



EXPOSURE DRAFT

PROPOSED STATEMENT ON AUDITING STANDARDS

AUDITOR INVOLVEMENT WITH EXEMPT OFFERINGS

(AICPA, PROFESSIONAL STANDARDS, AU-C SEC. 945)

June xx, 2016

Comments are requested by September xx, 2016

Prepared by the AICPA Auditing Standards Board for comment from persons interested
in auditing and reporting issues.

Comments should be addressed to Sherry Hazel at shazel@aicpa.org.

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Explanatory Memorandum

Introduction

This memorandum provides background to the proposed Statement on Auditing Standards (SAS) *Auditor Involvement with Exempt Offerings* (AICPA, *Professional Standards*, AU-C sec. 945).

Background

Certain securities are exempt from all provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 except for the antifraud provisions of those acts, which prohibit any person from misrepresenting or omitting material facts in an offering or sale of securities. The U.S. Securities and Exchange Commission (SEC) cannot directly regulate such issuers thus, as such is no requirement by the SEC for auditor involvement with exempt offering. Thus, an auditor generally is not required to participate in, or undertake any procedures with respect to, an exempt offering. Further, issuers of exempt offerings may include an auditor's report (accompanying audited financial statements) in an offering document without obtaining the auditor's permission as there are no laws or rules that prohibit such an inclusion. Franchise offerings regulated by the Federal Trade Commission are similar in that there is no requirement for auditor involvement with such offerings.

The AICPA provided industry-specific auditing guidance regarding an auditor's professional responsibilities when his or her audit report is included in municipal security offering document (AICPA Audit and Accounting Guides, *State and Local Governments* and *Health Care Entities*). The guidance provided situations in which an auditor is deemed "involved" with the offering and the procedures to perform in such situations. Some firms require involvement with municipal securities offerings as a matter of practice risk management. They accomplish this by including a provision in the engagement letter requiring the client to obtain the auditor's permission before using the auditor's report in the disclosure documents.

Prior to the Clarity project, the guidance on auditor involvement in AICPA Guides was phrased using "should" and thus, was interpreted as industry-specific requirements. During the conforming change process to incorporate the Clarity standards, the requirements (should) were eliminated as the clarified standards do not address what actions constitute "involvement" or define auditor requirements when involved with an exempt offering. Thus, the Auditing Standards Board developed a Task Force to address the topic of auditor involvement with exempt offerings.

Effective Date

The proposed SAS would be effective for offering documents with which the auditor is involved that are initially distributed, circulated, or submitted to potential investors on or after June 15, 2018. Once issued, the auditor would be permitted to apply the AU-C section before the effective date.

Explanation of Proposed Standard

The proposed standard defines the types of offerings addressed (exempt offerings), when an auditor is deemed involved in an offering, and the auditor requirements when involved with an exempt offering.

The proposed standard defines:

- Exempt offerings as securities exempt from registration under the Securities Act of 1933 or franchise offerings regulated by the Federal Trade Commission.
- Involvement as a two-benchmark model:
 - The auditor's report on financial statements or the auditor's review report on interim information is included or incorporated by reference in an exempt offering document, and
 - The auditor performs one or more of specified activities with respect to the offering document. Specified activities which trigger involvement are included in the proposed standard.
- Auditor requirements when involved include applying the following:
 - section 720, *Other Information in Documents Containing Audited Financial Statements* to the offering, and
 - section 560, *Subsequent Events and Subsequently Discovered Facts*.

Although an auditor is not required to become involved in an offering document except when the two benchmarks defining involvement are met, auditors are not precluded from becoming voluntarily involved with an offering.

Issues

In drafting the proposed standard the exempt securities task force identified the following issues:

Specified Activities that Trigger Involvement

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 Securities 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.

Subsequent Event Procedures

When the auditor is involved in an exempt offering, the Exempt Securities Task Force believes there should be a requirement to determine if any material events occurred subsequent to the report date that could call the auditor's report into question. The limited set of procedures related to subsequent events when an auditor is involved serves the public interest and also addresses compliance with the antifraud provisions to which these offerings are subject.

Some have argued that given the absence of a regulatory requirement for subsequent event procedures, the decision whether to perform such procedures is a risk management decision for firms to decide. There is also a question whether the issuer has requirements to update their financial statements with these types of offerings. If a preparer has no requirement to perform subsequent event procedures, some have argued it would not be appropriate to require the auditor perform subsequent event procedures. The Task Force feels strongly that the need to serve the public interest and comply with the antifraud provisions outweigh these concerns.

Guide for Respondents

Comments are most helpful when they refer to specific paragraphs; include the reasons for the comments and, when appropriate, make specific suggestions for any proposed changes to wording. When a respondent agrees with proposals in the exposure draft, it will be helpful for the ASB to be made aware of this view as well.

Written comments on the exposure draft will become part of the public record of the AICPA and will be available for public inspection at the offices of the AICPA after **Month Day**, 2016 for one year. Responses should be sent to Sherry Hazel at shazel@aicpa.org by September **Day**, 2016.

Respondents are asked, in particular, to respond to the following questions:

1. Is signing a copy of the auditor's report for inclusion in a specific offering document an appropriate trigger to establish involvement with an exempt offering?
2. Should subsequent event procedures be required when an auditor is involved with an exempt offering?

Comment Period

The comment period for this exposure draft ends on September **Day**, 2016.

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(2015–2016)

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AUDITOR INVOLVEMENT WITH EXEMPT OFFERINGS
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