March 13, 2020

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

By email: rule-comments@sec.gov

Re: SEC Proposed Amendments to Rule 2-01, Qualification of Accountants (File Number S7-26-19)

Dear Ms. Countryman:

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 23,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above-captioned proposed amendments.

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

Sincerely,

Ita M. Rahilly
President

Attachment

NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS ON

SEC PROPOSED AMENDMENTS TO RULE 2-01, QUALIFICATION OF ACCOUNTANTS

(File Number S7-26-19)

March 13, 2020

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New York State Society of Certified Public Accountants

Comments on

SEC Proposed Amendments to Rule 2-01, Qualification of Accountants (File Number S7-26-19)

The New York State Society of Certified Public Accountants (NYSSCPA) appreciates the opportunity to provide comments on the Securities and Exchange Commission's (SEC) proposed Amendments to Rule 2-01 (the Rule), Qualifications of Accountants.

We support the SEC's efforts to re-examine the independence rules when changes in business practices warrant a re-evaluation of the current rules. We offer the following comments on the proposed revisions.

General Comments

Auditor independence is arguably a cornerstone of our market economy. Without auditor independence, the investing public's ability to rely on a company's financial statements is significantly diminished.

This request for comment asks interested parties to comment on proposed revisions to the Rule but does not provide the ability to review the document upon which comments are sought. Accordingly, when the SEC proposes amendments to this section or any other, it would be most helpful to see an edited "redline" copy showing the proposed modifications – reflecting those items being struck and those being added – similar to what the American Institute of Certified Public Accountants and the Financial Accounting Standards Board provide when proposing to amend extant standards.

Specific Comments on Proposed Amendments

Proposed Amendments to Affiliate of the Audit Client and the Investment Company Complex

Proposed Amendments for Common Control and the Affiliate of the Audit Client
The SEC has proposed the addition of a materiality constraint in determining which sister entities of the attest client might be affiliates. The SEC cites the American Institute of Certified Public Accountants' (AICPA) *Code of Professional Conduct* (the Code) as the inspiration for this change. However, 1.224.010.01e of the Code's definition of an affiliate states, "A sister entity of a financial statement attest client if the financial statement attest client and sister entity are each material to the entity that controls both." In the AICPA version, both the sister entity and the attest client must each be material to the controlling entity; whereas, in the SEC version, only the sister entity's materiality to the controlling entity is considered.

We believe that the entirety of the AICPA's definition with respect to sister entities should be adopted by the SEC as this will reduce confusion for auditors who audit both public and non-public business entities. We further believe that the SEC, in adopting this change to a materiality constraint should provide guidance for how materiality is meant to be considered – is it quantified materiality only, or are there qualitative factors that would make a sister entity material to the controlling entity.

Finally, we are not convinced that the SEC has considered the practicality of determining materiality. As the auditors for the attest client, neither the attest client nor the auditor would necessarily have access to either the financial information of the sister entity nor of the controlling entity. Accordingly, the SEC should provide guidance on how the auditor is to determine materiality in those instances. We suggest that the SEC adopt the "best efforts" approach described in the Code (at 1.224.010.03) to identifying affiliates. In complex private equity structures, identifying all of the controlling entity's affiliates (investees and subsidiaries) may be difficult and time consuming.

Proposed Amendments to the Investment Company Complex

We agree with the SEC proposal to specifically reference the entity under audit and explicitly define investment companies to include unregistered funds for the purpose of paragraph (f)(14). Furthermore we believe that it is appropriate to direct auditors to the investment company complex definition to determine those entities that would be considered affiliates of the audit client. The SEC auditor independence rules are complex and do not necessarily flow in the most logical order. We believe auditors would find this suggested direction to be most helpful.

With respect to the question of common control with any investment company, investment advisor or sponsor, while we generally support the idea of adding a materiality constraint to the determination of which entities meet the definition of an affiliate, we reiterate our concerns that determining materiality would be very difficult if the audit client or auditor do not have direct access to the financial information of the sister investment advisor (or sponsor) or the controlling entity.

Proposed Amendment to Audit and Professional Engagement Period

We are opposed to shortening the lookback period for domestic issuers. We believe the extant SEC independence rules with respect to domestic issuers should be followed in all filings with the SEC, even those from foreign private issuers. We are of the opinion that all issuers seeking access to the U.S. stock markets should follow the same rules. Accordingly, we support the SEC's alternative of lengthening the lookback period for foreign private issuers to harmonize with the extant lookback period for domestic issuers. Initial public offerings (IPOs) are not spur of the moment occurrences. Entities contemplate their ability to go public for years before the actual initial offering. Therefore, we do not believe that the extant lookback period is an egregious burden to most entities or audit firms.

Proposed Amendments to Loans and Debtor-Creditor Relationships

Proposed Amendment to Except Student Loans

We support the proposed revisions to the independence rules to except student loans from the list of prohibited loans. However, we question the SEC's argument that "the amount of the student loan borrowings could be significant when considering student loans obtained for multiple immediate family members … could impact an auditor's objectivity and impartiality" when considering that there is no similar proscription with respect to a mortgage loan, which could be substantially more significant than student loan debt in terms of absolute dollars. In addition, student loans obtained for a covered person's own education is more likely to be significant to that individual, as those covered persons are more likely to be younger members of the audit team.

We urge the SEC to consider these issues and provide better guidance as to when student loan debt would and would not impair independence. Furthermore, we do not believe that the student loans should be limited to the covered person's accounting and auditing education. Increasingly, firms are hiring individuals with educational background in disciplines other than accounting and auditing such as computer science majors, engineers, etc. Firms are increasingly seeking individuals with strong analytics training and are assuming the responsibility to teach these individuals the accounting and auditing. Such individuals should not be excepted from the proposed student loan exemption.

Finally, we do not support the establishment of a hard limit on the amount of student loan debt that may be outstanding. There is no comparable limit with respect to the mortgage exemption. We would, however, support the addition of a requirement that the student loan debt be current and neither in arrears nor in default in order to be exempt from the prohibition on loans with audit clients.

Proposed Amendment to Clarify the Reference to "Mortgage Loan"

With respect to the proposed revisions to the mortgage loan exception, we support the clarification proposed by the SEC. This proposed revision strengthens our argument that there should not be a prohibition on the student loans obtained for multiple immediate family members of the covered person. We believe that there is no substantial difference between multiple mortgage loans and multiple student debt loans.

Proposed Amendment to Revise the Credit Card Rule to Refer to "Consumer Loans"

We suggest that the SEC limit the amount of outstanding consumer loans with audit client(s) to an aggregate of no more than $10,000 on a current basis. An auditor might have more than one loan with a single audit client or several loans with multiple audit clients. Therefore, we believe that the SEC should clarify that the sum of all consumer debt with audit clients be limited to the proposed $10,000 amount.

Proposed Amendment to the Business Relationship Rule

We believe adding "beneficial owners with significant influence" in the list of prohibited business relationships is appropriate. As the term "substantial stockholder" is not defined in the SEC Rule, we are hesitant to approve the replacement of this term because we are not convinced that this term is synonymous with the proposed "beneficial owners with significant influence." We suggest that the SEC either define substantial stockholder before removing this class of stockholder from the list of prohibited business relationships, or retain this class in the list.

Proposed Amendments for Inadvertent Violations for Mergers and Acquisitions

We are not convinced that inadvertent violations of the independence rules resulting from a merger or acquisition should be permitted by the SEC without additional guardrails. The SEC's argument that mergers and acquisitions happen very quickly, therefore not allowing the auditor of the acquiring entity sufficient time to address possible independence issues does not make logical sense as mergers and acquisitions rarely happen in the span of days or weeks, but more often take place over many months, even years. Rather than allowing the audit firm to continue the non-audit work with the acquired entity, the SEC should require that the audit firm cease all non-audit work that could result in independence impairment before the date the merger or acquisition is effective even if within the audit or professional engagement period.

If the cause of the independence impairment is the result not of non-audit work, but of business relationships or prohibited loans, we believe that these relationships or loans need to be terminated or resolved prior to the effective date of the merger or within a specific period of time (*e.g.*, three months) from the date the merger or acquisition plan is announced. We do not agree with the SEC's suggestion that a post-transaction transition be effected "as promptly as possible" is susceptible to abuse in application. Since the SEC acknowledges that "as promptly as possible" is facts and circumstances driven, and as the SEC staff "has generally not objected, as part of the independence consultation process, to the auditor and the audit client's determination that the auditor's objectivity and impartiality were not impaired in these circumstances," we do not believe that the Rule needs to be modified. Rather, these situations should continue to be addressed by the staff on a case by case basis as the issue arises.

With respect to IPOs, we disagree with the SEC's proposal to shorten the lookback period for domestic filers. Because the auditor is often the auditor for the entity for many years prior to the IPO, and, as discussed above, because IPOs do not happen overnight, we do not believe that inadvertent violations resulting from IPOs should be an issue for an audit firm that understands the extant SEC independence rules.