

## AT-C Section 9105

# Concepts Common to All Attestation Engagements: Attestation Interpretations of Section 105

## 1. Responding to Requests for Reports on Matters Relating to Solvency

**.01 Question**—Lenders, as a requisite to the closing of certain secured financings in connection with leveraged buyouts, recapitalizations, and certain other financial transactions, have sometimes requested written assurance from an accountant regarding the prospective borrower's solvency and related matters.<sup>1</sup> The lender is concerned that such financings not be considered to include a fraudulent conveyance or transfer under the United States Bankruptcy Code<sup>2</sup> or the relevant state fraudulent conveyance or transfer statute.<sup>3</sup> If the financing is subsequently determined to have included a fraudulent conveyance or transfer, repayment obligations and security interests may be set aside or subordinated to the claims of other creditors.

**.02** May a practitioner provide assurance concerning *matters relating to solvency*, as hereinafter defined?

**.03 Interpretation**—No. For reasons set forth subsequently, a practitioner should not provide any form of assurance, through an examination, review, or agreed-upon procedures engagement, that an entity

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<sup>1</sup> Although this interpretation describes requests from secured lenders and summarizes the potential effects of fraudulent conveyance or transfer laws upon such lenders, the interpretation is not limited to requests from lenders. All requests for assurance on matters relating to solvency are governed by this interpretation.

<sup>2</sup> Chapter 5 of the United States Bankruptcy Code addresses *fraudulent transfers and obligations* and states the following:

(a)(1)The trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor, that was made or incurred on or within two years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer occurred or such obligation was incurred, indebted; or

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

<sup>3</sup> State fraudulent conveyance or transfer statutes such as the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act reflect substantially similar provisions. These state laws may be employed absent a declaration of bankruptcy or by a bankruptcy trustee under Section 544(1) of the United States Bankruptcy Code. Although the statute of limitations varies from state to state, in some states, financing transactions may be vulnerable to challenge for up to six years from closing.

- is not insolvent at the time the debt is incurred or would not be rendered insolvent thereby.
- does not have unreasonably small capital.
- has the ability to pay its debts as they mature.

In the context of particular transactions, other terms are sometimes used or defined by the parties as equivalents of or substitutes for the preceding terms (for example, *fair salable value of assets exceeds liabilities*). These terms, and those matters listed previously, are hereinafter referred to as *matters relating to solvency*. The prohibition extends to providing assurance concerning all such terms.

**.04** Section 105, *Concepts Common to All Attestation Engagements*, indicates that one of the preconditions for performing an attestation engagement is that the criteria to be applied in the preparation and evaluation of the subject matter are suitable and will be available to the intended users.<sup>4</sup> Section 105 also indicates that suitable criteria exhibit all the following characteristics:<sup>5</sup>

- *Relevance*. Criteria are relevant to the subject matter.
- *Objectivity*. Criteria are free from bias.
- *Measurability*. Criteria permit reasonably consistent measurements, qualitative or quantitative, of subject matter.
- *Completeness*. Criteria are complete when subject matter prepared in accordance with them does not omit relevant factors that could reasonably be expected to affect decisions of the intended users made on the basis of the subject matter.

**.05** The matters relating to solvency mentioned in paragraph .03 of this interpretation are subject to legal interpretation under, and varying legal definition in, the United States Bankruptcy Code and various state fraudulent conveyance and transfer statutes. Because these matters are not clearly defined in an accounting sense and, therefore, are subject to varying interpretations, they do not provide the practitioner with suitable criteria required to evaluate the subject matter or an assertion. In addition, lenders are concerned with legal issues on matters relating to solvency, and the practitioner is generally unable to evaluate or provide assurance on these matters of legal interpretation. Therefore, practitioners are precluded from giving any form of assurance on matters relating to solvency or any financial presentation of matters relating to solvency.

**.06** Under existing AICPA standards, the practitioner may provide a client with various professional services that may be useful to the client in connection with a financing. These services include the following:

- Audit of historical financial statements
- Review of historical financial information (a review in accordance with AU-C section 930, *Interim Financial Information*, of interim financial information or in accordance with AR-C section 90, *Review of Financial Statements*)
- Examination or review of pro forma financial information (section 310, *Reporting on Pro Forma Financial Information*).

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<sup>4</sup> Paragraph .25b(ii) of section 105, *Concepts Common to All Attestation Engagements*.

<sup>5</sup> Paragraph .A42 of section 105.

- Examination of prospective financial information in accordance with section 305, *Prospective Financial Information*, or compilation of prospective financial information in accordance with AR-C section 80, *Compilation Engagements*.<sup>6</sup>

**.07** Although a practitioner may not provide an agreed-upon procedures report under section 215, *Agreed-Upon Procedures Engagements*, that addresses matters related to solvency, a practitioner may provide an agreed-upon procedures report that addresses other subject matter that can be useful to a client or lender in connection with a financing. For example, the practitioner may perform an agreed-upon procedures engagement in which the client and lender specify the procedures to be applied to various financial presentations, such as historical financial information, pro forma financial information, and prospective financial information, which can be useful to a client or lender in connection with a financing.

**.08** The practitioner should be aware that certain of the services described in paragraph .06 require that the practitioner have an appropriate level of knowledge of the entity's accounting and financial reporting practices and its internal control. This has ordinarily been obtained by the practitioner auditing historical financial statements of the entity for the most recent annual period or by otherwise obtaining an equivalent knowledge base. When considering acceptance of an engagement relating to a financing, the practitioner should consider whether he or she can perform these services without an equivalent knowledge base.

**.09** Section 215 indicates that the practitioner's agreed-upon procedures report should not express an opinion or conclusion about whether the subject matter is in accordance with (or based on) the criteria or whether the assertion is fairly stated.<sup>7</sup> Accordingly, a report on agreed-upon procedures should not express an opinion or conclusion on matters relating to solvency or any financial presentation of matters relating to solvency (for example, fair salable value of assets less liabilities or fair salable value of assets less liabilities, contingent liabilities, and other commitments). A practitioner's report on the results of applying agreed-upon procedures should contain the report elements set forth in section 215 (or section 305 if applying agreed-upon procedures to prospective financial information).<sup>8</sup> The practitioner's report on the results of applying agreed-upon procedures should state that

- the service has been requested in connection with a financing (no reference should be made to any solvency provisions in the financing agreement).
- no representations are provided regarding questions of legal interpretation.
- no assurance is provided concerning the borrower's
  - solvency,
  - adequacy of capital, or
  - ability to pay its debts.

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<sup>6</sup> Paragraph .01 of AR-C section 80, *Compilation Engagements*. Section 305, *Prospective Financial Information*, does not address compilations of prospective financial information—a service that is included in AT section 301, *Financial Forecasts and Projections*. Paragraph .01 of AR-C section 80 states that AR-C section 80 (which is applicable to compilations of historical financial statements) also may be applied, adapted as necessary in the circumstances, to other historical or prospective financial information.

<sup>7</sup> Paragraph .25 of section 215, *Agreed-Upon Procedures Engagements*.

<sup>8</sup> Paragraph .35 of section 215 and paragraph .39 of section 305.

- the procedures should not be taken to supplant any additional inquiries and procedures that the lender should undertake in its consideration of the proposed financing.
- where applicable, an audit of recent historical financial statements has previously been performed and that no audit of any historical financial statements for a subsequent period has been performed. In addition, if any services have been performed pursuant to paragraph .06, they may be referred to.

**.10** The financing agreement ordinarily specifies the date, often referred to as the *cut-off date*, to which the report is to relate (for example, a date three business days before the date of the report). The report should state that the inquiries and other procedures carried out in connection with the report did not cover the period from the cut-off date to the date of the report.

**.11** The practitioner might consider furnishing the client with a draft of the agreed-upon procedures report. The draft report should deal with all matters expected to be covered in terms expected to be used in the final report. The draft report should be identified as a draft in order to avoid giving the impression that the procedures described therein have been performed. This practice of furnishing a draft report at an early point permits the practitioner to make clear to the client and lender what they may expect the accountant to furnish and gives them an opportunity to change the financing agreement or the agreed-upon procedures if they so desire.

[Issue Date: May 1988; Amended: February 1993; Revised: January 2001; November 2006; Revised: December 2012; Revised: April 2016, effective for practitioners' reports dated on or after May 1, 2017.]

## 2. Applicability of Attestation Standards to Litigation Services

**.12 Question**—Does Interpretation No. 1, "Responding to Requests for Reports on Matters Relating to Solvency," of section 105 prohibit a practitioner from providing expert testimony, as described in section 105, before a trier of fact on matters relating to solvency?<sup>9</sup>

**.13 Interpretation**—No. Matters relating to solvency mentioned in paragraph .03 of Interpretation No. 1 are subject to legal interpretation under, and varying legal definition in, the United States Bankruptcy Code and various state fraudulent conveyance and transfer statutes. Because these matters are not clearly defined in an accounting sense and, therefore, subject to varying interpretations, they do not provide the practitioner with the suitable criteria required to evaluate the assertion. Thus, Interpretation No. 1 prohibits a practitioner from providing any form of assurance in reporting upon examination, review, or agreed-upon procedures engagements about matters relating to solvency (as defined in paragraph .03 of Interpretation No. 1).

**.14** However, a practitioner who is involved with pending or potential formal legal or regulatory proceedings before a trier of fact in connection with the resolution of a dispute between two or more parties may provide an expert opinion or consulting advice about matters relating to solvency. The prohibition in Interpretation No. 1 does not apply in such engagements because as part of the legal or regulatory proceedings, each party to the dispute has the opportunity to analyze and challenge the legal definition and interpretation of the matters relating to solvency and the criteria the practitioner uses to evaluate

<sup>9</sup> Paragraph .A2 of section 105.

matters related to solvency. Such services are not intended to be used by others who do not have the opportunity to analyze and challenge such definitions and interpretations.

[Issue Date: July 1990; Revised: January 2001; Revised: April 2016, effective for practitioners' reports dated on or after May 1, 2017.]

### 3. Providing Access to or Copies of Engagement Documentation to a Regulator<sup>10, 11</sup>

**.15 Question**—Section 105 states that "Because engagement documentation often contains confidential information, the practitioner should adopt reasonable procedures to maintain the confidentiality of that information."<sup>12</sup> However, practitioners are sometimes required by law, regulation, or contract<sup>13</sup> to provide a regulator, or a duly appointed representative, access to engagement documentation. For example, a regulator may request access to the engagement documentation to fulfill a quality review requirement or to assist in establishing the scope of a regulatory examination. Furthermore, as part of the regulator's review of the engagement documentation, the regulator may request copies of all or selected portions of the engagement documentation during or after the review. The regulator may intend, or decide, to make copies (or information derived from the engagement documentation) available to others, including other governmental agencies, for their particular purposes, with or without the knowledge of the practitioner or the client. When a regulator requests the practitioner to provide access to (and possibly copies of) engagement documentation pursuant to law, regulation, or contract, what actions might the practitioner consider?

**.16 Interpretation**—When a regulator requests access to engagement documentation pursuant to law, regulation, or contract, the practitioner may take the following steps:

- a. Consider advising the client that the regulator has requested access to (and possibly copies of) the engagement documentation and that the practitioner intends to comply with such request.<sup>14</sup>

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<sup>10</sup> The term *regulator(s)* includes federal, state, and local government officials with legal oversight authority over the entity. Examples of regulators who may request access to engagement documentation include, but are not limited to, state insurance and utility regulators, various health care authorities, and federal agencies such as the Federal Deposit Insurance Corporation, the Department of Housing and Urban Development, the Department of Labor, and the Rural Electrification Administration.

<sup>11</sup> The guidance in this interpretation does not apply to requests from the IRS; firm practice-monitoring programs, to comply with AICPA or state professional requirements such as peer or quality reviews; proceedings relating to alleged ethics violations; or subpoenas.

<sup>12</sup> Paragraph .39 of section 105.

<sup>13</sup> Paragraphs .26–.30 of this interpretation address situations in which the practitioner is not required by law, regulation, or contract to provide a regulator access to the engagement documentation.

<sup>14</sup> The practitioner may wish (and, in some cases, may be required by law, regulation, or contract) to confirm in writing with the client that the practitioner may be required to provide a regulator access to the engagement documentation. Sample language that may be used follows:

The engagement documentation for this engagement is the property of [name of firm] and constitutes confidential information. However, we may be requested to make certain engagement documentation available to [name of regulator] pursuant to authority given to it by law or regulation. If requested, access to such engagement documentation will be provided under the supervision of [name of firm] personnel. Furthermore, upon request, we may provide copies of selected engagement documentation to [name of regulator]. The [name of regulator] may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

- b. Make appropriate arrangements with the regulator for the review.
- c. Maintain control over the engagement documentation, and
- d. Consider submitting the letter described in paragraph .19 of this interpretation to the regulator.

**.17** Making appropriate arrangements with the regulator may include establishing the specific details, such as the date, time, and location of the review. The engagement documentation may be made available to a regulator at the offices of the client, the practitioner, or a mutually agreed-upon location. However, maintaining control of engagement documentation is necessary in order for the practitioner to maintain the integrity of the engagement documentation and the confidentiality of client information. For example, the practitioner (or the practitioner's representative) may be present when the engagement documentation is reviewed by the regulator.

**.18** Ordinarily, the practitioner may not agree to transfer ownership of the engagement documentation to a regulator. Furthermore, the practitioner may not agree, without client authorization, that the information contained therein about the client may be communicated to or made available to any other party. In this regard, the action of a practitioner providing access to, or copies of, the engagement documentation shall not constitute transfer of ownership or authorization to make them available to any other party.

**.19** An engagement performed in accordance with the attestation standards is not intended to, and does not, satisfy a regulator's oversight responsibilities. To avoid any misunderstanding, prior to allowing a regulator access to the engagement documentation, the practitioner may submit a letter to the regulator that

- a. sets forth the practitioner's understanding of the purpose for which access is being requested;
- b. describes the examination, review, or agreed-upon procedures process, as applicable, and the limitations inherent in the applicable attestation engagement;
- c. explains the purpose for which the engagement documentation was prepared, and that any individual conclusions or findings must be read in the context of the practitioner's report on the subject matter (or assertion);
- d. states, except when not applicable, that the engagement was not planned or conducted in contemplation of the purpose for which access is being granted or to assess the entity's compliance with laws and regulations;
- e. states that the examination, review, or agreed-upon procedures engagement, as applicable, and the engagement documentation should not supplant other inquiries and procedures that should be undertaken by the regulator for its purposes;
- f. requests confidential treatment under the Freedom of Information Act or similar laws and regulations,<sup>15</sup> when a request for the engagement documentation is made, and that written notice be given to the practitioner before transmitting any information

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<sup>15</sup> The practitioner may need to consult the regulations of individual agencies and, if necessary, consult with legal counsel regarding the specific procedures and requirements necessary to gain confidential treatment.

contained in the engagement documentation to others, including other governmental agencies, except when such transfer is required by law or regulation; and

- g. states that if any copies are to be provided, they will be identified as "Confidential Treatment Requested by [*name of firm, address, telephone number*]."

The practitioner may obtain a signed acknowledgment copy of the letter as evidence of the regulator's receipt of the letter. The letter to a regulator should be tailored to meet the individual engagement characteristics or the purpose of the regulatory request, for example, a quality control review. Illustrative letters for an examination engagement performed in accordance with section 315, *Compliance Attestation*, and an agreed-upon procedures engagement performed in accordance with section 215 follow.

**.20** Illustrative letter for an examination engagement:

**Illustrative Letter to Regulator**<sup>16</sup>

[*Date*]

[*Name and Address of Regulatory Agency*]

Your representatives have requested access to our engagement documentation in connection with our engagement to examine XYZ Company's compliance with [*identify the specified requirements*] during the period [*date*] to [*date*] [*or management's assertion about its compliance with (identify the specified requirements) during the period (date) to (date)*]. It is our understanding that the purpose of your request is [*state purpose: for example, "to facilitate your regulatory examination"*]<sup>17</sup>

Our examination was conducted in accordance with attestation standards<sup>18</sup> established by the American Institute of Certified Public Accountants, the objective of which is to obtain reasonable assurance about whether XYZ Company complied with [*identify the specified requirements*] during the period [*date*] to [*date*], in all material respects, and to express an opinion in a written report about whether XYZ Company complied with [*identify the specified requirements*] during the period [*date*] to [*date*] [*or whether management's assertion about its compliance with (identify the specified requirements) during the period (date) to (date) is fairly stated*], in all material respects, based on our examination. Under these standards, we have the responsibility to plan and perform our examination to provide a reasonable basis for our opinion and to exercise due professional care in the performance of our examination. Our examination is subject to the inherent risk that material noncompliance, if it exists, would not be detected. In addition, our examination does not address the possibility that material noncompliance may occur in the future. Also, our use of professional judgment and the assessments of attestation risk and materiality for the

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<sup>16</sup> The letter may be modified appropriately when the engagement has been conducted in accordance with Statements on Standards for Attestation Engagements (SSAEs) and also in accordance with additional attestation requirements specified by a regulatory agency (for example, the requirements specified in *Government Auditing Standards* issued by the Comptroller General of the United States).

<sup>17</sup> See footnote 13. Also, if the practitioner is not required by law, regulation, or contract to provide a regulator access to the engagement documentation but otherwise intends to provide such access, the letter should include a statement that "Management of [*name of entity*] has authorized us to provide you access to our attest documentation for [*state purpose*]." [Footnote revised, December 2012, to reflect conforming changes necessary due to the issuance of SAS Nos. 122–126. Revised: April 2016, effective for practitioners' reports dated on or after May 1, 2017.]

<sup>18</sup> See footnote 16.

purpose of our examination means that matters may have existed that would have been assessed differently by you. Our examination does not provide a legal determination on *[name of entity]*'s compliance with specified requirements.

The engagement documentation was prepared for the purpose of providing a sufficient and appropriate record of the basis of our opinion on *[name of entity]*'s compliance and to aid in the performance and supervision of our examination. The engagement documentation is the principal record of attestation procedures performed, relevant evidence obtained, and conclusions reached by the practitioner in the examination. The procedures that we performed were limited to those we considered necessary under attestation standards<sup>19</sup> established by the American Institute of Certified Public Accountants to provide us with reasonable basis for our opinion. Accordingly, we make no representation as to the sufficiency or appropriateness, for your purposes, of either the procedures or information in our engagement documentation. In addition, any notations, comments, and individual conclusions appearing on any of the engagement documentation do not stand alone and should not be read as an opinion on any part of management's assertion or the related subject matter.

Our examination was conducted for the purpose stated above and was not planned or performed in contemplation of your *[state purpose: for example, "regulatory examination"]*. Therefore, items of possible interest to you may not have been specifically addressed. Accordingly, our examination, and the engagement documentation prepared in connection therewith, should not supplant other inquiries and procedures that should be undertaken by the *[name of regulatory agency]* for the purpose of monitoring and regulating *[name of entity]*. In addition, we have not performed any procedures since the date of our report with respect to the subject matter *[or management's assertion related thereto]*, and significant events or circumstances may have occurred since that date.

The engagement documentation constitutes and reflects work performed or information obtained by us in the course of our examination. The documents contain trade secrets and confidential commercial and financial information of our firm and *[name of entity]* that is privileged and confidential, and we expressly reserve all rights with respect to disclosures to third parties. Accordingly, we request confidential treatment under the Freedom of Information Act or similar laws and regulations<sup>20</sup> when requests are made for the engagement documentation or information contained therein or any documents created by the *[name of regulatory agency]* containing information derived there from. We further request that written notice be given to our firm before distribution of the information in the engagement documentation (or copies thereof) to others, including other governmental agencies, except when such distribution is required by law or regulation.

*[If it is expected that copies will be requested, add the following:]*

Any copies of our engagement documentation we agree to provide you will contain a legend "Confidential Treatment Requested by *(name of firm, address, telephone number)*."

*[Firm signature]*

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<sup>19</sup> See footnote 16.

<sup>20</sup> This illustrative paragraph may not, in and of itself, be sufficient to gain confidential treatment under the rules and regulations of certain regulatory agencies. The practitioner should consider tailoring this paragraph to the circumstances after consulting the regulations of each applicable regulatory agency and, if necessary, consult with legal counsel regarding the specific procedures and requirements necessary to gain confidential treatment.

.21 The following is an illustrative letter for an agreed-upon procedures engagements:

**Illustrative Letter to Regulator**<sup>21</sup>

[Date]

[Name and Address of Regulatory Agency]

Your representatives have requested access to our engagement documentation in connection with our engagement to perform agreed-upon procedures on [identify the subject matter or management's assertion]. It is our understanding that the purpose of your request is [state purpose: for example, "to facilitate your regulatory examinations."] <sup>22</sup>

Our agreed-upon procedures engagement was conducted in accordance with attestation standards<sup>23</sup> established by the American Institute of Certified Public Accountants. Under these standards, we have the responsibility to perform the agreed-upon procedures to provide a reasonable basis for the findings expressed in our report. We were not engaged to, and did not, perform an examination, the objective of which would be to form an opinion on [identify the subject matter or management's assertion]. Our engagement is subject to the inherent risk that material misstatement of [identify the subject matter or management's assertion], if it exists, would not be detected. [The practitioner may add the following: "In addition, our engagement does not address the possibility that material misstatement of (identify the subject matter or management's assertion) may occur in the future."] The procedures that we performed were limited to those agreed to by the specified users, and the sufficiency of these procedures is solely the responsibility of the specified users of the report. Further, our engagement does not provide a legal determination on [name of entity]'s compliance with specified requirements.

The engagement documentation was prepared to document agreed-upon procedures applied, information obtained, and related findings in the engagement. Accordingly, we make no representation, for your purposes, as to the sufficiency or appropriateness of the information in our engagement documentation. In addition, any notations, comments, and individual findings appearing on any of the engagement documentation should not be read as an opinion on [identify the subject matter or management's assertion], or any part thereof.

Our engagement was performed for the purpose stated above and was not performed in contemplation of your [state purpose: for example, "regulatory examination"]. Therefore, items of possible interest to you may not have been specifically addressed. Accordingly, our engagement, and the engagement documentation prepared in connection therewith, should not supplant other inquiries and procedures that should be undertaken by the [name of regulatory agency] for the purpose of monitoring and regulating [name of client]. In addition, we have not performed any procedures since the date of our report with respect to the subject matter or management's assertion related thereto, and significant events or circumstances may have occurred since that date.

The engagement documentation constitutes and reflects procedures performed or information obtained by us in the course of our engagement. The documents

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<sup>21</sup> See footnote 16.

<sup>22</sup> See footnotes 13 and 17. [Footnote revised, December 2012, to reflect conforming changes necessary due to the issuance of SAS Nos. 122–126. Revised, April 2016.]

<sup>23</sup> See footnote 16.

contain trade secrets and confidential commercial and financial information of our firm and *[name of client]* that is privileged and confidential, and we expressly reserve all rights with respect to disclosures to third parties. Accordingly, we request confidential treatment under the Freedom of Information Act or similar laws and regulations when requests are made for the engagement documentation or information contained therein or any documents created by the *[name of regulatory agency]* containing information derived therefrom. We further request that written notice be given to our firm before distribution of the information in the engagement documentation (or copies thereof) to others, including other governmental agencies, except when such distribution is required by law or regulation.<sup>24</sup>

*[If it is expected that copies will be requested, add the following:]*

Any copies of our engagement documentation we agree to provide you will contain a legend "Confidential Treatment Requested by *(name of firm, address, telephone number)*."

*[Firm signature]*

[Issue Date: May 1996; Revised: January 2001; January 2002; Revised: December 2012; Revised: April 2016, effective for practitioners' reports dated on or after May 1, 2017.]

**.22 Question**—A regulator may request access to the engagement documentation before the attestation engagement has been completed and the report released. May the practitioner allow access in such circumstances?

**.23 Interpretation**—When the engagement has not been completed, the engagement documentation is necessarily incomplete because (a) additional information may be added as a result of further tests and review by supervisory personnel, and (b) any results of the engagement and conclusions reflected in the incomplete engagement documentation may change. Accordingly, it is preferable that access be delayed until all attestation procedures have been completed and all internal reviews have been performed. If access is provided prior to completion of the engagement, the practitioner may issue the letter referred to in paragraph .19 of this interpretation, modified appropriately. The following is an example of additional language that may be included in the letter:

We have been engaged to examine, in accordance with attestation standards established by the American Institute of Certified Public Accountants, XYZ Company's compliance with *[identify the specified requirements]* during the period *[date]* to *[date]* (or management's assertion about its compliance during the period *[date]* to *[date]*), but have not yet completed our examination. Accordingly, at this time, we do not express any opinion on XYZ Company's compliance with *[identify the specified requirements]* during the period *[date]* to *[date]* (or management's assertion about its compliance during the period *[date]* to *[date]*). Furthermore, the contents of the engagement documentation may change as a result of additional attestation procedures and review of the engagement documentation by supervisory personnel of our firm. Accordingly, our engagement documentation is incomplete.

Because the engagement documentation may change prior to completion of the engagement, it is preferable that the practitioner not provide copies of the engagement documentation until the engagement has been completed.

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<sup>24</sup> See footnote 20.

**.24 Question**—Some regulators may engage an independent party, such as another independent public accountant, to perform the engagement documentation review on behalf of the regulatory agency. Are there any special precautions the practitioner may observe in these circumstances?

**.25 Interpretation**—The practitioner may obtain acknowledgment, preferably in writing, from the regulator stating that the third party is acting on behalf of the regulator and agreement from the third party that he or she is subject to the same restrictions on disclosure and use of engagement documentation and the information contained therein as the regulator.

**.26 Question**—When a regulator requests the practitioner to provide access to (and possibly copies of) engagement documentation and the practitioner is not otherwise required by law, regulation, or contract to provide such access, what steps may the practitioner take?

**.27 Interpretation**—The practitioner may obtain an understanding of the reasons for the regulator's request for access to the engagement documentation and may consider consulting with legal counsel regarding the request. If the practitioner decides to provide such access, reasonable procedures to maintain the confidentiality of client information include obtaining the client's consent, preferably in writing, to provide the regulator access to the engagement documentation.

**.28** Following is an example of language that may be used in the written communication to the client:

The engagement documentation for this engagement is the property of [name of firm] and constitutes confidential information. However, we have been requested to make certain engagement documentation available to [name of regulator] for [describe the regulator's basis for its request]. Access to such engagement documentation will be provided under the supervision of [name of firm] personnel. Furthermore, upon request, we may provide copies of selected engagement documentation to [name of regulator].

You have authorized [name of firm] to allow [name of regulator] access to the engagement documentation in the manner discussed above. Please confirm your agreement to the above by signing below and returning to [name of firm, address].

[Firm signature]

Agreed and acknowledged:

[Name and title]

[Date]

**.29** If the client requests to review the engagement documentation before allowing the regulator access, the practitioner may provide the client with the opportunity to obtain an understanding of the nature of the information about the subject matter contained in the engagement documentation that is being made available to the regulator. When a client reviews the engagement documentation, the need to maintain control of the engagement documentation is as discussed in paragraph .17 of this interpretation.

**.30** The guidance in paragraphs .17–.25 of this interpretation, which provide guidance on making arrangements with the regulator for access to the engagement documentation, maintaining control over the engagement

documentation, and submitting a letter describing various matters to the regulator, is also applicable.

[Issue Date: July, 1994; Revised: June, 1996; Revised: October, 2000; Revised: January, 2002; Revised: December, 2005; Revised: October, 2011, effective for audits of financial statements for periods ending on or after December 15, 2012; Revised: April 2016, effective for practitioners' reports dated on or after May 1, 2017.]

## 4. Performing and Reporting on an Attestation Engagement Under Two Sets of Attestation Standards

**.31 Question**—Do the AICPA attestation standards permit the performance of, and reporting on, an attestation engagement in which the practitioner follows both the AICPA attestation standards and another set of attestation standards, such as those issued by the International Auditing and Assurance Standards Board or the PCAOB?

**.32 Interpretation**—Yes, a practitioner may perform and report on an attestation engagement in accordance with AICPA attestation standards in addition to another set of attestation standards, as long as both sets of attestation standards are followed in their entirety.

**.33 Question**—If a practitioner performs an attestation engagement in accordance with the AICPA attestation standards and the PCAOB interim attestation standards, how would the practitioner reference both sets of attestation standards if the practitioner chooses to do so in the attestation report?

**.34 Interpretation**—If the practitioner performs an attestation engagement in accordance with both AICPA attestation standards and the PCAOB interim attestation standards, and the report references both sets of attestation standards, the statement that the attestation engagement was conducted in accordance with attestation standards established by the AICPA would be amended to add that the engagement was also conducted in accordance with "the standards of the Public Company Accounting Oversight Board (United States)." <sup>25</sup> A reference to "the standards" of the PCAOB indicates that the practitioner has complied not only with the PCAOB interim attestation standards, but also with the related professional practice standards of the PCAOB, which include the relevant independence rules. If the practitioner is required to comply only with the PCAOB interim attestation standards rather than all the PCAOB standards, the practitioner may include the word "attestation" in the reference to the standards of the PCAOB. <sup>26</sup> A practitioner performing an attestation engagement in these circumstances may, nevertheless, be responsible for complying with certain or all of the independence and other related professional practice standards of the PCAOB, for example, when the attestation engagement is subject to regulatory oversight that requires compliance with those rules. Whether the practitioner conducts an attestation engagement in accordance with the standards of the PCAOB or in accordance with the attestation standards of the PCAOB depends on the circumstances of the engagement.

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<sup>25</sup> PCAOB Release No. 2015-002, *Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules*, states, in part, "...whenever the practitioner is required to make reference in a report to attestation standards established by the American Institute of Certified Public Accountants, the practitioner must instead refer to "the standards of the Public Company Accounting Oversight Board (United States)."

<sup>26</sup> By analogy to Staff Question and Answer No. 2, *Audits of Financial Statements of Non-Issuers Performed Pursuant to the Standards of the Public Company Accounting Oversight Board* (AICPA, PCAOB Standards and Related Rules, PCAOB Staff Guidance, sec. 100.01), dated June 30, 2004.

.35 Following are illustrative reports with examples of additional language (in ***bold italics***) that a practitioner may include in attestation reports to indicate that the engagement was conducted in accordance with the AICPA attestation standards and the PCAOB interim attestation standards:

### **Examination Engagement**

#### **Independent Accountant's Report**

[Same first paragraph as the standard report]

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants ***and in accordance with the standards of the Public Company Accounting Oversight Board (United States)***. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether [*identify the subject matter, for example, the schedule of investment returns*] is in accordance with (or based on) the criteria, in all material respects. An examination involves performing procedures to obtain evidence about [*identify the subject matter, for example, the schedule of investment returns*]. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of [*identify the subject matter, for example, the schedule of investment returns*], whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

### **Review Engagement**

#### **Independent Accountant's Report**

[Same first paragraph as the standard report]

Our review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants ***and in accordance with the standards of the Public Company Accounting Oversight Board (United States)***. Those standards require that we plan and perform the review to obtain limited assurance about whether any material modifications should be made to [*identify the subject matter, for example, the schedule of investment returns*] in order for it to be in accordance with (or based on) the criteria. A review is substantially less in scope than an examination, the objective of which is to obtain reasonable assurance about whether [*identify the subject matter, for example, the schedule of investment returns*] is in accordance with (or based on) the criteria, in all material respects, in order to express an opinion. Accordingly, we do not express such an opinion. We believe that our review provides a reasonable basis for our conclusion.

### **Agreed-Upon Procedures Engagement**

#### **Independent Accountant's Report**

[Same first paragraph as the standard report]

[Include paragraphs to enumerate procedures and findings]

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants ***and in accordance with the standards of the Public Company Accounting Oversight Board (United States)***. We were not engaged to and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on [*identify the subject matter, for example, the accompanying Statement of Investment Performance Statistics of XYZ Fund for the year ended December 31, 20X1*]. Accordingly, we

do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

**.36** A practitioner performing an attestation engagement for a nonissuer may be required by law or regulation, or may otherwise determine it is more appropriate to use the form of attestation report included in the PCAOB Interim Attestation Standards adjusted to reflect that the engagement was also performed in accordance with AICPA attestation standards. In these circumstances a practitioner may use the reports illustrated in paragraph .37.

**.37** Following are illustrative attestation reports based on the illustrative reports in the PCAOB interim attestation standards.<sup>27</sup> The reports are marked to conform with the incremental reporting requirements in AT-C section 205, *Examination Engagements*, AT-C section 210, *Review Engagements*, and AT-C section 215, *Agreed-Upon Procedures Engagements*,<sup>28</sup> respectively. Additions to the reports are shown in **bold italics** and deletions are shown in ~~strike through~~. Such edits are intended to illustrate an attestation report that complies with the reporting requirements of both AICPA attestation standards and the PCAOB interim attestation standards.

### Examination Engagement

#### Independent Accountant's Report<sup>29</sup>

##### *[Appropriate Addressee]*

We have examined the *[identify the subject matter—for example, the accompanying schedule of investment returns of XYZ Company for the year ended December 31, 20XX]*. XYZ Company's management is responsible for **presenting** the schedule of investment returns **in accordance with (or based on) [identify criteria—for example, the ABC criteria set forth in Note 1]**. Our responsibility is to express an opinion **on the schedule of investment returns** based on our examination.

Our examination was conducted in accordance with **the standards of the Public Company Accounting Oversight Board (United States) and in accordance with** attestation standards established by the American Institute of Certified Public Accountants. **Those standards require that we plan and perform the examination to obtain reasonable assurance about whether [identify the subject matter, for example, the schedule of investment returns] is in accordance with (or based on) the criteria, in all material respects**, and, accordingly, included examining, on a test basis, evidence supporting *[identify the subject matter—for example, XYZ Company's schedule of investment returns]* and performing such other procedures as we considered necessary in the circumstances. We believe that the evidence we obtained in our examination **is sufficient and appropriate to provide** a reasonable basis for our opinion.

***[Include a description of significant inherent limitations, if any, associated with the measurement or evaluation of the subject matter against the criteria.]***

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<sup>27</sup> The illustrative attestation reports include the examination report in example 1 of appendix A, "Examination Reports," of AT section 101, *Attest Engagements* (AICPA, *PCAOB Standards and Related Rules*), the review report in example 1 of appendix B, "Review Reports," of AT section 101, and the agreed-upon procedures report in paragraph .32 of AT section 201, *Agreed-Upon Procedures Engagements* (AICPA, *PCAOB Standards and Related Rules*).

<sup>28</sup> All AT-C sections can be found in AICPA *Professional Standards*.

<sup>29</sup> A firm registered with the PCAOB may use the title "Report of Independent Registered Public Accounting Firm," or another appropriate title that includes the word "independent."

[Additional paragraph(s) may be added to emphasize certain matters relating to the attestation engagement or the subject matter.]

In our opinion, the schedule referred to above presents, in all material respects, [identify the subject matter—for example, the investment returns of XYZ Company for the year ended December 31, 20XX] **in accordance with (or based on)** [identify criteria—for example, the ABC criteria set forth in Note 1].

[Practitioner's signature]

[Practitioner's city and state]

[Date of practitioner's report]

## Review Engagement

### Independent Accountant's Report<sup>30</sup>

#### ***[Appropriate Addressee]***

We have reviewed the [identify the subject matter—for example, the accompanying schedule of investment returns of XYZ Company for the year ended December 31, 20XX]. XYZ Company's management is responsible for **presenting** the schedule of investment returns **in accordance with (or based on)** [identify criteria—for example, the ABC criteria set forth in Note 1]. **Our responsibility is to express a conclusion on the schedule of investment returns based on our review.**

Our review was conducted in accordance with **the standards of the Public Company Accounting Oversight Board (United States) and in accordance with** attestation standards established by the American Institute of Certified Public Accountants. **Those standards require that we plan and perform the review to obtain limited assurance about whether any material modifications should be made to [identify the subject matter—for example, the schedule of investment returns] in order for it to be in accordance with (or based on) the criteria.** A review is substantially less in scope than an examination, the objective of which is **to obtain reasonable assurance about whether [identify the subject matter—for example, XYZ Company's schedule of investment returns] is in accordance with (or based on) the criteria, in all material respects and** the expression of an opinion on [identify the subject matter—for example, XYZ Company's schedule of investment returns] and ~~to obtain reasonable assurance about whether [identify the subject matter—for example, XYZ Company's schedule of investment returns] is in accordance with (or based on) the criteria, in all material respects.~~ Accordingly, we do not express such an opinion. **We believe that our review provides a reasonable basis for our conclusion.**

***[Include a description of significant inherent limitations, if any, associated with the measurement or evaluation of the subject matter against the criteria.]***

[Additional paragraph(s) may be added to emphasize certain matters relating to the attestation engagement or the subject matter.]

Based on our review, ~~nothing came to our attention that caused us to believe that the~~ **we are not aware of any material modifications that should be made to** [identify the subject matter—for example, schedule of investment returns of XYZ Company for the year ended December 31, 20XX] **is in order for**

<sup>30</sup> See footnote 29.

*it to be in accordance with (or based on)* not presented, in all material respects, in conformity with [identify the criteria—for example, the ABC criteria set forth in Note 1].

[Practitioner's signature]

[Practitioner's city and state]

[Date of practitioner's report]

### Agreed—Upon Procedures Engagement

#### Independent Accountant's Report<sup>31</sup>

**[Appropriate Addressee]:**

We have performed the procedures enumerated below, which were agreed to by the audit committees and managements of ABC Inc. and XYZ Fund, solely to assist you in evaluating the accompanying Statement of Investment Performance Statistics of XYZ Fund (prepared in accordance with the criteria specified therein) for the year ended December 31, 20X1. XYZ Fund's management is responsible for the statement of investment performance statistics. This agreed-upon procedures engagement was conducted in accordance with **the standards of the Public Company Accounting Oversight Board (United States) and in accordance with** attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

[Include paragraphs to enumerate procedures and findings.]

We were not engaged to and did not conduct an examination **or a review**, the objective of which would be the expression of an opinion **or conclusion, respectively**, on the accompanying Statement of Investment Performance Statistics of XYZ Fund **for the year ended December 31, 20XX**. Accordingly, we do not express such an opinion **or conclusion**. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the audit committees and managements of ABC Inc. and XYZ Fund, and is not intended to be and should not be used by anyone other than these specified parties.

[Practitioner's signature]

[Practitioner's city and state]

[Date of practitioner's report]

[Issue Date: May 2017; Revised: February 2018.]

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<sup>31</sup> See footnote 29.