



Agenda Item 2

Auditor Involvement with Exempt Offerings

Objective of Agenda Item

To vote to ballot the proposed Statement on Auditing Standards addressing auditor involvement with exempt offerings.

Background

Exempt Securities Task Force consists of the following members:

- Chris Smith – BDO (Chair)
- Martha Garner – PwC
- Jeffrey Markert – KPMG
- Christine Piché – CliftonLarsonAllen
- Jere Shawver - Baker Tilly
- Kim Tredinnick – Baker Tilly

Additional assistance provided by:

- Jack Fuchs – Thompson Hine LLP
- Seth Friedman & Chris Paci – DLA Piper
- Paul Maco – Bracewell LLP

Summary and Disposition of Comments Received at the January 2016 ASB Meeting

The Task Force was asked to address the following issues raised at the January 2016 ASB meeting. The bullets following each issue reflect the Exempt Task Force's consideration of those items.

Introduction/Scope

The ASB directed the Task Force to evaluate the use of terms “nonissuer” and “investment.”

- Instances of “nonissuer” eliminated either by rephrasing or replacing with “entity.”

The ASB generally agreed with the two benchmark model defining involvement, however took exception to the provision regarding “the terms of the audit engagement require the entity to obtain

permission from the auditor before using the auditor's report in connection with an offering of investments or similar undertaking.”

- Scope revised to limit the scope to performing one or more of the trigger activities.

ASB members discussed “included” and “incorporated by reference” as some thought certain terms have a definitive meaning in securities law. Others suggested the terms have a common understanding.

- The Exempt Task Force researched and evaluated the appropriateness of the terms concluding that use of “included” and “incorporated by reference” is appropriate for this standard.
- Revisions made to emphasize that it is only the auditor's report that is being referred to regarding included and incorporated by reference.

Effective Date

ASB members supported the alignment of the effective date and relevant procedures to the date of the distribution, circulation, or submission of offering documents. However, the proposed standard was inconsistent with dating references.

- Revisions were made to consistently use the term “distribution, circulation, or submission of the offering document.”
- Note that the proposed effective date of June 30, 2018 would provide approximately one year from final issuance (assuming May 2017) before becoming effective.

The ASB requested the Task Force consider whether additional dates should be considered (e.g., closing, effective, qualification) and whether a documentation requirement to consider relevant dates.

- The Exempt Task Force concluded that distribution, circulation, or submission of the offering document is sufficient in terms of the dates to consider procedures. The Task Force did not believe procedures should be required of the auditor after final distribution, circulation, or submission of the offering document, thus the revisions have no references to closing or effective dates.
- The Exempt Task Force concluded that a documentation requirement regarding the relevant dates identified by the auditor, client, and counsel is unnecessary.

Objective

The ASB directed the Exempt Task Force to revisit the objective to align better with the standard. As drafted it was too lengthy and did not align to the full purpose of the proposed standard.

- Objective substantively revised.

Involvement

Exempt Task Force was asked to evaluate whether the notion of “involved” is necessary as some expressed concern with the term.

- After consideration, the Exempt Task Force decided to maintain the terms “involved” and “involvement.” Having a term to coin what the situation is with regard to exempt offerings will help educate practitioners and give context to what the proposed standard addresses.

The ASB focused its January 2016 discussion on the “acknowledgement” triggers (providing a revised auditor’s report or signing a report for inclusion in an offering). Some thought that any action by a firm with regard to an offering should constitute involvement. Others thought that a revised or signed report is within the context of the original audit engagement and would not constitute involvement.

- The Exempt Task Force deleted the trigger, “Provide a revised auditor’s report for inclusion in a specific offering document” from the standard. The rationale was that revising a report is not specific to the offering, instead it relates to the original engagement to audit the financial statements.
- The Exempt Task Force maintained the trigger, “signing a copy of the auditor’s report for inclusion in a specific offering document.” This trigger will be a matter of further discussion, see Issue for Discussion below for more details.

Subsequent Events

There were differences of opinion on requiring subsequent events, however the majority of members who spoke up on this issue supported the requirement noting it is in the public interest and once the auditor is deemed involved, it makes sense to perform such procedures. Others suggested that an intelligent read of the document (similar to AU-C 720) would give an opportunity to note inconsistencies with the financial statements or misstatement of fact and that an auditor would only apply subsequent procedures if deemed necessary. ASB directed the Exempt Task Force to maintain the subsequent events procedures.

Other Comments

Detailed comments and editorial suggestions were provided by ASB members.

- Edits in the draft reflect the Exempt Task Force's consideration of comments and proposed edits.

Issue for Discussion

The specified activities that trigger involvement (triggers) establish parameters to the proposed standard so as to avoid an auditor from unknowingly becoming subject to requirements. The proposed standard identifies seven triggers in paragraph .8b as follows:

- i. Assisting the entity in preparing information included in the offering document
- ii. Reading a draft of the offering document at the entity's request
- iii. Issuing a letter in accordance with section 920, Letters for Underwriters and Certain Other Requesting Parties, or an attestation engagement report in lieu of a comfort or similar letter on information included in the offering document
- iv. Participating in due diligence discussions with underwriters, broker-dealers, or other financial intermediaries in connection with an offering document
- v. Issuing a report on an attestation engagement relating to the offering document
- vi. Providing written agreement (for example, an inclusion letter) for the use of the auditor's report in a specific offering document
- vii. *Signing a copy of the auditor's report for inclusion in a specific offering document***

The triggers either result in an engagement (i-vi) or an acknowledgement (vii) that the auditor's report will be used in an offering. There are some concerns over acknowledgement. The Exempt Task Force believes that the acknowledgement driven trigger exposes the auditor to liability under securities laws thus, appropriate to include. However, there is some concern that signing a copy of a report is within the scope of the original engagement to audit the financial statements, and thus not appropriate as a trigger to require involvement.

Issues for ASB Discussion

1. Does the ASB support the inclusion of the acknowledgement trigger (vii) to establish involvement?

Items Presented

Agenda Item 2 – Issues Paper

Agenda Item 2A – Draft SAS

Agenda Item 2B – Draft SAS Marked with Changes from January 2016 Draft

Agenda Item 2C – Wrap Materials

Mr. Smith will lead the ASB through each paragraph of Item 2A soliciting feedback addressing issues raised in Item 2 as they arise in the draft SAS. Item 2B is provided to reflect changes made to the SAS since the version distributed in the January 2016 Board materials. In addition, Mr. Smith will present the Item 2C and solicit feedback. Any necessary changes will be made to the draft SAS and wrap materials. Revised documents will be circulated (email and print) to ASB members mid-day Wednesday, May 25. The objective is to vote the draft to ballot on Thursday, May 26.