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November 3, 2023

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street NW
Washington, DC 20006

Via Email to comments@pcaobus.org

Re: PCAOB Rulemaking Docket Matter No. 053, *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability*

Dear Office of the Secretary:

Grant Thornton LLP appreciates the opportunity to comment on the Public Company Accounting Oversight Board's (PCAOB's) Rulemaking Docket Matter No. 053, *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability* (the Proposal). We support the Board's mission and appreciate its ongoing commitment to investor protection. However, our letter highlights some specific concerns we have with regard to the Proposal, as well as a broader but considerable concern about the cumulative impact the Proposal could have when combined with the potential consequences of other active standard-setting projects. We believe that this combined impact on the profession as a whole could affect auditors' ability to sufficiently carry out their responsibilities within the financial reporting chain. We respectfully submit our comments and recommendations for the Board's consideration.

Firm liability versus individual liability

On page 7 of the Proposal, the PCAOB states that "there exists an incongruity between the respective requisite mental states for liability of a registered firm resulting from an associated person's conduct and for liability of the associated person." We do not think this difference is problematic and believe that it strikes an appropriate balance. We agree that it is reasonable to hold firms responsible for negligence and that a firm acts through its individuals. Nevertheless, a firm's system of quality management is complex and contains various interdependent parts, including personnel with overlapping responsibilities. In our opinion, the fact that a firm's actions

are taken by individuals forms the very basis for the construct within extant Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*. Further, we do not believe it is appropriate to hold individuals to a negligence standard for their execution of a broad, diverse set of responsibilities that require judgment.

Need for change

We are concerned that the Proposal does not clearly set forth a sufficient basis for the proposed rule changes and believe that certain points made in support of the Proposal seem to be contradictory to others. For example, the discussion on page 8 of the Proposal describes the Board's inability to charge Rule 3502 violations, and how the current threshold prevents the Board from executing its mandate of investor protection to the fullest extent. However, the economic analysis on page 25 states that the PCAOB staff "estimates two to three instances in 2022 where an amended Rule 3502 would have prompted staff to recommend a Rule 3502 charge." The discussion further indicates that the 2022 estimate "is likely a fair average representation across other years."

Based on this discussion, the perceived gap in the PCAOB's current regulatory framework appears minimal at best. It does not appear to be the type of gap that warrants a stark expansion of the enforcement-related tools that the Board currently possesses.

We also believe that the proposed QC 1000, *A Firm's System of Quality Control*, provides clearer expectations with regard to individuals in quality control roles, rendering the need for revisions to Rule 3502 unnecessary, given the various other enforcement tools currently at the Board's disposal. We supported the Board's intention to modernize and streamline the standards and rules, as described in the Board's 2022-2026 Strategic Plan, and agree that change may be necessary to meet today's needs, as the Board notes on page 11 of the Proposal. However, we believe the Board's expectations and intentions remain unclear with regard to the need for rulemaking concerning contributory liability, and we are unaware of significant changes in legal precedent regarding negligence standards over the last several years that would necessitate the proposed changes.

Costs of unintended consequences

In considering how these changes will be brought to bear in the profession, we believe the potential costs of the unintended consequences of the proposed amendments cannot be overstated. Our two most significant concerns are as follows:

- The caliber of individuals willing to serve in quality control roles will likely suffer if the rule is approved as proposed. In our comment letter on proposed QC 1000, we expressed concerns that firms might have difficulty filling the roles specified in the proposed standard. We believe proposed AS 1000, *General Responsibilities of the Auditor in Conducting an Audit*, QC 1000, and the proposed amendments to Rule 3502 could have a compounding impact on the profession's and on individual firms' ability to attract and retain qualified individuals to assume key roles in systems of quality control. We feel that Rule 3502 is particularly problematic in this regard because, under the proposed standard, individuals serving in a quality

control function could be held liable for an honest mistake that results in a quality control violation against the firm. This no-margin-for-error scenario will certainly have a chilling effect on the number of qualified individuals willing to assume a quality control role, which of course runs counter to the point for the PCAOB's new initiatives.

- When combined with the various other standard-setting changes the Board has undertaken recently, the proposed amendments to Rule 3502 could drive smaller firms away from auditing public companies, thus reducing competition. Similarly, the cumulative impact of the Proposal and other recently proposed standards could also reduce the number of foreign firms that are willing to perform procedures in support of international public company audits.

If the Board elects to move forward with amending Rule 3502, we believe aligning Rule 3502 more closely with the provisions of SEC Rule 102(e) would be more appropriate. While such an approach would not eliminate the potential unintended consequences described above, we believe it could provide clearer expectations of when liability for an error might arise and help to mitigate the impact of such consequences.

Effective date

While we do not disagree with the Board's basis for proposing an effective date of 60 days from the date of SEC approval, we ask the Board to again consider the interrelationships of the proposed changes and the other open standard-setting projects. We do not believe it is yet clear how Rule 3502, as proposed, would interact with the final versions of QC 1000 or AS 1000. It may be appropriate to have a longer effective date in order to give adequate time for the Board to make further progress on those projects and evaluate the interactions and potential unintended consequences of the various proposed changes in standards and rules.

We would be pleased to discuss our comments with you. If you have any questions, please contact Jeff Hughes, National Managing Partner of Audit Quality and Risk, at (404) 475-0130 or Jeff.Hughes@us.gt.com.

Sincerely,

/s/ Grant Thornton LLP