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SENT ELECTRONICALLY

Via online submission: comments@pcaobus.org

Office of the Secretary
Public Company Accounting Oversight Board
1666 K St. N.W.
Washington, DC 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 051 – ***Amendments to PCAOB Auditing Standards Related to a Company’s Noncompliance with Laws and Regulations and Other Related Amendments (PCAOB Release No. 2023-003)***

Dear Madam Secretary and PCAOB Board Members:

Thank you for the opportunity to provide input to the Public Company Accounting Oversight Board (PCAOB) on the above noted document.

MNP LLP is one of Canada’s largest chartered professional accountancy and business advisory firms. Our clients include a sizable contingent of public traded entities, including Emerging Growth Companies (“EGC”), as well as small to mid-sized owner-managed businesses, credit unions, co-operatives, First Nations, not-for-profit organizations, municipalities, and government entities. We believe that we are positioned well to provide feedback on the proposed amendments from the viewpoint of a mid-sized firm.

While we generally support the need to modernize auditing standards to enhance audit quality, we are concerned that the overly broad scope of the proposed amendments will instead be detrimental to audit quality, while increasing the regulatory cost and complexity of audits performed under PCAOB auditing standards, particularly for mid-sized firms such as ours.

The proposed amendment in paragraph 6 of AS 2405, *Illegal Acts by Clients* (“AS 2405”), would require auditors to identify “laws and regulations with which noncompliance could reasonably have a material effect on financial statements”. It is not clear if this proposed requirement is intended to be risk-based. We believe a risk-based approach would be more appropriate.

Companies are subject to various complex laws and regulations related to their industry or jurisdiction of operations, which their governance and compliance processes (i.e., management, the board of directors, audit committee and legal counsel) are responsible to monitor and which may be subject to a network of regulatory oversight. Further, where interpretations of law or regulation may vary between users and jurisdictions, the auditor would be placed in an untenable situation on matters that may have no material impact on financial reporting.

We believe the auditor’s role should remain to determine which matters of noncompliance that have occurred do affect the financial statements under the relevant financial reporting framework.

The proposed new requirement would transfer some of that responsibility to auditors, thus expanding the scope of the auditor’s responsibilities. The corresponding benefits of doing so are not clearly described in the economic analysis. If the scope is expanded as proposed beyond the auditor’s core competencies, mid-sized firms may be required to engage various legal specialists to assist in meeting the new requirements, which could drastically affect the economics of audits of smaller public companies, including EGCs.

In addition to those costs, non-affiliated firms (“NAF”) such as ours would also need to make extensive revisions to our methodology, which have been noted in the economic analysis. We are concerned that these will make audits of companies by mid-sized firms uneconomical. We suggest more robust economic analysis is needed of the potential costs in relation to benefits as they relate to mid-sized firms.

In addition to our overarching concern, we have identified certain specific issues with the proposal below.

Question 24: Is the proposed approach to evaluate instances of noncompliance that has or may have occurred sufficiently clear? If not, why not?

The Proposing Release does not provide guidance or clarification on the auditor's responsibilities with respect to noncompliance with laws and regulations in instances where the noncompliance does not have a material effect on the financial statements. It is not clear whether the definition in paragraph .A2¹ in Appendix A of the proposal is intended to go beyond non-compliance that has a financial statement impact (i.e., extend to other information in documents containing audited financial statements, or the manner of its presentation that the auditor is aware contains a material misstatement of fact).

For example, the companies we audit are required to report their assessment on their internal control over financial reporting ("ICFR"); however, we do not attest to or report on management's assessment. Our responsibilities under the proposal are not clear with respect to management's assessment when there is noncompliance with the requirements of establishing and maintaining an adequate internal control structure in reporting their ICFR.

Footnote 13 of proposed amendments to AS 2405 refers to paragraph .04-.05 of AS 2710, *Other Information in Documents Containing Audited Financial Statements*. Those paragraphs appear to focus solely on financial statement matters (i.e., paragraph .04 states, "The auditor's responsibility with respect to a document does not extend beyond the **financial information** [emphasis added] identified in his report...").

We suggest that, if the proposed definition of noncompliance with laws and regulations remains broad, the PCAOB should also revise AS 2701, *Auditing Supplemental Information Accompanying Audited Financial Statements*, to clarify the auditor's responsibilities under that standard when the auditor identifies noncompliance in supplemental information accompanying the financial statements that is not material to the financial statements.

Question 26: Are the procedures the auditor may perform to obtain an understanding of the nature and circumstances of potential noncompliance and to determine whether it is likely the noncompliance occurred sufficiently clear? If not, why not? What additional procedures, if any, should be added?

In reference to our response to question 24, we believe that revisions to other standards may be required, consistent with the proposals for noncompliance that does not have a material effect on the financial statements (e.g., risk assessment, management representations, reporting responsibilities).

Question 33: Does the timing of the proposed communications (that is, "as soon as practicable") to management and the audit committee pose any particular challenges to the auditor? If so, how should the proposed requirement be changed?

Question 34: Is it appropriate to require the auditor to have a subsequent communication to management and the audit committee to communicate the results of the auditor's evaluation of information indicating noncompliance with laws and regulations has or may have occurred? If not, why not? Does this communication pose any particular challenges? If so, what are they?

We do not consider it necessary to require two communications. We believe that the proposed standards should allow auditors to exercise professional judgement when determining whether two communications are required or if one communication would be more effective informative.

The type of noncompliance along with the timing of when the noncompliance is identified may play a role in the auditor determining whether an immediate communication followed by a subsequent communication is necessary. In certain instances, it may be appropriate to have one communication for efficiency purposes.

¹ Paragraph .A2 states, in part, "Noncompliance with laws and regulations – An act or omission, intentional or unintentional, by the company whose financial statements are under audit, or by the company's management, its employees, or others that act in a company capacity or on the company's behalf, that violates any law, or any rule or regulation having the force of law. ..."

For example, if the auditor identifies noncompliance during the closing stages of the audit, efforts may be better spent on investigating the noncompliance and determining with more certainty the effects of the noncompliance before than preparing required communications. In this instance, one communication at the end of the audit may be more effective and informative than two communications. In cases when it is not evident whether the noncompliance is significant, communication to the audit committee may not be effective until the significance of the noncompliance has been investigated.

We would be pleased to provide the PCAOB with any additional information you may require regarding our comments above to assist in finding solutions that meet the needs of the financial statement users and investors.

Yours truly,

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