if no findings are reported.
 - The requirement for the auditor to “go-first” continues to blur the lines between the responsibilities of plan administrators and auditors. There is no current regulatory requirement for plan administrators to report operational matters to their regulators. In fact, certain IRS correction programs allow plan sponsors to self-correct without penalty or reporting to regulators. We are concerned that reporting findings in a public domain may have the unintended consequence of causing unnecessary concern among plan participants and potentially jeopardizing self correction options.

We believe the cost of reporting findings in the auditors’ report would outweigh any potential benefit of enhanced audit quality. Given that the procedures as currently proposed do not take into consideration auditor’s risk assessment, we believe auditors will spend time reporting findings that are not material to the plan. For auditor’s that currently follow the Guide, the incremental cost of reporting is not expected to be significant.

Issue 7 – Required Procedures Relating to the Form 5500

Respondents are asked for their views about whether the proposed procedures in paragraphs 36–48 of the proposed SAS would achieve the objective of increased consistency with respect to identifying information in the Form 5500 that may be relevant to the audit of ERISA plan financial statements, and if not, why?

We are supportive of the requirements in paragraphs 36–48 of the Proposed Standard with regard to the Form 5500, and believe they will achieve the Board’s objective to increase consistency with respect to identifying information in the Form 5500 that is materially inconsistent and misstatements of fact.

To further enhance the Proposed Standard, we suggest that the references to the Form 5500 be more specific. The Form 5500 instructions refer to the Form 5500 as the Annual Return/Report inclusive of all required schedules and attachments. In practice, we believe many auditors currently obtain and reconcile only the Form 5500 Schedule H - Financial Information. Material inconsistencies may also be identified through reading the other applicable schedules and attachments such as, Schedule(s) A- Insurance Information, Schedule C – Service Provider Information, Schedule D – DFE/Participating Plan Information, Schedule G – Financial Transaction Schedules, Schedule SB – Single-Employer Defined Benefit Plan Actuarial Information and Schedule MB - Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information.

Paragraph .A69 of the Proposed Standard includes a discussion of misstatement of fact before the requirements related to identifying misstatements of fact between the Form 5500 and the financial statements are outlined. We acknowledge that this content follows the same order as AU-C 720, yet we believe the Proposed Standard will be more understandable if paragraph 36 was amended as follows (addition underlined):

The auditor should read the Form 5500 in order to identify material inconsistencies or misstatements of fact, if any, with the audited ERISA plan financial Statements.

In addition, the sentences in .A69 that define misstatement of fact, and the definition of material inconsistencies should be added to a new application paragraph linked to paragraph 36.

Issue 8 – Proposed New Reporting Standard and Amendments to Other AU-C Sections

Respondents are asked whether (1) the proposed approach of creating a new reporting model for reporting on ERISA plan audits (AU-C section 703) will better describe management’s and the auditor’s responsibilities in these engagements; (2) the proposed amendments to the other AU-C sections are appropriate; and (3) whether there are other sections of the AICPA Professional Standards that would need to be amended for this proposed SAS.

We are supportive of the enhanced descriptions of both management’s and the auditor’s responsibilities in these engagements. With regard to other aspects of the new reporting model in

the Proposed Standard and amendments to other AU-C sections we offer the following suggestions:

- We do not support duplicating content that also exists in AU-C section 700. Instead, we recommend conforming amendments to AU-C section 700 that reference this Proposed Standard for the few different elements of the auditors' report for ERISA plan financial statements, and the Proposed Standard use similar wording as in paragraph 12, "In addition to the requirements in AU-C section 700, the auditor should....." the auditor should also....". Implementing our recommendation would result in a significantly more concise standard while still achieving the objectives. We believe auditors should also be familiar with the basic auditor reporting standard and the redundancy is unnecessary and could lead to confusion if anyone believed there were substantive differences.
- Paragraph 118 of the Proposed Standard replaces AU-C section 725.09 when reporting on supplemental information for ERISA plans. We do not support the following incremental reporting requirements which are in addition to those in paragraph 725.09 because we believe that paragraph 725.09 is sufficient for ERISA plan audits irrespective of scope:
 - Stating that the auditor performed procedures to test the completeness and accuracy of the information presented in the supplemental schedules;
 - Stating that the auditor evaluated whether the supplementary information, including its form and content, are presented in conformity with the DOL Rules and Regulations; and
 - Opining on the form and content of the supplemental schedules.

We recognize that guidance is needed when management imposes the Audit Scope Limitation and the certified investment information is included in the supplemental schedules and agree with the guidance, similar to paragraph .118e and .118i, without reference to form and content in conformity with DOL Rules and Regulations.

- Paragraphs .A130 to .A133 elevates application material from the Guide regarding considerations for modifying the report on supplementary information when information or schedules required by the DOL are omitted. Currently there is diversity in practice as to how to evaluate the omission of information and schedules in the context of the financial statements taken as a whole. We believe that moving the guidance without an explicit requirement as to the conditions that would necessitate mention of the omissions or inconsistencies in the auditors' report will do little to further audit quality.
- We support the change in paragraph .A90, and included in paragraph .A148 Illustration 2, which effectively eliminates the interpretative guidance contained in the Guide related to the auditor opining on the financial status of a defined benefit pension plan in response to presentation flexibility offered by US GAAP. The rationale for a prior Board's decision on the concept of financial status to be referenced in the auditors' opinion is not well documented, and in our experience, often contributes to incorrectly worded auditors' opinion paragraphs.

We do not agree with the application material in .A90 that suggests that the auditor is not required to make specific reference to the benefit obligation information in the opinion paragraph of the auditors' report when such information is presented in the notes to the

financial statements. ASC 960-205-45-1 and ASC 965-205-45-1 require the annual financial statements of defined benefit pension and health and welfare plans, respectively, to include information regarding the actuarial present value of accumulated plan benefits (benefit obligations) and year-to-year changes therein. ASC 960-20-45-2 and ASC 965-20-45-2 provide flexibility as to whether such information is presented on the face of one or more financial statements or in the notes to the financial statements. Regardless of location, the benefit obligation information is considered a basic financial statement under US GAAP, accordingly, we believe, the auditor's opinion should include reference to the accumulated plan benefits (benefit obligations) and year-to-year changes therein. Similarly, we believe that the application guidance to paragraph 52 should clarify whether the *Introductory Paragraph* would include reference to the statements of accumulated plan benefits (benefit obligations) and year-to-year changes therein when presented in the notes to the financial statements.

To further enhance the Proposed Standard, we suggest that the application material be expanded to make it clear that the guidance also applies equally to defined benefit health and welfare plans.

- In a separate comment, we offer our view that additional material is necessary regarding reporting in accordance with PCAOB and AICPA standards applicable to issuer ERISA plans.

Issue 9 – Proposed Effective Date
<i>Respondents are asked whether the proposed effective date provides sufficient time for preparers, auditors, and others to adopt the new standard and related conforming amendments.</i>

We are aware of the Board's project on auditor reporting, which once final, would further change the requirements for auditors' reports in this Proposed Standard. We believe it is not in the public interest to change the reports as contemplated by this Proposed Standard to change them again when the Board adopts other new standards for auditors reporting. Therefore, we recommend the Board consider different effective dates for the performance and reporting requirements.

As a comparative statement of net assets is required by regulation, we also believe that the Board should consider whether transition guidance is necessary to address the differences in performance requirements.

We recommend an effective date of a minimum of two years from when the Proposed Standard is finalized which allows for a reasonable amount of time to change audit methodologies, reporting templates and train professional staff. As previously stated, we also recommend that the Board consider the amount of time that will be necessary to amend the Guide. In consideration of the fact that the vast majority of ERISA plans are December 31st year-ends, the effective date may be for periods ending after December 15th of the effective year.

Other Matters

In addition to providing specific feedback requested by the Board, we have identified other matters with regard to the Proposed Statement that should be considered:

Form 11K filers

Paragraphs 73 and 74 of the Proposed Standard are the same as paragraphs 42 and 43 of AU-C section 700, intended to address the circumstance when reporting on an audit performed in accordance with another set of standards in addition to generally accepted auditing standards (GAAS) (dual reporting). We believe that the Proposed Standard does not provide sufficient guidance for a specific common dual reporting circumstance.

ERISA plans with interest that constitute securities registered under the Securities Act of 1933 are required to file Form 11-K pursuant to Section 15(d) of the Securities Exchange Act of 1934. In accordance with the rules of both the SEC and PCAOB, these plans are considered issuers and the audit is to be performed in accordance with standards of the PCAOB. Additionally, ERISA section 103(a)(3)(A) requires these same plans to submit to the DOL an audit of the plan's financial statements in accordance GAAS. The PCAOB's *Applicability of Public Company Accounting Oversight Board* recognizes that entities whose audits are not within the PCAOB's jurisdiction, referred to as *nonissuers*, are to be conducted in accordance GAAS as issued by the Auditing Standards Board.

Since the formation of the PCAOB in 2002, there has been an industry practice to issue two auditors' reports on these ERISA plan financial statements – one in accordance with PCAOB standards for filing with the Form 11-K, and a second in accordance with AICPA standards for filing with the Form 5500. Paragraph 11.42 of the Guide implies that a dual standard report will not be accepted by the SEC, however, based on our experience in practice, we believe this may no longer be accurate.

In fact, Statement of Auditing Standards No. 131, *Amendment to Statement on Auditing Standards No. 122, Section 700, Forming an Opinion and Reporting on Financial Statements* (SAS 131), was in response to practice issues resulting from referencing the PCAOB standards for non-issuers, including issuing two auditors' reports rather than dual referencing two sets of auditing standards in a single report, referencing only the PCAOB standards, and using the AICPA form of report. SAS 131 made it clear that not referencing the AICPA auditing standards for non-issuers likely violates the AICPA Code of Conduct, and that the PCAOB's form of report should be followed when dual reporting.

The PCAOB's standards do not contain guidance for when reporting on an audit conducted in accordance with more than one set of auditing standards, and similar to the AICPA Code of Conduct, the PCAOB's Rule 3100, *Compliance With Auditing and Related Professional Practice Standards*, generally requires all registered public accounting firms to adhere to the PCAOB's standards in connection with the preparation or issuance of any audit report on the financial statements of an issuer. Any registered public accounting firm or person associated with such a firm that fails to adhere to applicable PCAOB standards in connection with an audit of the financial statements of an issuer may be the subject of a PCAOB disciplinary proceeding in accordance with Section 105 of the act.

The Guide includes limited guidance on reporting in accordance with the PCAOB Standards, and does alert auditors that these audits should be conducted in accordance with both sets of

standards. Again, the Board acknowledged the PCAOB expressed views on the form of audit report by issuing SAS 131, therefore, we believe the Board should consider either providing additional requirements and application material on dual reporting whether AICPA members are performing audits of ERISA plans in accordance with the PCAOB standards, or liaise with the PCAOB staff on this matter to determine whether a dual report would be acceptable or if the PCAOB views issuing two reports as acceptable. We believe auditors are going to need additional guidance on engaging in accordance with two sets of standards, and the Board is in the best position to facilitate the development of such guidance.

Non ERISA Plans

Paragraph 1 of the Proposed Standard indicates that it would apply to ERISA plans, and paragraph .A1 of the Proposed Standard references the AICPA's Audit and Accounting Guide *Employee Benefit Plans* (the Guide) for interpretative guidance on applying the Proposed Standard. However, paragraph 1.03 of the Guide states that the Guide may be applied to plans other than those subject to ERISA because it was useful in applying all of US GAAS.

To avoid potential confusion, we recommend that the Board explicitly state that the Proposed Standard is not to be adapted and applied to other plan types. Similarly, when the Guide is amended for the Proposed Standard, it should make clear which interpretative guidance is relevant to the application of this Proposed Standard or the scope of the Guide should be restricted to ERISA plans.

Engagement acceptance and written representations

We are supportive of the additional requirements for engagement acceptance and written representations because it sets out management's agreement of its responsibilities and the auditor's expectation of what management will provide, particularly with the Audit Scope Limitation. Paragraphs 12(c) and 22(b) of the Proposed Standard references both ERISA section 107 and 209 as part of management's responsibility with regard to participant records. We believe that the term "sufficient records" requires further definition, as the term is not currently defined in current literature and is subjective.

* * * * *

We appreciate the Board's careful consideration of our comments and observations, and support the Board's efforts to continue to enhance auditing standards and audit quality. If you have any questions regarding our comments included in this letter, please do not hesitate to contact Ilene Kassman (212-909-5667 or ikassman@kpmg.com) or Beth Thompson (713-319-2938 or bathompson@kpmg.com).

Sincerely,

KPMG LLP

APPENDIX A – DETAILED OBSERVATIONS, RECOMMENDATIONS AND EDITORIAL COMMENTS

Based upon our analysis of the Proposed Standard, we have identified observations, recommendations and editorial comments that could be made to improve or provide additional clarity in the requirements. We have provided our recommendations below (additions are underlined; deletions are ~~struckthrough~~).

Reference	Recommendation	Rationale
Paragraph 13.	Add paragraph 13 as an additional bullet in to paragraph 12.	Consider including paragraph 13 in the list of management’s responsibilities included in 12.
Paragraphs 14 and 22	Paragraphs 14 and 22 reference “most current” plan instrument. Consider adding clarification “for the audit period”.	To make clear the expectation is that the plan document used in the audit, as often amended, needs to be current for the audit period.
Paragraph .A42	.A42. Performing an audit of ERISA plan financial statements when management imposes a limitation on the scope of the audit as permitted by ERISA does not eliminate the need <u>requirement</u> for the auditor to plan and perform the audit in accordance with GAAS. Such limitation on the scope of the audit is unique to EBPs and differs from the scope limitations discussed in AU-C section 705. Unlike other scope limitations, when the scope of the audit is limited as permitted by ERISA, the auditor is required to perform certain audit procedures on the certified investment information even though the scope of the audit is limited.	<ul style="list-style-type: none"> • Replace “need” with “requirement”. • The procedures for an Audit Scope Limitation should not be characterized as audit procedures as they are not designed to obtain evidence on which to support an audit opinion.
Paragraph .A43	.A43. The need <u>requirement</u> to perform audit procedures based on the assessed risk of material misstatement for noninvestment-	Replace “need” with “requirement”.

	related information (for example, benefit payments, employer or employee contributions, and accruals) and investment information not covered by the certification is the same for all ERISA plans, regardless of whether management imposes an ERISA-permitted audit scope limitation.	
Paragraph 20a.	20a. obtain from management and read the certification particularly as it relates to investment related information prepared by a qualified institution; (Ref. par. A44–A45)	The word “particularly” is not necessary in context of the paragraph.
Paragraph 21	21. If, as part of the audit procedures performed, the auditor becomes aware that the certified investment information is incomplete, inaccurate, or otherwise unsatisfactory, the auditor should perform further inquiry, which might result in additional audit procedures or modification to the auditor’s opinion in accordance with AU-C section 705.	Suggest deleting as the auditor is not auditing certified information.
Paragraph 32	Consider moving paragraph 32 before paragraph 31.	Reordering improves flow of proposed standard as the auditor should perform procedures in paragraph 32 before going to AU-C section 705 as indicated in paragraph 31.
Paragraph .A68	.A68 Certain differences exist between the Form 5500 Schedule H Financial Information and GAAP financial statements. For example, <u>ERISA requires that 401(h) assets be reported as an assets of the defined benefit pension plan in regulatory filings</u> the net assets of a 401(h) account related to a defined benefit pension plan are included in the Form 5500 for the defined benefit pension plan; however, the financial statements do not reflect the net assets of the 401(h) account because such amounts are not	Revisions to clarify authority of reporting.

	available to pay pension benefits (rather they are used only to pay retiree health benefits). DOL rules and regulations require the notes to the financial statements to include an explanation of differences, if any, between the information contained in the separate financial statements and the net assets, liabilities, income, expense, and changes in net assets as required to be reported on the Form 5500 Schedule H, Financial Information. Such reconciling items are not considered inconsistencies with the Form 5500.	
Paragraph 37	Consider moving paragraph 37 before paragraph 36.	Reordering improves flow of Proposed Standard.

APPENDIX B – DETAILED OBSERVATIONS, RECOMMENDATIONS AND EDITORIAL COMMENTS

Based upon our analysis of the Proposed Standard, we have identified observations, recommendations and editorial comments that we believe should be made to the illustrative reports (additions are underlined; deletions are ~~strikethrough~~).

Location	Comment	Illustration Number						
		1	2	3	4	5	6	7
Introductory grey box	Suggest eliminating. It is not necessary to illustrate an emphasis of matter relating to a plan merger in the Proposed Standard.	x				x	x	
Introductory grey box	If no emphasis of matter paragraph is illustrated, the bullet describing the fact that the illustration excludes an emphasis of matter is superfluous and should be deleted.		x	x				x
Introductory grey box	Bullet related to <i>Report on Specific Plan Provisions Relating to Financial Statements</i> - “recording of account activity” needs clarification to associate this procedure with an account balance, class of transaction, or disclosure.	x		x		x	x	x
Introductory grey box	Bullet related to <i>Report on Specific Plan Provisions Relating to Financial Statements</i> - Consider adding “certain” before procedures: “The auditor performed certain procedures...”	x	x	x		x	x	x
Introductory grey box	Add U.S. before GAAP to conform to the other illustrations presented.					x	x	x
Introductory grey box	Modify to indicate that the auditor has concluded the omission is material resulting in a modified report under AU-C section 705. This will better link AU-C section 703 to AU-C section 705.					x		
<i>An Auditor’s Report on Financial Statements for a Defined Contribution Retirement Plan Subject to ERISA When Management</i>	Define “Employee Retirement Income Security Act of 1974” in first occurrence as “ERISA”. Use “ERISA” throughout as an abbreviation.			x				

<p><i>Imposes a Limitation on the Scope of the Audit as Permitted by ERISA</i></p>								
<p><i>Basis for Limitation on the Scope of the Audit</i></p>	<p>As permitted by 29 CFR 2520.103-8 of the Department of Labor’s Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974 <u>ERISA</u>, management imposed a limitation on the scope of the audit. Under the authority of section 103(a)(3)(C) of <u>ERISA</u> the Employee Retirement Income Security Act of 1974, the audit need not extend to information related to assets held for investment of the plan (investment information) prepared and certified by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that <u>the investment information is the statements or information regarding assets so held</u> are prepared and certified to by the bank or insurance carrier in accordance with 29 CFR 2520.103-5 and 29 CFR 2520.103-8.</p> <p>We have been informed by management that a qualified institution holds the investments and executes investment transactions. Management has obtained certifications from the qualified institution as of December 31, 20X2 and 20X1, and for the year ended December 31, 20X2, stating that the investment information, described in Note X to the financial statements, is complete and accurate <u>and has instructed us not to audit the certified investment information.</u></p>			<p>x</p>				