

August 3, 2010

Ms. Sherry Hazel
AICPA
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By e-mail: shazel@aicpa.org

Re: Proposed Statement on Auditing Standards, *Filings With the U.S. Securities and Exchange Commission Under the Securities Act of 1933*

The New York State Society of Certified Public Accountants, representing 28,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned exposure draft.

The NYSSCPA's Auditing Standards Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with us, please contact Jan C. Herringer, Chair of the Auditing Standards Committee at (212) 885-8133, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



Margaret A. Wood
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON
PROPOSED STATEMENT ON AUDITING STANDARDS,
*FILINGS WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION
UNDER THE SECURITIES ACT OF 1933***

August 3, 2010

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Robert N. Waxman

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New York State Society of Certified Public Accountants
Auditing Standards Committee

Comments on

Proposed Statement on Auditing Standards, *Filings With the U.S. Securities and Exchange Commission Under the Securities Act of 1933*

The Auditing Standards Committee of the New York State Society of Certified Public Accountants welcomes the opportunity to comment on the AICPA Auditing Standards Board's (ASB) proposed Statement on Auditing Standards, *Filings With the U.S. Securities and Exchange Commission Under the Securities Act of 1933* (the proposed SAS). We have responded below to the questions posed in the *Guide for Respondents*, followed by our specific comments on the proposed SAS.

Responses to Questions

1. Is the objective of the auditor appropriate?

Yes, the stated objective is appropriate insofar as the proposal addresses subsequent events procedures and the performance of a "reasonable investigation." However, the proposed SAS also discusses (and defines) the auditor's responsibilities under the 1933 Act for consents and awareness letters (paragraphs 4, 11 and 16); therefore, we recommend that the objective be expanded to include the SEC's reporting requirements regarding consents and awareness letters.

2. Are there any considerations for smaller, less complex entities or governmental entities that should be addressed in the proposed SAS?

No, we do not believe there is a need to consider less complex or smaller entities in this proposed SAS. Further, the Securities Act of 1933 exempts the registration of U.S. governmental units; therefore, these entities need not be considered in the proposed standard. Moreover, because Schedule B, used by foreign governments (or political subdivisions of foreign governments) to register securities rarely includes financial statements, guidance for auditors regarding non-U.S. governmental units need not be considered.

Specific Comments

Paragraph 1

Given that this proposal does not address all of the auditor's legal responsibilities under the 1933 Act, we recommend inclusion of more limiting language such as:

“This proposed SAS addresses certain ~~the~~ auditor’s responsibilities in connection with financial statements of a nonissuer included in a registration statement”

We also recommend that this paragraph reference the two disclaimers (preceding paragraph 1) to Exhibit A.

Paragraph 3

We recommend referencing Exhibit A directly from paragraph 3 and deleting paragraph A4 because it only serves as a marker for Exhibit A.

Paragraph 4

In defining “Auditor’s consent,” we suggest the following revisions (see underlined text):

A statement manually dated and signed by the auditor that indicates that the auditor consents to the inclusion of the auditor’s report in a registration statement filed under the Securities Act of 1933.

With regard to the definition of “awareness letter,” we propose that the final standard include a reference to Item 601(b)(15) of Regulation S-K. Also, this letter must be manually dated and signed.

We recommend referencing the definition of “effective date of the registration statement,” to Exhibit A directly, and deleting paragraph A3, because that paragraph only references Exhibit A.

Paragraph 7

Paragraph 9 of the proposed SAS, *Subsequent Events and Subsequently Discovered Facts*, states that the procedures required by paragraph 8 (of the proposed SAS) are to cover the period from the date of the financial statements to the date of the auditor’s report or as near as practicable thereto, whereas paragraph 7(a) of this proposed SAS says “through a date at or near the effective date of the registration statement.” To clarify these dates, we recommend that the final standard provide application guidance regarding the “effective date” and the dating of the auditor’s consent and the awareness letter.

Most auditors have interpreted the phrase, “at or near the effective date” to mean within five days of the effective date. We believe that this paragraph may be better stated as “at or shortly before the effective date.”

Paragraph 7(b)

As stated above, we recommend that the phrase “at or near the effective date” may be better stated as “at or shortly before the effective date.”

Paragraph 13

For clarity, we recommend adding the word “annual” to the first sentence of this paragraph as follows:

“If the auditor concludes, based on known facts, that unaudited annual financial statements....”

We also suggest that the final standard add a procedure such that the auditor should also determine whether or not the financial statements conform to the requirements of Regulation S-X, Staff Accounting Bulletins and other SEC accounting literature (and are not merely in conformity with the requirements of the “applicable financial reporting framework”).

Paragraph 14(a)

Once again, for additional clarity we recommend adding the word annual, thus “...unaudited annual financial statements.”

Further, we recommend including a footnote to paragraph 14(a) that references the guidance in paragraphs 54 -59 (Subsequent Discovery of Facts Existing at the Date of the Report) of AR Section 90, *Review of Financial Statements*.

Paragraph 15

Consistent with our previous comment, we recommend adding the word “annual” to the phrase “unaudited annual financial statements.”

Paragraph A1

We believe that this paragraph does not provide sufficient explanatory information. In order to distinguish the liability provisions of the Acts, the liability provisions of the 1934 Act should be outlined at a minimum in the final standard—in particular, Section 10(b) of the Exchange Act and Rule 10b-5, or alternatively a reference should be made to both the Section and the Rule.

Paragraphs A3 and A4

Other than to act as pointers to Exhibit A, these two sentences do not include any substantive information and, we suggest deleting them.

Paragraph A5

A defense to a Section 11 action against auditors would require demonstrating that a reasonable investigation (defined in Section 11(c)) had been made and that the auditors had reasonable grounds for believing and did believe that the financial statements were true and not misleading. Thus, the auditor must do more than just read the indicated documents to fulfill Section 11(c) responsibilities. Also, we believe that Section 11 is important to understand the requirements in this proposed SAS. For this reason, we suggest that those paragraphs pertaining to accountants be quoted in full rather than providing just excerpts in Exhibit A.

Paragraph A6

We propose providing additional guidance to help auditors to recognize those situations in which a prospectus supplement does not establish a new effective date for the auditor.

Paragraph A8

This paragraph should be cross-referenced to the example wording in Exhibit B.

Paragraph A10

This paragraph should be cross-reference to the example wording in Exhibit B.

Paragraph A13

We believe this sentence is too abbreviated. The final standard should provide some guidance and direction regarding the circumstance(s) that would require withholding the consent.

Paragraph A14

While this assertion regarding rarity may be true, we do not believe this “explanatory material” is necessary if paragraph 12 is applicable. We recommend deleting this paragraph from the final standard.

Paragraph A15

For additional clarity, we recommend referencing these bullet points to the appropriate paragraphs in Exhibit A, for example:

- The liability provisions of Section 11 of the Securities Act of 1933 Pars 2-5
- The auditor’s consent and awareness letter Pars 6-7
- *Etc.*

Exhibit A: Background

For greater clarity the source of the quotation in paragraph 4 of Exhibit A should be labeled as “Section 11(b)(3)(B).”

Exhibit B: Illustrative Disclosures and Reports

We believe the following paragraph should be titled (for example) “Independent Accountants.”

“With respect to the unaudited interim financial information of Company X for the three-month periods ended March 31, 20X3 and 20X2, included in this prospectus”

Because this example would not apply to review reports incorporated by reference or included in non-Securities Act offerings, the fact should be noted and mention made that the last sentence of the example should be omitted where there is no Section 11 liability.

Given that the proposed SAS defines and discusses consents and awareness letters, we believe that example wording of these two types of SEC reports should be included in Exhibit B.