



Agenda Item 6

The Auditor's Involvement with Non-Registered Securities and Franchise Offering Documents

Objective of Agenda Item

To consider the expansion of scope from municipal offerings to all exempt offerings with regard to a proposed standard on the auditor's involvement with related offering documents.

Municipal Securities Task Force (TF) members are:

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

Additional assistance provided by:

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

Background

At the January 2015 ASB meeting, the ASB affirmed the TF's recommendation to develop a standard similar to AU-C 925, *Filings Under Federal Securities Statutes*, to address auditor involvement; however the ASB suggested the TF explore broadening the scope of the project to potentially include other "securities", including but not limited to, offerings exempt from the registration provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934.

The ASB generally agreed with the TF's suggestion that procedures similar to AU-C 720, *Other Information in Documents Containing Audited Financial Statements* and subsequent event procedures required by AU-C 925 should be considered in the development of a standard.

Issues for Discussion

Scope: Types of Offerings

The first component of the scope of this project is to identify exempt offerings beyond municipal securities. The TF determined that there are two categories of securities: Non-Registered Securities and Franchise Offerings. Agenda Item 6A provides information on the various types of securities.

The expansion of scope raises the question as to how far to extend the scope of a proposed standard. The TF believes that the scope should be limited to fundraising efforts in exchange for debt or equity securities and exclude fundraising appeals of a charitable nature and loan solicitations.

The following is a proposed scope for consideration:

This proposed Statement on Auditing Standards (SAS) addresses the auditor's responsibilities when the auditor's report on financial statements of a nonissuer are included or incorporated by reference in documents relating to a non-registered security or franchise offering, and the auditor is involved with the offering document as specified in this proposed SAS.

1. Does the ASB agree with the expansion of the proposed scope of this standard to include non-registered securities and franchise offerings?
2. Are there other types of offerings that should be considered?

Scope: Triggers

The second component of the scope of this project is determining and defining the notion of "involvement" with an offering document. At its January meeting, the ASB discussed that awareness of an offering by the auditor would not be sufficient to constitute involvement, based on an acknowledgement that municipal issuers (and potentially issuers of other exempt offerings) may include an auditor's report accompanying audited financial statements in the offering document without obtaining the auditor's permission. Instead the discussion focused on whether the auditor has knowledge that the issuer is doing something with the auditor's report and that the auditor is performing procedures related to the offering document. In discussing the triggers that may indicate involvement currently included in the AICPA Audit and Accounting Guide, *State and Local Governments* (SLG Guide), members of the ASB questioned whether, for a specific offering, providing written agreement for use of the report, revising a report for inclusion, or signing a report for inclusion would be considered "involvement" as there likely would be no engagement for these scenarios.

Consistent with the current SLG guidance, the TF determined that two benchmarks should be present to subject the auditor to the requirements of the proposed standard:

1. The financial statements on which the auditor's report was (or to be) issued are included in or incorporated by reference into the offering document, and
2. The auditor performs one of the defined trigger activities.

With regard to Item 2 above, the following activities are triggers related to an offering document the TF has considered that would subject the auditor to the requirements of the proposed standard:

- a. Assisting in preparing the financial information included in the offering document
- b. Reviewing a draft of the offering document at the client's request or as required under the terms of the auditor's engagement letter
- c. Issuing a letter in accordance with AU-C 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
- d. Issuing a report on an attestation engagement relating to the offering
- e. Engaging in due diligence discussions with underwriters
- f. Providing written agreement for the use of the independent auditor's report in a specific offering document
- g. Providing a revised independent auditor's report for inclusion in a specific offering document
- h. Signing the independent auditor's report for inclusion in a specific offering document

The TF questioned whether triggers should be limited to engagement-driven activities. Items a-e are engagement-driven (activities for which the auditor would be engaged to perform). Items f-h would not require separate engagement; however these activities provide evidence that the auditor was aware of the offering. From a firm point of view, involvement based solely on awareness is a risk management issue.

As the TF discussed items f-h in more depth, it questioned whether item h – signing the independent auditor's report for inclusion in a specific offering document – merits being a trigger. In this scenario, it is very possible that the securities related to the offering have already been placed and sold and that the inclusion of the report is done as a compliance issue for the offering file. The auditor would have no recourse at this stage of the process if issues were identified in the original report or in the offering document.

Issues for ASB Discussion

3. Does the ASB agree with the two benchmarks proposed to require involvement: *a)* The financial statements on which the auditor's report was (or to be) issued are included in or incorporated by reference into the offering document, and *b)* The auditor performs one of the defined trigger activities?
4. Does the ASB believe that the triggers to require involvement should be engagement driven or engagement-driven and awareness-based?
5. If the ASB supports the inclusion of awareness based triggers, does the ASB agree item h (signing a report for inclusion in a specific offering) should be excluded from the triggers?

Items Presented

Agenda Item 6 – Issues Paper

Agenda Item 6A – Non-Registered Offerings Which May Contain an Auditor's Report

Mr. Smith will refer to the Issues Paper and the Item 6A in leading the discussion.