

July 6, 2018

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE, Washington, DC 20549-1090

Via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

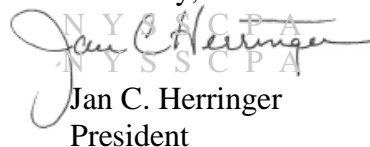
**Re: Proposed Rule - Auditor Independence with Respect to Certain Loans or  
Debtor-Creditor Relationships  
(File No. S7-10-18)**

Dear Mr. Fields:

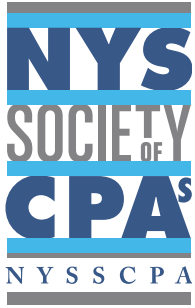
The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 26,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above-captioned proposed rule.

The NYSSCPA's Professional Ethics Committee and SEC Committee deliberated the proposed rule and prepared the attached comments. If you would like additional discussion with us, please contact Elliot L. Hendler, Chair of the Professional Ethics Committee, at (212) 719-8300, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

  
Jan C. Herringer  
President

Attachment



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

**COMMENTS ON**

**A PROPOSED RULE - AUDITOR INDEPENDENCE WITH RESPECT TO CERTAIN  
LOANS OR DEBTOR-CREDITOR RELATIONSHIPS  
(File No. S7-10-18)**

**July 6, 2018**

**Principal Drafters**

*From the Professional Ethics Committee:*

**Elliot L. Hendler  
Steven J. Leifer  
Elliot A. Lesser  
Victoria L. Pitkin**

*From the SEC Committee:*

**Mitchell J. Mertz**

**NYSSCPA 2018–2019 Board of Directors**

Jan C. Herrerger,

*President*

Ita Rahilly,

*President-elect*

Anthony T. Abboud,

*Secretary/Treasurer*

Charles Abraham,

*Vice President*

Salvatore A. Collemi,

*Vice President*

Iralma Pozo,

*Vice President*

Janeen Schrann,

*Vice President*

Joanne S. Barry,

*ex officio*

Darcy Aldous

Dennis N. Annarumma

Sol S. Basilyan

Carnet Brown

Rumbi Bwerinofa-Petrozzello

Christopher G. Cahill

Catherine Censullo

Anthony S. Chan

Mitchell A. Davis

Harold L. Deiters III

William H. Dresnack

Edward F. Esposito

Mark L. Farber

Lynne M. Fuentes

Timothy Hammon

Douglas L. Hoffman

Kimberly G. Johnson

Jennifer Kartychak

Gerard LoVerde

Patricia McGrath

Candice R. Meth

Steven Morse

Tracey J. Niemotko

Kevin P. O’Leary

Thomas S. Pirro

Renee Rampulla

Brian M. Reese

Robert Rollmann

Michael M. Todres

Mark M. Ulrich

David Young

**NYSSCPA 2018–2019 Professional Ethics Committee**

Elliot L. Hendler, *Chair*

Jo Ann Golden, *Vice Chair*

Eric H. Altstadter

Nicole A. Booth

Gary E. Carpenter

David C. Daly

Kelly Kennedy-Ryu

Steven J. Leifer

Elliot A. Lesser

Ronald Nash

Brian K. Pearson

Victoria L. Pitkin

Paul M. Ribaud

Michael Rudegeair

Robert E. Sohr

Marianne E. Van Duyne

**NYSSCPA 2018–2019 SEC Committee**

Joseph J. Puglisi, *Chair*

Charles V. Abraham

Michele B. Amato

Douglas J. Beck

Jennifer L. Biundo

Anthony S. Chan

Burgman E. Connolly

Michelle Edry

Neil W. Ehrenkrantz

Michael J. Halkias

Elliot L. Hendler

Matthew M. Jahrsdoerfer

David J. Lamb

Steven R. Leidenfrost

Helen R. Liao

Robert P. Marggraf

Thomas P. Martin

Mitchell J. Mertz

Renee Mikalopas-Cassidy

Shelly E. Mitchell

Michael G. Mullen

Rita M. Piazza

John P. Rushford

Robert E. Sohr

Chenyao Soong

Ioanna Vavasis

Liren Wei

Philip H. Weiner

**NYSSCPA Staff**

Ernest J. Markezin

**New York State Society of Certified Public Accountants**

**Comments on**

**Proposed Rule - Auditor Independence with Respect to Certain Loans or  
Debtor-Creditor Relationships  
(File No. S7-10-18)**

The New York State Society of Certified Public Accountants (NYSSCPA) appreciates the opportunity to provide comments on the Securities and Exchange Commission (SEC or the Commission) proposed rule regarding *Auditor Independence with Respect to Certain Loans or Debtor-Creditor Relationships* (proposed rule).

**General Comments**

The NYSSCPA supports the SEC’s recognition of the need for amendments to its auditor independence rules relating to lending relationships between the auditor and certain shareholders of audit clients. We believe that the proposed rule will allow auditors and audit committees to focus on those situations that could result in an impairment of independence and will provide relief from many of the significant challenges that have been observed. However, we believe that some of those challenges, particularly in gathering and evaluating information, will remain and are not easily reduced or eliminated.

**Specific Comments**

We have the following responses to selected questions contained in the proposed rule’s requests for specific comments.

***1. Focus the Analysis Solely on Beneficial Ownership***

We agree that the focus of the ownership analysis should be shifted toward beneficial ownership and away from the owner of record concept as beneficial owners have the actual financial interest in the entity and bear the risks and rewards of ownership, whereas the owners of record are, in most cases, only nominal owners. Accordingly, the elimination of the requirement to analyze owners of record would ease the compliance challenges without raising other independence concerns.

***2. “Significant Influence” Test***

We concur with the SEC’s decision to replace the 10% bright-line test with a “significant influence” test. The “significant influence” test would provide a better picture of any potential independence impairment by enabling auditors and audit committees to apply the facts and circumstances in a more effective, substantive and meaningful way. In determining what constitutes significant influence, we believe that the requirements of

Accounting Standards Codification (ASC) 323, *Investments – Equity Method and Joint Ventures*, provide a robust framework for analyzing significant influence as they require an evaluation of “facts and circumstances” in determining whether significant influence exists that might impair the auditor’s independence.

We support codifying the concept of “significant influence” in the SEC rules in much the same way as it is already codified in accounting principles generally accepted in the United States of America. This will assist those with less experience with the concept to better understand it and reduce the challenges they face in applying the concept. Those with greater experience in applying the concept should not face any significant challenges in application.

Although ASC 323 includes a rebuttable presumption with respect to 20% ownership, this is merely a guide and may be raised or lowered depending upon the facts and circumstances. The proposed rule addresses considerations for the auditor in determining what the appropriate threshold should be for a given client. We believe that this guidance will be improved over time as the Commission, auditors and audit committees gain experience with the proposed rule.

We believe there is a difference between having influence over an audit client and having significant influence over the client. In the latter case, there is a presumption that actions or opinions could alter management’s decision-making process. Having just influence implies that actions or opinions are merely suggestive in nature and management can disregard at will. However, to the extent that any influence creates the appearance of a lack of independence, that influence would need to be evaluated more acutely.

### ***3. “Known Through Reasonable Inquiry”***

We believe, in the absence of a more objective criteria, this subjective standard will have to suffice to identify beneficial owners. Any objective evidence that might be obtained in identifying beneficial owners would be cost prohibitive to accumulate.

### ***4. Proposed Amendment to Exclude from “Audit Client” Other Funds that Would Be Considered an “Affiliate of the Audit Client”***

Affiliates of an audit client should not be categorically excluded from the definition of an audit client as there may be other relationships with the affiliate that would impair independence. Therefore, we suggest that the Commission consider framing the issue of loans and debtor-creditor relationships in a broader independence context with respect to these affiliates.

#### ***A. Materiality***

We oppose adding a materiality qualifier to the proposed significant influence test.

***B. Accounting Firms’ “Covered Persons” and Immediate Family Members***

The definition of a “covered person” should not be amended for the purposes of the proposed rule or elsewhere in the auditor independence rules. Any such amendment could result in confusion between different definitions of the same term and independence impairments in areas not contemplated by this proposed rule.

***C. Evaluation of Compliance***

We do not believe that the periods for when independence should be evaluated should be changed.

**Other Comments**

***Competitive Structure***

We believe that the proposed rule will have no effect on the competitive structure of the audit profession. In fact, we believe that by loosening the extant rule, investment company complexes will be less inclined to diversify the cadre of auditors that they currently use.