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September 27, 2017

Ms. Sherry Hazel
Audit and Attest Standards Team
American Institute of Certified Public Accountants
1211 Avenue of the Americas
New York, New York 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 proposed Statement on Auditing Standards ("SAS"), *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA* (the "proposed SAS"), issued by the Auditing Standards Board ("ASB"). We support the ASB's efforts to enhance the value and relevance of the auditor's report for audits of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

The proposed SAS includes nine issues for consideration for which feedback is specifically requested. Our comments on those issues are as follows:

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

The procedures described in paragraph 20 of the proposed SAS, relating to investment information certified by a qualified institution in an ERISA limited-scope audit, are consistent with the procedures that we have observed to be performed in current practice. We agree that the inclusion of these procedures within the AU-C codification should enhance the execution and consistency of auditor performance with respect to certified investment information in ERISA limited-scope audits.

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

The reporting model described in paragraphs 88 through 115 of the proposed SAS represents a distinct change from current reporting standards for ERISA limited-scope audits.

**Issue 2 – The Form and Content of the Auditor's Report on ERISA Plan Financial Statements with the ERISA-Permitted Audit Scope Limitation (continued)**

Currently, the auditor issues a disclaimer of opinion (in some cases, a qualified opinion) on the fairness of presentation of the financial statements in accordance with the applicable financial reporting framework, while issuing an opinion on the fairness of presentation of the financial statements in compliance with the U.S. Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. Under the proposed SAS, the auditor instead would issue an opinion on the fairness of presentation of the financial statements in accordance with the applicable financial reporting framework, based on the audit and the auditor's use of the certification of the investment information that the auditor was instructed not to audit.

We agree that the proposed new reporting model will provide increased transparency with respect to the auditor's report, will improve auditors' understanding of their responsibilities in ERISA limited-scope audits, and will better describe management's responsibilities for the financial statements. We also agree that the proposed new reporting model will provide improved clarity to users with respect to the auditor's responsibilities.

Our concern is that the auditor would be issuing an opinion on the fairness of presentation of the financial statements in accordance with the applicable financial reporting framework when the auditor has not applied audit procedures to investments and investment information, which is typically the most substantial portion of the financial statements. Even with including the caveat in the report that the opinion is based on the audit and the auditor's use of the certification of the investment information that the auditor was instructed not to audit, we believe that issuing such an opinion may give the user the impression that the same level of assurance can be expressed by the auditor on the financial statements, regardless of whether or not audit procedures were performed on investments and investment information. We do not believe that the performance of ERISA limited-scope audit procedures, as outlined in paragraph 20 of the proposed SAS, is the equivalent of performing audit procedures on investments and investment information in accordance with other auditing standards generally accepted in the United States of America, such as occurs in a full-scope audit.

While we believe that the new reporting model should express more assurance on the fairness of presentation of the financial statements than is expressed in the current reporting model, we also believe that the appropriate level of assurance should be less than issuing an unmodified opinion on the fairness of presentation of the financial statements. Under existing standards, the auditor's intent is to disclaim an opinion on investment information contained in the financial statements and to issue an opinion on the fairness of presentation on the remainder of the financial statements. Under the proposed SAS, it appears that the auditor's intent would be to provide limited assurance that the auditor is not aware of any material modifications that should be made to the investment information contained in the financial statements (similar to a review), while issuing an opinion on the fairness of presentation on the remainder of the financial statements. We believe the auditor's report should more clearly state that.

**Issue 2 – The Form and Content of the Auditor's Report on ERISA Plan Financial Statements with the ERISA-Permitted Audit Scope Limitation (continued)**

We propose that paragraph 106 of the proposed SAS be revised as follows:

> "When the ERISA-permitted audit scope limitation is the only limitation on the scope of the audit and the auditor has not identified any material misstatements, the auditor's report should include the following:
>
> a. A statement that, because of the significance of the investment information that the auditor was instructed not to audit, the auditor was not able to obtain sufficient, appropriate audit evidence to provide a basis for an audit opinion on this investment information.
> b. A statement that, based on the audit and based on the use of the certification of the investment information that the auditor was instructed not to audit, the auditor is not aware of any material modifications that should be made to the certified investment information in order for it to be presented fairly, in all material respects, in accordance with [the applicable financial reporting framework].
> c. A statement that, in the auditor's opinion, the remainder of the financial statements, not including the investment information that the auditor was instructed not to audit, present fairly, in all material respects, the […] in accordance with [the applicable financial reporting framework]."

To implement the proposed revision above, we propose that the auditor's opinion section of Illustration 3 of the proposed SAS be revised as follows:

> "Because of the significance of the investment information summarized in Note X that we were instructed not to audit, we have not been able to obtain sufficient, appropriate audit evidence to provide a basis for an audit opinion on this investment information. However, based on our audit and our use of the certification of the investment information that we were instructed not to audit, we are not aware of any material modifications that should be made to the investment information summarized in Note X of the accompanying financial statements in order for it to be presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America.
>
> In our opinion, the remainder of the financial statements referred to above, not including the investment information summarized in Note X that we were instructed not to audit, 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."

**<u>Issue 3 – Modifications to the Opinion in the Independent Auditor's Report</u>**

We believe that the guidance in paragraphs 31 and 34 of the proposed SAS, as well as the reports presented in Illustrations 5, 6, and 7 of the proposed SAS, are clear with respect to the auditor's responsibilities when circumstances exist that would impair the auditor's ability to issue an unmodified opinion, other than the ERISA-permitted scope limitation on qualifying investment information. We also believe that this guidance provides transparent reporting to the users of the financial statements.

**<u>Issue 4 – Required Emphasis-of-Matter Paragraphs</u>**

We do not have any concerns about the types of situations included in paragraph 116 of the proposed SAS that would be included in emphasis-of-matter paragraphs in the auditor's report.

**<u>Issue 5 – Reporting Internal Control Deficiencies</u>**

We agree with the ASB that the auditor's report that accompanies the financial statements should not include a description of material weaknesses or significant deficiencies in internal control.

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

We believe that the inclusion of the required audit procedures in paragraphs 15 and 16 of the proposed SAS will enhance the consistency and quality of the audit work performed in ERISA plan audits. We also believe that the guidance on achieving these requirements is appropriate.

We also believe that reporting the results of testing specific plan provisions, as contemplated in paragraphs 119 through 124 of the proposed SAS, will be an important new element in the auditing of ERISA plan financial statements, and we agree with the proposed elements and illustrative reports included with the proposed SAS. The primary beneficiaries of this report will be regulatory agencies, primarily the U.S. Department of Labor ("DOL") and the Internal Revenue Service ("IRS"), and the plan's participants. Under the proposed SAS, this report, whether combined with the independent auditor's report on the financial statements or issued as a separate report, would be included as part of the audited financial statements that are included with the electronic filing of Form 5500.

However, although Form 5500 is filed with the DOL, and the DOL shares these filings with the IRS, the DOL and the IRS are not the only parties that can access Form 5500 and all of its attachments. Because all Form 5500 returns, complete with all of their attachments, are posted to a public website (EFAST2), any person can access and download any plan's Form 5500 at any time, including individuals who have no connection with the particular benefit plan or sponsor.

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

As such, under the proposed SAS, the report on testing specific plan provisions, complete with any findings as a result of that testing, would become available for public view by anyone, including individuals who have no connection with the particular benefit plan or sponsor.

It is true that, under the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (the "Uniform Guidance"), non-profit organizations and governmental entities with $750,000 or more in expenditures of federal awards during a year are also subject to the disclosure of compliance findings, material weaknesses, and significant deficiencies in audit packages that are posted to a public website (the Federal Audit Clearinghouse) and that can be accessed and downloaded by anyone, including individuals who have no connection with that particular entity. Those findings can also include material weaknesses and significant deficiencies in internal control that relate to the financial statements as a whole and do not relate to any particular federally funded award. However, by definition, the entities subject to this public disclosure are limited to those who receive awards from the federal government, either directly or via pass-through entities, and the federal government is ultimately funded primarily by the American public (via taxes). Therefore, under the Uniform Guidance, it can be argued that there is a public interest in public disclosure of compliance findings, material weaknesses, and significant deficiencies for entities receiving federal funding.

Conversely, ERISA plans are funded through contributions of either the plan sponsor or the plan's participants, or both. These contributions are not ultimately funded by the American public's taxes. As such, we do not see the justification of a public interest in public disclosure of findings in ERISA plan audits. (Even though the proposed SAS requires findings that are "clearly inconsequential" to be excluded from the report, it is likely that there will be diversity in practice as to what is considered "clearly inconsequential", resulting in some findings being reported that will be interpreted by certain readers as being more consequential than they may actually be.) However, if the proposed SAS is enacted as currently written, this public disclosure of findings will become an unintended consequence.

To address this concern, we propose the following:

- We believe that paragraph 120 of the proposed SAS should be revised to remove the option of including the report on specific plan provisions with the auditor's report on the financial statements. The report would be required to be issued as a separate report. (This would also eliminate paragraph 124 of the proposed SAS.)

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

- The report on specific plan provisions would be required to be issued for every ERISA plan audit, but would not be permitted to be included with the audited financial statements. Instead, it would be issued as a stand-alone report, in the same manner as communications on control deficiencies and communications on other matters that are required to be communicated with those charged with governance.

- The report on specific plan provisions would be a required attachment to the electronic Form 5500 filing, but as a separate attachment. This attachment would not be posted by the DOL on the EFAST2 website, or any other website. The DOL would only share this attachment with the IRS (or, if applicable, other regulatory agencies).

- In the summary annual reports or other required communications issued to plan participants annually, plan sponsors would be required to document that a report on specific plan provisions has been issued and is available to any plan participant who wants to review the report or obtain a copy. This requirement would be similar to the current requirement for making the plan's audited financial statements and Form 5500 available for any plan participant to review or copy.

Of course, the latter two items would not be included in the issued SAS. However, since the DOL has been involved in the process of drafting the proposed SAS, it should be possible to convince the DOL to enact these two provisions. If these suggestions are enacted, the DOL and the IRS will receive information that should improve their oversight responsibilities without subjecting plan sponsors and administrators to excessive public scrutiny.

**Issue 7 – Required Procedures Relating to Form 5500**

We believe that the procedures included in paragraphs 36 through 48 of the proposed SAS will increase the consistency of auditors' performance in identifying information in Form 5500 that may be relevant to audits of ERISA plan financial statements.

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

We agree with the approach of creating a new reporting model to more completely describe management's responsibilities and the auditor's responsibilities in audits of ERISA plan financial statements. We also believe that the ASB can use this model as a framework for modifying the auditor's reports on financial statements for any or all other types of entities that would achieve the same objectives for those entities.

**Issue 9 – Proposed Effective Date**

The proposed effective date for the proposed SAS is for periods ending on or after December 15, 2018. We believe that this proposed SAS will generate significant discussion and debate, and that the issuance of the final SAS may well be delayed because of the discussion and debate. Indeed, the comment period for the proposed SAS was extended from August 21, 2017 to September 29, 2017 (as of this writing). Therefore, we believe that an effective date of periods ending on or after December 15, 2018 may not provide enough time after the issuance of the final SAS for auditors and other parties to properly adopt the new standard.

Since the DOL's Form 5500 Modernization Initiative is proposed to be effective for plan years ending on or after December 31, 2019, we believe a similar effective date would be more appropriate for the proposed SAS. Therefore, we recommend an effective date for the proposed SAS to be for periods ending on or after December 15, 2019. This would also allow the DOL to complete modification of the Form 5500 reporting system that will include incorporating an attachment for the report on specific plan provisions that can be separated from the rest of the Form 5500 electronic filing, as we have previously suggested.

We appreciate your consideration of our comments, and we would be pleased to discuss these matters further. Please direct any questions you may have to Michael Nicholas, Quality Control Principal, at mnicholas@gjc-cpa.com, or Anthony McCree, Managing Partner, at amccree@gjc-cpa.com. Both individuals may also be reached at (313) 965-2655.

Sincerely,

George Johnson & Company

CERTIFIED PUBLIC ACCOUNTANTS