

October 13, 2016

SENT VIA EMAIL

Ms. Sherry Hazel
American Institute of Certified Public Accountants
1211 Avenue of the Americas, 19th Floor
New York, NY 10036-8775

RE: Proposed Statement on Auditing Standards, *Auditor Involvement with Exempt Offering Documents*

Dear Ms. Hazel:

Moss Adams LLP appreciates the opportunity to comment on the Proposed Statement on Auditing Standards, *Auditor Involvement with Exempt Offering Documents* (the proposed SAS).

Moss Adams LLP is the largest accounting and consulting firm headquartered in the Western United States, with a staff of over 2,500, including more than 270 partners. Founded in 1913, the firm serves public and private middle-market businesses, not-for-profit, and governmental organizations.

We support the efforts of the Auditing Standards Board (ASB) to address the topic of auditor involvement with exempt offerings, and to promote consistency in the application of auditor responsibilities, as a matter of public interest, when auditors are involved with offerings of exempt securities and franchise offerings. While we support most conceptual aspects of the proposal, we are concerned about certain items in the proposed SAS that may benefit from further clarification to facilitate consistent application. Our comments are set forth below.

Scope of the Proposed SAS

Commenters are asked to provide feedback on the types of offerings included in the scope of the proposed SAS, specifically whether franchise offerings should be included in its scope. We believe it is appropriate to include franchise offerings because they typically require the auditor's report and the related financial statements to be included in the offering documents.

Involvement

Paragraph 8(b) of the proposed SAS describes the condition in which the auditor is engaged to perform, "or otherwise performs", one or more of the listed activities for purposes of determining whether the auditor is involved in the exempt offering and in the scope of the proposed SAS. The phrase "otherwise performs" is undefined. We are concerned that without a clearer explanation of this phrase it may lead to inconsistent application.

We recommend the ASB provide some guidance regarding situations intended to be encompassed by the term "otherwise performs" to sharpen the focus on when an auditor's activities put them within

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the scope of the proposed SAS or not. The alternative, to remove this language from paragraph 8(b), limiting the requirement to situations where the auditor is engaged to perform such activities, whether engaged in writing or verbal agreement, is not in the best interests of the public.

Reading a Draft of the Offering Document

In the application guidance for paragraph 8(b)(ii), paragraph A9 states that reading a draft of the offering document encompasses situations in which the auditor “receives a request” from the entity to read and provide feedback on the offering document. The proposed SAS appears to attempt to draw a line between when an entity requests the auditor perform certain activities and when the auditor performs those activities anyway. If this is the case, we do not agree that simply receiving a request from the entity is an appropriate trigger for involvement. In certain situations, the auditor may receive such a request from the entity but decline to provide the requested feedback, perhaps in order to remain outside the scope of the proposed SAS if there were no other triggers. The auditor may nevertheless choose to read the offering document of their own accord in order to comply with the requirements of AU-C 720, *Other Information in Documents Containing Audited Financial Statements*. If the ASB considers the entity’s request a critical aspect of the auditor’s involvement, we believe the proposed SAS should better differentiate between circumstances where the auditor reads a draft of the offering document **at the entity’s request** and where the auditor reads a draft of the offering documents only in order to comply with AU-C 720, **and** the entity requested the auditor to read the documents, and the auditor refused the entity’s request. Accordingly, it is our view that the scope of proposed paragraphs 8(b)(ii) and A9 are too broad.

We recommend the ASB amend paragraph A9 so that simply receiving a request from the entity does not trigger auditor involvement. Furthermore, we believe the proposal should be amended to clarify that simply fulfilling the requirements of AU-C 720 also does not trigger involvement. We believe providing examples of situations that are not intended to be encompassed in paragraph 8(b)(ii) (rather than situations that are intended to be encompassed) in paragraph A9 could be an effective manner of clarifying the intent of this trigger.

Assisting the Entity in Preparing Information Included in the Offering Document

“Information” included in scope – Paragraph 8(b)(ii) describes that auditor involvement is triggered when the auditor assists the entity in preparing information included in the offering document, and does not distinguish between information the auditor knew would be included versus information that may have been prepared before the exempt offering was even considered by the entity. For example, the auditor may have assisted the entity in preparing a schedule of future lease revenue for the entity’s internal purposes, which ended up being included in the exempt offering documents that were developed much later. It also does not address or specifically exclude situations when the offering document gives no indication the auditor assisted in the preparation of the information. We believe intention is an important distinction, and that involvement in the offering should not be triggered when an auditor is not reasonably aware that the information he or she is assisting the entity to prepare will be included in an exempt offering document.

We recommend the ASB add the words “to be” in 8(b)(ii) so that it reads as follows: Assisting the entity in preparing information to be included in the offering document”.

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Supplementary Information – Paragraph A7 describes items that are not considered “information included in the offering document” that are referred to in paragraph 8(b)(i). Among the list is “...supplementary information [SI] other than required supplementary information accompanying those financial statements that the auditor already *considered* [emphasis added] during the audit of the financial statements or review of interim financial information.” The term “considered” is undefined and does not appear in AU-C 725, *Supplementary Information in Relation to the Financial Statements as a Whole*. It is unclear whether the exclusion in paragraph A7 extends to only SI for which the auditor provided an in-relation-to opinion in its audit report, or SI the auditor disclaimed an opinion on, or SI the auditor was silent about in its audit report because the auditor was not engaged to audit such SI (which would technically be Other Information as defined in AU-C 720). Further, supplementary information is a defined term in AU-C 725; we do not believe the clarifying phrase “other than required supplementary information” is necessary in the proposed SAS.

We recommend the ASB revise the term “considered” to align with the auditor’s responsibilities under AU-C 725. Further, we suggest that all references to supplementary information in the proposed SAS be aligned with the existing definitions in AU-C 725.

Due Diligence Discussions

Paragraph 8(b)(iv) describes one of the triggers to involvement as “participating in due diligence discussions...” Paragraph A13 further describes requests by underwriters to interview or otherwise meet with auditors as a part of the due diligence process for an offering, referred to as “oral due diligence meetings”. It is not clear whether paragraph 8(b)(iv) is *limited* to oral due diligence meetings, or whether paragraph A13 is simply illuminating one typical format of due diligence. Further, we are concerned that the discussion in A13 does not address situations in which underwriters and their counsel, placement agents, broker-dealers, or other financial intermediaries use other forms of communication with auditors, such as electronic mail, to perform their due diligence.

We recommend the ASB add discussion in paragraph A13 to note that “participation in due diligence discussions” may take place in a variety of communication methods, and need not necessarily be an oral communication, for the activity to trigger involvement as stated in paragraph 8(b)(iv).

Subsequent Event Procedures

Paragraphs 12-17 provide guidance on the auditor’s responsibility to perform subsequent event procedures when the auditor is involved in with an exempt offering document. We agree that these procedures are appropriate in a variety of situations when the auditor is involved with an exempt offering document, particularly those situations where the auditor provides an inclusion letter, comfort letter, or other written communication in conjunction with the offering. However, we are concerned that certain events triggering involvement do not necessarily warrant the extent of subsequent events procedures included in the proposed SAS. For example, as currently proposed in paragraph 8(b)(i), assisting the entity in preparing information that is contained in the offering document would trigger involvement, and necessitate performance of the proposed subsequent event procedures. As noted above, there are circumstances in which the auditor may perform nonattest services to assist the entity in preparing information included in the offering document, without the auditor’s previous knowledge that the information resulting from such services would be included in

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an offering document. We do not believe that assisting the entity in preparing such information should in and of itself warrant the extent of subsequent event procedures proposed, unless the auditor was made aware that the information would be included in an offering document prior to performing the nonattest services.

We recommend the ASB further consider whether subsequent event procedures are appropriate for all of the proposed triggering activities, particularly those proposed in paragraph 8(b)(i).

Examples of Exempt Offerings

Paragraph A23 describes certain offerings within the jurisdiction of the Office of Thrift Supervision (OTS). Paragraph 1(i) of Appendix A also describes the OTS as a regulator of securities. As a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Office of Thrift Supervision was dissolved July 2011 and merged with the Office of the Comptroller of Currency and other federal agencies.

We recommend the ASB amend the proposed SAS to replace the references to the OTS with the Office of the Comptroller of the Currency (OCC).

Other Specific Comments

- While paragraph 5 of the proposed SAS defines the term “exempt offering document”, the phrase “offering document” is used throughout the document instead. The full defined term “exempt offering document” should be used consistently throughout the proposed SAS. In addition, many terms might be used to describe an exempt offering document, such as offering circular, offering memorandum, or offering statement. To drive better understanding by all auditors, we suggest that the Application and Explanatory Material be updated to include this explanation.
- Paragraph 3 describes the effective date as the date exempt offering documents with which the auditor is involved that are “initially distributed, circulated, or submitted” on or after June 15, 2018. Paragraph A4 seems to contradict paragraph 3 by limiting the effective date to the “initial distribution”. Furthermore, these terms are not sufficiently defined to ensure a consistently applied effective date. For example, neither the requirement nor the application guidance clarify whether “distribution” only occurs when an offering document is distributed externally beyond the working group, or whether it is when it is first distributed to a buyer or potential buyer, that is does not include draft documents, and so on. We suggest the terms used in these paragraphs be more fully defined so that the effective date is more precisely stated.

We appreciate the opportunity to provide feedback and we hope that you find our comments meaningful. If you would like to discuss our comments or have any questions, please contact Erica Forhan (Erica.Forhan@mossadams.com) at (206) 302-6826.

Yours truly,

Moss Adams LLP