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*Statement on
Auditing Standards*

July 2017

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Issued by the Auditing Standards Board

Auditor Involvement With Exempt Offering Documents

(AICPA, Professional Standards, AU-C sec. 945;

Also amends SAS No. 122, Statements on Auditing Standards: Clarification and Recodification, section 560, Subsequent Events and Subsequently Discovered Facts, and section 925, Filings With the U.S. Securities and Exchange Commission [AICPA, Professional Standards, AU-C sec. 560 and 925])

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Statement on Auditing Standards, *Auditor Involvement With Exempt Offering Documents*

Introduction

Scope of This Statement on Auditing Standards

1. This Statement on Auditing Standards (SAS) addresses the auditor's responsibilities when both of the following conditions exist:

- 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 relating to either of the following:
 - i.* Securities, when either the transaction or the securities themselves are exempt from registration under the Securities Act of 1933, as amended (Securities Act of 1933)
 - ii.* Franchise offerings regulated by the Federal Trade Commission (FTC) or applicable state franchise laws

Hereafter, such security and franchise offerings are referred to as "exempt offerings" for purposes of this SAS.

- b.* The auditor performs one or more of the activities in paragraph 8*b* with respect to the exempt offering document.

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

2. Exempt offerings are made pursuant to federal or state securities laws and regulations or pursuant to federal or state franchise laws and regulations, including, in each case, the antifraud provisions thereof.¹ Exempt offerings include, but are not limited to, the following:

- Securities transactions that are exempt from the registration requirements of Section 5 of the Securities Act of 1933, such as 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

¹ Exhibit A, "Examples of Exempt Offerings," provides examples of types of offerings within the scope of this Statement on Auditing Standards.

Effective Date

3. This SAS is effective for exempt offering documents with which the auditor is involved that are initially distributed, circulated, or submitted on or after June 15, 2018. (Ref: par. A4)

Objectives

4. The objectives of the auditor when involved with an exempt offering document are to perform procedures specified in this SAS and respond appropriately as follows:

- a. When the auditor determines that information included or incorporated by reference in the exempt offering document could undermine the credibility of the financial statements and the auditor's report thereon
- b. To facts that become known to the auditor after the date of the auditor's report that, had they been known to the auditor at that date, may have caused the auditor to revise the auditor's report

Definitions

5. For purposes of this SAS, the following terms have the meanings attributed as follows:

Exempt offering document. The disclosure document that provides financial and nonfinancial information related to the entity issuing the exempt offering (or in the case of a franchise offering, the franchisor) and the offering itself. (Ref: par. A5)

Security. *Security* has the meaning as defined in Section 2(a)(1) of the Securities Act of 1933, as amended.

6. References in this SAS to an auditor's report are to be read to encompass an auditor's report on financial statements² or an auditor's review report on interim financial information in accordance with AU-C section 930, *Interim Financial Information*.

7. References in this SAS to an auditor's report that is included in an exempt offering document are to be read to also encompass an auditor's report that is incorporated by reference in an exempt offering document.

² An auditor's report in accordance with AU-C section 700, *Forming an Opinion and Reporting on Financial Statements*, AU-C section 800, *Special Considerations—Audits of Financial Statements Prepared in Accordance With Special Purpose Frameworks*, or AU-C section 805, *Special Considerations—Audits of Single Financial Statements and Specific Elements, Accounts, or Items of a Financial Statement*.

Requirements

Involvement

8. The auditor is involved with an exempt offering document and should apply the requirements of this SAS in connection with an exempt offering document when both of the following conditions exist:

- a.* The auditor's report is included in the exempt offering document.
- b.* The auditor performs one or more of the following activities with respect to the exempt offering document: (Ref: par. A6)
 - i.* Assisting the entity in preparing information included in the exempt offering document (Ref: par. A7—A10)
 - ii.* Reading a draft of the exempt offering document at the entity's request (Ref: par. A11)
 - iii.* Issuing a comfort or similar letter in accordance with AU-C section 920, *Letters for Underwriters and Certain Other Requesting Parties*, or an agreed-upon procedures report in accordance with AT-C section 215, *Agreed-Upon Procedures Engagements*, in lieu of a comfort or similar letter on information included in the exempt offering document (Ref: par. A12—A14)
 - iv.* Participating in due diligence discussions with underwriters, placement agents, broker-dealers, or other financial intermediaries in connection with the exempt offering (Ref: par. A15)
 - v.* Issuing a practitioner's attestation report on information relating to the exempt offering (Ref: par. A16—A17)
 - vi.* Providing written agreement for the use of the auditor's report in the exempt offering document (Ref: par. A18—A23)
 - vii.* Updating an auditor's report for inclusion in the exempt offering document (Ref: par. A24—A25)

When the auditor is involved with an exempt offering document, the auditor should perform the procedures in paragraphs 9–15 at or shortly before the date of distribution, circulation, or submission of the exempt offering document, and as appropriate upon any subsequent distribution, circulation, or submission of the exempt offering document. (Ref: par. A26)

Other Information Included in the Exempt Offering Document

9. When the auditor is involved with an exempt offering document, the auditor should perform the procedures described in paragraphs .06–.18 of AU-C section 720, *Other Information in Documents Containing Audited Financial Statements*, on the exempt offering document. When performing those procedures, the auditor should determine that the auditor's role is not

described in the exempt offering document in a way that indicates that the auditor's responsibility is greater than the auditor intends. (Ref: par. A27–A31)

Subsequent Events and Subsequently Discovered Facts

10. When the auditor is involved with an exempt offering document, the auditor should do the following:

- a.* Perform 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 exempt offering document that, had they been known to the auditor as of the date of the auditor's report, may have caused the auditor to revise the auditor's report (hereafter referred to as "subsequent events" for purposes of this SAS). Such procedures should include the following: (Ref: par. A32—A35)
 - i. Obtaining an understanding of any procedures that management may have performed to identify such events
 - ii. 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 minutes, if any, of the meetings of the entity's management and those charged with governance that have been held since the date of the auditor's report and inquiring about matters discussed at any such meetings for which minutes are not yet available
 - iv. Reading the entity's most recent subsequent interim financial statements, if any
- b.* Obtain updated written representations from management about the following:
 - i. Whether any information has come to management's attention that would cause management to believe that any of the previous representations should be modified
 - ii. Whether any events have occurred subsequent to the date of the auditor's report that would require adjustment to, or disclosure in, the financial statements
 - iii. That management provided complete minutes of the meetings of the entity's management and those charged with governance, or summaries of actions of recent meetings for which minutes have not yet been prepared since previous representations were provided
 - iv. That management provided communications received from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices since previous representations were provided

11. If a predecessor auditor's report on a prior period is included in the exempt offering document but the predecessor auditor did not 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 exempt offering document, and the predecessor auditor is involved with the exempt offering then the predecessor auditor should perform the following procedures:

- a. Read the financial statements of the subsequent period to be presented on a comparative basis.
- b. Compare 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. Inquire of and request written representations from management of the former client, at or near the date of distribution, circulation, or submission of the exempt offering document about the following:
 - i. Whether any information has come to management's attention that would cause management to believe that any of the previous representations should be modified
 - ii. Whether any events have occurred subsequent to the date of the latest prior period financial statements reported on by the predecessor auditor that, had they been known to the auditor as of the date of the auditor's report, may have caused the auditor to revise the auditor's report
- d. Obtain 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.

12. When a predecessor auditor of an acquired entity is involved with an exempt offering document and the acquirer's audited financial statements included in the exempt offering document reflect a time period that includes the date of acquisition, the predecessor auditor may be unable to perform all of the procedures in paragraph 11 of this SAS. In such circumstances, the predecessor auditor should obtain written representations from management of the former client, and a representation letter from the successor auditor as described in paragraph 11c-d of this SAS.

13. If the auditor identifies subsequent events that may require adjustment of, or disclosure in, the audited financial statements or reviewed interim financial information, the auditor should not agree to the inclusion of the auditor's report in the exempt offering document until the auditor's consideration of the subsequent events, including the effect on the auditor's report, has been satisfactorily evaluated in accordance with AU-C section 560, *Subsequent Events and Subsequently Discovered Facts*.³

³ Paragraph .11 of AU-C section 560, *Subsequent Events and Subsequently Discovered Facts*.

14. If the auditor becomes aware of subsequently discovered facts, the auditor should not agree to the inclusion of the auditor's report in the exempt offering document until the auditor's consideration of the subsequently discovered facts, including the effect on the auditor's report, has been satisfactorily evaluated in accordance with AU-C section 560.⁴

15. If management does not revise the financial statements in circumstances in which the auditor believes they need to be revised, in addition to following the requirements in AU-C section 560, the auditor should not agree to the inclusion of the auditor's report in the exempt offering document.⁵

Application and Other Explanatory Material

Scope of This Statement on Auditing Standards (Ref: par. 1)

A1. Securities offerings and franchise offerings may be offered by means other than a registered offering through exemptions to registration afforded under federal or state laws and regulations based on the size and nature of the offering or the issuing entity or franchisor, as applicable. Securities offered through means other than a registration statement under the Securities Act of 1933 and franchise offerings are within the scope of this SAS. Exhibit A, "Examples of Exempt Offerings," provides examples of types of offerings within the scope of this SAS. AU-C section 925, *Filings With the U.S. Securities and Exchange Commission Under the Securities Act of 1933*, addresses the auditor's responsibilities when financial statements of a nonissuer are included or incorporated by reference in a registration statement under the Securities Act of 1933.

A2. Auditors may 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 document. The existence of such a provision in an engagement letter does not establish involvement unless the auditor performs one or more of the activities in paragraph 8b with respect to the exempt offering document. An example provision for an engagement letter may read as follows:

The Entity may wish to include our report on these financial statements in an exempt offering document. The Entity agrees that the aforementioned auditor's report, or reference to our Firm, will not be included in any such offering document without our prior permission or consent. Any agreement to perform work in connection with an exempt offering document, including an agreement to provide permission or consent, will be a separate engagement.

A3. The auditor may include in the terms of the engagement a provision that any exempt offering document issued by the entity with which the auditor is not involved, other than as determined by paragraph 8, will clearly indicate the auditor is not involved with the contents of such offering document. An example disclosure related to an exempt offering document may read as follows:

⁴ Paragraphs .15–.18 of AU-C section 560.

⁵ Paragraphs .17–.18 of AU-C section 560.

[*Name of 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*] also has not performed any procedures relating to this offering document.

Effective Date (Ref: par. 3)

A4. Some exempt offerings have multiple stages, for example distribution of a preliminary offering document and a final offering document. For such exempt offerings, the effective date relates to the distribution, circulation, or submission of the initial exempt offering document on or after June 15, 2018. Other exempt offerings, such as franchise offerings, may be updated annually. For such exempt offerings, the effective date relates to the initial or updated exempt offering document distributed, circulated, or submitted on or after June 15, 2018.

Definitions (Ref: par. 5)

A5. An exempt offering document may also be referred to as an offering statement, offering memorandum, offering circular, or a franchise disclosure document.

Involvement

Performance of Activities (Ref: par. 8b)

A6. Auditors may become aware of an offering through a communication from an entity or through the receipt of a draft exempt offering document from an underwriter, placement agent, broker-dealer, or the entity. Awareness of an exempt offering by the auditor does not, by itself, constitute involvement.

Assisting in Preparing Information (Ref: par. 8bi)

A7. Assistance in preparing information as described in paragraph 8bi is predicated upon the auditor being reasonably aware that the information will be included in a specific exempt offering document. For example, an auditor assisting the entity with the preparation of a schedule for the entity's internal purposes that the entity later includes in an exempt offering document would not be considered assisting the entity in preparing information as described in paragraph 8bi.

A8. Information does not include the audited financial statements or interim financial information covered by the auditor's report. Further, information does not include required supplementary information, or other information that accompanied those financial statements that the auditor already considered during the audit of the financial statements or review of interim financial information.

A9. Self-review, management participation, and advocacy threats to a covered member's compliance with the AICPA Code of Professional Conduct may exist when a member provides corporate finance consulting services to an entity.⁶ A member may assist the entity in drafting its

⁶ The "Independence Rule" (ET sec. 1.200.001) of the AICPA Code of Professional Conduct.

exempt offering document or memorandum without impairing independence⁷ if the member complies with the AICPA Code of Professional Conduct.^{8, 9}

A10. Providing written or oral comments to the entity on the exempt offering document is considered assisting the entity in preparing information included in the exempt offering document, regardless of whether the entity requested the auditor to read the document or the auditor did so voluntarily.

Reading a Draft of the Exempt Offering Document (Ref: par. 8bii)

A11. Reading a draft of the exempt offering document encompasses situations in which the auditor reads the exempt offering document at the request of the entity even if the auditor does not ultimately provide written or oral comments.

Issuing a Comfort or Similar Letter or an Agreed-Upon Procedures Report in Accordance with AT-C Section 215 (Ref: par. 8biii)

A12. Underwriting agreements between an entity and its underwriters may include a request for the entity's auditor to prepare and issue a comfort letter that will assist the underwriters with their due diligence in connection with the exempt offering. Comfort letters may also be requested by parties other than the underwriters. AU-C section 920 addresses the auditor's responsibilities related to the issuance of comfort letters.

A13. An auditor may issue a comfort letter that provides negative assurance to a requesting party (as defined in AU-C section 920) only if the requesting party provides the written opinion from external legal counsel or the required representation letter described in AU-C section 920.¹⁰ If the requesting party does not provide the required written opinion from external legal counsel or a representation letter, the auditor may issue a similar letter that does not provide negative assurance, but that instead includes certain statements required by AU-C section 920.¹¹

A14. When a comfort letter is requested by a party other than a requesting party as defined in AU-C section 920, the auditor should not provide that party with a comfort letter or similar letter described in AU-C section 920.¹² Instead, the auditor may accept an engagement to perform agreed-upon procedures requested by that party in accordance with the attestation standards and may issue a practitioner's report.¹³

⁷ The "Corporate Finance Consulting" interpretation (ET sec. 1.295.130.02f) of the "Nonattest Services" subtopic (ET sec. 1.295) under the "Independence Rule" of the AICPA Code of Professional Conduct.

⁸ The "General Requirements for Performing Nonattest Services" interpretation (ET sec. 1.295.040), of the "Nonattest Services" subtopic under the "Independence Rule."

⁹ The "Corporate Finance Consulting" interpretation (ET sec. 1.295.130.03) of the "Nonattest Services" subtopic under the "Independence Rule" also lists examples of types of corporate finance consulting services that would impair a member's independence in connection with an offering.

¹⁰ Paragraphs .07, .11, and .A92 of AU-C section 920, *Letters for Underwriters and Certain Other Requesting Parties*.

¹¹ Paragraph .12 and example Q, "Letter to a Requesting Party That Has Not Provided the Legal Opinion or the Representation Letter Required by Paragraph .11," of exhibit B, "Examples of Comfort Letters," of AU-C section 920.

¹² Paragraph .13 of AU-C section 920.

¹³ AT-C section 215, *Agreed-Upon Procedures Engagements*.

Participating in Due Diligence Discussions (Ref: par. 8biv)

A15. As part of their due diligence process, underwriters and their counsel may ask to meet with the entity's auditors and discuss the specific exempt offering, either formally or informally.¹⁴ Such meetings are often referred to as oral due diligence meetings; however, other communication methods may be used. The discussion typically focuses on the audit engagement, the entity's financial statements, and the entity's system of internal control over financial reporting. Auditors use professional judgment in determining whether to participate in due diligence discussions if the underwriter has not provided the written opinion from external legal counsel or representation letter as described in AU-C section 920.¹⁵ If the auditor agrees to participate, auditors use professional judgment in determining which questions in an oral due diligence meeting can be addressed.

Issuing a Practitioner's Attestation Report on Information Relating to the Exempt Offering (Ref: par. 8bv)

A16. During the offering process, management or other parties to the offering may engage a practitioner to perform an attestation engagement on information related to the offering. For example, in an exempt debt offering, management or its legal advisers may engage a practitioner to perform agreed-upon procedures on the entity's compliance with the revenue coverage requirements on outstanding debt securities or to recompute the calculation of escrow account requirements for an advance refunding of debt securities. If the practitioner engaged to perform the attestation engagement is the auditor whose report accompanies the financial statements included in the exempt offering document, the auditor is deemed to be involved with the exempt offering document. A practitioner's attestation report relating to an exempt offering need not be referred to or included in the exempt offering document to involve the auditor of the financial statements with the offering.

A17. 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 exempt offering document in the manner described in this SAS.

Providing Written Agreement for the Use of the Auditor's Report in the Exempt Offering Document (Ref: par. 8bvi)

A18. For securities exempt from registration under the Securities Act of 1933, it may not be necessary for the auditor to provide any type of written agreement. If the auditor is asked to provide written agreement, the auditor may provide an inclusion letter indicating that the auditor agrees to the inclusion of the auditor's report in the exempt offering document.

A19. An inclusion letter is a letter requested by and addressed to the entity that is signed and dated by the auditor indicating that the auditor agrees to the inclusion or incorporation by reference of the auditor's report in the exempt offering document.

¹⁴ The "Confidential Client Information Rule" (ET sec 1.700.001) of the AICPA Code of Professional Conduct states that the auditor should not disclose any confidential client information without the specific consent of the client.

¹⁵ Paragraphs .07, .11, and .A92 of AU-C section 920.

A20. For securities exempt from registration under the Securities Act of 1933, 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 AU-C section 925 with a different meaning in that context.

A21. The following example language may be used to indicate that the auditor agrees to inclusion of the auditor's report on financial statements in an exempt offering document:

INDEPENDENT AUDITOR'S INCLUSION LETTER

We agree to the inclusion [*or incorporation by reference*] in the [*name of Offering Document*] dated [*insert issuance date of Offering Document*] of our report, dated [*insert date of auditor's report on the financial statements*], on our audit of the financial statements of [*name of Entity*] as of December 31, 20X2 [*and 20X1*], and for the year[s] then ended.

A22. For franchise offerings regulated by the FTC, certain states may require a *consent of accountant* which may also be referred to as an *acknowledgement letter*.

A23. The following example language may be used to indicate the auditor's agreement to the inclusion of the auditor's report on financial statements in a franchise offering document:

INDEPENDENT AUDITOR'S ACKNOWLEDGMENT

We agree to the inclusion in the [*name of Offering Document*, for example the Franchise Disclosure Document] dated [*issuance date of Offering Document*] issued by [*name of Franchisor*] ("the Franchisor") of our report, dated [*insert date of auditor's report on the financial statements*], relating to the financial statements of the Franchisor as of December 31, 20X2 [*and 20X1*], and for the year[s] then ended.

Updating an Auditor's Report for Inclusion in the Exempt Offering Document (Ref: par. 8bvii)

A24. Updating an auditor's report involves, for example, signing an updated auditor's report when the previously issued financial statements are corrected for an accounting error or reflect a retrospective application of a change in accounting principle.

A25. The following examples would not constitute updating an auditor's report for purposes of paragraph 8bvii:

- Providing a copy of or re-signing a previously issued auditor's report
- Revising an originally issued auditor's report to eliminate references made by the auditor in the original report required by *Government Auditing Standards*
- Revising an originally issued report to eliminate references made by the auditor in the original report to supplementary information that the auditor reported on in relation to the basic financial statements

Distribution, Circulation, or Submission (Ref: par. 8)

A26. As discussed in paragraph A4, exempt offerings may have multiple stages. Thus, a single offering could involve multiple applications of this SAS. Requesting management to keep the auditor advised of the progress of the preparation of the exempt offering document proceedings through the final distribution, circulation, or submission of the final exempt offering document is important so that the auditor's consideration of events occurring after the date of the auditor's report up to the distribution, circulation, or submission of the final exempt offering document can be completed.

Other Information Included in the Exempt Offering Document (Ref: par. 9)

A27. When revision of the other information in the exempt offering document is necessary due to a material inconsistency or a material misstatement of fact that management refuses to correct, AU-C section 720 requires the auditor to notify those charged with governance of the auditor's concerns regarding the other information and take any further appropriate action. With regard to exempt offerings, actions may also include determining whether to withhold the auditor's agreement to include the auditor's report. In such cases, the auditor may consider it appropriate to obtain legal advice.

References to the Auditor as an "Expert"

A28. 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 A31 of this SAS, when an entity wishes to make reference to the auditor's role in connection with an exempt offering, 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 exempt offering document.

A29. 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 document:

Independent Auditors

The financial statements of [*name of Entity*] as of December 31, 20X2 [and 20X1], and for the year[s] then ended, included in this offering document, have been audited by [*name of Firm*], independent auditors, as stated in their report appearing herein.

A30. If the entity refuses to delete references to the auditor as an "expert," the auditor may consider whether to withhold permission to include the auditor's report in the exempt offering document, based on the auditor's professional judgment. In such circumstances, the auditor may consider it appropriate to obtain legal advice.

A31. In situations in which the term *expert* is sufficiently defined 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, as amended. For example, if the term *expert* is defined under applicable state law, the auditor may agree to be named as an expert in an exempt offering document in an intrastate offering. An understanding of any auditor liability provisions that may be included in the applicable federal or state statutes is an important consideration. In such circumstances, the auditor may consider it appropriate to obtain legal advice.

Subsequent Events and Subsequently Discovered Facts (Ref: par. 10–15)

A32. The general objective of the subsequent event procedures described in this SAS is to identify subsequent events or act upon any subsequently discovered facts that become known to the auditor after the date of the auditor's report that, had they been known to the auditor at that date, may have caused the auditor to revise the auditor's report. After financial statements have been issued or are available to be issued, the accounting framework pursuant to which they were prepared may not require accounting for or disclosure of events occurring after that date. Financial statements included in an exempt offering document may have previously been issued; accordingly, the auditor's subsequent event procedures are performed to update the auditor's awareness of the existence of any events or facts that may cause revision to the financial statements, including disclosures, or the auditor's report thereon through the date of distribution, circulation, or submission of the exempt offering document.

A33. When applying the procedures described in paragraphs 11–15 of this SAS, the auditor may consider the application and other explanatory material in AU-C section 560.

A34. An illustrative updating management representation letter is included in AU-C section 580, *Written Representations*.¹⁶

Considerations Specific to Governmental Entities

A35 In determining the extent of subsequent event procedures to perform in connection with a governmental debt offering, and the related management representations to request as addressed in paragraph 10*b* of this SAS, the auditor may consider the structure of the government and which 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 debt offering. Alternatively, if the debt is offered solely 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 in the exempt offering document, the scope of subsequent event procedures would likely also encompass the primary government.

¹⁶ Exhibit C, "Illustrative Updating Management Representation Letter," of AU-C section 580, *Written Representations*.

A36.

Exhibit A—Examples of Exempt Offerings (Ref: par. A1)

1. The Securities Act of 1933 provides for two broad types of exemptions to the requirement that securities be registered with the SEC under Section 5 of the 1933 Act: exempt securities (under Section 3 of the 1933 Act) and exempt transactions (generally under Sections 4 and 4A of the 1933 Act). With Section 3 exempt securities, the exemption lies with the nature of the security, and thus each transaction involving that security will itself be exempt. With Section 4 exempt transactions, however, the exemption is applicable only to a single transaction, and does not necessarily carry over to subsequent transactions. Each transaction involving that security must be analyzed to determine if it too is exempt from Section 5 registration requirements. The following list is not intended to be comprehensive. The exemptions listed are frequently subject to conditions and definitional limitations that are not summarized here.

Exempt Securities

2. Examples of exempt securities (subject to conditions and, in some cases, restrictive definitions) include the following:

- Securities issued or guaranteed by federal, state, and local governments, including most industrial development bonds (Section 3(a)(2))
- Any security issued or guaranteed by banks or employee benefit plans (Section 3(a)(2))
- Short-term commercial paper with a maturity of nine months or less (Section 3(a)(3))
- Securities issued by non-profit religious, educational or charitable organizations (Section 3(a)(4))
- Securities issued by savings and loans and farmer's cooperatives (Section 3(a)(5))
- Railroad equipment trusts (Section 3(a)(6))
- Certificates of receivers and trustees issued with court approval (Section 3(a)(7))
- Insurance policies and annuity contracts (Section 3(a)(8))
- Equity securities issued in connection with the acquisition by a bank holding company of a bank or savings association (Section 3(a)(12))
- Securities issued by certain church employee plans (Section 3(a)(13))
- Security futures products and standardized options (Section 3(a)(14))

Exempt Transactions

3. Examples of exempt transactions include the following:

- Transactions by any person other than an issuer, underwriter, or dealer (Section 4(a)(1))
- Transaction by an entity not involving any public offering (the “private placement” exemption), including offerings under Regulation D Rule 506 and Rule 144A (Section 4(a)(2))
- Transactions by a dealer, with certain exceptions (Section 4(a)(3))
- Brokers’ transactions executed on customer orders (Section 4(a)(4))
- Offers or sales by an entity to accredited investors (under certain conditions) (Section 4(a)(5))

- Regulation CF transactions (crowdfunding) (Section 4(a)(6))
- Private resales of securities (Section 4(a)(7))
- Small issues of securities, including Regulation A offerings and offerings under Rules 504 and 505 of Regulation D (Section 3(b) and Section 3(c))
- Voluntary exchanges between an entity and security holders (Section 3a)(9))
- Judicially or administratively approved exchanges (Section 3a)(10))
- Intrastate offerings (Section 3(a)(11))

Other common exemptions

4. Examples of other common exemptions include these:
 - Rule 701 exemptions for compensatory arrangements
 - Regulation S (offshore offers and sales)

Franchise Offerings

5. Franchise offerings are regulated at the federal and state level. Federal regulation occurs through the FTC under the *Disclosure Requirements and Prohibitions Concerning Franchising* (the FTC rule). The FTC rule requires franchisors to provide a franchise disclosure document to each prospective buyer, but does not require franchise disclosure documents to be filed or registered with the FTC. At the state level, regulations vary widely. Some states have franchise statutes and regulations that are more stringent than the FTC requirements, and which may require a franchisor to file or register its offering with state franchise authorities.

A37.

Appendix A—Amendment to SAS No. 122 Section 560, *Subsequent Events and Subsequently Discovered Facts*

1. AU-C section 560, *Subsequent Events and Subsequently Discovered Facts*, states that the auditor is not required to perform any audit procedures regarding the financial statements after the date of the auditor's report. However, requirements exist in AU-C section 925, *Filings With the U.S. Securities and Exchange Commission Under the Securities Act of 1933*, and this SAS requires, in certain circumstances, procedures to be performed after the date of the auditor's report. This amendment highlights, through a footnote, that there may be instances in which the requirements of AU-C section 560 apply after the report date.

(***Boldface italics*** denotes new language. Deleted text is shown in ~~strikethrough~~.)

[No amendments to paragraphs .01–.11. Paragraph .01 included for contextual information only.]

Scope of This Section

.01 This section addresses the auditor's responsibilities relating to subsequent events and subsequently discovered facts in an audit of financial statements. It also addresses a predecessor auditor's responsibilities for subsequent events and subsequently discovered facts when reissuing the auditor's report on previously issued financial statements that are to be presented on a comparative basis with audited financial statements of a subsequent period. (Ref: par. .A1)

Subsequently Discovered Facts That Become Known to the Auditor Before the Report Release Date

.12 The auditor is not required to perform any audit procedures regarding the financial statements after the date of the auditor's report. However, if a subsequently discovered fact becomes known to the auditor before the report release date,^{fn 3} the auditor should

- a. discuss the matter with management and, when appropriate, those charged with governance.
- b. determine whether the financial statements need revision and, if so, inquire how management intends to address the matter in the financial statements.^{fn 4}

^{fn 3} The term *report release date* is defined in paragraph .06 of section 230, *Audit Documentation*.

^{fn 4} ***There may be instances in which the auditor applies the relevant requirements in this section after the date of the auditor's report as described in AU-C section 925, Filings With the U.S. Securities and Exchange Commission Under the Securities Act of 1933, and AU-C section 945, Auditor Involvement With Exempt Offering Documents.***

[Subsequent footnotes 4–14 renumbered. No amendments to paragraphs .13–.20.]

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

.A1 When audited financial statements are included in other documents subsequent to their issuance, the auditor may have additional responsibilities to consider, such as legal or regulatory requirements involving private placement offerings, exempt public offerings (including offerings pursuant to Securities and Exchange Commission [SEC] Rule 144A), or other offerings of securities to the public in jurisdictions outside the United States. Section 720, *Other Information in Documents Containing Audited Financial Statements*, may be applied, adapted as necessary in the circumstances, to such other documents. Section 925, *Filings With the U.S. Securities and Exchange Commission Under the Securities Act of 1933*, addresses the auditor’s responsibilities in connection with financial statements of a nonissuer included in a registration statement filed with the SEC under the Securities Act of 1933, as amended. **Section 945, Auditor Involvement With Exempt Offering Documents**, *addresses the auditor’s responsibilities when an auditor is involved with an exempt offering document.*

[No revisions to paragraphs .A2–.A30.]

2. This amendment is effective for exempt offering documents with which the auditor is involved that are initially distributed, circulated, or submitted on or after June 15, 2018.

A38.

Appendix B—Amendment to Exhibits A and B of Section 925, *Filings With the U.S. Securities and Exchange Commission*

Note that exhibits to AU-C sections are nonauthoritative.

Exhibit A—Background

.A14

[No amendments to paragraphs 1–16 of exhibit A (par. .A14). Paragraph .16 included for contextual information only.]

References to the Auditor as an Expert in a Document Other Than a Securities Act of 1933 Registration Statement

16. 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 ~~17~~¹⁷⁴⁸ of this exhibit, when an issuer wishes to make reference to the auditor's role in an offering document in connection with a securities 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.

~~**17.** Exhibit B provides an example of a typical description of the auditor's role when an issuer wishes to make reference to the auditor in an offering document in connection with a securities offering that is not registered under the Securities Act of 1933.~~

~~**18**~~¹⁷. 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 securities 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 securities 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. ***In such circumstances, the auditor may consider it appropriate to obtain legal advice.***

Letters Similar to Consents Prepared in Connection With a Document That Is Not a Securities Act of 1933 Registration Statement

~~**19**~~¹⁸. When an auditor's report is used in connection with an 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. If the auditor is asked to provide a written consent for use in connection with a document other than a Securities Act of 1933 registration statement, then the auditor may provide a letter indicating that the auditor agrees to the inclusion of the auditor's report on the audited financial statements in the offering materials. ~~This letter would typically not be included in the offering materials.~~ ***Section 945 addresses the auditor's responsibilities when an auditor is involved with an exempt offering document.***

~~**20.** Exhibit B provides an example of language the auditor might use to indicate that the auditor agrees to the inclusion of the auditor's report on the audited financial statements in the offering materials when the auditor's report is used in connection with an offering transaction that is not registered under the Securities Act of 1933.~~

Exhibit B—Illustrative Disclosures and Reports

.A15

The following is an example of a typical “experts” section in a registration statement filed under the Securities Act of 1933:

Experts

The consolidated balance sheets of Company X as of December 31, 20X2 and 20X1, and the related consolidated statements of income and comprehensive income, changes in stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 20X2, included in this prospectus, have been so included in reliance on the report of ABC & Co, independent auditors, given on the authority of that firm as experts in auditing and accounting.

The following is an example of a disclosure for a registration statement filed under the Securities Act of 1933 that includes the auditor’s review report on unaudited interim financial information when such disclosure is included in a separate section. This disclosure may also be included under a section titled “Experts”:

Independent Auditors

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, ABC & Co. has reported that they have applied limited procedures in accordance with professional standards for a review of such information. However, their separate report dated May XX, 20X3, included herein, states that they did not audit and they do not express an opinion on that interim financial information. Accordingly, the degree of reliance on their report on such information should be restricted in light of the limited nature of the review procedures applied. ABC & Co. is not subject to the liability provisions of section 11 of the Securities Act of 1933 for their report on the unaudited interim financial information because that report is not a “report” or a “part” of the registration statement prepared or certified by the accountants within the meaning of Sections 7 and 11 of the Act.

~~The following is an example of a typical description of the auditor’s role when an issuer wishes to make reference to the auditor in an offering document prepared in connection with a securities offering that is not registered under the Securities Act of 1933:~~

Independent Auditors

~~The financial statements of Company X as of December 31, 20X2 and for the year then ended, included in this offering circular, have been audited by ABC & Co., independent auditors, as stated in their report appearing herein.~~

~~Although generally not necessary, the following is an example of language the auditor might use indicating that the auditor agrees to the inclusion of the auditor’s report on the audited financial statements in offering materials prepared in connection with a securities offering that is not registered under the Securities Act of 1933:~~

~~We agree to the inclusion in the offering circular of our report, dated February 5, 20X3, on our audit of the financial statements of Company X.~~

1. This amendment is effective for exempt offering documents with which the auditor is involved that are initially distributed, circulated, or submitted on or after June 15, 2018.

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