



Agenda Item 2B

Draft SAS Marked with Changes from January 2016 Draft

~~The Auditor's Involvement with Offering Documents Other than Filings With the U.S. Securities and Exchange Commission Under the Securities Act of 1933~~

Auditor Involvement with Exempt Offerings

Introduction

Scope of This Section ~~(Ref: par. .A1-.A4)~~

.01

This proposed Statement on Auditing Standards (SAS) addresses the auditor's responsibilities when ~~the auditor's report on financial statements (or the auditor's report on a review of interim financial information) of a nonissuer[‡] is included or incorporated by reference in an offering of an investment that is not registered with the U.S. Securities and Exchange Commission (SEC) under the Securities Act of 1933 (offering document), and~~

~~a. the auditor's report on financial statements or the auditor's review report on interim financial information of an entity is included or incorporated by reference in an offering document of a security exempt from registration under the Securities Act of 1933 or a franchise offering regulated by the Federal Trade Commission (hereafter, such offerings are referred to as "exempt offerings"), and~~

~~a.b. the auditor performs one or more of the activities in paragraph .0708 with respect to an~~the~~ offering document, ~~or,~~~~

~~a. 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. (Ref: par. .A1 and .A2)~~

In such situations, the auditor is deemed to be involved with the offering document. ~~(Ref: par. .A1-.A3)~~

[‡] AU-C Glossary, *Glossary of Terms*

~~.02:~~

~~The scope of this standard contemplates~~Exempt offerings ~~that~~ are made pursuant to federal or state securities or franchise laws and regulations, including the antifraud provisions thereof. ~~They~~Exempt offerings include, but are not limited to:

- Transactions that are exempt from the registration requirements of Section 5 of the Securities Act of 1933, including private placement offerings; exempt public offerings; and municipal securities offerings
- Offerings of securities issued or backed by governmental, municipal, banking, tax-exempt, or other entities that are exempt from registration under the Securities Act of 1933
- Franchise offerings.

~~Hereafter, such offerings are referred to as “exempt offerings.” (Ref: par. .A4)~~

Effective Date ~~(Ref: par. .A5)~~

.03

This section is effective for offering documents with which the auditor is involved that are initially distributed, circulated, or submitted to potential investors on or after Month Day, 20XX-June 15, 2018. (Ref: par. .A5A4)

Objective ~~(Ref: par. .A6 and .A7)~~

.04

The objective of the auditor, ~~in connection with the inclusion or incorporation by reference of the auditor’s report on financial statements of a nonissuer (or the auditor’s report on a review of interim financial information of a nonissuer) in an offering document with which the auditor is~~ when involved, in an exempt offering is to perform specified procedures ~~at or shortly before the date of the distribution, circulation, or submission of the offering document to potential investors or a regulator to~~ and respond appropriately ~~when the auditor becomes aware that offering documents include~~ to information included in an offering document that could undermine the credibility of ~~those financial statements and the auditor’s report.~~ (Ref: par. ~~(or interim financial information).~~ .A5— .A6)

Definitions ~~(Ref: par. .A8)~~

.05

For purposes of this section, the following terms have the meanings attributed as follows:

Inclusion letter. ~~When~~A letter, requested by the ~~client, a letter entity, addressed to the entity and~~ signed and dated by the auditor ~~to acknowledge indicating the auditor’s awareness that~~ auditor agrees to the inclusion of the auditor’s report on financial statements ~~(or the auditor’s review report on a review of~~

interim financial information ~~is being used~~ in ~~an~~the offering document. This letter is not considered to be part of the offering document. (Ref: par. ~~.A7~~-.A8 and ~~.A18~~)

Involvement. ~~Situations in which~~**Involved.** The auditor is involved when the auditor's report ~~on financial statements (or the auditor's report on a review of interim financial information)~~ is included or incorporated by reference in an offering document, ~~and 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, or and~~ the auditor performs one or more of the activities in paragraph ~~.0708~~ with respect to that offering document.

Offering Document. ~~For purposes~~The disclosure document that provides financial and nonfinancial information related to the issuer of this section, ~~an~~the exempt offering ~~of an investment that and the offering itself.~~

Security. Security is ~~not registered~~used with the ~~SEC under meaning defined in Section 2(a)(1) of the Securities Act of 1933~~-. ~~of the U.S. Securities and Exchange Commission (SEC).~~

.06

References ~~in this section to~~ ~~includes an auditor's report~~ are to be read to encompass an auditor's report in accordance with section 700, *Forming an Opinion and Reporting on Financial Statements*, or an auditor's review report on interim financial information in accordance with section 930, *Interim Financial Information*.

.07

References in the ~~inclusion~~remainder of this section to an auditor's report that is *included* in an offering document ~~in this section means includes or incorporates~~ are to be read to also encompass an auditor's report that is *incorporated* by reference in an ~~exempt offering~~- document.

Requirements

Involvement (Ref: Par. ~~.A9~~-.A20)

.0708

The auditor should apply the requirements of this section in connection with an exempt offering document that includes when

a. the auditor's report ~~on financial statements (or the auditor's report on a review of interim financial information)~~ when is included in the offering document, and

~~a.b.~~ the auditor is engaged to perform, or otherwise performs, one or more of the following activities with respect to ~~a specific~~the offering document: (Ref: par. ~~.A8~~):

- i. ~~Assist~~Assisting the entity in preparing ~~financial~~ information included in the offering document (Ref: par. ~~.A9~~.A10)
- ii. ~~Read~~Reading a draft of the offering document at the entity's request (Ref: par. .A11)
- iii. ~~Issue~~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. (Ref: par. A12~~-~~.A14)
- iv. ~~Participate~~Participating in due diligence discussions with underwriters, broker-dealers, or other financial intermediaries in connection with an offering document (Ref: par. .A15)
- v. ~~Issue~~Issuing a report on an attestation engagement relating to the offering document (Ref: par. .A16~~-~~.A17)
- vi. ~~Provide~~Providing written agreement (for example, an inclusion letter) for the use of the auditor's report in a specific offering document (Ref: par. .A18)
- ~~a. Provide a revised auditor's report for inclusion in a specific offering document (Ref: par. A19)~~
- vii. ~~Sign~~Signing a copy of the auditor's report for inclusion in a specific offering document (Ref: par. ~~.A20~~A19)

~~The Other Information Included in the Offering Document and Other Information (Ref: par. A21-A23)~~

~~.0809~~

When the auditor is deemed to be involved with the offering document, the auditor should perform the procedures described in section 720, *Other Information in Documents Containing Audited Financial Statements*, on the offering document (including material that is incorporated by reference into the offering document) at or shortly before the date ~~that~~of the distribution, circulation, or submission of the offering document ~~is distributed, circulated, or submitted~~ (Ref: par. ~~.A5-A7~~.)

.10

When revision of the other information is necessary due to a material inconsistency or a material misstatement of fact that management refuses to correct and the auditor intended to agree to inclusion of the auditor's report in a specific offering document as discussed in paragraph .08bvi, the auditor should determine whether to withhold such permission. (Ref: par.

~~.09~~

~~In connection with~~A20)

.11

When performing the procedures required by paragraph ~~.0809~~, the auditor should determine that the auditor's name is not being used in a way that indicates that the auditor's responsibility is greater than the auditor intends. (Ref: par. .A21—.A24)

Subsequent Events Procedures (~~Ref: par. .A5 .A7 and .A24 .A27~~)

.1012

When the ~~most recent separate financial statements of the entity and the related auditor's report are included in the offering document and the~~ auditor is involved in an exempt offering, the auditor should perform the following procedures described in section 560, *Subsequent Events and Subsequently Discovered Facts*, at or shortly before the date ~~that of the distribution, circulation, or submission of the offering document is distributed, circulated, or submitted~~ (Ref: par. .A5 .A7):²

- a. Audit procedures designed to identify events occurring between the date of the auditor's report and the date of the distribution, circulation, or submission of the offering document that require adjustment to, or disclosure in, the financial statements. Such procedures, which take into account the auditor's risk assessment in determining the nature and extent of such audit procedures, should include
 - i. ~~obtaining~~Obtaining an understanding of any procedures that management has established to ensure that such events are identified-
 - ii. ~~inquiring~~Inquiring of management and, when appropriate, those charged with governance about whether any such events have occurred that might affect the financial statements-
 - iii. ~~reading~~Reading minutes, if any, of the meetings of the entity's owners, management, and those charged with governance that have been held after the date of the financial statements and inquiring about matters discussed at any such meetings for which minutes are not yet available-
 - iv. ~~reading~~Reading the entity's ~~latest~~most recent subsequent interim financial statements, if any-
- b. Obtain updated written representations from management at or shortly before the date of the distribution, circulation, or submission of the offering document, about whether
 - i. any information has come to management's attention that would cause management to believe that any of the previous representations should be modified.

² Paragraphs .09—.10 of section 560, *Subsequent Events and Subsequently Discovered Facts*.

- ii. any events have occurred subsequent to the date of the financial statements that would require adjustment to, or disclosure in, those financial statements. ~~(Ref: par. .A27); make the financial statements inaccurate or misleading; or cause any material changes in the subsequent financial position or results of operation.)~~

minutes of the meetings of shareholders, directors, and committees of directors are complete and authentic records of proceedings at all such meetings held since previous representations were provided. (Ref: par. .11

- iii. When the auditor has audited the most recent period for which separate audited financial statements of the entity are .A25 — .A27)

.13

When the auditor's report is included in the offering document and

- a. the entity has been acquired by another entity,
- b. the acquirer's audited financial statements included in the offering document reflect a period that includes the date of acquisition, ~~and~~
- c. the auditor is a predecessor auditor because the auditor is not the continuing auditor of the entity, ~~and,~~
- d. the predecessor auditor has met one (or more) of the criteria in paragraph ~~.07 and the predecessor auditor's report is included in the offering document~~08b,

the auditor may be unable to perform all of the procedures in paragraph ~~.1012~~. In such circumstances, the auditor should obtain written representations from management and the successor auditor as described in section 560 at or shortly before the distribution, circulation or submission of the offering document.³

~~.12~~14

If a predecessor ~~auditor, who becomes involved with an offering document, audited the entity's separate financial statements for~~auditor's report on a prior period is included in the offering document but ~~has the predecessor auditor did~~ not ~~audited~~audit the entity's separate financial statements for the most recent audited period for which the entity's audited financial statements are included in the offering document, and the predecessor auditor is involved with the offering, then the predecessor auditor should perform the following procedures described in section 560 through a date at or shortly before the distribution, circulation or submission of the offering document:⁴

³ Paragraph .19c–d of section 560.

⁴ Paragraph .19 of section 560.

- a. ~~Read~~Reading the financial statements of the subsequent period to be presented on a comparative basis
- b. ~~Compare~~Comparing the prior period financial statements that the predecessor auditor reported on with the financial statements of the subsequent period to be presented on a comparative basis
- c. ~~Obtain~~Obtaining written representations from management at or shortly before the date of the distribution, circulation, or submission of the offering document ~~is distributed, circulated, or submitted~~ (Ref: par. ~~A5~~)
- d. ~~Obtain~~Obtaining a representation letter from the successor auditor stating whether the successor auditor's audit revealed any matters that, in the successor auditor's opinion, might have a material effect on, or require disclosure in, the financial statements reported on by the predecessor auditor.

.1315

If the auditor becomes aware of subsequently discovered facts, the auditor should not agree to the inclusion of his or her report until the auditor's consideration of the subsequently discovered facts, including the effect on the auditor's report on the financial statements, has been satisfactorily completed in accordance with section 560.⁵ ~~If management does not revise the audited financial statements in circumstances in which the auditor believes they need to be revised, then the auditor should determine whether to withhold the auditor's permission to include the auditor's report.~~ (Ref: par. evaluated in accordance with section 560.⁶ ~~A26~~)

Unaudited Annual Financial Statements or Unaudited Interim Financial Information

.14

~~If the auditor concludes, based on known facts, that unaudited annual financial statements or unaudited interim financial information included in an offering document are not in conformity with the requirements of the applicable financial reporting framework, then the auditor should request that management revise the unaudited annual financial statements or unaudited interim financial information appropriately.~~

.15

.16

⁵ Paragraphs ~~.15–.18~~ of section 560.

⁶ Paragraphs ~~.15–.18~~ of section 560.

If management does not revise the ~~unaudited annual~~ financial statements ~~or unaudited interim financial information appropriately and~~

- ~~a. in circumstances when the auditor has reported on a review of the unaudited annual financial statements or unaudited interim financial information,~~
- ~~b. the auditor's review report is included in the offering document, and~~
- ~~c. the subsequently discovered facts are such that believes they would have affected the report had they been known need to the auditor at the date of the report,~~

~~the auditor should perform the applicable procedures, adapted as necessary, be revised, in addition to the requirements~~ in section 560.⁷

~~.16~~

If management does not revise, the ~~unaudited annual financial statements or unaudited interim financial information appropriately and~~

- ~~a. the auditor has not reported on a review of the unaudited annual financial statements or unaudited interim financial information or~~
- ~~b. the auditor's review report is not included in the offering document,~~

~~the auditor should modify the report on the audited financial statements to describe the departure from the requirements of the applicable financial reporting framework contained in the unaudited annual financial statements or unaudited interim financial information, as described in section 930, *Interim Financial Information*.~~⁸

~~.17~~

~~Additionally, the auditor should determine whether not agree to withhold the auditor's permission to include the inclusion of his or her~~ auditor's report in the offering document. (Ref: par. .A26)⁹

Application and Other Explanatory Material

Scope of This Section (Ref: par. .01)

~~.A1~~

~~Securities and .05) franchise offerings may be offered by means other than a registered offering through exemptions afforded under federal and state securities laws based on the size and nature of the offering or the issuing entity. Securities and franchise offerings offered through means other than a registration statement under the Securities Act of 1933 are within the scope of this standard. The appendix, "Examples~~

⁷ Paragraphs .14 and .17-.18 of section 560.

⁸ Paragraph .35 of section 930, *Interim Financial Information*.

⁹ Paragraphs .17-.18 of section 560.

[of Exempt Offerings” provides examples of types of offerings within the scope of this section. Section 925 Filings With the U.S. Securities and Exchange Commission provides guidance on the auditor’s responsibilities when financial statements of an entity are included or incorporated by reference in a registration statement under the Securities Act of 1933.](#)

[.A1-A2](#)

Although an auditor is not required to become involved in an offering document except through the performance of procedures noted in par. [.0708](#), some auditors include a provision in the terms of the engagement requiring the entity to obtain permission from the auditor before using the auditor’s report in connection with an [exempt offering of investments or similar undertaking](#). Such a provision [is may be](#) used by the auditor to establish a requirement that the auditor become involved with the entity’s [exempt offerings](#) ~~(Ref: par. .01) In such situations, the auditor is involved with the offering document. For. An~~ example, [provision for](#) an engagement letter ~~might contain a provision similar to the following: may read~~ [as follows](#):

The Entity may wish to include our report on these financial statements in a registration statement proposed to be filed under the Securities Act of 1933 or in some other securities offering. ~~You~~ agree that the aforementioned audit report, or reference to our Firm, will not be included in any such offering without our prior permission or consent. ~~Any~~ agreement to perform work in connection with an offering, including an agreement to provide permission or consent, will be a separate engagement.”

Clarification in the ~~Securities~~ Offering Document When There Is No Auditor Involvement

[.A2A3](#)

~~If the auditor does not include a provision in the terms of the engagement that would require auditor involvement, the auditor may nevertheless~~The auditor may include in the terms of the engagement a requirement that any offering document issued by the entity with which the auditor is not involved clearly indicates the auditor is not involved with the contents of such offering document. ~~Such a~~An example disclosure related to [a municipal an exempt](#) offering document ~~could~~may read as [follows](#):

“[[Name of ~~firm~~Firm], our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. [Name of ~~firm~~Firm] also has not performed any procedures relating to this ~~official statement.~~” (Ref: par. .01)-offering document.

[.A3](#)

~~Securities may be sold through a transaction registered pursuant to the provisions of the Securities Act of 1933 which involves the filing of a registration statement with the SEC. Entities offering such securities are considered to be issuers and, accordingly, are not subject to the standards promulgated by the AICPA Auditing Standards Board. When financial statements of a nonissuer are included or incorporated by~~

~~reference in a registration statement; section 925 provides guidance on the auditor's responsibilities in connection with such situations.~~

~~.A4~~

~~Investments may be offered through means other than a registered offering through exemptions afforded under federal and state securities laws based on the size and nature of the offering or the issuing entity. Investments offered through means other than a registration statement under the Securities Act of 1933 are within the scope of this standard and include the following: securities offered through private placements; securities offered by municipal entities; and franchise disclosure documents. Offering materials are referred to by various names (for example, prospectus, offering document, official statement, offering circular, and franchise disclosure statement). (Ref: par. 02)~~

Effective Date

Distributed, Circulated, or Submitted (Ref: par. .03, ~~.08, and .10~~)

.A5A4

~~Offerings~~Exempt offerings often have multiple stages including a preliminary offering and a final offering. Throughout the process, draft offering documents may be distributed, circulated, or submitted to the auditor or others. The requirements of this statement pertain to whensituations where the offering document is distributed, circulated, or submitted to potential investors or a regulator.

Objective (Ref: par. .04, ~~.08, and .10~~)

.A6A5

As discussed in paragraph ~~.A5,A4, exempt~~ offerings often have multiple stages. ~~Thus, there could be multiple applications of this standard related to a single offering.~~ Involvement with a preliminary offering document establishes involvement with the issuance thus requiring the application of the requirements of this section at subsequent stages of the offering. Thus, there could be multiple applications of this standard related to a single offering.

~~.A7~~

.A6

Requesting management to keep the auditor advised of the progress of the offering document proceedings through the ~~closing date~~final distribution, circulation, or submission of the offering document is important so that the auditor's consideration of events occurring after the date of the auditor's report up to the ~~date of the offering document, or as close thereto as reasonable and practicable, can be completed by the date of the offering document.~~ In addition to performing the procedures required by this section at or shortly before the date of the offering document, the auditor may also perform some or all of the procedures in this section at or shortly before the closing date. final distribution, circulation, or submission of the offering document can be completed.

Definitions (Ref: par. .05)

.A8A7

An inclusion letter may also be referred to as an *agree-to-include letter*, an *acknowledgement letter*, or an *awareness letter*. Note that awareness letter is defined in section 925 with a ~~separated~~different meaning in that context.

Involvement (Ref: par. .0708)

.A9A8

Auditors may become aware of an offering through a communication from ~~a client~~an entity or through the receipt of a draft offering document from an underwriter, broker-dealer or a client. Awareness of an offering does not constitute involvement unless the auditor performs one or more of the activities in paragraph .07-08.

Preparing ~~Financial~~ Information (Ref: par. ~~7a~~8bi)

.A10A9

~~Financial information~~Information does not include the annual financial statements ~~or~~or interim financial information covered by the auditor's report, or the required supplementary information or supplementary information other than required supplementary information accompanying those financial statements that the auditor already considered during his or her audit of the financial statements ~~or review of interim financial information~~.

.A10

When a member provides corporate finance consulting services to an attest client, self-review, management participation, and advocacy threats to a covered member's compliance with the Independence Rule (ET sec. 1.200.001) of the AICPA Code of Professional Conduct may exist. ET sec. 1.295.130. 02f. provides that a member may assist the attest client in drafting its offering document or memorandum, without impairing independence, so long as the member applies the General Requirements for Performing Nonattest Services interpretation [1.295.040] of the "Independence Rule" [1.200.001]. ET 1.295.130.03 also lists examples of types of corporate finance consulting services that would impair a member's independence in connection with an offering.

Reading the Offering Document (Ref: par. ~~7b~~8bii)

.A11

Reading a draft of the offering document ~~is meant to entail~~encompasses situations where the auditor requests or receives a request from the client to read and provide feedback on the offering document. Paragraphs ~~.08 and .09~~ .11 discuss the auditor's responsibility to read the offering document as part of required procedures when the auditor is deemed to be involved.

Issuing a Comfort Letter in Accordance with Section 920 or an Attestation Report (Ref: par. .7c8biii)

.A12

Underwriting agreements between an entity and its underwriters⁴⁰ may require include a request for the entity's auditor to prepare a comfort letter addressed to that will assist the underwriters. Section 920 addresses the auditor's responsibilities when engaged to issue letters to requesting parties with their due diligence in connection with a nonissuer entity's financial statements included in registration statements filed with the offering. Comfort letters may also be requested by parties other than the SEC under the Securities Act underwriters. Section 920 provides guidance related to the issuance of 1933.⁴¹—comfort letters.

.A13

An auditor may provide issue a comfort letter that provides negative assurance to a broker-dealer or other financial intermediary acting requesting party (as principal or agent in offerings of investments issued or backed by entities exempt from registration under the 1933 Act defined in section 920) only if the broker-dealer or other financial intermediary requesting party provides the required representation letter described in section 920.¹² Paragraph .A93 Example A-2 of section 920 provides an illustration of If the requesting party does not provide the required representation letter, the auditor may issue a modified comfort letter in a non-Securities Act of 1933 offering, including the required underwriter representations, that does not provide negative assurance.¹³

.A14

If the required representation letter is not provided by the broker-dealer or other financial intermediary, the auditor should follow the requirements and guidance in section 920.¹⁴—When a comfort letter is requested by a party other than the underwriter, broker-dealer, or other financial intermediary, a requesting party (as defined in section 920), the auditor should not provide that party with a comfort letter or letter described in section 920.¹⁵ Instead, the auditor may provide the perform procedures requested by that party with and issue a report on agreed-upon procedures.¹⁶

⁴⁰ Paragraph .07 of section 920, Letters for Underwriters and Certain Other Requesting Parties, defines underwriter.

⁴¹ Paragraph .A93 Example A-2 of section 920 provides an illustration of a comfort letter in a non-1933 Act offering, including the required underwriter representations.

¹² Paragraph .11 Paragraphs .07, .11b and .A92 of section 920, Letters for Underwriters and Certain Other Requesting Parties.

¹³ Paragraphs .12 and .A93, Example Q of section 920.

¹⁴ Paragraph .12 of section 920.

¹⁵ Paragraph .1213 of section 920.

¹⁶ AT section 201, Agreed-Upon Procedures Engagements.

Due Diligence Discussions (Ref: par. [.07d08biv](#))

.A15

As part of their due diligence process on a specific [exempt](#) offering, underwriters and their counsel may [ask to](#) interview the entity's auditors. ~~Such~~[The meetings at which such](#) interviews [occur](#) are often referred to as [oral](#) due diligence meetings. The interview typically focuses on the audit engagement, the entity's financial statements, and ~~their system of internal controls.~~[Auditorsthe entity's system of internal controls over financial reporting. Auditors use professional judgment in determining whether to participate in oral due diligence meetings if the underwriter has not provided the representation letter described in paragraph .A14. If the auditor agrees to participate, auditors](#) use professional judgment in determining which questions in an oral due diligence meeting can be addressed.

Offering-Related Attestation Engagements (Ref: par. [.07e08bv](#))

.A16

During the offering process, management or other involved parties ~~often~~[may](#) engage practitioners to provide certain needed information through an attestation engagement. For example, in a debt offering, management or its legal advisors may engage a practitioner to review the entity's compliance with the revenue coverage requirements on outstanding debt securities or to verify the calculation of escrow account requirements for an advance refunding of debt securities. If the auditor whose report accompanies the financial statements included in the offering document also provides an attestation engagement report relating to a debt offering, the auditor is deemed to be involved. If the practitioner engaged to perform the attestation engagement is not the financial statement auditor, the practitioner engaged to perform the attestation engagement is not deemed to be involved with the offering document in the manner discussed in this section.

.A17

An attestation engagement report relating to an offering exempt from the Securities Act of 1933 need not be referred to or included in the offering document to involve the auditor of the financial statements with the offering. Sometimes, the attestation engagement report may only be included in the ~~official~~ closing documents for the offering.

~~Letters Similar to Consents~~[Inclusion Letter](#) (Ref: par. [.07f08bvi](#))

.A18

When an auditor's report is used in connection with an [exempt](#) offering ~~transaction that is not registered under the Securities Act of 1933~~, it is not usually necessary for the auditor to provide any type of written ~~consent agreement~~, but some exceptions exist ~~(for example, securities subject to Regulation A and certain~~

~~state franchise statutes require written consent).~~¹⁷ If the auditor is asked to provide ~~a written consent~~ ~~then an inclusion letter~~, the auditor may provide a letter indicating that the auditor agrees to the inclusion of the auditor's report ~~on financial statements~~ in the offering materials. This letter would typically not be included in the offering materials. The following example language may be used to indicate that the auditor agrees to inclusion:

We agree to the inclusion in the offering ~~circular document~~ of our report, dated February 5, 20X3, on our audit of the financial statements of [~~name~~Name of ~~entity~~Entity].

~~Revised Auditor's Report (Ref: par. .07.g)~~

~~**.A19**~~

~~A revised auditor's report might, for example, eliminate the references made by the auditor in the original report to (a) supplementary information that the auditor reported on in relation to the basic financial statements or (b) the audit and reports required by *Government Auditing Standards*.~~

~~Signing an Auditor's Report for Specific Inclusion in an Offering Document (Ref: par. .08bvii)~~

~~**.A20**~~

~~**.A19**~~

Signing the auditor's report involves an original manual or electronic signature on the auditor's report, not a reproduction of an auditor's report that was manually or electronically signed. For example, the underwriter or bond counsel may require a copy of the auditor's report with an original manual or electronic signature to file with the official closing documents for the offering.

The Offering Document and Other Information

~~Withholding the Auditor's Agreement to Include the Auditor's Report (Ref: par. .08-09-10)~~

~~**.A20**~~

~~In making the determination whether to withhold the auditor's agreement to include his or her report, the auditor may consider it appropriate to obtain legal advice.~~

~~References to the Auditor as an Expert (Ref: par. .11)~~

~~**.A21**~~

The term *expert* has a specific statutory meaning under the Securities Act of 1933. Outside the Securities Act of 1933 context, the term *expert* is typically undefined. Accordingly, except as described in paragraph ~~.A23~~ ~~.A24~~, when an issuer wishes to make reference to the auditor's role in connection with an ~~exempt~~

¹⁷ Exhibit A paragraphs ~~.19-~~20 of section ~~920~~925, *Filings With the U.S. Securities and Exchange Commission*.

offering [that is not registered under the Securities Act of 1933](#), the caption to that section of the document would generally be titled "Independent Auditors" (or something similar) rather than "Experts," with no reference to the auditor as an expert anywhere in the document.

.A22

The following is an example of a typical description of the auditor's role when an entity wishes to make reference to the auditor in an exempt offering.¹⁸

Independent Auditors

The financial statements of Entity X as of December 31, 20X2 and for the year then ended, included in this offering [circular document](#), have been audited by ~~ABC & Co.~~ [\[Name of Firm\]](#), independent auditors, as stated in their report appearing herein.

If the auditor is not involved with the offering document and the terms of the engagement require disclosure of this fact, additional disclosure similar to that illustrated in paragraph [.A2A4](#) may be considered.

[.A23](#)

If the entity refuses to delete references to the auditor as an "expert," the auditor may consider whether to permit inclusion of the auditor's report, based on the auditor's professional judgment and an evaluation of liabilities the auditor may be assuming. In such situations, the auditor may consider it appropriate to obtain legal advice.

[.A23A24](#)

There may be situations in which the term *expert* is sufficiently defined such that the auditor may agree to be referred to as an expert outside the context of a registration statement filed under the Securities Act of 1933. For example, if the term "*expert*" is defined under applicable state law, the auditor may agree to be named as an expert in an offering document in an intrastate offering. The auditor may also agree to be named as an expert, as that term is used by the Office of Thrift Supervision (OTS), in offering documents that are subject to the jurisdiction of the OTS. An understanding of any auditor liability provisions that may be included in the applicable federal or state statutes is an important consideration.¹⁹

Subsequent Events Procedures (Ref: par. ~~.10-13~~[12](#))

[.A24A25](#)

In addition to the procedures discussed in paragraph [.1012](#), the auditor may consider it necessary and appropriate to inquire of, or extend previous oral or written inquiries to, the entity's legal counsel

¹⁸ Exhibit B of section 925.

¹⁹ Paragraph .18 of Exhibit A of section 925.

concerning litigation, claims, and assessments, as described in section 501, *Audit Evidence—Specific Considerations for Selected Items*.

.A26

An illustrative updating management representation letter is included in section 580, *Written Representations*.²⁰

Considerations Specific to Governmental Entities

.A25A27

The auditor, in determining the extent of procedures to conduct, may consider the structure of the government offering the debt and which ~~components~~component units relate to the debt offering. A component unit not guaranteeing the repayment is ordinarily not a relevant entity to the users of the bond offering. Alternatively, if the debt is offered by a particular component unit, the scope of subsequent event procedures would likely be limited to the applicable component unit responsible for the repayment of the debt. However, if the full set of financial statements for the reporting entity were included, the scope of subsequent event procedures would likely also encompass the primary government.

.A26

Appendix – Examples of Exempt Offerings

.A28

.A28—1 Examples of securities exempt from registration under the Securities Act of 1933, include:

- a. Municipal securities – Section 3(a)(2)
- b. Intrastate offerings – Section 3(a)(11)
- c. Small issues – Section 3(b)(1)
 - i. Regulation D Rule 504 exemption (“Seed capital” exemption)
 - ii. Regulation D Rule 505 exemption
 - iii. Regulation A exemption
- d. Transactions by an issuer not involving any public offering (e.g., private placements, nonpublic offerings, private sales) –Section 4(a)(2)
 - i. Regulation D Rule 506 offering
 - ii. Rule 144A offering exemption

²⁰ Exhibit C of section 580, *Written Representations*.

[e. Securities sold for employee benefit plans \(Rule 701\)](#)

[f. Other classes of securities specifically exempted](#)

[i. Securities issued by religious, charitable, educational and other nonprofit organizations](#)

[ii. Securities issued or guaranteed by banks. Note however that issuances of bank securities may be subject to other regulators, for example, the Office of Thrift Supervision.](#)

[iii. Miscellaneous other securities such as short-term notes, drafts and bills of exchange; insurance policies; certificates issued by a receiver or trustee in bankruptcy; interests in a railroad equipment trust](#)

[iv. Crowdfunding – allows for limited-size offerings to be sold in small amounts to a large number of investors \(e.g., over the Internet\)](#)

[A.28—2 Franchise offerings regulated by the Federal Trade Commission:](#)

[Franchise offerings are regulated at the federal and state level. Federal regulation occurs through the Federal Trade Commission under the *Disclosure Requirements and Prohibitions Concerning Franchising* \(the FTC Rule\). The FTC Rule requires franchisors to provide a franchise disclosure document \(FDD\) to each prospective buyer, but does not require FDDs to be filed or registered with the Federal Trade Commission. At the state level, regulations vary widely. Some states have franchise statutes and regulations that are more stringent than the Federal Trade Commission requirements, and which may require a franchisor to file or register its offering with state franchise authorities. In making the determination whether to withhold the auditor's agreement to include his or her report, the auditor may consider it appropriate to obtain legal advice. \(Ref: par. .13 and .17\)](#)

[.A27](#)

[An illustrative updating management representation letter is included in section 580, *Written Representations*.²⁴ \(Ref: par. .10\)](#)

²⁴ [Exhibit C of section 580, *Written Representations*.](#)