

May 14, 2010

Ms. Sherry Hazel
AICPA
1211 Avenue of the Americas
New York, N.Y. 10036-8775

By e-mail: shazel@aicpa.org

**Re: Proposed Statement on Auditing Standards, Reports on Application of
Requirements of an Applicable Financial Reporting Framework**

Dear Ms. Hazel:

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 Robert N. Waxman, Chair of the Auditing Standards Committee at (212) 755-3400, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



David J. Moynihan
President

Attachment

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

**COMMENTS ON
PROPOSED STATEMENTS ON AUDITING STANDARDS,
*REPORTS ON APPLICATION OF REQUIREMENTS OF AN APPLICABLE
FINANCIAL REPORTING FRAMEWORK***

May 14, 2010

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New York State Society of Certified Public Accountants
Auditing Standards Committee

Comments on
Proposed Statements on Auditing Standards, *Reports on Application of*
Requirements of an Applicable Financial Reporting Framework

The New York State Society of Certified Public Accountants welcomes the opportunity to comment on the AICPA Auditing Standards Board's (ASB) proposed statement, *Reports on Application of Requirements of an Applicable Financial Reporting Framework*. We support the ASB's efforts to improve the clarity and reduce the complexity of auditing standards.

Our specific comments follow our answers to the questions posed.

Responses to Specific Questions

1. Is the objective of the reporting accountant appropriate?

We believe the objective of the reporting accountant is appropriate.

2. Is Interpretation No. 1, "Requirement to Consult With the Continuing Accountant," of AU section 625, *Reports on the Application of Accounting Principles*, appropriately incorporated in the proposed SAS?

Not entirely. We believe the term "advisory accountant" (as used in Interpretation No. 1) should be substituted for "reporting accountant," and defined in paragraph 8. This definition would eliminate having to piece together the language in paragraphs 13 and A5 of the proposal. The definition would read as follows:

Advisory accountant. A reporting accountant who is engaged to provide accounting and reporting advice to the entity on a recurring basis. This advice may constitute the effective outsourcing of certain controllership, or other financial reporting functions, or involve financial reporting advisory services.

However, there is no justification for continuing the exception for the advisory accountant from consulting with the continuing accountant, and for all the reasons outlined in paragraph 13 (below) we recommend this exception be eliminated.

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

We do not believe that any such considerations are necessary in the proposed SAS.

Comments by Paragraph

Title of Standard. We recommend the title of the standard could be shortened as follows: “Reports on the Application of a Financial Reporting Framework.”

Paragraph 1. We recommend adding the underlined to this paragraph: “. . .to a specific transaction or a group of related transactions.” or alternatively defining the term “transaction” to say that it can include a group of transactions. This addition would suggest to the reporting accountant the importance of the substance rather than the form of the transaction. (See our comment under paragraph 8 below.) We also recommend deleting the phrase “either in connection with a proposal to obtain a new client or otherwise.”

Paragraph 1a. We believe it would be helpful to footnote the first mention of “financial reporting framework.” This footnote would then reference where the phrase is defined: “The term financial reporting framework, is defined in SAS *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance With Generally Accepted Auditing Standards*.

Paragraph 2. Assuming that “principal to the transaction” means management of the specific entity or those charged with governance (as used in paragraph 14), we recommend that “management of the specific entity or those charged with governance” be substituted for “principal to the transaction.” If “principal to the transaction” has a different meaning, then it should be defined in the Standard.

Paragraph 3. As used here, the term “accounting principles” should be substituted for “accounting policies.” APB 22, *Disclosure of Accounting Policies*, par. 6, distinguishes accounting policies from principles saying:

“The accounting policies of a reporting entity are the specific accounting principles and the methods of applying those principles that are judged by the management of an entity to be the most appropriate in the circumstances to present fairly financial position, cash flows, and results of operations in accordance with generally accepted accounting principles and that, accordingly, have been adopted for preparing financial statements.”

We note that this distinction is made elsewhere in the auditing and accounting literature, for example, the AICPA's proposed statement "Consistency of Financial Statements" which addresses changes in accounting principles (see paragraph 3).

This paragraph says that management may consult with accountants on the application of financial reporting; it does not mention consultation regarding the type of audit report that may be issued (under paragraphs 1(b) and 2(b)). This type of audit report consultation by management, with a reference to the auditing standards, should be incorporated into this paragraph.

It is unclear why this paragraph refers to "new transactions" when it applies to all transactions. We, therefore, recommend deletion of the word "new."

Paragraph 4. Litigation may involve more than accounting matters. We recommend that subparagraph b, say "...accounting or auditing matters...."

Paragraph 5. The meaning of "position papers" is given in paragraph A1; consideration should be given to defining it in paragraph 8 and deleting paragraph A1. As position papers may address hypothetical transactions (paragraph 9), we recommend that the following words be added to paragraph 5:

"...views on an issue involving the application of the requirements of an applicable financial reporting framework, provided that these communications address hypothetical transactions and are not intended to provide guidance on the application of these requirements to a specific transaction."

We believe that "any" should precede "accountant," so that the sentence would read "...prepared by ~~an~~ any accountant...."). This would clarify the intent of the Standard so that no accountant in the practice of public accounting (not just the "reporting accountant") can prepare a position paper regarding the accounting for a specific transaction, whether already completed or yet to be completed.

Paragraph 8. AU 508, *Reports on Audited Financial Statements* (e.g., AU 508.08) as well as many other auditing standards, refers to the independent auditor's report; therefore, we propose that "continuing accountant" be changed to "continuing auditor" (or "continuing independent auditor"). Consequently, all references to continuing auditor throughout this proposal should be changed, and agree with the auditing standards literature. We suggest that this definition be expanded to include independent auditor's on whom the principal auditor expresses reliance in his report.

Paragraph 8, Specific transaction. We recommend that this definition be more expansive so as to include providing advice not just on a specific transaction, but also for “step transactions,” *i.e.*, where the accounting for a series of steps in a transaction should be determined based on the overall transaction. This augmentation will focus the reporting accountant on the determination of the economic substance of a series of transactions versus just its form (under paragraph 12(a)) and the need for the reporting accountant to re-characterize certain transactions.

Paragraph 9. The term “[A]n accountant” should be expanded to make it clear that this requirement applies to both the continuing accountant and the reporting accountant (*i.e.*, the reporting auditor). We believe that the last sentence should be expanded to apply to oral advice in addition to a written report. This sentence would read as follows: “As such, the reporting accountant should not accept an engagement to issue a written report or provide oral advice on hypothetical transactions.” This paragraph essentially incorporates an AICPA policy statement aimed at regulating the Profession and controlling the participation of accountants in “opinion shopping” by management.

If the Board does not believe that auditors would behave responsibly and ethically (*i.e.*, they would not use professional judgment and due care) and that auditors would intentionally misapply the accounting framework to provide management advice that may suit management’s desired accounting result, we believe that an ethics rule is needed to regulate this behavior. We suggest that the AICPA’s Professional Ethics Executive Committee address and adopt rules addressing opinion shopping (referred to as “second opinions”) by December 15, 2010 (the effective date of this standard). Included in this ethics rule should be an independence interpretation to cover those situations in which the continuing auditor participates in any way to structure and/or market a financial product or transaction for any of its audit or attestation clients.

Paragraph 13. This exception to the standard should be eliminated (or phased out for those reporting accountants who currently fall into this exception). All reporting accountants would be required to consult with the continuing accountant, and there will be three parties involved in an AU 625, *Reports on the Application of Accounting Principles*, situation: management or those charged with governance, the continuing accountant (auditor), and the reporting accountant.

We make this recommendation to overcome the many subjective evaluations that must be made by the reporting accountant who must answer the following questions in order not to consult with the continuing accountant:

- *Must the reporting accountant be engaged to provide both accounting and reporting advice? If engaged to provide only reporting advice will the reporting accountant remain exempt from consulting with the continuing accountant?*
- *How does the reporting accountant define “recurring basis?” Is an engagement letter for a “continuing consultation” a recurring engagement? If management consults with a reporting accountant twice, does the second consultation make it recurring?*
- *What representations from management will confirm the reporting accountant’s belief that a second opinion is not being requested? What objective facts must the reporting accountant have in order to determine that a second opinion is not behind the consultation?*
- *Having full access to management requires the reporting accountant to broadly define “full access:” who is included in management; and what are the roles of the Board and the Audit Committee.*
- *Does the reporting accountant have unimpeded access to all the relevant information?*
- *Is the reporting accountant independent of management and the entity? Does it matter?*
- *How does the reporting accountant know when all the “relevant information has been obtained”?*

We believe this consultation exception looks like a “loophole” in the standard that should be eliminated to avoid any taint or perception of “opinion shopping.”

Paragraph 14. We believe it would always be appropriate for the report to describe the reasons for the reporting accountant’s conclusion, and that all written reports include that rationale and support. For that reason, we recommend the deletion of “if appropriate.”

Paragraph 14(f)(i). We recommend deleting the “specified parties” who are the “addressees” (*i.e.*, management or those charged with governance). This should then read as:

“...the report is intended solely for the information and use of management or those charged with governance.”

Paragraph A4. Because Par 12(f) refers to “conclusion” as “forming a professional judgment,” we suggest deleting “conclusion” and substituting “forming a professional judgment.”

Paragraph A6. We recommend that paragraph 14(f)(iii) read as follows: “A statement that the report is not intended to be and should not be used by anyone other than the specified parties and their continuing accountant (auditor).” We would eliminate this paragraph.

Paragraph A8. In situations where the reporting accountant is not independent of the specific entity, the report should indicate that. Also, in situations where the reporting accountant falls into the exception provided for under paragraph 13 (acting as the advisory accountant), the report should indicate that as well.