

August 4, 2023

Via Email: [comments@pcaobus.org](mailto:comments@pcaobus.org)

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006-2803

**Re: Freeport-McMoRan Inc. Comment Letter on 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**

Dear Secretary Brown and Members of the Public Company Accounting Oversight Board:

This letter is submitted on behalf of Freeport-McMoRan Inc. (NYSE: FCX), a leading international mining company with headquarters in Phoenix, Arizona. We are one of the world’s largest publicly traded copper producers, with a portfolio of assets that includes the Grasberg minerals district in Indonesia, one of the world’s largest copper and gold deposits, and significant mining operations in North America and South America, including the large-scale Morenci minerals district in Arizona and the Cerro Verde operation in Peru.

We appreciate the opportunity to comment on the proposed auditing standard changes issued by the Public Company Accounting Oversight Board (the PCAOB) on June 6, 2023, titled Amendments to PCAOB Auditing Standards related to a Company’s Noncompliance with Laws and Regulations and Other Related Amendments, PCAOB Release No. 2023-003; PCAOB Rulemaking Docket Matter No. 051 (the Proposed Standards). For the reasons identified below, we do not support the Proposed Standards, and we believe the Proposed Standards will have detrimental effects on public companies, including their shareholders and auditors.

### **Risks Associated with Expanding Auditor’s Role into the Legal Arena While Potentially Eroding a Company’s Attorney-Client Privilege**

We believe that the Proposed Standards do not fully consider the consequences for public companies in significantly expanding the role of the auditor to include responsibilities that fall squarely within the purview of legal counsel, which is outside the auditor’s core competencies. The Proposed Standards suggest the auditor will be expected and held accountable to identify all laws and regulations applicable to a public company client across the company’s operations and evaluate any information that may indicate instances of noncompliance regardless of materiality. Auditors are not legal experts, and accordingly, will need to retain and rely on the expertise of attorneys and other legal specialists, which will pose new and heightened risks to public companies.

Specifically, the auditor’s expanded role could alter what information and documents, including otherwise privileged or protected attorney-client communications, a company may

need to share with its auditor to ensure that sufficient audit evidence is obtained for the auditor to evaluate and assess potential noncompliance and subsequent remediation. This would present a significantly increased risk of waiver of the company's right to claim legal privileges or other legal protections.

Oversight of a company's compliance with laws and regulations is the responsibility of a company's board of directors, audit committee and management team, including the general counsel. However, the Proposed Standards require the auditor to independently determine noncompliance with laws and regulations, including whether a company's disclosures contain a material misstatement. This could result in situations where the view of the auditor's legal specialist conflicts with the company's legal opinion. A determination of noncompliance requires legal judgment that should remain in the purview of the company and its legal counsel.

### **Substantial Costs Imposed without Commensurate Benefits**

We believe the Proposed Standards do not adequately consider the potential that the new requirements would significantly expand the cost of audits for public companies and that such costs are likely to outweigh the perceived benefits to investors.

As noted above, we believe that the Proposed Standards will result in auditors significantly investing in legal capabilities by engaging attorneys or other legal specialists for each area of law in each jurisdiction relevant to a public company client. Public companies of all sizes are subject to a variety of laws and regulations with which they must comply, at various levels of government and across the jurisdictions in which they operate. As laws and regulations evolve, or as a company's business changes, engagement of additional legal experts may be required, further increasing costs. The auditors will ultimately seek to pass on those increased costs to their clients, such as fees incurred from the engagement and supervision of such legal specialists. For companies with global operations (we have significant operations in seven countries and throughout the United States) or that are subject to a variety of laws and regulations due to the nature of their businesses, such increased costs are likely to be substantial.

Public companies also will need to undertake enhancing their controls and procedures to satisfy the requirements of the Proposed Standards. We further believe that the Proposed Standards would require management and the audit committee to invest additional time and resources. Collectively, these costs are expected to be substantial and likely outweigh the perceived benefits to investors, who indirectly will be harmed by the significantly increased costs to the public companies in which they invest.

### **Increase in Premature and Duplicative Communications to Audit Committee Thereby Distracting from Core Responsibilities**

The Proposed Standards would require communication to the audit committee (except for matters that are "clearly inconsequential") (1) as soon as the auditor becomes aware of information indicating that noncompliance has or may have occurred (i.e., before a full

evaluation has been conducted), and (2) after the auditor has evaluated such information. We are concerned that the requirement to communicate potential noncompliance before the auditor's evaluation would result in premature communications with the audit committee. Because the auditor also would be required to communicate with the audit committee again following evaluation, the Proposed Standards are likely to result in duplicative communications. Accordingly, we believe that the increase in volume of communications could unnecessarily increase the audit committee's workload and distract the audit committee's attention from its core responsibilities and other matters.

### **Conclusion**

We appreciate the opportunity to share our views on the Proposed Standards and would be happy to discuss our comments with the PCAOB and its staff.

Sincerely,



Douglas N. Currault II  
Senior Vice President and General Counsel