



An Introduction to Auditor Comfort Letters

CLE Seminar

May 2, 2023

Presented by:

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Contents of Packet:

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4. Form of Comfort Letter per Examples A, B and F annexed to AS 6101
5. *Top 10 Practice Tips: Comfort Letters*, Lexis Practice Advisor (2021)
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An Introduction to Auditor Comfort Letters

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An Introduction to Auditor Comfort Letters

Agenda

- Comfort Letter Basics
 - What? Why? When?
- Auditing Standards No. 6101: Form and contents of a comfort letter
- Understanding the different levels of comfort
- Additional practice tips
- Refer to CLE packet for further reading and guidance

What is a Comfort Letter?

- Letter delivered by issuer's independent accountants to underwriters or initial purchasers that provides assurances with respect to certain financial information included in the offering document used for a securities offering.
 - ❖ Breaking it down:
 - Underwriters vs. Initial purchasers; registered vs. unregistered offerings
 - Assurances: positive vs. negative assurance; "cold" comfort
 - "Certain" financial information – not all numbers can be comforted by auditors
 - Offering document: registration statement, prospectus, offering memorandum, plus documents incorporated by reference
 - Comfort Letter = Letter itself plus its attachments

Why needed? Why does it matter?

- Obtaining comfort *matters* to underwriters
 - assists in establishing underwriter's due diligence defense against Section 11 liability and underwriter's reasonable investigation of issuer and financials
- Required by underwriting agreement or purchase agreement; closing condition
- To aid and inform drafting and preparation of disclosure document
- To ensure no material misstatements or omissions in offering document
- To enhance comfort level of parties to transaction *e.g.*, joint bookrunners, co-managers
- Part of larger due diligence process for underwriter's counsel

Why Do Underwriters Obtain Comfort Letters?

- The due diligence defense for underwriters in SEC registered offerings requires:
 - As to “expertized” information (e.g., audited financial statements), the underwriter had **no reasonable ground to believe**, and did not believe, that statements were untrue or omitted to state a material fact
 - As to “non-expertized” information (e.g., interim financial statements, MD&A and other financial data), the underwriter, **after reasonable investigation**, had reasonable ground to believe, and did believe, that statements were true and did not omit to state a material fact.
[See Tab 2: Section 11(b)(3) of Securities Act, item (C) vs. item (A); see also Section 12(a)(2)]
- Comfort letter = evidence or record of: underwriter’s “reasonable investigation” of statements re issuer’s financial condition; or a basis to say “no reasonable ground to believe” statements were untrue
- To help identify and elevate problematic issues

When are Comfort Letters Delivered?

- U.S. underwritten/Rule 144A/Reg S offerings: pricing and closing
 - At pricing: the notion is that underwriters do not want to enter into contracts to sell the securities without assurances as to the financial information
 - At closing (bring-down letter): the auditors confirm that there is no material change from the initial letter delivered at pricing
- Bring-down letter is usually short
 - Reaffirms statements in initial letter; updates cut-off date of auditors' procedures
- Programs, such as MTN programs
 - Establishment of program, significant or syndicated take-downs and in some cases periodically (e.g., annually or quarterly).

What is the Role of Underwriters' Counsel?

- Identify areas of comfort at start of the transaction (prospectus, OM, incorporated documents *e.g.*, 10-K, 10-Qs, 8-Ks)
- Often prepare the “circle-up” comfort request and send to the accountants
- Review form and content of comfort letter against AS 6101 and precedents
- Negotiate form and “tickmark” levels with accountants
 - Identify items circled by counsel but not given tickmarks by auditors
 - Identify items given a lower level of comfort/tickmark by auditors
 - Review and discuss with auditors deviations from past practice
 - Ensure underwriters have no comments/further requests.
- Ensure delivery at signing and closing

How? Practice tips to review and negotiate

Know + apply

1. Review AS 6101 and relevant comfort letter precedents
2. Obtain a SAS 72 rep letter for unregistered deals
3. Plan ahead
4. Mind the 135-day rule and dates for delivery of comfort letter
5. Understand the different levels of comfort
6. Circle like a pro
7. Aim high but be realistic
8. Pay special attention to pro forma information
9. Pay attention to special considerations for FPIs
10. Have a back-up plan

[See Tab 5 “Top 10 Practice Tips: Comfort Letters”, Lexis (2021)]

AS 6101: Form and Contents of Comfort Letter

- The contents are principally specified in *Auditing Standards No. 6101: Letters for Underwriters and Certain Other Requesting Parties* ("AS 6101") of the Public Company Accounting Oversight Board ("PCAOB")
 - AS 6101 superseded AU Section 634 of the PCAOB, which in turn contained and codified Statement on Auditing Standards No. 72 ("SAS 72") of the American Institute of Certified Public Accountants.
 - The term "SAS 72" is however still often used (e.g., "SAS 72 comfort letter").
- AS 6101 applies to both SEC-registered and non-SEC registered offerings.
 - Registered offerings: accountants provide a comfort letter to underwriters or other parties with a statutory due diligence defense under Section 11 of the Securities Act in connection with financial statements/schedules included/incorporated by reference in registration statements filed with the SEC.

AS 6101: Contents of Comfort Letter (*cont'd*)

- Non-registered offerings: accountants may provide a comfort letter to broker-dealers or other financial intermediaries in offerings/placement of securities exempt from registration requirements of Section 5 of Securities Act *e.g.*, Regulation S, Regulation D, Rule 144A offerings. Will usually ask for a “SAS 72 rep letter.” Addressee must have a due diligence defense.
- In a “SAS 72 rep letter,” broker-dealer or financial intermediary represents that the due diligence undertaken by it in connection with the placement of securities is “substantially consistent” with the diligence that would have been undertaken in connection with acting as an underwriter in an SEC-registered offering. [See **Tab 6**, *Form of SAS 72 rep letter under paragraph .07 of AS 6101*]
- Variations exist among different audit firms, and reflect the financial statements and reporting process of the applicable issuer. Obtain precedents.
- Qualifications, limitations and other language that are not expressly contemplated by AS 6101 are not frequent, and are proper subjects for negotiation

AS 6101: Contents of Comfort Letter (*cont'd*)

Specific parts of the letter

- Date: date of pricing (or date of closing for bring-down comfort letter)
- Addressees: *e.g.*, issuer's board of directors and underwriters
- Introduction: auditors have audited financial statements included in 10-K incorporated by reference in registration statement/offering document
- If applicable, reference to SAS 72 reps (diligence review by initial purchaser)
- Statement as to the independence of the accountants
- Opinion whether audited financial statements comply as to form with Securities Act, Exchange Act and related SEC rules and regulations
- Procedures performed by accountants with respect to information other than audited financial statements:
 - Unaudited (reviewed) quarterly/interim financial statements
 - Unaudited financial statements (*e.g.* monthly financials)

AS 6101: Contents of Comfort Letter (*cont'd*)

Specific parts of the letter

- Subsequent changes in key line items (e.g. change in capital stock, increase in long term debt, decrease in net income) from the date of last financials included or incorporated in the offering document through the cut-off date (often referred as the “change period” or “bring-down period”)
- Others: pro forma information, capsule financial information
- Comments/Conclusions with respect to above information
 - Negative assurance re unaudited and any pro forma financial info
 - Negative assurance as to changes in line items; specified procedures
- Additional procedures: “tick-and-tie comfort” (tables, other info incorporated)
 - Purpose: identify financial information that has its source in the documents/records audited or reviewed by the auditors.
- Disclaimers, non-reliance by third parties
- Signature, Annexes

AS 6101: Contents of Comfort Letter (*cont'd*)

Examples A, B and F in AS 6101 (see tab 4)

- Date: *"June 28, 19X6" at p.1*
- Addressees: *"[Addressees]" at p.1*
- Introduction: *auditors have audited financial statements, at p.1*
- Reference to SAS 72 reps, if applicable: *not applicable*
- Statement as to the independence of the accountants – *item 1, at p.1*
- Opinion re audited financial statements – *item 2, at p.1*
- Auditor procedures performed with respect to information other than audited financial statements: - *item 3, p. 1; cut-off-date: "June 23, 19X6"*
 - Unaudited (reviewed) quarterly/interim financial statements – *item 4(a) at p. 2*
 - Unaudited financial statements (e.g. monthly financials) – *item 4(b) at p. 2*

AS 6101: Contents of Comfort Letter (*cont'd*)

Example A, B and F in AS 6101 (see tab 4)

- Subsequent changes in key line items – *item 6, at p. 3*
- Others: pro forma information, capsule financial information – *not applicable*
- Comments/Conclusions with respect to above information
 - Negative assurance on quarterly financials – *item 5(a), at p. 3*
 - Negative assurance on monthly financials – *item 5(b), at p. 3*
 - Negative assurance/specified procedures on key line items after monthlies to cut-off date – *item 6, p. 3*
- Additional procedures: “ticking and tying” – *items 7 to 9, at pp. 4 to 6*
- Disclaimers, non-reliance by third parties – *items 10 to 11 at p. 6*
- Signature, Annexes – *p. 6 onwards*

Sample

- See following sample comfort letter issued in MTN program quarterly update

Examining Sample Comfort Letters – Introduction to the Letter

May 15, 2018

The Board of Directors of [REDACTED]

and

[REDACTED]

New York, New York 10018

and

[REDACTED]

(collectively, the “Principals/Agents”)

and

[REDACTED]

(collectively, the “Dealers”)

c/o [REDACTED]

[REDACTED]

New York, New York 10018

Ladies and Gentlemen:

We have audited the consolidated financial statements of [REDACTED] (the “Company”) and subsidiaries as of December 31, 2017 and 2016 and for each of the three years in the period ended December 31, 2017 included in the Company’s annual report on Form 10-K for the year ended December 31, 2017 (the “Form 10-K”), and incorporated by reference in the registration statement (No. 333-[REDACTED]) on Form S-3 filed by the Company under the Securities Act of 1933 (the “Act”); our report with respect thereto is also incorporated by reference in that registration statement. The registration statement, including the base prospectus and prospectus supplement dated February 26, 2018, is herein referred to as the “Registration Statement.”

Examining Sample Comfort Letters – Independence of Auditors

In connection with the Registration Statement:

1. We are an independent registered public accounting firm with respect to the Company within the meaning of the Act and the applicable rules and regulations thereunder adopted by the Securities and Exchange Commission (“SEC”) and the Public Company Accounting Oversight Board (United States) (“PCAOB”).



Examining Sample Comfort Letters – Audited Financial Statements and Compliance as to Form

2. In our opinion, the consolidated financial statements audited by us and incorporated by reference in the Registration Statement comply as to form in all material respects with the applicable accounting requirements of the Act and the Securities Exchange Act of 1934 and the related rules and regulations adopted by the SEC.

Examining Sample Comfort Letters – Comfort on Unaudited Quarterly Financial Statements

3. We have not audited any financial statements of the Company as of any date or for any period subsequent to December 31, 2017; although we have conducted an audit for the year ended December 31, 2017, the purpose (and therefore the scope) of the audit was to enable us to express an opinion on the consolidated financial statements as of December 31, 2017 and for the year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the unaudited consolidated balance sheet as of March 31, 2018 and the unaudited consolidated statements of income, of comprehensive income, of cash flows and of changes in equity for the three-month periods ended March 31, 2018 and March 31, 2017 included in the Company's quarterly report on Form 10-Q for the quarter ended March 31, 2018, incorporated by reference in the Registration Statement, or on the financial position, results of operations, or cash flows as of any date or for any period subsequent to December 31, 2017.
4. For purposes of this letter, we have read the minutes of the 2018 meetings of the Board of Directors, the Risk Committee, and the Audit Committee of the Company and its subsidiaries as set forth in the minute books at May 14, 2018, officials of the Company having advised us that the minutes of all such meetings through that date were set forth therein, except for the minutes of the April 25, 2018 Audit Committee, the April 25, 2018 Risk Committee and the April 26, 2018 Board of Directors meetings which were not approved in final form, for which agendas were provided to us; officials of the Company have represented that such agendas include all substantive actions taken at such meetings, and have carried out other procedures to May 14, 2018 (our work did not extend to May 15, 2018, inclusive) as follows:
 - a. With respect to the three-month periods ended March 31, 2018 and 2017, we have:
 - (i) performed the procedures (completed on May 4, 2018) specified by the PCAOB for a review of interim financial information as described in AS 4105, *Reviews of Interim Financial Information*, on the unaudited consolidated balance sheet as of March 31, 2018, and unaudited consolidated statements of income, of comprehensive income, of cash flows and changes in equity for the three-month periods ended March 31, 2018 and 2017, included in the Company's quarterly report on Form 10-Q for the quarter ended March 31, 2018, incorporated by reference in the Registration Statement; and
 - (ii) inquired of certain officials of the Company who have responsibility for financial and accounting matters whether the unaudited consolidated financial statements referred to in 4.a.(i) above comply as to form in all material respects with the applicable accounting requirements of the Securities Exchange Act of 1934 as it applies to Form 10-Q and the related rules and regulations adopted by the SEC.

Examining Sample Comfort Letters – Comfort on Unaudited Quarterly Financial Statements

5. It should be noted effective January 1, 2018, the Company adopted Accounting Standards Codification 606, *Revenue from Contracts with Customers*, Accounting Standards Update 2016-01, *Financial Instruments—Overall: Recognition and Measurement of Financial Assets and Financial Liabilities*, and Accounting Standards Update 2018-02, *Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that:
 - a. (i) Any material modifications should be made to the unaudited consolidated financial statements described in 4.a.(i), incorporated by reference in the Registration Statement, for them to be in conformity with generally accepted accounting principles;
 - (ii) The unaudited consolidated financial statements described in 4.a.(i) do not comply as to form in all material respects with the applicable accounting requirements of the Securities Exchange Act of 1934 as it applies to Form 10-Q and the related rules and regulations adopted by the SEC; or

Examining Sample Comfort Letters – Comfort on Unaudited Monthly Financial Statements

4. For purposes of this letter, we have read the minutes of the 2018 meetings of the Board of Directors, the Risk Committee, and the Audit Committee of the Company and its subsidiaries as set forth in the minute books at May 14, 2018, officials of the Company having advised us that the minutes of all such meetings through that date were set forth therein, except for the minutes of the April 25, 2018 Audit Committee, the April 25, 2018 Risk Committee and the April 26, 2018 Board of Directors meetings which were not approved in final form, for which agendas were provided to us; officials of the Company have represented that such agendas include all substantive actions taken at such meetings, and have carried out other procedures to May 14, 2018 (our work did not extend to May 15, 2018, inclusive) as follows:
 - b. With respect to the period from April 1, 2018 to April 30, 2018, we have:
 - (i) read the unaudited consolidated financial data of the Company and subsidiaries for April of both 2018 and 2017 furnished us by the Company, officials of the Company having advised us that no such financial data as of any date or for any period subsequent to April 30, 2018 were available. The financial data for April of both 2018 and 2017 is incomplete in that it omits the statement of cash flows, the statement of changes in equity, the statement of comprehensive income and other disclosures.
 - (ii) inquired of certain officials of the Company who have responsibility for financial and accounting matters whether the unaudited consolidated financial data referred to in 4.b.(i) above is stated on a basis substantially consistent with that of the audited consolidated financial statements incorporated by reference in the Registration Statement.

The foregoing procedures do not constitute an audit conducted in accordance with standards of the PCAOB. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations as to the sufficiency of the foregoing procedures for your purposes.

Examining Sample Comfort Letters – Comfort on Unaudited Monthly Financial Statements

5. It should be noted effective January 1, 2018, the Company adopted Accounting Standards Codification 606, *Revenue from Contracts with Customers*, Accounting Standards Update 2016-01, *Financial Instruments—Overall: Recognition and Measurement of Financial Assets and Financial Liabilities*, and Accounting Standards Update 2018-02, *Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that:
- b. (i) At April 30, 2018 there was any change in common or preferred stock, increase in long-term debt, or decrease in consolidated total assets or total equity of the Company and subsidiaries consolidated as compared with amounts shown on the March 31, 2018 unaudited consolidated balance sheet incorporated by reference in the Registration Statement, or (ii) for the period from April 1, 2018 to April 30, 2018, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net income, except in all instances for changes, increases or decreases which the Registration Statement discloses have occurred or may occur, and except that the unaudited consolidated financial data, which we were furnished by the Company, showed a decrease from March 31, 2018 in consolidated total assets and total equity as follows (in millions of dollars):

	<i>Consolidated Total Assets</i>	<i>Total Equity</i>
April 30, 2018	177,193	19,585
March 31, 2018	182,035	19,683

Examining Sample Comfort Letters – Comfort on Change Period

6. As mentioned in 4.b.(i), Company officials have advised us that no consolidated financial data as of any date or for any period subsequent to April 30, 2018 are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after April 30, 2018 have, of necessity, been even more limited than those with respect to the periods referred to in 4. We have inquired of certain officials of the Company who have responsibility for financial and accounting matters whether at May 14, 2018 there was any change in the common or preferred stock, increase in long-term debt or decrease in consolidated total assets or total equity of the Company and subsidiaries consolidated as compared with amounts shown in the March 31, 2018 unaudited consolidated balance sheet incorporated by reference in the Registration Statement.

Those officials referred to above stated that they cannot comment on any such changes, increases or decreases in consolidated long-term debt, consolidated total assets or total equity of the Company for the periods referred to above.

On the basis of these inquiries and our reading of the minutes and agendas as described in 4, nothing came to our attention that caused us to believe that there was any such change in common or preferred stock, except in all instances for changes, increases or decreases, that the Registration Statement discloses have occurred or may occur.

Examining Sample Comfort Letters – “Tick-and-Tie” Comfort

7. For purposes of this letter, we have also read the items identified by you on the attached copy of the Form 10-K and the Company’s quarterly report on Form 10-Q for the quarter ended March 31, 2018, incorporated by reference in the Registration Statement, and have performed the following procedures, which were applied as indicated with respect to the letters explained below. We make no comment as to whether the SEC would view any non-GAAP financial information included or incorporated by reference in the Registration Statement as being compliant with the requirements of Regulation G or Item 10 of Regulation S-K.

A	Compared to or recalculated from amounts included in the Company’s audited consolidated financial statements included in the Form 10-K, incorporated by reference in the Registration Statement, and found such amounts to be in agreement, after giving effect to rounding, if applicable. However, we make no comment with respect to classification or reasons given for changes between periods, where applicable.
B	Compared to or recomputed from a corresponding amount included in the Company’s accounting records and found such amounts to be in agreement, after giving effect to rounding, if applicable.
C	Compared to or recomputed from a schedule prepared by the Company from its accounting records and found such amounts to be in agreement, after giving effect to rounding. We (a) compared the amounts on the schedule to corresponding amounts appearing in the accounting records and found such amounts to be in agreement and (b) determined that the schedule was mathematically correct. We make no comment with respect to the Company’s: <ul style="list-style-type: none">• classification or reasons given for changes between periods, where applicable;• calculation of yield on total interest earning assets;• methodology, determination and classification of nonaccrual loans, accruing loans contractually past due 90 days, or total nonperforming loans and assets;• methodology for calculating average balances, regulatory measures, or ratios;• classification of deposit balances by type of deposit or major depositor categories, other fees and commissions by type, and other expenses by expense type;• classification of loans two-months-and-over contractual delinquency;

Examining Sample Comfort Letters – “Tick and Tie” Comfort

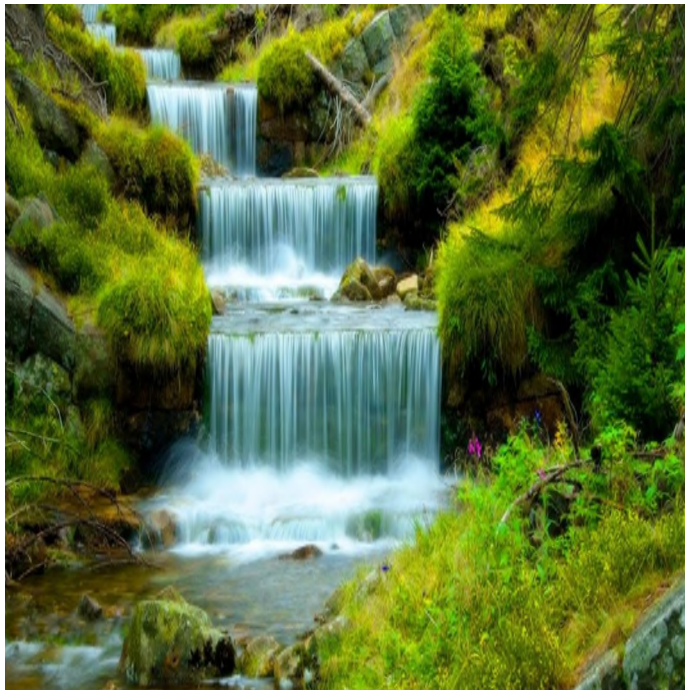
	<ul style="list-style-type: none"> • classification of loan types, types of other fees and commissions, and other expenses; • determination of delinquency status of loans; and • the definition, calculation and presentation of selected regulatory capital balances and ratios (e.g. tangible common equity, Tier 1 Capital, Risk Weighted Assets, Tier 2 capital, etc.), made by the Company to comply with regulatory reporting requirements of the Federal Financial Institutions Examination Council or their usefulness for any purposes.
D	<p>Recalculated a specific dollar amount or percentage included under the heading “Ratio of Earnings to Fixed Charges” by reference to unaudited schedules or analyses prepared and provided to us by the Company from its accounting records and performed the following procedures: (a) compared the amounts or percentages on the schedules or analyses to corresponding amounts appearing in the accounting records and found such amounts to be in agreement, after giving effect to aggregation or rounding, if applicable; and (b) determined that the schedules were mathematically correct. We make no comment with respect to reasons given for changes between periods. We make no comment as to the appropriateness of the Company’s definition of earnings, fixed charges, rents and the interest factor thereof, and coverage category.</p>
E	<p>Compared to a schedule prepared by the Company from its accounting records and found such amounts to be in agreement. We (a) compared the amounts on the schedule to corresponding amounts appearing in the accounting records and found such amounts to be in agreement and (b) determined that the schedule was mathematically correct.</p> <p>It should be noted that the following are not measures of operating performance or liquidity defined by generally accepted accounting principles and may not be comparable to similarly titled measures presented by other companies. We make no comment about the Company’s definition, calculation or presentation of these measures or their usefulness for any purposes.</p> <ul style="list-style-type: none"> • adjusted performance; • taxable equivalent; • total tangible assets; • tangible common equity; • tangible common equity to total tangible assets; • efficiency ratios; • rate of return on average balances; and • net charge-off and net charge-off coverage ratios.

Examining Sample Comfort Letters – “Tick and Tie” Comfort

F	Recalculated the amount, percentage, ratio or subtotal from amounts included in the Company’s audited consolidated financial statements as of and for the year ended December 31, 2017 incorporated by reference in the Registration Statement and the comparative period presented for the year ended December 31, 2016, as applicable (included in the Company’s audited consolidated financial statements as of December 31, 2017 and 2016 and for the three years ended December 31, 2017), and found it to be in agreement after giving effect to rounding, if applicable. However, where applicable, we make no comment as to the appropriateness or manner in which such classifications have been made, and we make no representation as to these amounts, percentages, ratios or subtotals or the appropriateness of these measures for your purposes.
G	Compared to or recomputed from amounts included in the Company’s unaudited financial statements as of March 31, 2018 and for the three-month period ended March 31, 2017, incorporated by reference in the Registration Statement, and found such amounts to be in agreement, after giving effect to rounding, if applicable. However, we
	make no comment with respect to classification or reasons given for changes between periods, where applicable.

Understand different levels of comfort from auditors

procedures performed + period covered = comfort level



- Year-end Audit of Financial Statements
 - e.g., years ended December 31, 2017, 2016 and 2015
- Interim Review of Quarterly Financial Statements
 - e.g., quarterly periods ended March 31, 2018 and 2017
- Specified Procedures on Internal monthlies
 - e.g., specified items as of May 31, 2018 (vs. March 31, 2018), and for two-month period from April 1, 2018 to May 31, 2018 (vs. corresponding period in 2017)
- Specified Procedures on remaining change period
 - e.g., specified items as of June 23, 2018 (vs. March 31, 2018), and for period from April 1, 2018 to June 23, 2018 (vs. corresponding period in 2017)

Audited Annual Financial Statements

- Top level: financial statements audited by accountants in accordance with PCAOB standards and covered by auditor's unqualified opinion
- Have been "expertized" (they have been audited).
- Independent accountants consent to inclusion of financial statements and their report, and being named an expert in registration statement
- Main objective of audit: provide accountants with a reasonable basis (and not an absolute basis) for expressing an unqualified opinion regarding financial statements of issuer taken as a whole (auditors call this the "attest function").
- An audit opinion consists of two basic elements:
 - First, that the financial statements audited present fairly, in all material respects, the financial condition and results of operations for the issuer and its consolidated subsidiaries as of and for the periods covered; and
 - Second, that the financial statements have been prepared in accordance with applicable GAAP or IFRS.

Audited Annual Financial Statements

- Comfort level: positive assurance
 - Opinion in auditor’s report found in audited financial statements included in Form 10-K
 - Comfort letter: *“In our opinion, the consolidated financial statements audited by us and incorporated by reference in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Securities Exchange Act of 1934 and the related rules and regulations adopted by the SEC.”*
- Compare this positive assurance with “negative” assurance
 - Per AS 6101, procedures short of an audit, provide accountants with a basis for expressing, at most, negative assurance
 - Negative assurance consists of a statement by accountants that, as a result of performing specified procedures, nothing came to their attention that caused them to believe that specified matters do not meet a specified standard
(for example, nothing came to our attention that caused us to believe that any material modifications should be made to the unaudited financial statements or unaudited condensed financial statements for them to be in conformity with GAAP. [See footnote 10, AS 6101])

Unaudited Quarterly Financial Statements

- Have not been “expertized” (they have not been audited).
- An opinion is not given (AS No. SAS 100 (now *AS 4105, Reviews of Interim Financial Information*) establishes the standards for engagements by independent accountants concerning the review of interim financial information issued by public companies).
 - The purpose of a review is to provide the accountant with a basis for reporting whether material modifications are necessary for the interim financial information to be in accordance with GAAP or IFRS. A review of interim financial information differs significantly from an audit of financial information because a review does not include the collection of corroborative evidence through the performance of typical substantive audit tests.
 - In performing a “SAS 100” review, the accountants will, among other things, (i) review minutes of shareholder and board meetings, (ii) make inquiries of management as to whether the interim financial statements are prepared in accordance with GAAP and whether there have been any changes in accounting principles or practices or in business activities, (iii) compare current interim period financial statements to the comparable previous interim period financial statements and (iv) compare recorded amounts to expectations.

Unaudited Quarterly Financial Statements

- Comfort level: Negative assurance
 - *“Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that —*
 - i. Any material modifications should be made to the unaudited condensed consolidated financial statements, incorporated by reference in the registration statement, for them to be in conformity with generally accepted accounting principles*
 - ii. The unaudited condensed consolidated financial statements do not comply as to form in all material respects with the applicable accounting requirements of the Securities Exchange Act of 1934 as it applies to Form 10-Q and the related rules and regulations adopted by the SEC.”*

Numbers in Change or Bring-Down Period

- The period between the last day of the stub period (period covered by interim financial statements) and the cut-off date (date up to which auditors have performed their specified procedures) for the comfort letter.
- The change or bring-down period can be broken down into two parts:
 - Any time period for which the company has prepared internal financial statements
 - The remaining time, for which the company has no internal financial statements
- Procedures accountants perform are more limited than a SAS 100 review
 - *e.g.*, reading monthly financial statements; inquiries of issuer's officials whether monthly statements are prepared on a basis substantially consistent with audited financial statements incorporated in the offering document

Change or Bring-Down Period (*cont'd*)

- Accountants will compare (i) key balance sheet items found in the most recent monthly statements vs. corresponding items found in most recent balance sheet incorporated in offering document, and (ii) key income statement line items found in most recent monthly statements vs. corresponding items found in income statements for comparable period in prior year
- Relevant line item changes listed in AS 6101 include:
 - Changes in capital stock.
 - Increases in long-term debt.
 - Decreases in consolidated net current assets or shareholders' equity.
 - Decreases in net sales.
 - Total or per-share amounts of income before extraordinary items.
 - Total or per-share amounts of net income.
 - Line items can vary e.g., depending on issuer, industry, peer practice

Changes in Line Items (cont'd)

- The best comfort accountants can give on change period is limited to assuring underwriters there have been no changes in key financial statement line items during period compared to comparable past periods covered by financials
 - *“Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that— (a) at May 31, 2018, there was any change in the capital stock, increase in long-term debt, or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 2018 unaudited condensed consolidated balance sheet incorporated by reference in the registration statement or (b) for the period from April 1, 2018, to May 31, 2018, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.”*

Changes in Line Items (cont'd)

- *"We have inquired of certain officials of the company who have responsibility for financial and accounting matters whether (a) at June 23, 2018, there was any change in capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 2018, unaudited condensed consolidated balance sheet included in the registration statement or (b) for the period from April 1, 2018, to June 23, 2018, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income. On the basis of these inquiries and our reading of the minutes as described, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur."*
- Confirm that no changes in key financial statement line items have occurred during change period that would need to be disclosed in offering document.
 - If material changes in key financial statement line items have indeed occurred during the change period, to craft disclosure to include in the offering document describing those changes.

The “135 Day” Rule under AS 6101

- If 135 days or more have elapsed since the date of the issuer’s most recent audited annual financial statements or reviewed interim financial statements, on the one hand, and the cut-off date of the comfort letter, on the other hand, then auditors will not be able to give any negative assurance as to subsequent changes in specified financial statement items.
 - Rather, they will be limited to reporting procedures performed and findings obtained.
- Likely to be an issue during Q1 of a year, when audited financials are being prepared.
 - There are 92 days in the fourth quarter, thus the Form 10-K must be filed in February (or the other applicable 2nd month of the quarter) for there to be no gap in coverage.
- To illustrate, if accountants reviewed issuer’s interim financial statements for Q3 ended September 30, 2022, then they may provide negative assurance on increases or decreases in specified financial statement items as of any date up to February 11, 2023 (134 days subsequent to September 30, 2022).

The “135 Day” Rule under AS 6101

- From February 12, 2023, which is the 135th day, the auditors will refuse to give negative assurance on the change period, since the September 30, 2022 interim financial statements then would not be less than 135 days old
- Implications:
 - Underwriters will often be unwilling to proceed with the deal if they do not receive negative assurance on the change period. In the above illustration, the underwriters may decide to postpone the deal until after the issuer files its 2022 Form 10-K (that contains the year-end audited financial statements) in March 2023.
- The 135 day rule under AS 6101 is different from and in addition to, the financial staleness rules of the SEC.

[See Tab 7b for 2023 financial statement staleness calendar]

Circle like a pro

What should be included in the “Circle-Up” request?

- All financial information included or incorporated by reference in the offering document that can be tied to the financial statements (audited or unaudited), accounting books/records and company schedules.
 - This would include selected financial data tables, capitalization tables and dilution tables included in the body of the offering document, as well as those financials included in the SEC filings incorporated by reference in the offering document.
 - This would exclude SEC filings that are “furnished” rather than filed.
- Figures that can be tied to contracts or agreements (e.g., principal amount of notes outstanding reflected in a global note or indenture) generally will not be circled and tickmarked.
- The actual financial statements and notes thereto, included in issuer’s Form 10-K or Form 10-Q that are incorporated into the offering document do not need to be circled. But circle the numbers appearing in the MD&A and OM.

What should be included in the “Circle-Up”?

(cont’d)

- Figures pertaining to the company’s market/industry that are not financial in nature (e.g., market data) do not need to be circled or tickmarked.
- The number of employees, the square footage of facilities and backlog information are typically not circled or tickmarked.
- AS 6101 lists examples of the types of quantitative information that can only be comforted if it is derived from accounting records subject to controls.

Tick-and-tie comfort

- After you send the circle-up request to the accountants, they will deliver their circle-up and will provide “tickmarks” next to circled numbers in the offering document and/or documents incorporated by reference and trace these numbers to the company’s financial statements, trial balance/general ledger or books and records.
- The purpose is to identify financial information that has its source in the documents audited or reviewed by the auditors.
- Accountants frequently will not cover certain numbers in the offering document (that they cannot trace to the company’s financial statements) such as share numbers, square feet, sales per square feet, backlog, employee counts and projected/estimated capital expenditures.

Tickmarks (*cont'd*)

- The tickmark letters or numbers represent varying levels of comfort depending on whether information is derived from audited financials, interim financials or other accounting books or records.
- The applicable tickmark is placed next to each number in the offering document and/or documents incorporated by reference that the accountants will give comfort on.
- The meaning of each tickmark is provided in the comfort letter with its purpose being to tie that number back to another source (principally the issuer's audited or unaudited financial statements).
- The accountants may sometimes have to trace numbers back directly to the books and records of the issuer or may even rely on a schedule prepared by company management.

Tickmarks (*cont'd*)

- When a number is tied back to anything other than financial statements or the issuer's books and records, the value of such comfort decreases.
- AS 6101 states that the comfort letter can only cover numbers that are derived from the company's accounting records that are subject to the company's system of internal accounting controls (some accountants define "accounting records" more broadly than others).
- One of the most negotiated items on tickmarks is which numbers are tied to a "company-prepared schedule," where neither the accountants nor the company have tied the data on the schedule to the underlying records.

Levels of tickmark comfort

Aim high but be realistic

- In general, there are several possible levels of tickmark comfort, including that
 - (a) the auditors have compared or recalculated the number or percentage:
 - To or from amounts in the audited financial statements and found them to be in agreement.
 - To or from amounts in the reviewed interim financial statements and found them to be in agreement.
 - To or from amounts in the company's accounting records and found them to be in agreement.
 - To or from amounts in a schedule prepared by the company based on its accounting records and found them to be in agreement; and
 - (b) the auditors have verified the arithmetic accuracy of certain calculations.
- ❖ Read and review the tickmark legend in the comfort letter when reviewing tick-and-tie comfort on the circle-up request

Sample tick-and-tie comfort

- “7. At your request, we have also read the items identified by you on the attached pages from the Prospectus, the Preliminary Prospectus Supplement, the Company’s Form 10-K for the year ended December 31, 2017, the Company’s Quarterly Reports on Form 10-Q for the quarters ended March 31, June 30, and September 30, 2018, and the Company’s Current Report on Form 8-K dated January 22, 2019 and have performed the following procedures, which were applied as indicated with respect to the letters explained below:
 - A. **Compared** the dollar and other amounts either **to the amounts in the audited consolidated financial statements** described in the introductory paragraph of this letter or, for prior years, included in the Company’s annual reports to shareholders for the years 2016, 2015, 2014, or 2013 to the extent such amounts are included in or can be derived from such statements and found them to be in agreement.
 - B. **Compared** the dollar and other amounts **to the amounts in the unaudited consolidated financial statements included in** the Company’s Quarterly Reports on **Form 10-Q** described in paragraph 3. to the extent such amounts are included in or can be derived from such statements and found them to be in agreement.
 - C. **Compared** the dollar and other amounts not derived directly from the audited consolidated financial statements or the unaudited consolidated financial statements included in the Company’s Quarterly Reports on Form 10-Q **to amounts in the Company’s accounting records** to the extent such amounts could be so compared directly and found them to be in agreement.
 - D. **Compared** the dollar and other amounts not derived directly from audited consolidated financial statements, not derived from the unaudited consolidated financial statements included in the Company’s Quarterly Reports on Form 10-Q or that could not be compared directly to the Company’s accounting records, **to amounts in analyses prepared by the Company from its accounting records** and found them to be in agreement.

Sample tick-and-tie comfort (cont'd)

- E. **Proved the arithmetic accuracy** of the percentages or amounts based on the data in the above-mentioned audited consolidated financial statements, unaudited consolidated financial statements included in the Company's Quarterly Reports on Form 10-Q, accounting records or analyses, as applicable. With respect to any non-GAAP financial measures, we proved the arithmetic accuracy based on definitions contained within the Registration Statement, Form 10-K or the Company's Quarterly Reports on Form 10-Q; we make no representation as to the appropriateness or completeness of such definitions.
- F. **Compared the non-GAAP financial measure to the reconciliation of that non-GAAP financial measure to the corresponding GAAP measure** included, or incorporated by reference, in the Registration Statement and found them to be in agreement.
- NC. No procedures performed"

Sample tick-and-tie comfort (cont'd)

- **10-K circle-up**

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A")

Financial Highlights

We reported net income of **\$2.0 billion (\$3.49 per diluted common share)** on total net revenue of **\$27.2 billion** for 2017. In comparison, we reported net income of **\$3.8 billion (\$6.89 per diluted common share)** on total net revenue of **\$25.5 billion** for 2016, and **\$4.1 billion (\$7.07 per diluted common share)** on total net revenue of **\$23.4 billion** for 2015.

Total Company Performance

- **Earnings:** Our net income decreased by **\$1.8 billion** to **\$2.0 billion** in 2017 compared to 2016.

On June 28, 2017, we announced that our Board of Directors authorized the repurchase of up to **\$1.85 billion** of shares of our common stock from the third quarter of 2017 through the end of the second quarter of 2018. In December 2017, the Board of Directors reduced the authorized repurchases of our common stock to up to **\$1.0 billion** for the remaining 2017 Comprehensive Capital Analysis and Review ("CCAR") period, which ends June 30, 2018 ("2017 Stock Repurchase Program"). In the first quarter of 2018, we repurchased approximately **\$200 million** of our common stock. See "MD&A—Capital Management—Dividend Policy and Stock Purchases" for additional information.

Sample tick-and-tie comfort (cont'd)

- **10-Q circle-up**

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A")

Financial Highlights

We reported net income of \$1.3 billion (\$2.62 per diluted common share) on total net revenue of \$6.9 billion for the first quarter of 2018. In comparison, we reported net income of \$810 million (\$1.54 per diluted common share) on total net revenue of \$6.5 billion for the first quarter of 2017.

- **8-K exhibit circle-up**

Exhibit 99.2, Financial Supplement, Fourth Quarter 2018

Table 15: Calculation of Regulatory Capital Measures and Reconciliation of Non-GAAP Measures⁽¹⁾

(Dollars in millions, except as noted)

	Basel III Standardized Approach				
	December 31, 2018	September 30, 2018	June 30, 2018	March 31, 2018	December 31, 2017
Tangible common equity ("TCE") ⁽⁹⁾	9.1	9.0	8.8	8.6	8.3

Limitations on Comfort

- Pay attention to different levels of comfort, as some comfort is minimal
- No comfort may be available in certain circumstances:
 - 135 day rule
 - White Paper I (accounting industry guidance): cautions auditors against giving comfort on year-end financial information that is subject to change pending completion of an audit
- Information “furnished” with the SEC, but not “filed.”
 - This information is not part of the prospectus for liability purposes in an offering
- The “dark period”: several days between the cut-off date and the date of letter.

Limitations on Comfort

- Key data not comforted (or subject to limited comfort) typically include:
 - Mixed financial/operating data
 - Estimates
 - Projections
 - EBITDA, Adjusted EBITDA and other non-GAAP financial measures
- Information proposed to be released to public before completion of auditor's review procedures.
 - For example, financial projections or forecasts and earnings releases.
 - However, in some cases auditors will provide comfort on earnings releases (this happens when the offering prices after earnings are released but before the Form 10-K/10-Q is filed). *e.g.*, ask for comfort on 8-K earnings release exhibits
- Non-financial/business/market information

Have a back-up plan and look at the big picture

- Comfort letters are a *part of* the process of establishing a due diligence defense under federal securities laws. They do not:
 - Substitute for independent review and due diligence discussions with management and accountants about business and financial results
 - Protect underwriters in the face of “red flags” (*WorldCom* litigation)
- “Financial” due diligence typically includes:
 - Reading financial statements and notes
 - Review of accounting presentation, historical results, financial policies, debt covenants and industry hot button issues with the CFO and other principal financial executives
 - Review of financial projections and underlying assumptions with CFO and other principal financial executives
 - Drafting sessions on financial disclosure (*e.g.*, MD&A, EBITDA presentation, pro formas, recent developments)
 - Auditor due diligence session
 - **Comfort letter**
 - Note that counsel 10b-5 negative assurance letters exclude financial statements and financial and accounting data

Have a back-up plan (cont'd)

Heightened due diligence procedures

- In the event of limited comfort or red flags, heightened due diligence procedures may include:
 - Specific calls with management and auditors on recent financial results or other significant developments
 - Review of the issuer's internal monthly financial statements
 - CFO certificate/management comfort letter
 - Additional back-up
 - Conversations with Audit Committee
 - Further review of offering documents to add protective disclosure, such as:
 - Risk factors
 - MD&A overview or trend disclosure
 - Further internal review with the underwriter's in-house counsel and committee
- ❖ The back-up is back-up

Additional practice tips

- Discuss financial disclosure issues with the auditors as early in the offering process as practicable.
- While drafting the offering document, solicit input from the auditors and draft the offering document with the comfort letter in mind.
- Request a draft of the comfort letter from the auditors, provide any comments on the draft and send to the auditors the draft circle-up early in the offering process.
- Agree on the final form of the comfort letter as soon as practicable before pricing of offering.
 - Ideally the final draft of the comfort letter should be agreed before filing of the registration statement in an SEC-registered offering or before finalizing the preliminary offering document in an unregistered offering.

Additional practice tips (cont'd)

- Discuss timing and logistics of comfort letter delivery with the auditors well in advance of pricing.
 - Make sure the auditors are aware of the expected date and time of pricing and that the underwriters expect the comfort letter to be delivered shortly thereafter.
 - Especially if the pricing comfort letter will cover the final offering document, make sure a representative of the auditors will be available to deliver the circle-up as the final offering document is being completed the night of pricing.
- Send drafts to underwriters for their review and comment.

Annex A: Special Issues / Additional items (for further reading)

- Pro forma financial information
- Capsule or flash financial information
- Going concern issue
- Special considerations for foreign private issuers
- Worldcom case
- AICPA white paper

What About Pro Forma Financial Information?

- If the offering document includes pro forma financial statements (acquisition or merger related), the accountants provide negative assurance that the pro formas comply with Rule 11-02 of Regulation S-X.
- The accountants also prove the arithmetic accuracy of the pro forma adjustments to confirm whether the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements.
- In connection with the negative assurance, the accountants will first:
 - Read the pro forma statements, and
 - Make inquiries of management of the issuer.

What About Pro Forma Financial Information?

(cont'd)

- Pursuant to AS 6101, an accounting firm can only provide negative assurance on pro forma financial statements if that firm has audited or reviewed a substantial portion of the overall company.
 - This can be problematic where the pro formas include large acquisitions of companies that the accounting firm did not audit or review.
- It is also important to obtain comfort on all of the historical information included in the pro forma financials.
 - Underwriters often want comfort on historical data in the pro formas even when there is no corresponding F-page financial statement disclosure.
 - This may require multiple comfort letters from various acquired entities' accounting firms.

What About Capsule or Flash Financial Information?

- Financial information more recent than the most recent financial statements included in an offering document is referred to as capsule or flash financial information.
 - *e.g.*, potential offering in January or February of 2019, where auditors are in the process of completing the 2018 year end audit. Deal question: should we include in the OM preliminary estimates/ranges of Q4 and 2018 year-end numbers, before filing of the 10-K?
- Typically, this information is in the form of narrative disclosure and the expected results may be stated in the form of a range.
- The issuer may choose to include such information in the offering document because:
 - The information the company has about the period is materially negative, and therefore must be included for antifraud reasons or to satisfy SEC line-item disclosure requirements, such as the requirement to disclose known trends and uncertainties.
 - The information the company has about the period is positive, and therefore it would assist the marketing of the offering.
- When capsule or flash information is included in an offering document, the underwriters often ideally would like to get some form of comfort on it from the auditors.

What About Capsule or Flash Financial Information? *(cont'd)*

- Type of comfort auditors provide is usually limited to “agreed upon procedures”. Ask for a CFO certificate to cover capsule information.
- Counsel should be aware that there are particular limitations on the comfort that can be given on fourth quarter and full-year capsule financial information.
 - These limitations are described in a 2005 AICPA White Paper regarding capsule financial information presented in a registration statement prior to the issuance of the year-end financial statements. Affect January and February offerings.
 - While the limitations on comfort described in the white paper technically only apply to fourth quarter and full-year capsule financial information, practitioners have reported that many auditors have increasingly been declining to give comfort on capsule financial information in all periods using the principles articulated in the white paper

Going-Concern Issue

- As part of the audit, an auditor must evaluate conditions or events discovered that raise questions about whether the issuer will be able to continue as a “going concern.”
- Information that raises going concern questions generally relates to the issuer’s ability to meet its maturing obligations without selling operating assets, restructuring debt or revising operations based on outside pressures or similar strategies.
- SAS 59 (now AS 2415) concludes that the projection of the going-concern concept is limited to a reasonable period of time, which is defined as not exceeding one year beyond the date of the audited financial statements.
- Auditors are required to evaluate information obtained during the course of the audit engagement to determine whether substantial doubt has been raised about the issuer’s continued existence as a going concern.

Going-Concern Issue (*cont'd*)

- Some conditions and events which may raise substantial doubt include: (i) recurring operating losses/negative cash flows from operations, (ii) defaults on indebtedness, (iii) the need to sell substantial assets, (iv) labor difficulties, (v) uneconomic long-term commitments, (vi) legal proceedings or pending legislation that may affect the issuer's ability to continue operations and (vii) the loss of a principal customer.
- When substantial doubt has been raised, the auditor is required to identify and evaluate management's plans (which may also include an evaluation of management's financial projections) for dealing with the conditions and events that prompted the substantial doubt conclusions.
- If there is substantial doubt as to whether the issuer can continue as a going concern, the audited financial statements must adequately disclose the conditions/events that raised the going-concern issue and the auditor's report must include language to the effect that "substantial doubt exists as to the issuer's ability to continue as a going concern."

Special considerations for foreign private issuers

- Comfort letter should state that accountants are also independent under *local* standards
- Comfort letter should state that audited financial statements comply as to form with local accounting standards *and* the '33 Act/'34 Act
- Currency translations can add a layer of complexity to “tick-and-tie” comfort
- Accounting firms in many non-U.S. jurisdictions request written “arrangement” or “engagement” letters (particularly if the securities are anticipated to be sold outside of the U.S.) that are commonly used outside of the U.S. and may, among other things, limit the liability of, and provide indemnification for, the accountants
 - These letters should be reviewed carefully with counsel and possibly appropriate members of in-house counsel
 - Care should be taken to ensure that any exculpation or indemnification provisions do not limit the value of the comfort letter in litigation

WorldCom and Comfort Letters

- WorldCom's underwriters claimed a due diligence defense in a securities action based upon the comfort letters received in an offering.
- The court determined that the underwriters' reliance on the statements in the comfort letter may have been unreasonable, in light of "warning signs" in the company's financial statements.
 - Key financial ratios were out of line with those of competitors.
- Impact: comfort letters may not provide as much protection as hoped, in the absence of other due diligence procedures by the underwriters on the financial statements.
 - Underwriters must consider the totality of the information.

AICPA White Paper

- AICPA White Paper I (2004): Auditors encouraged not to cover earnings releases until the related quarterly or annual reports are complete.
- AICPA White Paper II (2005) draft relating to the auditor's role in due diligence: purported to prohibit auditors from commenting on financial statements beyond what the comfort letter states.
 - The draft was withdrawn in light of protests from the financial industry.

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TAB 2

Securities Act of 1933

As Amended

LAW TEXT

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to make the statements therein, in the light of the circumstances under which such prospectus is, or is to be, used, not misleading. Upon issuance of an order under this subsection, the Commission shall give notice of the issuance of such order and opportunity for hearing by personal service or the sending of confirmed telegraphic notice. The Commission shall vacate or modify the order at any time for good cause or if such prospectus has been filed or amended in accordance with such order.

(c) Any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(d) In the exercise of its powers under subsections (a), (b), or (c), the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use or the nature of the security, issue, issuer, or otherwise, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate and consistent with the public interest and the protection of investors.

(e) The statements or information required to be included in a prospectus by or under authority of subsection (a), (b), (c), or (d), when written, shall be placed in a conspicuous part of the prospectus and, except as otherwise permitted by rules or regulations, in type as large as that used generally in the body of the prospectus.

(f) In any case where a prospectus consists of a radio or television broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms and prospectuses used in connection with the sale of securities registered under this title.

CIVIL LIABILITIES ON ACCOUNT OF FALSE REGISTRATION STATEMENT

SECTION 11. (a) In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue:

(1) Every person who signed the registration statement;

(2) Every person who was a director of (or person performing similar functions), or partner in, the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

(3) Every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

(4) Every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him;

(5) Every underwriter with respect to such security.

If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least 12 months beginning after the effective date of the registration statement, then the right of recovery under this

subsection shall be conditioned on proof that such person acquired the securities relying on such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person.

(b) Notwithstanding the provisions of subsection (a) no person, other than the issuer, shall be liable as provided therein who shall sustain the burden of proof:

(1) That before the effective date of the part of the registration statement with respect to which his liability is asserted: (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing, that he had taken such action and that he would not be responsible for such part of the registration statement; or

(2) That if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact he forthwith acted and advised the Commission, in accordance with paragraph (1), and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or

(3) That:

(A) As regards any part of the registration statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and

(B) As regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert: (i) he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and

(C) As regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and

(D) As regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.

(c) In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the **standard of reasonableness** shall be that required of a prudent man in the management of his own property.

(d) If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then for the purposes of paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

(e) The suit authorized under subsection (a) may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and: (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: *Provided*, That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable. In no event shall any underwriter (unless such underwriter shall have knowingly received from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interests in the underwriting) be liable in any suit or as a consequence of suits authorized under subsection (a) for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public. In any suit under this or any other section of this title the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him, in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.

(f)(1) Except as provided in paragraph (2), all or any one or more of the persons specified in subsection (a) shall be jointly and severally liable, and every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

(2)(A) The liability of an outside director under subsection (e) shall be determined in accordance with Section 21D(f) of the Securities Exchange Act of 1934.

(B) For purposes of this paragraph, the term "outside director" shall have the meaning given such term by rule or regulation of the Commission.

(g) In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public.

CIVIL LIABILITIES ARISING IN CONNECTION WITH PROSPECTUSES AND COMMUNICATIONS

SECTION 12. (a) *In General.* Any person who:

(1) Offers or sells a security in violation of Section 5, or

(2) Offers or sells a security (whether or not exempted by the provisions of Section 3, other than paragraphs (2) and (14) of subsection (a) thereof), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof **that he did not know, and in the exercise of reasonable care could not have known**, of such untruth or omission, shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

(b) *Loss Causation.* In an action described in subsection (a)(2), if the person who offered or sold such security proves that any portion or all of the amount recoverable under subsection (a)(2) represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.

LIMITATION OF ACTIONS

SECTION 13. No action shall be maintained to enforce any liability created under Section 11 or Section 12(a)(2) unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under Section 12(a)(1), unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under Section 11, or Section 12(a)(1) more than three years after the security was *bona fide* offered to the public, or under Section 12(a)(2) more than three years after the sale.

CONTRARY STIPULATIONS VOID

SECTION 14. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this title or of the rules and regulations of the Commission shall be void.

LIABILITY OF CONTROLLING PERSONS

SECTION 15. (a) *Controlling Person.* Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under Section 11, or 12, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

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TAB 3



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AS 6101: Letters for Underwriters and Certain Other Requesting Parties

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Introduction

.01 This section provides guidance to accountants for performing and reporting on the results of engagements to issue letters for underwriters and certain other requesting parties described in and meeting the requirements of paragraph .03, .04, or .05 (commonly referred to as "comfort letters") in connection with financial statements and financial statement schedules contained in registration statements filed with the Securities and Exchange Commission (SEC) under the Securities Act of 1933 (the Act) and other securities offerings. In paragraph .09, this section also provides guidance to accountants for performing and reporting on the results of engagements to issue letters for certain

requesting parties, other than underwriters or other parties with a due diligence defense under section 11 of the Act, that are described in, but do not meet the requirements of, paragraph .03, .04, or .05.

.02 The service of accountants providing letters for underwriters developed following enactment of the Act. Section 11 of the Act provides that underwriters, among others, could be liable if any part of a registration statement contains material omissions or misstatements. The Act also provides for an affirmative defense for underwriters if it can be demonstrated that, after a reasonable investigation, the underwriter has reasonable grounds to believe that there were no material omissions or misstatements. Consequently, underwriters request accountants to assist them in developing a record of reasonable investigation. An accountant issuing a comfort letter is one of a number of procedures that may be used to establish that an underwriter has conducted a reasonable investigation.

Applicability

.03 Accountants may provide a comfort letter to underwriters,² or to other parties with a statutory due diligence defense under section 11 of the Act, in connection with financial statements and financial statement schedules included (incorporated by reference) in registration statements filed with the SEC under the Act. A comfort letter may be addressed to parties with a statutory due diligence defense under section 11 of the Act, other than a named underwriter, only when a law firm or attorney for the requesting party issues a written opinion to the accountants that states that such party has a due diligence defense under section 11 of the Act.³ An attorney's letter indicating that a party "may" be deemed to be an underwriter or has liability substantially equivalent to that of an underwriter under the securities laws would not meet this requirement. If the requesting party, in a securities offering registered pursuant to the Act, other than a named underwriter (such as a selling shareholder or sales agent) cannot provide such a letter, he or she must provide the representation letter described in paragraphs .06 and .07 for the accountants to provide them with a comfort letter.

.04 Accountants may also issue a comfort letter to a broker-dealer or other financial intermediary, acting as principal or agent in an offering or a placement of securities, in connection with the following types of securities offerings:

- Foreign offerings, including Regulation S, Eurodollar, and other offshore offerings
- Transactions that are exempt from the registration requirements of section 5 of the Act, including those pursuant to Regulation A, Regulation D, and Rule 144A
- Offerings of securities issued or backed by governmental, municipal, banking, tax-exempt, or other entities that are exempt from registration under the Act

In these situations the accountants may provide a comfort letter to a broker-dealer or other financial intermediary in connection with a securities offering only if the broker-dealer or other financial intermediary provides in writing the representations described in paragraphs .06 and .07.

.05 Accountants may also issue a comfort letter in connection with acquisition transactions (for example, cross-comfort letters in a typical Form S-4 or merger proxy situation) in which there is an exchange of stock and such comfort letters are requested by the buyer or seller, or both, as long as the representation letter described in paragraphs .06 and .07 is provided. An accountants' report on a preliminary investigation in connection with a proposed transaction (for example, a merger, an acquisition, or a financing) is not covered by this section; accountants should refer to the guidance in AT section 201, *Agreed-Upon Procedures Engagements*.

.06 The required elements of the representation letter from a broker-dealer or other financial intermediary, or of other requesting parties described in paragraphs .03 and .05, are as follows:

- The letter should be addressed to the accountants.
- The letter should contain the following:

"This review process, applied to the information relating to the issuer, is (will be) substantially consistent⁴ with the due diligence review process that we would perform if this placement of securities (or issuance of securities in an acquisition transaction) were being registered pursuant to the Securities Act of 1933 (the Act). We are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Act."⁵
- The letter should be signed by the requesting party.

.07 An example of a letter, setting forth the required elements specified in paragraph .06, from a party requesting a comfort letter follows:

[Date]

Dear ABC Accountants:

[Name of financial intermediary], as principal or agent, in the placement of [identify securities] to be issued by [name of issuer], will be reviewing certain information relating to [issuer] that will be included (incorporated by reference) in the document [if appropriate, the document should be identified], which may be delivered to investors and utilized by them as a basis for their investment decision. This review process, applied to the information relating to the issuer, is (will be) substantially consistent with the due diligence review process that we would perform if this placement of

securities⁶ were being registered pursuant to the Securities Act of 1933 (the Act). We are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Act. We hereby request that you deliver to us a "comfort" letter concerning the financial statements of the issuer and certain statistical and other data included in the offering document. We will contact you to identify the procedures we wish you to follow and the form we wish the comfort letter to take.

Very truly yours,

[Name of Financial Intermediary]

.08 When one of the parties identified in paragraphs .03, .04, and .05 requests a comfort letter and has provided the accountants with the representation letter described above, the accountants should refer in the comfort letter to the requesting party's representations (see example P [paragraph .64]).

.09 When one of the parties identified in paragraphs .03, .04, or .05, other than an underwriter or other party with a due diligence defense under section 11 of the Act, requests a comfort letter but does not provide the representation letter described in paragraphs .06 and .07, accountants should not provide a comfort letter but may provide another form of letter. In such a letter, the accountants should not provide negative assurance on the financial statements as a whole, or on any of the specified elements, accounts, or items thereof. The other guidance in this section is applicable to performing procedures in connection with a letter and on the form of the letter (see paragraphs .36 through .43 and .54 through .60). Example Q in the Appendix [paragraph .64] provides an example of a letter issued in such a situation. Any such letter should include the following statements:

- a. It should be understood that we have no responsibility for establishing (and did not establish) the scope and nature of the procedures enumerated in the paragraphs above; rather, the procedures enumerated therein are those the requesting party asked us to perform. Accordingly, we make no representations regarding questions of legal interpretation⁷ or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraphs; also, such procedures would not necessarily reveal any material misstatement of the amounts or percentages listed above as set forth in the offering circular. Further, we have addressed ourselves solely to the foregoing data and make no representations regarding the adequacy of disclosures or whether any material facts have been omitted. This letter relates only to the financial statement items specified above and does not extend to any financial statement of the company taken as a whole.

- b. The foregoing procedures do not constitute an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States). Had we performed additional procedures or had we conducted an audit or a review of the company's [*give dates of any interim financial statements*] consolidated financial statements in accordance with the standards of the Public Company Accounting Oversight Board, other matters might have come to our attention that would have been reported to you.
- c. These procedures should not be taken to supplant any additional inquiries or procedures that you would undertake in your consideration of the proposed offering.
- d. This letter is solely for your information and to assist you in your inquiries in connection with the offering of the securities covered by the offering circular, and it is not to be used, circulated, quoted, or otherwise referred to for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the offering document or any other document, except that reference may be made to it in any list of closing documents pertaining to the offering of the securities covered by the offering document.
- e. We have no responsibility to update this letter for events and circumstances occurring after [*cutoff date*].

.10 When a party other than those described in paragraphs .03, .04, or .05 requests a comfort letter, the accountants should not provide that party with a comfort letter or the letter described in paragraph .09 or example Q [paragraph .64]. The accountants may instead provide that party with a report on agreed-upon procedures and should refer to AT section 201, *Agreed-Upon Procedures Engagements*, for guidance.

General

.11 The services of independent accountants include audits of financial statements and financial statement schedules included (incorporated by reference) in registration statements filed with the SEC under the Act. In connection with this type of service, accountants are often called upon to confer with clients, underwriters, and their respective counsel concerning the accounting and auditing requirements of the Act and the SEC and to perform other services. One of these other services is the issuance of letters for underwriters, which generally address the subjects described in paragraph .22.

.12 Much of the uncertainty, and consequent risk of misunderstanding, with regard to the nature and scope of comfort letters has arisen from a lack of recognition of the necessarily limited nature of the comments that accountants can properly make with respect to financial information, in a registration statement or other offering document (hereafter referred to as a registration statement), that has not been audited in accordance

with the standards of the PCAOB and, accordingly, is not covered by their opinion. In requesting comfort letters, underwriters are generally seeking assistance on matters of importance to them. They wish to perform a "reasonable investigation" of financial and accounting data not "expertized"⁸ (that is, covered by a report of independent accountants, who consent to be named as experts, based on an audit performed in accordance with the standards of the PCAOB) as a defense against possible claims under section 11 of the Act.⁹ What constitutes a reasonable investigation of unaudited financial information sufficient to satisfy an underwriter's purposes has never been authoritatively established. Consequently, only the underwriter can determine what is sufficient for his or her purposes. Accountants will normally be willing to assist the underwriter, but the assistance accountants can provide by way of comfort letters is subject to limitations. One limitation is that independent accountants can properly comment in their professional capacity only on matters to which their professional expertise is substantially relevant. Another limitation is that procedures short of an audit, such as those contemplated in a comfort letter, provide the accountants with a basis for expressing, at the most, negative assurance.¹⁰ Such limited procedures may bring to the accountants' attention significant matters affecting the financial information, but they do not provide assurance that the accountants will become aware of any or all significant matters that would be disclosed in an audit. Accordingly, there is necessarily a risk that the accountants may have provided negative assurance of the absence of conditions or matters that may prove to have existed.

.13 This section deals with several different kinds of matters. First, it addresses whether, in a number of areas involving professional standards, it is proper for independent accountants, acting in their professional capacity, to comment in a comfort letter on specified matters, and, if so, the form such a comment should take. Second, practical suggestions are offered on which form of comfort letter is suitable in a given circumstance, procedural matters, the dating of letters, and what steps may be taken when information that may require special mention in a letter comes to the accountants' attention.¹¹ Third, it suggests ways of reducing or avoiding the uncertainties, described in the preceding paragraph, regarding the nature and extent of accountants' responsibilities in connection with a comfort letter. Accountants who have been requested to follow a course other than what has been recommended, with regard to points not involving professional standards, would do well to consult their legal counsel.

.14 Comfort letters are not required under the Act, and copies are not filed with the SEC. It is nonetheless a common condition of an underwriting agreement in connection with the offering for sale of securities registered with the SEC under the Act that the accountants are to furnish a comfort letter. Some underwriters do not make the receipt of a comfort letter a condition of the underwriting agreement or purchase agreement (hereafter referred to as the underwriting agreement) but nevertheless ask for such a letter.¹²

.15 The accountants should suggest to the underwriter that they meet together with the client to discuss the procedures to be followed in connection with a comfort letter; during this meeting, the accountants may describe procedures that are frequently followed (see the examples in the appendix [paragraph .64]). Because of the accountants' knowledge of the client, such a meeting may substantially assist the underwriter in reaching a decision about procedures to be followed by the accountants. However, any discussion of procedures should be accompanied by a clear statement that the accountants cannot furnish any assurance regarding the sufficiency of the procedures for the underwriter's purposes, and the appropriate way of expressing this is shown in paragraph 4 of example A [paragraph .64].

.16 Because the underwriter will expect the accountants to furnish a comfort letter of a scope to be specified in the underwriting agreement, a draft of that agreement should be furnished to the accountants so that they can indicate whether they will be able to furnish a letter in acceptable form. It is desirable practice for the accountants, promptly after they have received the draft of the agreement (or have been informed that a letter covering specified matters, although not a condition of the agreement, will nonetheless be requested), to prepare a draft of the form of the letter they expect to furnish. To the extent possible, the draft should deal with all matters to be covered in the final letter and should use exactly the same terms as those to be used in the final letter (subject, of course, to the understanding that the comments in the final letter cannot be determined until the procedures underlying it have been performed). The draft letter should be identified as a draft to avoid giving the impression that the procedures described therein have been performed. This practice of furnishing a draft letter at an early point permits the accountants to make clear to the client and the underwriter what they may expect the accountants to furnish. Thus furnished with a draft letter, the underwriter is afforded the opportunity to discuss further with the accountants the procedures that the accountants have indicated they expect to follow and to request any additional procedures that the underwriter may desire. If the additional procedures pertain to matters relevant to the accountants' professional competence, the accountants would ordinarily be willing to perform them, and it is desirable for them to furnish the underwriter with an appropriately revised draft letter. The accountants may reasonably assume that the underwriter, by indicating his or her acceptance of the draft comfort letter, and subsequently, by accepting the letter in final form, considers the procedures described sufficient for his or her purposes. It is important, therefore, that the procedures¹³ to be followed by the accountants be clearly set out in the comfort letter, in both draft and final form, so that there will be no misunderstanding about the basis on which the accountants' comments have been made and so that the underwriter can decide whether the procedures performed are sufficient for his or her purposes. For reasons explained in paragraph .12, statements or implications that the accountants are carrying out such procedures as they consider necessary should be avoided, since this may lead to misunderstanding about the responsibility for the sufficiency of the procedures for the underwriter's purposes. The following is a suggested form of legend that may be placed on the draft letter for identification and explanation of its purposes and limitations.

This draft is furnished solely for the purpose of indicating the form of letter that we would expect to be able to furnish [*name of underwriter*] in response to their request, the matters expected to be covered in the letter, and the nature of the procedures that we would expect to carry out with respect to such matters. Based on our discussions with [*name of underwriter*], it is our understanding that the procedures outlined in this draft letter are those they wish us to follow.¹⁴ Unless [*name of underwriter*] informs us otherwise, we shall assume that there are no additional procedures they wish us to follow. The text of the letter itself will depend, of course, on the results of the procedures, which we would not expect to complete until shortly before the letter is given and in no event before the cutoff date indicated therein.

.17 Comfort letters are occasionally requested from more than one accountant (for example, in connection with registration statements to be used in the subsequent sale of shares issued in recently effected mergers and from predecessor auditors). At the earliest practicable date, the client should advise any other accountants who may be involved about any letter that may be required from them and should arrange for them to receive a draft of the underwriting agreement so that they may make arrangements at an early date for the preparation of a draft of their letter (a copy of which should be furnished to the principal accountants) and for the performance of their procedures. In addition, the underwriter may wish to meet with the other accountants for the purposes discussed in paragraph .15.

.18 There may be situations in which more than one accountant is involved in the audit of the financial statements of a business and in which the reports of more than one accountant appear in the registration statement. For example, certain significant divisions, branches, or subsidiaries may be audited by other accountants. The principal accountants (that is, those who report on the consolidated financial statements and, consequently, are asked to give a comfort letter with regard to information expressed on a consolidated basis) should read the letters of the other accountants reporting on significant units. Such letters should contain statements similar to those contained in the comfort letter prepared by the principal accountants, including statements about their independence. The principal accountants should state in their comfort letters that (a) reading letters of the other accountants was one of the procedures followed, and (b) the procedures performed by the principal accountants (other than reading the letters of the other accountants) relate solely to companies audited by the principal accountants and to the consolidated financial statements.

.19 Regulations under the Act permit companies, in certain circumstances, to register a designated amount of securities for continuous or delayed offerings during an extended period by filing one "shelf" registration statement. At the effective date of a shelf registration statement, the registrant may not have selected an underwriter (see footnote 12). A client or the legal counsel designated to represent the underwriting group might,

however, ask the accountants to issue a comfort letter at the effective date of a shelf registration statement to expedite the due diligence activities of the underwriter when he or she is subsequently designated and to avoid later corrections of financial information included in an effective prospectus. However, as stated in paragraph .12, only the underwriter can determine the procedures that will be sufficient for his or her purposes. Under these circumstances, therefore, the accountants should not agree to furnish a comfort letter addressed to the client, legal counsel or a nonspecific addressee such as "any or all underwriters to be selected." The accountants may agree to furnish the client or legal counsel for the underwriting group with a draft comfort letter describing the procedures that the accountants have performed and the comments the accountants are willing to express as a result of those procedures. The draft comfort letter should include a legend, such as the following, describing the letter's purpose and limitations:

This draft describes the procedures that we have performed and represents a letter we would be prepared to sign as of the effective date of the registration statement if the managing underwriter had been chosen at that date and requested such a letter. Based on our discussions with [*name of client or legal counsel*], the procedures set forth are similar to those that experience indicates underwriters often request in such circumstances. The text of the final letter will depend, of course, on whether the managing underwriter who is selected requests that other procedures be performed to meet his or her needs and whether the managing underwriter requests that any of the procedures be updated to the date of issuance of the signed letter.

A signed comfort letter may be issued to the underwriter selected for the portion of the issue then being offered when the underwriting agreement for an offering is signed and on each closing date.

.20 Accountants, when issuing a letter under the guidance provided in this section, may not issue any additional letters or reports, under any other section, to the underwriter or the other requesting parties identified in paragraphs .03, .04, and .05 (hereinafter referred to as the underwriter) in connection with the offering or placement of securities, in which the accountants comment on items for which commenting is otherwise precluded by this section.

.21 While the guidance in this section generally addresses comfort letters issued in connection with securities offerings registered pursuant to the Act, it also provides guidance on comfort letters issued in other securities transactions. However, the guidance that specifically refers to compliance of the information commented on with SEC rules and regulations, such as compliance with Regulation S-X¹⁵ or S-K,¹⁶ generally applies only to comfort letters issued in connection with securities offerings registered pursuant to the Act.

Guidance on the Format and Contents of Comfort Letters

.22 This section (paragraphs .22 through .62) provides guidance on the format and possible contents of a typical comfort letter. It addresses how the comfort letter should be dated, to whom it may be addressed, and the contents of the introductory paragraph of the comfort letter. Further, it addresses the subjects that may be covered in a comfort letter:

- a. The independence of the accountants (paragraphs .31 and .32)
- b. Whether the audited financial statements and financial statement schedules included (incorporated by reference) in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC (paragraphs .33 and .34)
- c. Unaudited financial statements, condensed interim financial information, capsule financial information, pro forma financial information, financial forecasts, management's discussion and analysis (MD&A), and changes in selected financial statement items during a period subsequent to the date and period of the latest financial statements included (incorporated by reference) in the registration statement (paragraphs .29 and .35 through .53)
- d. Tables, statistics, and other financial information included (incorporated by reference) in the registration statement (paragraphs .54 through .62)
- e. Negative assurance as to whether certain non-financial statement information, included (incorporated by reference) in the registration statement complies as to form in all material respects with Regulation S-K (paragraph .57)

Dating

.23 The letter ordinarily is dated on or shortly before the effective date (that is, the date on which the registration statement becomes effective). On rare occasions, letters have been requested to be dated at or shortly before the filing date (that is, the date on which the registration statement is first filed with the SEC). The underwriting agreement ordinarily specifies the date, often referred to as the "cutoff date," to which certain procedures described in the letter are to relate (for example, a date five days before the date of the letter). The letter should state that the inquiries and other procedures described in the letter did not cover the period from the cutoff date to the date of the letter.

.24 An additional letter may also be dated at or shortly before the closing date (that is, the date on which the issuer or selling security holder delivers the securities to the underwriter in exchange for the proceeds of the offering). If more than one letter is

requested, it will be necessary to carry out the specified procedures and inquiries as of the cutoff date for each letter. Although comments contained in an earlier letter may, on occasion, be incorporated by reference in a subsequent letter (see example C [paragraph .64]), any subsequent letter should relate only to information in the registration statement as most recently amended.

Addressee

.25 The letter should not be addressed or given to any parties other than the client and the named underwriters,¹⁷ broker-dealer, financial intermediary or buyer or seller. The appropriate addressee is the intermediary who has negotiated the agreement with the client, and with whom the accountants will deal in discussions regarding the scope and sufficiency of the letter. When a comfort letter is furnished to other accountants, it should be addressed in accordance with the guidance in this paragraph and copies should be furnished to the principal accountants and their client.

Introductory Paragraph

.26 It is desirable to include an introductory paragraph similar to the following:

We have audited the [*identify the financial statements and financial statement schedules*] included (incorporated by reference) in the registration statement (no. 33-00000) on Form _____ filed by the company under the Securities Act of 1933 (the Act); our reports with respect thereto are also included (incorporated by reference) in that registration statement. The registration statement, as amended as of _____, is herein referred to as the registration statement.

.27 When the report on the audited financial statements and financial statement schedules included (incorporated by reference) in the registration statement includes one or more explanatory paragraphs or a paragraph to emphasize a matter regarding the financial statements, the accountants should refer¹⁸ to that fact in the comfort letter and discuss the subject matter of the paragraph.¹⁹ In those rare instances in which the SEC accepts a qualified opinion on historical financial statements, the accountants should refer to the qualification in the opening paragraph of the comfort letter and discuss the subject matter of the qualification. (See *also* paragraph .35f.)

.28 The underwriter occasionally requests the accountants to repeat in the comfort letter their report on the audited financial statements included (incorporated by reference) in the registration statement. Because of the special significance of the date of the accountants' report, the accountants should not repeat their opinion.²⁰ The underwriter sometimes requests negative assurance regarding the accountants' report. Because accountants have a statutory responsibility with respect to their opinion as of the effective date of a registration statement, and because the additional significance, if any, of

negative assurance is unclear and such assurance may therefore give rise to misunderstanding, accountants should not give such negative assurance. Furthermore, the accountants should not give negative assurance with respect to financial statements and financial statement schedules that have been audited and are reported on in the registration statement by other accountants.

.29 The accountants may refer in the introductory paragraphs of the comfort letter to the fact that they have issued reports on—²¹

- a. Condensed financial statements that are derived from audited financial statements (see AS 3315, *Reporting on Condensed Financial Statements and Selected Financial Data*).
- b. Selected financial data (see AS 3315).
- c. Interim financial information (see AS 4105).
- d. Pro forma financial information (see AT section 401, *Reporting on Pro Forma Financial Information*).
- e. A financial forecast (see AT section 301, *Financial Forecasts and Projections*).
- f. Management's discussion and analysis (see AT section 701, *Management's Discussion and Analysis*).

Such a reference should be to the accountants' reports that were previously issued, and if the reports are not included (incorporated by reference) in the registration statement, they may be attached to the comfort letter.²² In referring to previously issued reports, the accountants should not repeat their reports in the comfort letter or otherwise imply that they are reporting as of the date of the comfort letter or that they assume responsibility for the sufficiency of the procedures for the underwriter's purposes. However, for certain information on which they have reported, the accountants may agree to comment regarding compliance with rules and regulations adopted by the SEC (see paragraphs .33 and .34). Accountants should not mention in a comfort letter reports issued in accordance with AS 1305, *Communications About Control Deficiencies in an Audit of Financial Statements*, or any restricted use reports issued to a client in connection with procedures performed on the client's internal control in accordance with AT section 501, *Reporting on an Entity's Internal Control Over Financial Reporting*.

.30 An underwriter may also request that the accountants comment in their comfort letter on (a) unaudited interim financial information required by item 302(a) of Regulation S-K, to which AS 4105 pertains or (b) required supplementary information, to which AS 2705 pertains. AS 4105 and AS 2705 provide that the accountants should expand the auditor's unqualified report on the audited financial statements to refer to such information when the scope of their procedures with regard to the information was restricted or when the information appears not to be presented in conformity with

generally accepted accounting principles or, for required supplementary information, applicable guidelines. Such expansions of the auditor's unqualified report in the registration statement would ordinarily be referred to in the opening paragraph of the comfort letter (see *also* paragraph .35f). Additional comments on such unaudited information are therefore unnecessary. However, if the underwriter requests that the accountants perform procedures with regard to such information in addition to those performed in connection with their review or audit as prescribed by AS 4105 and AS 2705, the accountants may do so and report their findings.

Independence

.31 It is customary in conjunction with SEC filings for the underwriting agreement to provide for the accountants to make a statement in the letter concerning their independence. This may be done substantially as follows:

We are independent certified public accountants with respect to The Blank Company, Inc., within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC.

Regulation S-K requires disclosure in the prospectus and registration statement of interests of named experts (including independent accountants) in the registrant. Regulation S-X precludes accountants who report on financial statements included (incorporated by reference) in a registration statement from having interests of the type requiring disclosure in the prospectus or registration statement. Therefore, if the accountants make a statement in a comfort letter that they are independent within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC, any additional comments on independence would be unnecessary.^{22a}

.32 When comfort letters are requested from more than one accountant (see paragraphs .17 and .18), each accountant must, of course, be sure he or she is independent within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC. The accountants for previously nonaffiliated companies recently acquired by the registrant would not be required to have been independent with respect to the company whose shares are being registered. In such a case, the accountants should modify the wording suggested in paragraph .31 and make a statement regarding their independence along the following lines.

As of [*insert date of the accountants' most recent report on the financial statements of their client*] and during the period covered by the financial statements on which we reported, we were independent certified public accountants with respect to [*insert the name of their client*] within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC.

Compliance With SEC Requirements

.33 The accountants may be requested to express an opinion on whether the financial statements covered by their report comply as to form with the pertinent accounting requirements adopted by the SEC.²³ This may be done substantially as follows:

In our opinion [*include phrase "except as disclosed in the registration statement," if applicable*], the [*identify the financial statements and financial statement schedules*] audited by us and included (incorporated by reference) in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.²⁴

If there is a material departure from the pertinent rules and regulations adopted by the SEC, the departure should be disclosed in the letter.²⁵ An appropriate manner of doing this is shown in example K [paragraph .64].

.34 Accountants may provide positive assurance on compliance as to form with requirements under the rules and regulations adopted by the SEC only with respect to those rules and regulations applicable to the form and content of financial statements and financial statement schedules that they have audited. Accountants are limited to providing negative assurance on compliance as to form when the financial statements or financial statement schedules have not been audited. (For guidance in commenting on compliance as to form, see paragraph .37 regarding unaudited condensed interim financial information, paragraph .42 regarding pro forma financial information, paragraph .44 regarding a forecast, and paragraph .57 regarding Regulation S-K items.²⁶)

Commenting in a Comfort Letter on Information Other Than Audited Financial Statements

General

.35 Comments included in the letter will often concern (a) unaudited condensed interim financial information (see paragraphs .36 through .38),²⁷ (b) capsule financial information (see paragraphs .36 and .39 through .41), (c) pro forma financial information (see paragraphs .42 and .43), (d) financial forecasts (see paragraphs .36 and .44), and (e) changes in capital stock, increases in long-term debt, and decreases in other specified financial statement items (see paragraphs .36 and .45 through .53). For commenting on these matters, the following guidance is important:

- a. As explained in paragraph .16, the agreed-upon procedures performed by the accountants should be set forth in the letter, except that when the accountants have been requested to provide negative assurance on interim financial information or capsule financial information, the procedures involved in an AS 4105

review need not be specified (see paragraphs .37 through .41 of this section and paragraph 4 of example A [paragraph .64]).

- b. To avoid any misunderstanding about the responsibility for the sufficiency of the agreed-upon procedures for the underwriter's purposes, the accountants should not make any statements, or imply that they have applied procedures that they have determined to be necessary or sufficient for the underwriter's purposes. If the accountants state that they have performed an AS 4105 review, this does not imply that those procedures are sufficient for the underwriter's purposes. The underwriter may ask the accountants to perform additional procedures. For example, if the underwriter requests the accountants to apply additional procedures and specifies items of financial information to be reviewed and the materiality level for changes in those items that would necessitate further inquiry by the accountants, the accountants may perform those procedures and should describe them in their letter. Descriptions of procedures in the comfort letter should include descriptions of the criteria specified by the underwriter.
- c. Terms of uncertain meaning (such as *general review*, *limited review*, *reconcile*, *check*, or *test*) should not be used in describing the work, unless the procedures comprehended by these terms are described in the comfort letter.
- d. The procedures performed with respect to interim periods may not disclose changes in capital stock, increases in long-term debt or decreases in the specified financial statement items, inconsistencies in the application of generally accepted accounting principles, instances of noncompliance as to form with accounting requirements of the SEC, or other matters about which negative assurance is requested. An appropriate manner of making this clear is shown in the last three sentences in paragraph 4 of example A [paragraph .64].
- e. Matters to be covered by the letter should be made clear in the meetings with the underwriter and should be identified in the underwriting agreement and in the draft comfort letter. Since there is no way of anticipating other matters that would be of interest to an underwriter, accountants should not make a general statement in a comfort letter that, as a result of carrying out the specified procedures, nothing else has come to their attention that would be of interest to the underwriter.
- f. When the report on the audited financial statements and financial statement schedules in the registration statement departs from the auditor's unqualified report, and the comfort letter includes negative assurance with respect to subsequent unaudited condensed interim financial information included (incorporated by reference) in the registration statement or with respect to an absence of specified subsequent changes, increases, or decreases, the accountant should consider the effect thereon of the subject matter of the qualification, explanatory paragraph(s), or paragraph(s) emphasizing a matter regarding the financial statements. The accountant should also follow the guidance in paragraph

.27. An illustration of how this type of situation may be dealt with is shown in example I [paragraph .64].

Knowledge of Internal Control

.36 The accountants should not comment in a comfort letter on (a) unaudited condensed interim financial information, (b) capsule financial information, (c) a financial forecast when historical financial statements provide a basis for one or more significant assumptions for the forecast, or (d) changes in capital stock, increases in long-term debt and decreases in selected financial statement items, unless they have obtained knowledge of a client's internal control as it relates to the preparation of both annual and interim financial information. Knowledge of the client's internal control over financial reporting includes knowledge of the control environment, risk assessment, control activities, information and communication, and monitoring. Sufficient knowledge of a client's internal control as it relates to the preparation of annual financial information ordinarily would have been acquired, and may have been acquired with respect to interim financial information, by the accountants who have audited a client's financial statements for one or more periods. When the accountants have not audited the most recent annual financial statements, and thus have not acquired sufficient knowledge of the entity's internal control, the accountants should perform procedures to obtain that knowledge.

Unaudited Condensed Interim Financial Information

.37 Comments concerning the unaudited condensed interim financial information²⁸ included (incorporated by reference) in the registration statement provide negative assurance as to whether (a) any material modifications should be made to the unaudited condensed interim financial information for it to be in conformity with generally accepted accounting principles and (b) the unaudited condensed interim financial information complies as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC. Accountants may comment in the form of negative assurance only when they have conducted a review of the interim financial information in accordance with AS 4105. The accountants may (a) state in the comfort letter that they have performed the procedures identified in AS 4105 for a review of interim financial information (see paragraphs 4a and 5a of example A [paragraph .64] or (b) if the accountants have issued a report on the review, they may mention that fact in the comfort letter. If it is mentioned in the comfort letter, the accountants should attach the review report to the letter unless the review report is already included (incorporated by reference) in the registration statement. When the accountants have not conducted a review in accordance with AS 4105, the accountants may not comment in the form of negative assurance and are, therefore, limited to reporting procedures performed and findings obtained (see example O [paragraph .64]).

.38 The letter should specifically identify any unaudited condensed interim financial information and should state that the accountants have not audited the condensed interim financial information in accordance with the standards of the PCAOB and do not express an opinion concerning such information. An appropriate manner of making this clear is shown in paragraph 3 of example A [paragraph .64].

Capsule Financial Information

.39 In some registration statements, the information shown in the audited financial statements or unaudited condensed interim financial information is supplemented by unaudited summarized interim information for subsequent periods (commonly called "capsule financial information"). This capsule financial information (either in narrative or tabular form) often is provided for the most recent interim period and for the corresponding period of the prior year. With regard to selected capsule financial information, the accountants—

- a. May give negative assurance with regard to conformity with generally accepted accounting principles and may refer to whether the dollar amounts were determined on a basis substantially consistent with that of the corresponding amounts in the audited financial statements if (1) the selected capsule financial information is presented in accordance with the minimum disclosure requirements of Accounting Principles Board (APB) Opinion No. 28, paragraph 30 [AC section I73.146], and (2) the accountants have performed an AS 4105 review of the financial statements underlying the capsule financial information. If those conditions have not been met, the accountants are limited to reporting procedures performed and findings obtained.
- b. May give negative assurance as to whether the dollar amounts were determined on a basis substantially consistent with that of the corresponding amounts in the audited financial statements if the selected capsule financial information is more limited than the minimum disclosures described in APB Opinion 28, paragraph 30 (see example L [paragraph .64]), as long as the accountants have performed an AS 4105 review of the financial statements underlying the capsule financial information. If an AS 4105 review has not been performed, the accountants are limited to reporting procedures performed and findings obtained.

.40 The underwriter occasionally asks the accountants to give negative assurance with respect to the unaudited interim financial statements or unaudited condensed interim financial information (see paragraph .37 and the interim financial information requirements of Regulation S-X) that underlie the capsule financial information and asks the accountants to state that the capsule financial information agrees with amounts set forth in such statements. Paragraphs 4*b* and 5*b* in example L [paragraph .64] provide an example of the accountants' comments in these circumstances.

.41 The underwriter might ask the accountants to give negative assurance on the unaudited condensed interim financial information, or information extracted therefrom, for a monthly period ending after the latest financial statements included (incorporated by reference) in the registration statement. In those cases, the guidance in paragraph .37 is applicable. The unaudited condensed interim financial information should be attached to the comfort letter so that it is clear what financial information is being referred to; if the client requests, the unaudited condensed interim financial information may be attached only to the copy of the letter intended for the managing underwriter.

Pro Forma Financial Information

.42 Accountants should not comment in a comfort letter on pro forma financial information unless they have an appropriate level of knowledge of the accounting and financial reporting practices of the entity (or, in the case of a business combination, of a significant constituent part of the combined entity). This would ordinarily have been obtained by the accountants auditing or reviewing historical financial statements of the entity for the most recent annual or interim period for which the pro forma financial information is presented. Accountants should not give negative assurance in a comfort letter on the application of pro forma adjustments to historical amounts, the compilation of pro forma financial information, whether the pro forma financial information complies as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X or otherwise provide negative assurance with respect to pro forma financial information unless they have obtained the required knowledge described above and they have performed an audit of the annual financial statements, or an AS 4105 review of the interim financial statements, of the entity (or, in the case of a business combination, of a significant constituent part of the combined entity) to which the pro forma adjustments were applied. In the case of a business combination, the historical financial statements of each constituent part of the combined entity on which the pro forma financial information is based should be audited or reviewed.

.43 If the accountants have obtained the required knowledge as described in paragraph .36, but have not met the requirements for giving negative assurance, the accountants are limited to reporting procedures performed and findings obtained. (See example O [paragraph .64].) The accountants should comply with the relevant guidance on reporting the results of agreed-upon procedures in AT section 201.

Financial Forecasts

.44 For accountants to perform agreed-upon procedures on a financial forecast and comment thereon in a comfort letter, they should obtain the knowledge described in paragraph .36 and then perform procedures prescribed in AT section 301.69, for reporting on compilation of a forecast. Having performed these procedures, they should follow the guidance in AT section 301.18 and .19 regarding reports on compilations of prospective financial information and should attach their report²⁹ thereon to the comfort letter.³⁰

Then they can perform additional procedures and report their findings in the comfort letter (see examples E and O [paragraph .64]). Accountants may not provide negative assurance on the results of procedures performed. Further, accountants may not provide negative assurance with respect to compliance of the forecast with rule 11-03 of Regulation S-X unless they have performed an examination of the forecast in accordance with AT section 301.

Subsequent Changes

.45 Comments regarding subsequent changes typically relate to whether there has been any change in capital stock, increase in long-term debt or decreases in other specified financial statement items during a period, known as the "change period," subsequent to the date and period of the latest financial statements included (incorporated by reference) in the registration statement (see paragraph .50). These comments would also address such matters as subsequent changes in the amounts of (a) net current assets or stockholders' equity and (b) net sales and the total and per-share amounts of income before extraordinary items and of net income. The accountants ordinarily will be requested to read minutes and make inquiries of company officials relating to the whole of the change period.³¹ For the period between the date of the latest financial statements made available and the cutoff date, the accountants must base their comments solely on the limited procedures actually performed with respect to that period (which, in most cases, will be limited to the reading of minutes and the inquiries of company officials referred to in the preceding sentence), and their comfort letter should make this clear (see paragraph 6 of example A [paragraph .64]).

.46 If the underwriter requests negative assurance as to subsequent changes in specified financial statement items as of a date less than 135 days from the end of the most recent period for which the accountants have performed an audit or a review, the accountants may provide such negative assurance in the comfort letter. For instance—

- When the accountants have audited the December 31, 19X6, financial statements, the accountants may provide negative assurance on increases and decreases of specified financial statement items as of any date up to May 14 (135 days subsequent to December 31).
- When the accountants have audited the December 31, 19X6, financial statements and have also conducted an AS 4105 review of the interim financial information as of and for the quarter ended March 31, 19X7, the accountants may provide negative assurance as to increases and decreases of specified financial statement items as of any date up to August 14, 19X7 (135 days subsequent to March 31).

An appropriate manner of expressing negative assurance regarding subsequent changes is shown in paragraphs 5b and 6 of example A [paragraph .64], if there has been no decrease and in example M [paragraph .64], if there has been a decrease.

.47 However, if the underwriter requests negative assurance as to subsequent changes in specified financial statement items as of a date 135 days or more subsequent to the end of the most recent period for which the accountants have performed an audit or a review, the accountants may not provide negative assurance but are limited to reporting procedures performed and findings obtained (see example O [paragraph .64]).

.48 In order that comments on subsequent changes be unambiguous and their determination be within accountants' professional expertise, the comments should not relate to "adverse changes," since that term has not acquired any clearly understood meaning. If there has been a change in an accounting principle during the change period, the accountants should note that fact in the letter.

.49 Comments on the occurrence of changes in capital stock, increases in long-term debt, and decreases in other specified financial statement items are limited to changes, increases, or decreases not disclosed in the registration statement. Accordingly, the phrase "except for changes, increases, or decreases that the registration statement discloses have occurred or may occur" should be included in the letter when it has come to the accountants' attention that a change, increase, or decrease has occurred during the change period, and the amount of such change, increase, or decrease is disclosed in the registration statement. This phrase need not be included in the letter when no changes, increases, or decreases in the specified financial statement items are disclosed in the registration statement.

.50 ***Change period.*** In the context of a comfort letter, a decrease occurs when the amount of a financial statement item at the cutoff date or for the change period (as if financial statements had been prepared at that date and for that period) is less than the amount of the same item at a specified earlier date or for a specified earlier period. With respect to the items mentioned in paragraph .45, the term *decrease* means (a) any combination of changes in amounts of current assets and current liabilities that results in decreased net current assets, (b) any combination of changes in amounts of assets and liabilities that results in decreased stockholders' equity, (c) decreased net sales, and (d) any combination of changes in amounts of sales, expenses and outstanding shares that results in decreased total and per-share amounts of income before extraordinary items and of net income (including, in each instance, a greater loss or other negative amount). The change period for which the accountants give negative assurance in the comfort letter ends on the cutoff date (see paragraph .23) and ordinarily begins, for balance sheet items, immediately after the date of the latest balance sheet in the registration statement and, for income statement items, immediately after the latest period for which such items are presented in the registration statement. The comparison relates to the entire period and not to portions of that period. A decrease during one part of the period may be offset by an equal or larger increase in another part of the period; however, because there was no decrease for the period as a whole, the comfort letter would not report the decrease occurring during one part of the period (see, however, paragraph .62).

.51 The underwriting agreement usually specifies the dates as of which, and periods for which, data at the cutoff date and data for the change period are to be compared. For balance sheet items, the comparison date is normally that of the latest balance sheet included (incorporated by reference) in the registration statement (that is, immediately prior to the beginning of the change period). For income statement items, the comparison period or periods might be one or more of the following: (a) the corresponding period of the preceding year, (b) a period of corresponding length immediately preceding the change period, (c) a proportionate part of the preceding fiscal year, or (d) any other period of corresponding length chosen by the underwriter. Whether or not specified in the underwriting agreement, the date and period used in comparison should be identified in the comfort letter in both draft and final form so that there is no misunderstanding about the matters being compared and so that the underwriter can determine whether the comparison period is suitable for his or her purposes.

.52 The underwriter occasionally requests that the change period begin immediately after the date of the latest audited balance sheet (which is, ordinarily, also the closing date of the latest audited statement of income) in the registration statement, even though the registration statement includes a more recent unaudited condensed balance sheet and condensed statement of income. The use of the earlier date may defeat the underwriter's purpose, since it is possible that an increase in one of the items referred to in paragraph .45 occurring between the dates of the latest audited and unaudited balance sheets included (incorporated by reference) in the registration statement might more than offset a decrease occurring after the latter date. A similar situation might arise in the comparison of income statement items. In these circumstances, the decrease occurring after the date of the latest unaudited condensed interim financial statements included (incorporated by reference) in the registration statement would not be reported in the comfort letter. It is desirable for the accountants to explain the foregoing considerations to the underwriter; however, if the underwriter nonetheless requests the use of a change period or periods other than those described in paragraph .50, the accountants may use the period or periods requested.

.53 When other accountants are involved and their letters do not disclose matters that affect the negative assurance given, an appropriate manner of expressing these comments is shown in example J [paragraph .64]. When appropriate, the principal accountants may comment that there were no decreases in the consolidated financial statement items despite the possibility that decreases have been mentioned by the other accountants. In such a case, the principal accountants could make a statement that "nothing came to our attention regarding the consolidated financial statements as a result of the specified procedures (which, so far as the related company was concerned, consisted solely of reading the other accountants' letter) that caused us to believe that"

Tables, Statistics, and Other Financial Information

.54 The underwriting agreement sometimes calls for a comfort letter that includes comments on tables, statistics, and other financial information appearing in the registration statement.

.55 The accountants should refrain from commenting on certain matters in a comfort letter. Except as indicated in the next sentence, they should comment only with respect to information (a) that is expressed in dollars (or percentages derived from such dollar amounts) and that has been obtained from accounting records that are subject to the entity's controls over financial reporting or (b) that has been derived directly from such accounting records by analysis or computation. The accountants may also comment on quantitative information that has been obtained from an accounting record if the information is subject to the same controls over financial reporting as the dollar amounts. The accountants should not comment on matters merely because they happen to be present and are capable of reading, counting, measuring, or performing other functions that might be applicable. Examples of matters that, unless subjected to the entity's controls over financial reporting (which is not ordinarily the case), should not be commented on by the accountants include the square footage of facilities, number of employees (except as related to a given payroll period), and backlog information.³² The accountants should not comment on tables, statistics, and other financial information relating to an unaudited period unless (a) they have performed an audit of the client's financial statements for a period including or immediately prior to the unaudited period or have completed an audit for a later period or (b) they have otherwise obtained knowledge of the client's internal control as provided for in paragraph .36 herein. In addition, the accountants should not comment on information subject to legal interpretation, such as beneficial share ownership.

.56 As with comments relating to financial statement information, it is important that the procedures followed by the accountants with respect to other information be clearly set out in the comfort letter, in both draft and final form, so that there will be no misunderstanding about the basis of the comments on the information. Further, so that there will be no implication that the accountants are furnishing any assurance with respect to the sufficiency of the procedures for the underwriter's intended purpose, the comfort letter should contain a statement to this effect. An appropriate way of expressing this is shown in paragraph 10 of example F [paragraph .64] (see *also* paragraph .16 of this section).

.57 Certain financial information in registration statements is included because of specific requirements of Regulation S-K. Accountants may comment as to whether this information is in conformity with the disclosure requirements of Regulation S-K if the following conditions are met:

- a. The information is derived from the accounting records subject to the entity's controls over financial reporting, or has been derived directly from such accounting records by analysis or computation.
- b. This information is capable of evaluation against reasonable criteria that have been established by the SEC.

The following are the disclosure requirements of Regulation S-K³³ that generally meet these conditions:

- Item 301, "Selected Financial Data"
- Item 302, "Supplementary Financial Information"
- Item 402, "Executive Compensation"
- Item 503(d), "Ratio of Earnings to Fixed Charges"

Accountants may not give positive assurance on conformity with the disclosure requirements of Regulation S-K; they are limited to giving negative assurance, since this information is not given in the form of financial statements and generally has not been audited by the accountants. Even with respect to the above-mentioned items, there may be situations in which it would be inappropriate to provide negative assurance with respect to conformity of this information with Regulation S-K because conditions (a) and (b) above have not been met. Since information relevant to Regulation S-K disclosure requirements other than those noted previously is generally not derived from the accounting records subject to the entity's controls over financial reporting, it is not appropriate for the accountants to comment on conformity of this information with Regulation S-K. The accountants' inability to comment on conformity with Regulation S-K does not preclude accountants from performing procedures and reporting findings with respect to this information.

.58 To avoid ambiguity, the specific information commented on in the letter should be identified by reference to specific captions, tables, page numbers, paragraphs, or sentences. Descriptions of the procedures followed and the findings obtained may be stated individually for each item of specific information commented on. Alternatively, if the procedures and findings are adequately described, some or all of the descriptions may be grouped or summarized, as long as the applicability of the descriptions to items in the registration statement is clear and the descriptions do not imply that the accountants assume responsibility for the adequacy of the procedures. It would also be appropriate to present a matrix listing the financial information and common procedures employed and indicating the procedures applied to the specific items. Another presentation that could be used identifies procedures performed with specified symbols and identifies items to which those procedures have been applied directly on a copy of the prospectus which is attached to the comfort letter. (See examples F, G, and H [paragraph .64]).

.59 Comments in the comfort letter concerning tables, statistics, and other financial information included (incorporated by reference) in the registration statement should be made in the form of a description of the procedures followed; the findings (ordinarily expressed in terms of agreement between items compared); and in some cases, as described below, statements with respect to the acceptability of methods of allocation used in deriving the figures commented on. Whether comments on the allocation of income or expense items between categories of sales (such as military and commercial sales) may appropriately be made will depend on the extent to which such allocation is made in, or can be derived directly by analysis or computation from, the client's accounting records. In any event, such comments, if made, should make clear that such allocations are to a substantial extent arbitrary, that the method of allocation used is not the only acceptable one, and that other acceptable methods of allocation might produce significantly different results. Furthermore, no comments should be made regarding segment information (or the appropriateness of allocations made to derive segment information) included in financial statements, since the accountants' report encompasses that information.³⁴ Appropriate ways of expressing comments on tables, statistics, and other financial information are shown in examples F, G, and H [paragraph .64].

.60 In comments concerning tables, statistics, and other financial information, the expression "presents fairly" (or a variation of it) should not be used. That expression, when used by independent accountants, ordinarily relates to presentations of financial statements and should not be used in commenting on other types of information. Except with respect to requirements for financial statements and certain Regulation S-K items discussed in paragraph .57, the question of what constitutes appropriate information for compliance with the requirements of a particular item of the registration statement form is a matter of legal interpretation outside the competence of accountants. Consequently, the letter should state that the accountants make no representations regarding any matter of legal interpretation. Since the accountants will not be in a position to make any representations about the completeness or adequacy of disclosure or about the adequacy of the procedures followed, the letter should so state. It should point out, as well, that such procedures would not necessarily disclose material misstatements or omissions in the information to which the comments relate. An appropriate manner of expressing the comments is shown in examples F, G, and H [paragraph .64].

Concluding Paragraph

.61 In order to avoid misunderstanding of the purpose and intended use of the comfort letter, it is desirable that the letter conclude with a paragraph along the following lines:

This letter is solely for the information of the addressees and to assist the underwriters³⁵ in conducting and documenting their investigation of the affairs of the company in connection with the offering of the securities covered by the registration statement, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group

for any other purpose, including, but not limited to, the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the registration statement or any other document, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the registration statement.

Disclosure of Subsequently Discovered Matters

.62 Accountants who discover matters that may require mention in the final comfort letter but that are not mentioned in the draft letter that has been furnished to the underwriter, such as changes, increases, or decreases in specified items not disclosed in the registration statement (see paragraphs .45 and .49), will naturally want to discuss them with their client so that consideration can be given to whether disclosure should be made in the registration statement. If disclosure is not to be made, the accountants should inform the client that the matters will be mentioned in the comfort letter and should suggest that the underwriter be informed promptly. It is recommended that the accountants be present when the client and the underwriter discuss such matters.

Effective Date

.63 This section is effective for comfort letters issued on or after June 30, 1993. Early application of this section is encouraged.

Appendix—Examples

.64

1. The contents of comfort letters vary, depending on the extent of the information in the registration statement and the wishes of the underwriter or other requesting party. Shelf registration statements may have several closing dates and different underwriters. Descriptions of procedures and findings regarding interim financial statements, tables, statistics, or other financial information that is incorporated by reference from previous 1934 Act filings may have to be repeated in several comfort letters. To avoid restating these descriptions in each comfort letter, accountants may initially issue the comments in a format (such as an appendix) that can be referred to in, and attached to, subsequently issued comfort letters.

Example A: Typical Comfort Letter

2. A typical comfort letter includes—

- a. A statement regarding the independence of the accountants (paragraphs .31 and .32).
- b. An opinion regarding whether the audited financial statements and financial statement schedules included (incorporated by reference) in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Act and related rules and regulations adopted by the SEC (paragraphs .33 and .34).
- c. Negative assurance on whether—
 1. The unaudited condensed interim financial information included (incorporated by reference) in the registration statement (paragraph .37) complies as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.
 2. Any material modifications should be made to the unaudited condensed consolidated financial statements included (incorporated by reference) in the registration statement for them to be in conformity with generally accepted accounting principles.
- d. Negative assurance on whether, during a specified period following the date of the latest financial statements in the registration statement and prospectus, there has been any change in capital stock, increase in long-term debt or any decrease in other specified financial statement items (paragraphs .45 through .53).

Example A is a letter covering all these items. Letters that cover some of the items may be developed by omitting inapplicable portions of example A.

Example A assumes the following circumstances.¹ The prospectus (part I of the registration statement) includes audited consolidated balance sheets as of December 31, 19X5 and 19X4, and audited consolidated statements of income, retained earnings (stockholders' equity), and cash flows for each of the three years in the period ended December 31, 19X5. Part I also includes an unaudited condensed consolidated balance sheet as of March 31, 19X6, and unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5, reviewed in accordance with AS 4105, *Reviews of Interim Financial Information*, but not previously reported on by the accountants. Part II of the registration statement includes audited consolidated financial statement schedules for the three years ended December 31, 19X5. The cutoff date is June 23, 19X6, and the letter is dated June 28, 19X6. The effective date is June 28, 19X6.

Each of the comments in the letter is in response to a requirement of the underwriting agreement. For purposes of example A, the income statement items of the current interim period are to be compared with those of the corresponding period of the preceding year.

[Addressee]

Dear Sirs:

We have audited the consolidated balance sheets of The Blank Company, Inc. (the company) and subsidiaries as of December 31, 19X5 and 19X4, and the consolidated statements of income, retained earnings (stockholders' equity), and cash flows for each of the three years in the period ended December 31, 19X5, and the related financial statement schedules all included in the registration statement (no. 33-00000) on Form S-1 filed by the company under the Securities Act of 1933 (the Act); our reports with respect thereto are also included in that registration statement. The registration statement, as amended on June 28, 19X6, is herein referred to as the registration statement.²

In connection with the registration statement—

1. We are independent certified public accountants with respect to the company within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC.
2. In our opinion [*include the phrase "except as disclosed in the registration statement," if applicable*], the consolidated financial statements and financial statement schedules audited by us and included in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.
3. We have not audited any financial statements of the company as of any date or for any period subsequent to December 31, 19X5; although we have conducted an audit for the year ended December 31, 19X5, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 31, 19X5, and for the year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5, included in the registration statement, or on the financial position, results of operations, or cash flows as of any date or for any period subsequent to December 31, 19X5.

4. For purposes of this letter we have read the 19X6 minutes of meetings of the stockholders, the board of directors, and [*include other appropriate committees, if any*] of the company and its subsidiaries as set forth in the minute books at June 23, 19X6, officials of the company having advised us that the minutes of all such meetings³ through that date were set forth therein; we have carried out other procedures to June 23, 19X6, as follows (our work did not extend to the period from June 24, 19X6, to June 28, 19X6, inclusive):

a. With respect to the three-month periods ended March 31, 19X6 and 19X5, we have—

- (i) Performed the procedures specified by the Public Company Accounting Oversight Board (United States) for a review of interim financial information as described in AS 4105, *Reviews of Interim Financial Information*, on the unaudited condensed consolidated balance sheet as of March 31, 19X6, and unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5, included in the registration statement.
- (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited condensed consolidated financial statements referred to in a(i) comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.

b. With respect to the period from April 1, 19X6, to May 31, 19X6, we have—

- (i) Read the unaudited consolidated financial statements⁴ of the company and subsidiaries for April and May of both 19X5 and 19X6 furnished us by the company, officials of the company having advised us that no such financial statements as of any date or for any period subsequent to May 31, 19X6, were available.
- (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited consolidated financial statements referred to in b(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the registration statement.

The foregoing procedures do not constitute an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board. Also, they would not necessarily reveal matters of

significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

5. Nothing came to our attention as a result of the foregoing procedures, however, that caused us⁵ to believe that—

a.

- (i) Any material modifications should be made to the unaudited condensed consolidated financial statements described in 4*a*(i), included in the registration statement, for them to be in conformity with generally accepted accounting principles. ⁶
- (ii) The unaudited condensed consolidated financial statements described in 4*a*(i) do not comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.

b.

- (i) At May 31, 19X6, there was any change in the capital stock, increase in long-term debt, or decrease in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 19X6, unaudited condensed consolidated balance sheet included in the registration statement, or
- (ii) for the period from April 1, 19X6, to May 31, 19X6, there were any decreases, as compared to the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

6. As mentioned in 4*b*, company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to May 31, 19X6, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after May 31, 19X6, have, of necessity, been even more limited than those with respect to the periods referred to in 4. We have inquired of certain officials of the company who have responsibility for financial and accounting matters whether (*a*) at June 23, 19X6, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 19X6, unaudited condensed

consolidated balance sheet included in the registration statement or (b) for the period from April 1, 19X6, to June 23, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income. On the basis of these inquiries and our reading of the minutes as described in 4, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

7. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the company in connection with the offering of the securities covered by the registration statement, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the registration statement or any other document, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the registration statement.

Example B: Letter When a Short-Form Registration Statement Is Filed Incorporating Previously Filed Forms 10-K and 10-Q by Reference

3. Example B is applicable when a registrant uses a short-form registration statement (Form S-2 or S-3) which, by reference, incorporates previously filed Forms 10-K and 10-Q. It assumes that the short-form registration statement and prospectus include the Form 10-K for the year ended December 31, 19X5, and Form 10-Q for the quarter ended March 31, 19X6, which have been incorporated by reference. In addition to the information presented below, the letter would also contain paragraphs 6 and 7 of the typical letter in example A. A Form S-2 registration statement will often both incorporate and include the registrant's financial statements. In such situations, the language in the following example should be appropriately modified to refer to such information as being both incorporated and included.

June 28, 19X6

[Addressee]

Dear Sirs:

We have audited the consolidated balance sheets of The Blank Company, Inc. (the company) and subsidiaries as of December 31, 19X5 and 19X4, and the consolidated statements of income, retained earnings (stockholders' equity), and cash flows for each of the three years in the period ended December 31, 19X5, and the related financial statement schedules, all included (incorporated by reference) in the company's annual report on Form 10-K for the year ended December 31, 19X5, and incorporated by reference in the registration statement (no. 33-00000) on Form S-3 filed by the company under the Securities Act of 1933 (the Act); our report with respect thereto is also incorporated by reference in that registration statement. The registration statement, as amended on June 28, 19X6, is herein referred to as the registration statement.

In connection with the registration statement—

1. We are independent certified public accountants with respect to the company within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC.
2. In our opinion, the consolidated financial statements and financial statement schedules audited by us and incorporated by reference in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Act and the Securities Exchange Act of 1934 and the related rules and regulations adopted by the SEC.
3. We have not audited any financial statements of the company as of any date or for any period subsequent to December 31, 19X5; although we have conducted an audit for the year ended December 31, 19X5, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 31, 19X5, and for the year then ended, but not on the consolidated financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5, included in the company's quarterly report on Form 10-Q for the quarter ended March 31, 19X6, incorporated by reference in the registration statement, or on the financial position, results of operations, or cash flows as of any date or for any period subsequent to December 31, 19X5.
4. For purposes of this letter, we have read the 19X6 minutes of the meetings of the stockholders, the board of directors, and [*include other appropriate committees, if any*] of the company and its subsidiaries as set forth in the minute books at June 23, 19X6, officials of the company having advised us

that the minutes of all such meetings⁷ through that date were set forth therein; we have carried out other procedures to June 23, 19X6, as follows (our work did not extend to the period from June 24, 19X6, to June 28, 19X6, inclusive):

a. With respect to the three-month periods ended March 31, 19X6 and 19X5, we have—

- (i) Performed the procedures specified by the Public Company Accounting Oversight Board (United States) for a review of interim financial information as described in AS 4105, *Reviews of Interim Financial Information*, on the unaudited condensed consolidated financial statements for these periods, described in 3, included in the company's quarterly report on Form 10-Q for the quarter ended March 31, 19X6, incorporated by reference in the registration statement.
- (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited condensed consolidated financial statements referred to in a(i) comply as to form in all material respects with the applicable accounting requirements of the Securities Exchange Act of 1934 as it applies to Form 10-Q and the related rules and regulations adopted by the SEC.

b. With respect to the period from April 1, 19X6, to May 31, 19X6, we have—

- (i) Read the unaudited consolidated financial statements⁸ of the company and subsidiaries for April and May of both 19X5 and 19X6 furnished us by the company, officials of the company having advised us that no such financial statements as of any date or for any period subsequent to May 31, 19X6, were available.
- (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited consolidated financial statements referred to in b(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements incorporated by reference in the registration statement.

The foregoing procedures do not constitute an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board. Also, they would not necessarily reveal matters of

significance with respect to the comments in the following paragraph. Accordingly, we make no representations about the sufficiency of the foregoing procedures for your purposes.

5. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that—

a.

- (i) Any material modifications should be made to the unaudited condensed consolidated financial statements described in 3, incorporated by reference in the registration statement, for them to be in conformity with generally accepted accounting principles.
- (ii) The unaudited condensed consolidated financial statements described in 3 do not comply as to form in all material respects with the applicable accounting requirements of the Securities Exchange Act of 1934 as it applies to Form 10-Q and the related rules and regulations adopted by the SEC.

b.

- (i) At May 31, 19X6, there was any change in the capital stock, increase in long-term debt, or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 19X6 unaudited condensed consolidated balance sheet incorporated by reference in the registration statement or
- (ii) for the period from April 1, 19X6, to May 31, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

Example C: Letter Reaffirming Comments in Example A as of a Later Date

4. If more than one comfort letter is requested, the later letter may, in appropriate situations, refer to information appearing in the earlier letter without repeating such information (see paragraph .24 and paragraph 1 of the Appendix). Example C reaffirms and updates the information in example A.

July 25, 19X6

[Addressee]

Dear Sirs:

We refer to our letter of June 28, 19X6, relating to the registration statement (no. 33-00000) of The Blank Company, Inc. (the company). We reaffirm as of the date hereof (and as though made on the date hereof) all statements made in that letter except that, for the purposes of this letter—

- a. The registration statement to which this letter relates is as amended on July 13, 19X6 [*effective date*].
- b. The reading of minutes described in paragraph 4 of that letter has been carried out through July 20, 19X6 [*the new cutoff date*].
- c. The procedures and inquiries covered in paragraph 4 of that letter were carried out to July 20, 19X6 [*the new cutoff date*] (our work did not extend to the period from July 21, 19X6, to July 25, 19X6 [*date of letter*], inclusive).
- d. The period covered in paragraph 4b of that letter is changed to the period from April 1, 19X6, to June 30, 19X6, officials of the company having advised us that no such financial statements as of any date or for any period subsequent to June 30, 19X6, were available.
- e. The references to May 31, 19X6, in paragraph 5b of that letter are changed to June 30, 19X6.
- f. The references to May 31, 19X6, and June 23, 19X6, in paragraph 6 of that letter are changed to June 30, 19X6, and July 20, 19X6, respectively.

This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the company in connection with the offering of the securities covered by the registration statement, and it is not to be used, circulated, quoted, or otherwise referred to within the underwriting group for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the registration statement or any other document, except that reference may be made to it in the underwriting agreement or any list of closing documents pertaining to the offering of the securities covered by the registration statement.

Example D: Comments on Pro Forma Financial Information

5. Example D is applicable when the accountants are asked to comment on (a) whether the pro forma financial information included in a registration statement complies as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X, and (b) the application of pro forma adjustments to historical amounts in the compilation of the pro forma financial information (see paragraphs .42 and .43). The material in this example is intended to be inserted between paragraphs 6 and 7 in example A. The accountants have audited the December 31, 19X5, financial statements and have conducted an AS 4105 review of the March 31, 19X6, interim financial information of the acquiring company. Other accountants conducted a review of the March 31, 19X6, interim financial information of XYZ Company, the company being acquired. The example assumes that the accountants have not previously reported on the pro forma financial information. If the accountants did previously report on the pro forma financial information, they may refer in the introductory paragraph of the comfort letter to the fact that they have issued a report, and the report may be attached to the comfort letter (see paragraph .29). In that circumstance, therefore, the procedures in 7b(i) and 7c ordinarily would not be performed, and the accountants should not separately comment on the application of pro forma adjustments to historical financial information, since that assurance is encompassed in the accountants' report on pro forma financial information. The accountants may, however, agree to comment on compliance as to form with the applicable accounting requirements of rule 11-02 of Regulation S-X.

7. At your request, we have—

- a. Read the unaudited pro forma condensed consolidated balance sheet as of March 31, 19X6, and the unaudited pro forma condensed consolidated statements of income for the year ended December 31, 19X5, and the three-month period ended March 31, 19X6, included in the registration statement.
- b. Inquired of certain officials of the company and of XYZ Company (the company being acquired) who have responsibility for financial and accounting matters about—
 - (i) The basis for their determination of the pro forma adjustments, and
 - (ii) Whether the unaudited pro forma condensed consolidated financial statements referred to in 7a comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X.

- c. Proved the arithmetic accuracy of the application of the pro forma adjustments to the historical amounts in the unaudited pro forma condensed consolidated financial statements.

The foregoing procedures are substantially less in scope than an examination, the objective of which is the expression of an opinion on management's assumptions, the pro forma adjustments, and the application of those adjustments to historical financial information. Accordingly, we do not express such an opinion. The foregoing procedures would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representation about the sufficiency of such procedures for your purposes.

8. Nothing came to our attention as a result of the procedures specified in paragraph 7, however, that caused us to believe that the unaudited pro forma condensed consolidated financial statements referred to in 7a included in the registration statement do not comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X and that the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements. Had we performed additional procedures or had we made an examination of the pro forma condensed consolidated financial statements, other matters might have come to our attention that would have been reported to you.

Example E: Comments on a Financial Forecast

6. Example E is applicable when accountants are asked to comment on a financial forecast (see paragraph .44). The material in this example is intended to be inserted between paragraphs 6 and 7 in example A. The example assumes that the accountants have previously reported on the compilation of the financial forecast and that the report is attached to the letter (see paragraph .29 and example O).

7. At your request, we performed the following procedure with respect to the forecasted consolidated balance sheet and consolidated statements of income and cash flows as of December 31, 19X6, and for the year then ending. With respect to forecasted rental income, we compared the occupancy statistics about expected demand for rental of the housing units to statistics for existing comparable properties and found them to be the same.

8. Because the procedure described above does not constitute an examination of prospective financial statements in accordance with the standards of the Public Company Accounting Oversight Board, we do not

express an opinion on whether the prospective financial statements are presented in conformity with AT section 301, *Financial Forecasts and Projections*, presentation guidelines or on whether the underlying assumptions provide a reasonable basis for the presentation.

Had we performed additional procedures or had we made an examination of the forecast in accordance with the standards of the Public Company Accounting Oversight Board, matters might have come to our attention that would have been reported to you. Furthermore, there will usually be differences between the forecasted and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material.

Example F: Comments on Tables, Statistics, and Other Financial Information—Complete Description of Procedures and Findings

7. Example F is applicable when the accountants are asked to comment on tables, statistics, or other compilations of information appearing in a registration statement (paragraphs .54 through .60). Each of the comments is in response to a specific request. The paragraphs in example F are intended to follow paragraph 6 in example A.

7. For purposes of this letter, we have also read the following, set forth in the registration statement on the indicated pages.⁹

<i>Item</i>	<i>Page</i>	<i>Description</i>
<i>a</i>	4	"Capitalization." The amounts under the captions "Amount Outstanding as of June 15, 19X6" and "As Adjusted." The related notes, except the following in Note 2: "See 'Transactions With Interested Persons.' From the proceeds of this offering the company intends to prepay \$900,000 on these notes, pro rata. See 'Use of Proceeds.'"
<i>b</i>	13	"History and Business—Sales and Marketing." The table following the first paragraph.
<i>c</i>	22	"Executive Compensation—19X5 Compensation."
<i>d</i>	33	"Selected Financial Data." ¹⁰

8. Our audit of the consolidated financial statements for the periods referred to in the introductory paragraph of this letter comprised audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred

to therein, or any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.

9. However, for purposes of this letter we have performed the following additional procedures, which were applied as indicated with respect to the items enumerated above.

Item in 7 Procedures and Findings

- a. We compared the amounts and numbers of shares listed under the caption "Amount Outstanding as of June 15, 19X6" with the balances in the appropriate accounts in the company's general ledger at May 31, 19X6 (the latest date for which posting had been made), and found them to be in agreement. We were informed by company officials who have responsibility for financial and accounting matters that there have been no changes in such amounts and numbers of shares between May 31, 19X6, and June 15, 19X6. We compared the amounts and numbers of shares listed under the caption "Amount Outstanding as of June 15, 19X6," adjusted for the issuance of the debentures to be offered by means of the registration statement and for the proposed use of a portion of the proceeds thereof to prepay portions of certain notes, as described under "Use of Proceeds," with the amounts and numbers of shares shown under the caption "As Adjusted" and found such amounts and numbers of shares to be in agreement. (However, we make no comments regarding the reasonableness of the "Use of Proceeds" or whether such use will actually take place.) We compared the description of the securities and the information (except certain information in Note 2, referred to in 7) included in the notes to the table with the corresponding descriptions and information in the company's consolidated financial statements, including the notes thereto included in the registration statement, and found such description and information to be in agreement.
- b. We compared the amounts of military sales, commercial sales, and total sales shown in the registration statement with the balances in the appropriate accounts in the company's accounting records for the respective fiscal years and for the unaudited interim periods and found them to be in agreement. We proved the arithmetic accuracy of the percentages of such amounts of military sales and commercial sales to total sales for the respective fiscal years and for the unaudited interim periods. We compared such computed percentages with the corresponding percentages appearing in the registration statement and found them to be in agreement.
- c. We compared the dollar amounts of compensation (salary, bonus, and other compensation) for each individual listed in the table "Annual Compensation" with the corresponding amounts shown by the individual employee earnings records

for the year 19X5 and found them to be in agreement. We compared the dollar amount of aggregate executive officers' cash compensation on page 22 with the corresponding amount shown in an analysis prepared by the company and found the amounts to be in agreement. We traced every item over \$10,000 on the analysis to the individual employee records for 19X5. We compared the dollar amounts shown under the heading of "Long-Term Compensation" on page 24 for each listed individual and the aggregate amounts for executive officers with corresponding amounts shown in an analysis prepared by the company and found such amounts to be in agreement.

We compared the executive compensation information with the requirements of item 402 of Regulation S-K. We also inquired of certain officials of the company who have responsibility for financial and accounting matters whether the executive compensation information conforms in all material respects with the disclosure requirements of item 402 of Regulation S-K. Nothing came to our attention as a result of the foregoing procedures that caused us to believe that this information does not conform in all material respects with the disclosure requirements of item 402 of Regulation S-K.

- d. We compared the amounts of net sales, income from continuing operations, income from continuing operations per common share, and cash dividends declared per common share for the years ended December 31, 19X5, 19X4, and 19X3, with the respective amounts in the consolidated financial statements on pages 27 and 28 and the amounts for the years ended December 31, 19X2, and 19X1, with the respective amounts in the consolidated financial statements included in the company's annual reports to stockholders for 19X2 and 19X1 and found them to be in agreement.

We compared the amounts of total assets, long-term obligations, and redeemable preferred stock at December 31, 19X5 and 19X4, with the respective amounts in the consolidated financial statements on pages 27 and 28 and the amounts at December 31, 19X3, and 19X2, and 19X1 with the corresponding amounts in the consolidated financial statements included in the company's annual reports to stockholders for 19X3, 19X2, and 19X1 and found them to be in agreement.

We compared the information included under the heading "Selected Financial Data" with the requirements of item 301 of Regulation S-K. We also inquired of certain officials of the company who have responsibility for financial and accounting matters whether this information conforms in all material respects with the disclosure requirements of item 301 of Regulation S-K. Nothing came to our attention as a result of the foregoing procedures that caused us to believe that this information does not conform in all material respects with the disclosure requirements of item 301 of Regulation S-K.

10. It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of the amounts or percentages listed above. Further, we have addressed ourselves solely to the foregoing data as set forth in the registration statement and make no representations regarding the adequacy of disclosure or regarding whether any material facts have been omitted.

11. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the company in connection with the offering of the securities covered by the registration statement, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the registration statement or any other document, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the registration statement.

Example G: Comments on Tables, Statistics, and Other Financial Information—Summarized Description of Procedures and Findings Regarding Tables, Statistics, and Other Financial Information

8. Example G illustrates, in paragraph 9a, a method of summarizing the descriptions of procedures and findings regarding tables, statistics, and other financial information in order to avoid repetition in the comfort letter. The summarization of the descriptions is permitted by paragraph .58. Each of the comments is in response to a specific request. The paragraphs in example G are intended to follow paragraph 6 in example A.¹¹

7. For purposes of this letter, we have also read the following, set forth in the registration statement on the indicated pages.

<i>Item</i>	<i>Page</i>	<i>Description</i>
<i>a</i>	4	"Capitalization." The amounts under the captions "Amount Outstanding as of June 15, 19X6" and "As Adjusted." The related notes, except the following in Note 2: "See 'Transactions With Interested Persons.' From the proceeds of this offering the company intends to prepay \$900,000 on these notes, pro rata. See 'Use of Proceeds.'"

<i>b</i>	13	History and Business—Sales and Marketing." The table following the first paragraph.
<i>c</i>	22	"Executive Compensation—19X5 Compensation."
<i>d</i>	33	"Selected Financial Data." ¹²

8. Our audit of the consolidated financial statements for the periods referred to in the introductory paragraph of this letter comprised audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred to therein, or any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.

9. However, for purposes of this letter and with respect to the items enumerated in 7 above—

- a.* Except for item 7*a*, we have (i) compared the dollar amounts either with the amounts in the audited consolidated financial statements described in the introductory paragraph of this letter or, for prior years, included in the company's annual report to stockholders for the years 19X1, 19X2, and 19X3, or with amounts in the unaudited consolidated financial statements described in paragraph 3 to the extent such amounts are included in or can be derived from such statements and found them to be in agreement; (ii) compared the amounts of military sales, commercial sales, and total sales and the dollar amounts of compensation for each listed individual with amounts in the company's accounting records and found them to be in agreement; (iii) compared other dollar amounts with amounts shown in analyses prepared by the company and found them to be in agreement; and (iv) proved the arithmetic accuracy of the percentages based on the data in the above-mentioned financial statements, accounting records, and analyses.

We compared the information in items 7*c* and 7*d* with the disclosure requirements of Regulation S-K. We also inquired of certain officials of the company who have responsibility for financial and accounting matters whether this information conforms in all material respects with the disclosure requirements of Regulation S-K. Nothing came to our attention as a result of the foregoing procedures that caused us to believe that this information does not conform in all material

respects with the disclosure requirements of items 402 and 301, respectively, of Regulation S-K.

- b. With respect to item 7a, we compared the amounts and numbers of shares listed under the caption "Amount Outstanding as of June 15, 19X6" with the balances in the appropriate accounts in the company's general ledger at May 31, 19X6 (the latest date for which postings had been made), and found them to be in agreement. We were informed by officials of the company who have responsibility for financial and accounting matters that there had been no changes in such amounts and numbers of shares between May 31, 19X6, and June 15, 19X6. We compared the amounts and numbers of shares listed under the caption "Amount Outstanding as of June 15, 19X6" adjusted for the issuance of the debentures to be offered by means of the registration statement and for the proposed use of a portion of the proceeds thereof to prepay portions of certain notes, as described under "Use of Proceeds," with the amounts and numbers of shares shown under the caption "As Adjusted" and found such amounts and numbers of shares to be in agreement. (However, we make no comments regarding the reasonableness of "Use of Proceeds" or whether such use will actually take place.) We compared the description of the securities and the information (except certain information in Note 2, referred to in 7) included in the notes to the table with the corresponding descriptions and information in the company's consolidated financial statements, including the notes thereto, included in the registration statement and found such descriptions and information to be in agreement.

10. It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of the amounts or percentages listed above. Further, we have addressed ourselves solely to the foregoing data as set forth in the registration statement and make no representations regarding the adequacy of disclosure or regarding whether any material facts have been omitted.

11. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the company in connection with the offering of the securities covered by the registration statement, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part

in the registration statement or any other document, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the registration statement.

Example H: Comments on Tables, Statistics, and Other Financial Information: Descriptions of Procedures and Findings Regarding Tables, Statistics, and Other Financial Information—Attached Registration Statement (or Selected Pages) Identifies With Designated Symbols Items to Which Procedures Were Applied

9. This example illustrates an alternate format which could facilitate reporting when the accountant is requested to perform procedures on numerous statistics included in a registration statement. This format is permitted by paragraph .58. Each of the comments is in response to a specific request. The paragraph in example H is intended to follow paragraph 6 in example A.

7. For purposes of this letter, we have also read the items identified by you on the attached copy of the registration statement (prospectus), and have performed the following procedures, which were applied as indicated with respect to the symbols explained below:



Compared the amount with the XYZ (Predecessor Company) financial statements for the period indicated and found them to be in agreement.



Compared the amount with the XYZ (Predecessor Company) financial statements for the period indicated contained in the registration statement and found them to be in agreement.



Compared the amount with ABC Company's financial statements for the period indicated contained in the registration statement and found them to be in agreement.



Compared with a schedule or report prepared by the Company and found them to be in agreement.

The letter would also contain paragraphs 8, 10, and 11 of the letter in example F.

[The following is an extract from a registration statement that illustrates how an accountant can document procedures performed on numerous statistics included in the registration statement.]

The following summary is qualified in its entirety by the financial statements and detailed information appearing elsewhere in this Prospectus.

The Company

ABC Company (the "Company") designs, constructs, sells, and finances single-family homes for the entry-level and move-up homebuyer. The Company and its predecessor have built and delivered more single-family homes in the metropolitan area than any other homebuilder for each of the last five years. The Company delivered 1,000 homes in the year ending December 31, 19X5, and at December 31, 19X5, had 500 homes¹³ under contract with an aggregate sales price of approximately \$45,000,000. The Company's wholly owned mortgage banking subsidiary, which commenced operations in March 19X5, currently originates a substantial portion of the mortgages for homes sold by the Company.

The Company typically does not engage in land development without related homebuilding operations and limits speculative building. The Company purchases only that land which it is prepared to begin developing immediately for home production. A substantial portion of the Company's homes are under contract for sale before construction commences.

The DEF area has been among the top five markets in the country in housing starts for each of the last five years, with more than 90,000 single-family starts during that period. During the same period, the DEF metropolitan area has experienced increases in population, personal income, and employment at rates above the national average. The Company is a major competitive factor in three of the seven market areas, and is expanding significantly in a fourth area.

The Offering

Stock Offered by the Company.....	750,000	
		⊗
		shares of Common Stock—\$.01 par value (the Common Stock)*
Common Stock to Be Outstanding.....	3,250,000 shares*	

Use of Proceeds.....

To repay indebtedness incurred for the acquisition of the Company.

Proposed NASDAQ Symbol.....

ABC

Summary Financial Information (In thousands, except per-share data)					
	<i>XYZ (Predecessor Company) Year Ended December 31,</i>			<i>ABC Company Year Ended December 31,</i>	
<i>Income Statement Data</i>	<u>19X1</u>	<u>19X2</u>	<u>19X3</u>	<u>19X4</u>	<u>19X5</u>
Revenue from home sales	\$106,603	\$88,970	\$104,110	\$115,837	\$131,032
Gross profit from sales	15,980	21,138	23,774	17,099	22,407
Income from home building net of tax	490	3,473	7,029	1,000	3,425
Earnings per share	—	—	—	—	\$ 1.37

Example I: Alternate Wording When Accountants' Report on Audited Financial Statements Contains an Explanatory Paragraph

10. Example I is applicable when the accountants' report on the audited financial statements included in the registration statement contains an explanatory paragraph regarding a matter that would also affect the unaudited condensed consolidated interim financial statements included in the registration statement. The introductory paragraph of example A would be revised as follows:

Our reports with respect thereto (which contain an explanatory paragraph that describes a lawsuit to which the Company is a defendant, discussed in note 8 to the consolidated financial statements) are also included in the registration statement.

The matter described in the explanatory paragraph should also be evaluated to determine whether it also requires mention in the comments on the unaudited condensed consolidated interim financial information (paragraph 5b of example A). If it is concluded that mention of such a matter in the comments on unaudited condensed consolidated financial statements is appropriate, a sentence should be added at the end of paragraph 5b in example A:

Reference should be made to the introductory paragraph of this letter which states that our audit report covering the consolidated financial statements as of and for the year ended December 31, 19X5, includes an explanatory paragraph that describes a lawsuit to which the company is a defendant, discussed in note 8 to the consolidated financial statements.

Example J: Alternate Wording When More Than One Accountant Is Involved

11. Example J applies when more than one accountant is involved in the audit of the financial statements of a business and the principal accountants have obtained a copy of the comfort letter of the other accountants (see paragraph .18). Example J consists of an addition to paragraph 4c, a substitution for the applicable part of paragraph 5, and an addition to paragraph 6 of example A.

[4]c. We have read the letter dated _____ of [*the other accountants*] with regard to [*the related company*].

5. Nothing came to our attention as a result of the foregoing procedures (which, so far as [*the related company*] is concerned, consisted solely of reading the letter referred to in 4c), however, that caused us to believe that.

...

6. ... On the basis of these inquiries and our reading of the minutes and the letter dated _____ of [*the other accountants*] with regard to [*the related company*], as described in 4, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

Example K: Alternate Wording When the SEC Has Agreed to a Departure From Its Accounting Requirements

12. Example K is applicable when (a) there is a departure from the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC and (b) representatives of the SEC have agreed to the departure. Paragraph 2 of example A would

be revised to read as follows:

2. In our opinion [*include the phrase "except as disclosed in the registration statement," if applicable*], the consolidated financial statements and financial statement schedules audited by us and included (incorporated by reference) in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC; however, as agreed to by representatives of the SEC, separate financial statements and financial statement schedules of ABC Company (an equity investee) as required by rule 3-09 of Regulation S-X have been omitted.

Example L: Alternate Wording When Recent Earnings Data Are Presented in Capsule Form

13. Example L is applicable when (a) the statement of income in the registration statement is supplemented by later information regarding sales and earnings (capsule financial information), (b) the accountants are asked to comment on that information (paragraphs .39 through .41), and (c) the accountants have conducted a review in accordance with AS 4105 of the financial statements from which the capsule financial information is derived. The same facts exist as in example A, except for the following:

- a. Sales, net income (no extraordinary items), and earnings per share for the six-month periods ended June 30, 19X6 and 19X5 (both unaudited), are included in capsule form more limited than that specified by APB Opinion 28 [AC section 173.146].
- b. No financial statements later than those for June 19X6 are available.
- c. The letter is dated July 25, 19X6, and the cutoff date is July 20, 19X6.

Paragraphs 4, 5, and 6 of example A should be revised to read as follows:

4. For purposes of this letter we have read the 19X6 minutes of the meetings of the stockholders, the board of directors, and [*include other appropriate committees, if any*] of the company and its subsidiaries as set forth in the minute books at July 20, 19X6, officials of the company having advised us that the minutes of all such meetings¹⁴ through that date were set forth therein; we have carried out other procedures to July 20, 19X6, as follows (our work did not extend to the period from July 21, 19X6, to July 25, 19X6, inclusive):

- a. With respect to the three-month periods ended March 31, 19X6 and 19X5, we have—

- (i) Performed the procedures specified by the Public Company Accounting Oversight Board (United States) for a review of interim financial information as described in AS 4105, *Reviews of Interim Financial Information*, on the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5, included in the registration statement.
- (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited condensed consolidated financial statements referred to in (i) comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.

b. With respect to the six-month periods ended June 30, 19X6 and 19X5, we have—

- (i) Read the unaudited amounts for sales, net income, and earnings per share for the six-month periods ended June 30, 19X6 and 19X5, as set forth in paragraph [*identify location*].
- (ii) Performed the procedures specified by the Public Company Accounting Oversight Board for a review of financial information as described in AS 4105 on the unaudited condensed consolidated balance sheet as of June 30, 19X6 and the unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the six-month periods ended June 30, 19X6 and 19X5 from which the unaudited amounts referred to in b(i) are derived.
- (iii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited amounts referred to in (i) are stated on a basis substantially consistent with that of the corresponding amounts in the audited consolidated statements of income.

The foregoing procedures do not constitute an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

5. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that—

a.

- i. Any material modifications should be made to the unaudited condensed consolidated financial statements described in 4*a*(i), included in the registration statement, for them to be in conformity with generally accepted accounting principles.
- ii. The unaudited condensed consolidated financial statements described in 4*a*(i) do not comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.

b.

- (i) The unaudited amounts for sales, net income and earnings per share for the six-month periods ended June 30, 19X6 and 19X5, referred to in 4*b*(i) do not agree with the amounts set forth in the unaudited consolidated financial statements for those same periods.
- (ii) The unaudited amounts referred to in *b*(i) were not determined on a basis substantially consistent with that of the corresponding amounts in the audited consolidated statements of income.

c. At June 30, 19X6, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 19X6, unaudited condensed consolidated balance sheet included in the registration statement, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

6. Company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to June 30, 19X6, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after June 30, 19X6, have been, of necessity, even more limited than those with respect to the periods referred to in 4. We have inquired of certain officials of the company who have responsibility for financial and accounting matters regarding whether (*a*) at July 20, 19X6, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 19X6 unaudited condensed consolidated

balance sheet included in the registration statement; or (b) for the period from July 1, 19X6, to July 20, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income. On the basis of these inquiries and our reading of the minutes as described in 4, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

Example M: Alternate Wording When Accountants Are Aware of a Decrease in a Specified Financial Statement Item

14. Example M covers a situation in which accountants are aware of a decrease in a financial statement item on which they are requested to comment (see paragraphs .45 through .53). The same facts exist as in example A, except for the decrease covered in the following change in paragraph 5b.

b.

- (i) At May 31, 19X6, there was any change in the capital stock, increase in long-term debt or any decrease in consolidated stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 19X6, unaudited condensed consolidated balance sheet included in the registration statement, or
- (ii) for the period from April 1, 19X6, to May 31, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or the total or per-share amounts of income before extraordinary items or of net income, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur and except that the unaudited consolidated balance sheet as of May 31, 19X6, which we were furnished by the company, showed a decrease from March 31, 19X6, in consolidated net current assets as follows (in thousands of dollars):

	<i>Current Assets</i>	<i>Current Liabilities</i>	<i>Net Current Assets</i>
March 31, 19X6	\$4,251	\$1,356	\$2,895
May 31, 19X6	3,986	1,732	2,254

6. As mentioned in 4b, company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to May 31, 19X6, are available; accordingly, the procedures carried

out by us with respect to changes in financial statement items after May 31, 19X6, have been, of necessity, even more limited than those with respect to the periods referred to in 4. We have inquired of certain officials of the company who have responsibility for financial and accounting matters regarding whether (a) there was any change at June 23, 19X6, in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 19X6, unaudited condensed consolidated balance sheet included in the registration statement; or (b) for the period from April 1, 19X6, to June 23, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income. On the basis of these inquiries and our reading of the minutes as described in 4, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur and except as described in the following sentence. We have been informed by officials of the company that there continues to be a decrease in net current assets that is estimated to be approximately the same amount as set forth in 5b [*or whatever other disclosure fits the circumstances*].

Example N: Alternate Wording of the Letter for Companies That Are Permitted to Present Interim Earnings Data for a Twelve-Month Period

15. Certain types of companies are permitted to include earnings data for a twelve-month period to the date of the latest balance sheet furnished in lieu of earnings data for both the interim period between the end of the latest fiscal year and the date of the latest balance sheet and the corresponding period of the preceding fiscal year. The following would be substituted for the applicable part of paragraph 3 of example A.

3. . . . was to enable us to express our opinion on the financial statements as of December 31, 19X5, and for the year then ended, but not on the financial statements for any period included in part within that year. Therefore, we are unable to and do not express any opinion on the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the related unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the twelve months then ended included in the registration statement. . . .

Example O: Alternate Wording When the Procedures That the Underwriter Has Requested the Accountant to Perform on Interim Financial Information Are Less Than an AS 4105 Review

16. The example assumes that the underwriter has asked the accountants to perform specified procedures on the interim financial information and report thereon in the comfort letter. The letter is dated June 28, 19X6; procedures were performed through June 23, 19X6, the cutoff date. Since an AS 4105 review was not performed on the interim financial information as of March 31, 19X6 and for the quarter then ended, the accountants are limited to reporting procedures performed and findings obtained on the interim financial information. In addition to the information presented below, the letter would also contain paragraph 7 of the typical comfort letter in example A.

June 28, 19X6

[Addressee]

Dear Sirs:

We have audited the consolidated balance sheets of The Blank Company, Inc. (the company) and the subsidiaries as of December 31, 19X5 and 19X4, and the consolidated statements of income, retained earnings (stockholders' equity), and cash flows for each of the three years in the period ended December 31, 19X5 and the related financial statement schedules all included in the registration statement (no. 33-00000) on Form S-1 filed by the company under the Securities Act of 1933 (the Act); our reports with respect thereto are included in that registration statement. The registration statement, as amended on June 28, 19X6, is herein referred to as the registration statement.

Also, we have compiled the forecasted balance sheet and consolidated statements of income, retained earnings (stockholders' equity), and cash flows as of December 31, 19X6 and for the year then ending, attached to the registration statement, as indicated in our report dated May 15, 19X6, which is attached.

In connection with the registration statement—

1. We are independent certified public accountants with respect to the company within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC.

2. In our opinion [*include the phrase "except as disclosed in the registration statement," if applicable*], the consolidated financial statements and financial statement schedules audited by us and included in the registration

statement comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.

3. We have not audited any financial statements of the company as of any date or for any period subsequent to December 31, 19X5; although we have conducted an audit for the year ended December 31, 19X5, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 31, 19X5, and for the year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5, included in the registration statement, or on the financial position, results of operations, or cash flows as of any date or for any period subsequent to December 31, 19X5.

4. For purposes of this letter, we have read the 19X6 minutes of meetings of the stockholders, the board of directors, and [*include other appropriate committees, if any*] of the company as set forth in the minute books at June 23, 19X6, officials of the company having advised us that the minutes of all such meetings¹⁵ through that date were set forth therein; we have carried out other procedures to June 23, 19X6, as follows (our work did not extend to the period from June 24, 19X6, to June 28, 19X6, inclusive):

- a. With respect to the three-month periods ended March 31, 19X6 and 19X5, we have—
 - (i) Read the unaudited condensed consolidated balance sheet as of March 31, 19X6, and unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5, included in the registration statement, and agreed the amounts contained therein with the company's accounting records as of March 31, 19X6 and 19X5, and for the three-month periods then ended.
 - (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited condensed consolidated financial statements referred to in a(i): (1) are in conformity with generally accepted accounting principles¹⁶ applied on a basis substantially consistent with that of the audited consolidated financial statements included in the registration statement, and (2)

comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC. Those officials stated that the unaudited condensed consolidated financial statements (1) are in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited financial statements, and (2) comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.

b. *With respect to the period from April 1, 19X6, to May 31, 19X6, we have*

—

- (i) Read the unaudited condensed consolidated financial statements of the company¹⁷ for April and May of both 19X5 and 19X6 furnished us by the company, and agreed the amounts contained therein to the company's accounting records. Officials of the company have advised us that no such financial statements as of any date or for any period subsequent to May 31, 19X6, were available.*
- (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether (1) the unaudited financial statements referred to in b(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the registration statement, (2) at May 31, 19X6, there was any change in the capital stock, increase in long-term debt or any decrease in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 19X6 unaudited condensed consolidated balance sheet included in the registration statement, and (3) for the period from April 1, 19X6, to May 31, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income.*

Those officials stated that (1) the unaudited consolidated financial statements referred to in 4b(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the registration statement, (2) at May 31, 19X6, there was no change in the capital stock, no increase in long-term debt, and no decrease in net current assets or stockholders'

equity of the consolidated companies as compared with amounts shown in the March 31, 19X6, unaudited condensed consolidated balance sheet included in the registration statement, and (3) there were no decreases for the period from April 1, 19X6, to May 31, 19X6, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income.

- c. As mentioned in 4b(i), company officials have advised us that no financial statements as of any date or for any period subsequent to May 31, 19X6, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after May 31, 19X6, have, of necessity, been even more limited than those with respect to the periods referred to in 4a and 4b. We have inquired of certain officials of the company who have responsibility for financial and accounting matters whether (a) at June 23, 19X6, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 19X6, unaudited condensed consolidated balance sheet included in the registration statement, or (b) for the period from April 1, 19X6, to June 23, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income. Those officials stated that (1) at June 23, 19X6, there was no change in the capital stock, no increase in long-term debt and no decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 19X6, unaudited condensed consolidated balance sheet, and (2) for the period from April 1, 19X6, to June 23, 19X6, there were no decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income.

The foregoing procedures do not constitute an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States). We make no representations regarding the sufficiency of the foregoing procedures for your purposes. Had we performed additional procedures or had we conducted an audit or a review, other matters might have come to our attention that would have been reported to you.

5. At your request, we also performed the following procedures:

- a. Read the unaudited pro forma condensed consolidated balance sheet as of March 31, 19X6, and the unaudited pro forma condensed consolidated statements of income for the year ended December 31, 19X5, and the three-month period ended March 31, 19X6, included in the registration statement.
- b. *Inquired of certain officials of the company and of XYZ Company (the company being acquired) who have responsibility for financial and accounting matters as to whether all significant assumptions regarding the business combination had been reflected in the pro forma adjustments and whether the unaudited pro forma condensed consolidated financial statements referred to in (a) comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X.*

Those officials referred to above stated, in response to our inquiries, that all significant assumptions regarding the business combination had been reflected in the pro forma adjustments and that the unaudited pro forma condensed consolidated financial statements referred to in (a) comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X.

- c. *Compared the historical financial information for the company included on page 20 in the registration statement with historical financial information for the company on page 12 and found them to be in agreement.*
We also compared the financial information included on page 20 of the registration statement with the historical information for XYZ Company on page 13 and found them to be in agreement.
- d. Proved the arithmetic accuracy of the application of the pro forma adjustments to the historical amounts in the unaudited pro forma condensed consolidated financial statements.

The foregoing procedures are less in scope than an examination, the objective of which is the expression of an opinion on management's assumptions, the pro forma adjustments, and the application of those adjustments to historical financial information. Accordingly, we do not express such an opinion. We make no representation about the sufficiency of the foregoing procedures for your purposes. Had we performed additional procedures or had we made an examination of the pro forma financial information, other matters might have come to our attention that would have been reported to you.

6. At your request, we performed the following procedures with respect to the forecasted consolidated balance sheet and consolidated statements of income and cash flows as of December 31, 19X6, and for the year then ending. With respect to forecasted rental income, we compared the occupancy statistics about expected demand for rental of the housing units to statistics for existing comparable properties and found them to be the same.

Because the procedures described above do not constitute an examination of prospective financial statements in accordance with the standards of the Public Company Accounting Oversight Board, we do not express an opinion on whether the prospective financial statements are presented in conformity with AT section 301, *Financial Forecasts and Projections*, presentation guidelines or on whether the underlying assumptions provide a reasonable basis for the presentation. Furthermore, there will usually be differences between the forecasted and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We make no representations about the sufficiency of such procedures for your purposes. Had we performed additional procedures or had we made an examination of the forecast in accordance with the standards of the Public Company Accounting Oversight Board, matters might have come to our attention that would have been reported to you.

Example P: A Typical Comfort Letter in a Non-1933 Act Offering, Including the Required Underwriter Representations

17. Example P is applicable when a comfort letter is issued in a non-1933 Act offering. The underwriter has given the accountants a letter including the representations regarding their due diligence review process, as described in paragraphs .06 and .07, and the comfort letter refers to those representations. In addition, the example assumes that the accountants were unable, or were not requested, to perform an AS 4105 review of a subsequent interim period and therefore no negative assurance has been given. See paragraph .47.

November 30, 19X5

[Addressee]

Dear Sirs:

We have audited the balance sheets of Example City, Any State Utility System as of June 30, 19X5 and 19X4, and the statements of revenues, expenses, and changes in retained earnings and cash flows for the years then ended, included in the Official Statement for \$30,000,000 of Example

City, Any State Utility System Revenue Bonds due November 30, 19Z5. Our report with respect thereto is included in the Official Statement. This Official Statement, dated November 30, 19X5, is herein referred to as the Official Statement.

This letter is being furnished in reliance upon your representation to us that —

- a. You are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act).
- b. In connection with the offering of revenue bonds, the review process you have performed is substantially consistent with the due diligence review process that you would have performed if this placement of securities were being registered pursuant to the Act.

In connection with the Official Statement—

1. We are independent certified public accountants with respect to Example City, Any State and its Utility System under rule 101 of the AICPA's *Code of Professional Conduct*, and its interpretations and rulings.
2. We have not audited any financial statements of Example City, Any State Utility System as of any date or for any period subsequent to June 30, 19X5; although we have conducted an audit for the year ended June 30, 19X5, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the financial statements as of June 30, 19X5, and for the year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the financial position, results of operations, or cash flows as of any date or for any period subsequent to June 30, 19X5, for the Example City, Any State Utility System.
3. For purposes of this letter we have read the 19X5 minutes of the meetings of the City Council of Example City, Any State as set forth in the minutes books as of November 25, 19X5, the City Clerk of Example City having advised us that the minutes of all such meetings¹⁸ through that date were set forth therein.
4. With respect to the period subsequent to June 30, 19X5, we have carried out other procedures to November 25, 19X5, as follows (our work did not extend to the period from November 26, 19X5, to November 30, 19X5, inclusive):

- We have inquired of, and received assurance from, city officials who have responsibility for financial and accounting matters, that no financial statements as of any date or for any period subsequent to June 30, 19X5, are available.
- We have inquired of those officials regarding whether (a) at November 25, 19X5, there was any increase in long-term debt or any decrease in net current assets of Example City, Any State Utility System as compared with amounts shown on the June 30, 19X5, balance sheet, included in the Official Statement, or (b) for the period from July 1, 19X5, to November 25, 19X5, there were any decreases, as compared with the corresponding period in the preceding year, in total operating revenues, income from operations or net income. Those officials stated that (1) at November 25, 19X5, there was no increase in long-term debt and no decrease in net current assets of the Example City, Any State Utility System as compared with amounts shown in the June 30, 19X5, balance sheet; and (2) there were no decreases for the period from July 1, 19X5, to November 25, 19X5, as compared with the corresponding period in the preceding year, in total operating revenues, income from operations, or net income, except in all instances for changes, increases, or decreases that the Official Statement discloses have occurred or may occur.

5. For accounting data pertaining to the years 19X3 through 19X5, inclusive, shown on page 11 of the Official Statement, we have (i) for data shown in the audited financial statements, compared such data with the audited financial statements of the Example City, Any State Utility System for 19X3 through 19X5 and found them to be in agreement; and (ii) for data not directly shown in the audited financial statements, compared such data with the general ledger and accounting records of the Utility System from which such information was derived, and found them to be in agreement.

6. The procedures enumerated in the preceding paragraphs do not constitute an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States). Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

7. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Example City, Any State Utility System in connection with the offering of securities covered by the Official Statement, and it is not to be used, circulated, quoted, or otherwise referred to for any other purpose, including but not limited to the purchase or sale of securities, nor is it to be

filed with or referred to in whole or in part in the Official Statement or any other document, except that reference may be made to it in the Purchase Contract or in any list of closing documents pertaining to the offering of securities covered by the Official Statement.

Example Q: Letter to a Requesting Party That Has Not Provided the Representation Letter Described in Paragraphs .06 and .07

18. This example assumes that these procedures are being performed at the request of the placement agent on information included in an offering circular in connection with a private placement of unsecured notes with two insurance companies.¹⁹ The letter is dated June 30, 19X6; procedures were performed through June 25, 19X6, the cutoff date. The statements in paragraphs 5 through 9 of the example should be included in any letter issued pursuant to paragraph .09.²⁰

June 30, 19X6

[Addressee]

Dear Sirs:

We have audited the consolidated balance sheets of The Blank Company, Inc. (the company) and subsidiaries as of December 31, 19X5 and 19X4, and the consolidated statements of income, retained earnings (stockholders' equity), and cash flows for each of the three years in the period ended December 31, 19X5, included in the offering circular for \$30,000,000 of notes due June 30, 20X6. Our report with respect thereto is included in the offering circular. The offering circular dated June 30, 19X6, is herein referred to as the offering circular.

We are independent certified public accountants with respect to the company under Public Company Accounting Oversight Board Rule 3520, *Auditor Independence*.²¹

We have not audited any financial statements of the company as of any date or for any period subsequent to December 31, 19X5; although we have conducted an audit for the year ended December 31, 19X5, the purpose (and, therefore, the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 31, 19X5, and for the year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month

periods ended March 31, 19X6 and 19X5, included in the offering circular, or on the financial position, results of operations, or cash flows as of any date or for any period subsequent to December 31, 19X5.

1. At your request, we have read the 19X6 minutes of meetings of the stockholders, the board of directors, and [*include other appropriate committees, if any*] of the company as set forth in the minute books at June 25, 19X6, officials of the company having advised us that the minutes of all such meetings²² through that date were set forth therein; we have carried out other procedures to June 25, 19X6 (our work did not extend to the period from June 26, 19X6, to June 30, 19X6, inclusive), as follows:

- a. With respect to the three-month periods ended March 31, 19X6 and 19X5, we have—
 - (i) Read the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows^{23 24} of the company for the three-month periods ended March 31, 19X6 and 19X5, included in the offering circular, and agreed the amounts contained therein with the company's accounting records as of March 31, 19X6 and 19X5, and for the three-month periods then ended.
 - (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited condensed consolidated financial statements referred to in a(i) are in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited consolidated financial statements included in the offering circular. Those officials stated that the unaudited condensed consolidated financial statements are in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited consolidated financial statements.

b. With respect to the period from April 1, 19X6, to May 31, 19X6, we have—

- (i) Read the unaudited condensed consolidated financial statements of the company for April and May of both 19X5 and 19X6, furnished us by the company, and agreed the amounts contained therein with the company's accounting records. Officials of the company have advised us that no financial statements as of any date or for any period subsequent to May 31, 19X6, were available.

(ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether (1) the unaudited condensed consolidated financial statements referred to in *b(i)* are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the offering circular, (2) at May 31, 19X6, there was any change in the capital stock, increase in long-term debt or any decrease in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 19X6, unaudited condensed consolidated balance sheet included in the offering circular, and (3) for the period from April 1, 19X6, to May 31, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income.

Those officials stated that (1) the unaudited condensed consolidated financial statements referred to in *b(ii)* are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the offering circular, (2) at May 31, 19X6, there was no change in the capital stock, no increase in long-term debt, and no decrease in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 19X6, unaudited condensed consolidated balance sheet included in the offering circular, and (3) there were no decreases for the period from April 1, 19X6, to May 31, 19X6, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income.

c. As mentioned in *1b*, company officials have advised us that no financial statements as of any date or for any period subsequent to May 31, 19X6, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after May 31, 19X6, have, of necessity, been even more limited than those with respect to the periods referred to in *1a* and *1b*. We have inquired of certain officials of the company who have responsibility for financial and accounting matters whether (i) at June 25, 19X6, there was any change in the capital stock, increase in long-term debt, or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 19X6, unaudited condensed consolidated balance sheet included in the offering circular or (ii) for the period from April 1, 19X6, to June 25, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income.

Those officials referred to above stated that (i) at June 25, 19X6, there was no change in the capital stock, no increase in long-term debt, and no decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 19X6, unaudited

condensed consolidated balance sheet, and (ii) there were no decreases for the period from April 1, 19X6, to June 25, 19X6, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income.

2. At your request, we have read the following items in the offering circular on the indicated pages.²⁵

<i>Item</i>	<i>Page</i>	<i>Description</i>
<i>a</i>	13	"History and Business—Sales and Marketing." The table following the first paragraph.
<i>b</i>	22	"Executive Compensation—19X5 Compensation."
<i>c</i>	33	"Selected Financial Data." ²⁶

3. Our audits of the consolidated financial statements for the periods referred to in the introductory paragraph of this letter comprised audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred to therein, nor for any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.

4. However, at your request, we have performed the following additional procedures, which were applied as indicated with respect to the items enumerated above.

Item in 2 *Procedures and Findings*

- a.* We compare the amounts of military sales, commercial sales, and total sales shown in the registration statement with the balances in the appropriate accounts in the company's accounting records for the respective fiscal years and for the unaudited interim periods and found them to be in agreement. We proved the arithmetic accuracy of the percentages of such amounts of military sales and commercial sales to total sales for the respective fiscal years and for the unaudited interim periods. We compared such computed percentages with the corresponding percentages appearing in the registration statement and found them to be in agreement.
- b.* We compared the dollar amounts of compensation (salary, bonus, and other compensation) for each individual listed in the table

"Annual Compensation" with the corresponding amounts shown by the individual employee earnings records for the year 19X5 and found them to be in agreement. We compared the dollar amounts shown under the heading of "Long-Term Compensation" on page 24 for each listed individual and the aggregate amounts for executive officers with corresponding amounts shown in an analysis prepared by the company and found such amounts to be in agreement.

- c. We compared the amounts of net sales, income from continuing operations, income from continuing operations per common share, and cash dividends declared per common share for the years ended December 31, 19X5, 19X4, and 19X3, with the respective amounts in the consolidated financial statements on pages 27 and 28 and the amounts for the years ended December 31, 19X2, and 19X1, with the respective amounts in the consolidated financial statements included in the company's annual reports to stockholders for 19X2 and 19X1 and found them to be in agreement.

We compared the amounts of total assets, long-term obligations, and redeemable preferred stock at December 31, 19X5 and 19X4, with the respective amounts in the consolidated financial statements on pages 27 and 28 and the amounts at December 31, 19X3, and 19X2, and 19X1 with the corresponding amounts in the consolidated financial statements included in the company's annual reports to stockholders for 19X3, 19X2, and 19X1 and found them to be in agreement.

5. It should be understood that we have no responsibility for establishing (and did not establish) the scope and nature of the procedures enumerated in paragraphs 1 through 4 above; rather, the procedures enumerated therein are those the requesting party asked us to perform. Accordingly, we make no representations regarding questions of legal interpretation²⁷ or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraphs; also, such procedures would not necessarily reveal any material misstatement of the amounts or percentages listed above as set forth in the offering circular. Further, we have addressed ourselves solely to the foregoing data and make no representations regarding the adequacy of disclosures or whether any material facts have been omitted. This letter relates only to the financial statement items specified above and does not extend to any financial statement of the company taken as a whole.

6. The foregoing procedures do not constitute an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States). Had we performed additional procedures or had we conducted an audit or a review of the company's March 31, April 30, or May 31, 19X6 and 19X5, condensed consolidated financial statements in accordance with the standards of the Public Company Accounting Oversight Board, other matters might have come to our attention that would have been reported to you.

7. These procedures should not be taken to supplant any additional inquiries or procedures that you would undertake in your consideration of the proposed offering.

8. This letter is solely for your information and to assist you in your inquiries in connection with the offering of the securities covered by the offering circular, and it is not to be used, circulated, quoted, or otherwise referred to for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the offering document or any other document, except that reference may be made to it in any list of closing documents pertaining to the offering of the securities covered by the offering document.

9. We have no responsibility to update this letter for events and circumstances occurring after June 25, 19X6.

Example R: Comfort Letter That Includes Reference to Examination of Annual MD&A and Review of Interim MD&A

19. This example assumes the following circumstances.²⁸ The prospectus (part I of the registration statement) includes audited consolidated balance sheets as of December 31, 19X5 and 19X4, and audited consolidated statements of income, retained earnings (stockholders' equity), and cash flows for each of the three years in the period ended December 31, 19X5. Part I also includes an unaudited condensed consolidated balance sheet as of March 31, 19X6, and unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5. Part II of the registration statement includes audited consolidated financial statement schedules for the three years ended December 31, 19X5. The accountants have examined the company's management's discussion and analysis (MD&A) for the year ended December 31, 19X5, in accordance with AT section 701; the accountants have also performed reviews of the company's unaudited condensed consolidated financial statements, referred to above, in accordance with AS 4105, and the company's MD&A for the three-month period ended March 31, 19X6, in accordance with AT section 701. The accountant's reports on the examination and review of MD&A have been

previously issued, but not distributed publicly; none of these reports is included in the registration statement. The cutoff date is June 23, 19X6, and the letter is dated June 28, 19X6. The effective date is June 28, 19X6.

Each of the comments in the letter is in response to a requirement of the underwriting agreement. For purposes of example R, the income statement items of the current interim period are to be compared with those of the corresponding period of the preceding year.

June 28, 19X6

[Addressee]

Dear Sirs:

We have audited the consolidated balance sheets of The Blank Company, Inc. (the company) and subsidiaries as of December 31, 19X5 and 19X4, and the consolidated statements of income, retained earnings (stockholders' equity), and cash flows for each of the three years in the period ended December 31, 19X5, and the related financial statement schedules, all included in the registration statement (no. 33-00000) on Form S-1 filed by the company under the Securities Act of 1933 (the Act); our reports with respect thereto are also included in that registration statement. The registration statement, as amended on June 28, 19X6, is herein referred to as the registration statement. Also, we have examined²⁹ the company's Management's Discussion and Analysis for the year ended December 31, 19X5, included in the registration statement, as indicated in our report dated March 28, 19X6; our report with respect thereto is attached.³⁰ We have also reviewed the unaudited condensed consolidated financial statements as of March 31, 19X6 and 19X5, and for the three-month periods then ended, included in the registration statement, as indicated in our report dated May 15, 19X6, and have also reviewed the company's Management's Discussion and Analysis for the three-month period ended March 31, 19X6, included in the registration statement, as indicated in our report dated May 15, 19X6; our reports with respect thereto are attached.³¹

In connection with the registration statement—

1. We are independent certified public accountants with respect to the company within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC.
2. In our opinion [*include the phrase "except as disclosed in the registration statement," if applicable*], the consolidated financial statements and financial statement schedules audited by us and included in the registration

statement comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.

3. We have not audited any financial statements of the company as of any date or for any period subsequent to December 31, 19X5; although we have conducted an audit for the year ended December 31, 19X5, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 31, 19X5, and for the year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 1, 19X6 and 19X5, included in the registration statement, or on the financial position, results of operations, or cash flows as of any date or for any period subsequent to December 31, 19X5.

4. We have not examined any management's discussion and analysis of the company as of or for any period subsequent to December 31, 19X5; although we have made an examination of the company's Management's Discussion and Analysis for the year ended December 31, 19X5, included in the company's registration statement, the purpose (and therefore the scope) of the examination was to enable us to express our opinion on such Management's Discussion and Analysis, but not on the management's discussion and analysis for any interim period within that year. Therefore, we are unable to and do not express any opinion on the Management's Discussion and Analysis for the three-month period ended March 31, 19X6, included in the registration statement, or for any period subsequent to March 31, 19X6.

5. For purposes of this letter we have read the 19X6 minutes of meetings of the stockholders, the board of directors, and [*include other appropriate committees, if any*] of the company and its subsidiaries as set forth in the minute books at June 23, 19X6, officials of the company having advised us that the minutes of all such meetings³² through that date were set forth therein; we have carried out other procedures to June 23, 19X6, as follows (our work did not extend to the period from June 24, 19X6, to June 28, 19X6, inclusive):

- a. With respect to the three-month periods ended March 31, 19X6 and 19X5, we have inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the unaudited condensed consolidated statements of

income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5, included in the registration statement, comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.

b. With respect to the period from April 1, 19X6, to May 31, 19X6, we have

—

- (i) Read the unaudited consolidated financial statements³³ of the company and subsidiaries for April and May of both 19X5 and 19X6 furnished to us by the company, officials of the company having advised us that no such financial statements as of any date or for any period subsequent to May 31, 19X6, were available.
- (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited consolidated financial statements referred to in item b(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the registration statement.

The foregoing procedures do not constitute an audit of financial statements conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States). Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

6. Nothing came to our attention as a result of the foregoing procedures, however, that caused us³⁴ to believe that—

- a. The unaudited condensed consolidated financial statements described in item 5a do not comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC.
- b.
 - (i) At May 31, 19X6, there was any change in the capital stock, increase in long-term debt, or decrease in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 19X6, unaudited condensed consolidated balance sheet included in the registration statement, or
 - (ii) For the period from April 1, 19X6, to May 31, 19X6, there were any decreases, as compared to the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of

income before extraordinary items or of net income, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

7. As mentioned in item 5b, company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to May 31, 19X6, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after May 31, 19X6, have, of necessity, been even more limited than those with respect to the periods referred to in item 5. We have inquired of certain officials of the company who have responsibility for financial and accounting matters whether (a) at June 23, 19X6, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 19X6, unaudited condensed consolidated balance sheet included in the registration statement or (b) for the period from April 1, 19X6, to June 23, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income. On the basis of these inquiries and our reading of the minutes as described in item 5, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

8. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the company in connection with the offering of the securities covered by the registration statement, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the registration statement or any other document, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the registration statement.

Footnotes (AS 6101 - Letters for Underwriters and Certain Other Requesting Parties):

^[1] [Footnote deleted.]

2 The term *underwriter* is defined in section 2 of the Act as "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a participation in the direct or indirect participation in any such undertaking or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph, the term *issuer* shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."

3 This section is not intended to preclude accountants from providing to the client's board of directors, when appropriate, a letter addressed to the board of directors similar in content to a comfort letter. See the auditing interpretation "Letters to Directors Relating to Annual Reports on Form 10-K" (paragraphs .01-.09 of AI 27, *Letters for Underwriters and Certain Other Requesting Parties: Auditing Interpretations of AS 6101*).

4 It is recognized that what is "substantially consistent" may vary from situation to situation and may not be the same as that done in a registered offering of the same securities for the same issuer; whether the procedures being, or to be, followed will be "substantially consistent" will be determined by the requesting party on a case-by-case basis.

5 If a nonunderwriter requests a comfort letter in connection with a securities offering pursuant to the Act, the wording of the representation letter should be revised as follows:

"This review process . . . is substantially consistent with the due diligence review process that an underwriter would perform in connection with this placement of securities. We are knowledgeable with respect to the due diligence review process that an underwriter would perform in connection with a placement of securities registered pursuant to the Securities Act of 1933."

6 In an acquisition of securities, this sentence could be reworded to refer to "issuance of securities." See paragraph .05.

7 If this letter is requested in connection with a secured debt offering, the accountants should also refer to the attest interpretation "Responding to Requests for Reports on Matters Relating to Solvency" (AT section 9101.23-.33) for inclusion of additional statements.

⁸ See the auditing interpretation "Consenting to Be Named as an Expert in an Offering Document in Connection With Securities Offerings Other Than Those Registered Under the Securities Act of 1933" (paragraphs .12-.15 of AI 26, *Responsibilities Regarding Filings Under Federal Securities Statutes: Auditing Interpretations of AS 4101*).

⁹ See AS 4101, *Responsibilities Regarding Filings Under Federal Securities Statutes*, for a discussion of certain responsibilities of accountants that result from the inclusion of their reports in registration statements.

¹⁰ Negative assurance consists of a statement by accountants that, as a result of performing specified procedures, nothing came to their attention that caused them to believe that specified matters do not meet a specified standard (for example, that nothing came to their attention that caused them to believe that any material modifications should be made to the unaudited financial statements or unaudited condensed financial statements for them to be in conformity with generally accepted accounting principles).

¹¹ It is important to note that although the illustrations in this section describe procedures that may be followed by accountants as a basis for their comments in comfort letters, this section does not necessarily prescribe such procedures.

¹² Except when the context otherwise requires, the word underwriter (or certain other requesting parties, as described in paragraphs .03, .04, and .05), as used in this section refers to the managing, or lead, underwriter, who typically negotiates the underwriting agreement for a group of underwriters whose exact composition is not determined until shortly before a registration statement becomes effective. In competitive bidding situations in which legal counsel for the underwriters acts as the underwriters' representative prior to opening and acceptance of the bid, the accountants should carry out the discussions and other communications contemplated by this section with the legal counsel until the underwriter is selected.

¹³ When the accountants have been requested to provide negative assurance on interim financial information or capsule financial information and the procedures required for an AS 4105, *Reviews of Interim Financial Information*, review have been performed, those procedures need not be specified. See paragraphs .37 through .41.

¹⁴ In the absence of any discussions with the underwriter, the accountants should outline in the draft letter those procedures specified in the underwriting agreement that they are willing to perform. In that event, the sentence to which this footnote refers should be revised as follows: "In the absence of any discussions with [*name of underwriter*], we have set out in this draft letter those procedures referred to in the draft underwriting agreement (of which we have been furnished a copy) that we are willing to follow."

¹⁵ Regulation S-X, "Form and Content of and Requirements for Financial Statements, Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Company Act of 1940, and Energy Policy and Conservation Act of 1975."

¹⁶ Regulation S-K, "Standard Instructions for Filing Forms Under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975."

¹⁷ An example of an appropriate form of address for this purpose is "The Blank Company and XYZ & Company, as Representative of the Several Underwriters."

¹⁸ The accountants may also refer in the opening paragraph to expansions of their report that do not affect their opinion on the basic financial statements, for example, expansions of their report regarding (a) interim financial information accompanying or included in the notes to audited financial statements (see AS 4105.50) or (b) required supplementary information described in paragraphs .08 through .11 of AS 2705, *Required Supplementary Information*. See paragraph .30 of this section.

¹⁹ The accountants need not refer to or discuss explanatory paragraphs covering consistency of application of accounting principles.

²⁰ See AS 3110.03 through .08.

²¹ Except for a review report on management's discussion and analysis (MD&A), the accountants should not refer to or attach to the comfort letter any restricted use report, such as a report on agreed-upon procedures.

²² When the accountant does not perform a review or an examination of MD&A or does not attach or refer to a report on MD&A, the accountant may perform agreed-upon procedures with respect to items in MD&A, subject to controls over financial reporting (see paragraph .55).

^{22a} The SEC, in Financial Reporting Release No. 50 dated February 18, 1998, recognized the establishment of the Independence Standards Board (ISB) and indicated that the SEC intends to look to the ISB as the private sector body responsible for establishing independence standards and interpretations for auditors of public entities.

²³ The phrase rules and regulations adopted by the SEC is used because accountants should not be expected to be familiar with, or express assurances on compliance with, informal positions of the SEC staff.

²⁴ Certain financial statements may be incorporated in a registration statement under the Act by reference to filings under the Securities Exchange Act of 1934 (the 1934 Act). In those circumstances, the accountants may refer to whether the audited financial statements and financial statement schedules included (incorporated by reference) in the registration statement comply as to form in all material respects with the applicable accounting requirements of the 1934 Act and the related rules and regulations adopted by the SEC (see example B [paragraph .64]). However, the accountants should not refer to compliance with the provisions of the 1934 Act regarding internal accounting control. See AT section 501, *Reporting on an Entity's Internal Control Over Financial Reporting*, paragraph .82.

²⁵ Departures from rules and regulations adopted by the SEC that require mention in a comfort letter ordinarily do not affect fair presentation in conformity with generally accepted accounting principles; however, if they do, the accountants will, of course, mention these departures in expressing their opinion and in consenting to the use of their report in the registration statement. If departures from rules and regulations adopted by the SEC that require mention in a comfort letter either are not disclosed in the registration statement or have not been agreed to by representatives of the SEC, the accountants should carefully consider whether a consent to the use of their report in the registration statement should be issued.

²⁶ Accountants should not comment in a comfort letter on compliance as to form of MD&A with rules and regulations adopted by the SEC; accountants may agree to examine or review MD&A in accordance with AT section 701.

²⁷ The SEC requirements specify condensed financial statements. However, the guidance in paragraphs .37 and .38 also applies to complete financial statements. For purposes of this section, interim financial statements may be for a twelve-month period ending on a date other than the entity's normal year end.

²⁸ When accountants are engaged to perform procedures on interim financial information, they may have additional responsibilities under certain circumstances. The accountants should refer to AS 4105 for guidance.

²⁹ For purposes of issuing a comfort letter, if the forecast is included in the registration statement, the forecast must be accompanied by an indication that the accountants have not examined the forecast and therefore do not express an opinion on it. If a compilation report on the forecast has been issued in connection with the comfort letter, the report need not be included in the registration statement.

³⁰ When a client's securities are subject to regulation by the SEC, the accountants should be aware of the SEC's views regarding independence when agreeing to perform a compilation of a forecast. Independence may be deemed to be impaired when services include preparation or assembly of financial forecasts. The SEC

generally will not question the accountants' independence, however, when services are limited to issuing a report on a forecast as a result of performing the procedures stated in paragraph 5 of AT section 301.69.

³¹ The answers to these inquiries generally should be supported by appropriate written representations of the company officials.

³² Accountants generally will be unable to comment on nonfinancial data presented in MD&A. However, when the accountants have conducted an examination or a review of MD&A in accordance with AT section 701, they may agree to trace nonfinancial data presented outside MD&A to similar data included in the MD&A presentation. When the accountant does not perform a review or an examination of MD&A or does not attach or refer to a report on MD&A, the accountant may perform agreed-upon procedures with respect to items in MD&A subject to controls over financial reporting.

³³ Accountants should not comment in a comfort letter on compliance as to form of MD&A with rules and regulations adopted by the SEC; accountants may agree to examine or review MD&A in accordance with AT section 701.

³⁴ See paragraph .30 regarding requests by an underwriter for comments on interim financial information required by item 302(a) of Regulation S-K and required supplementary information described in AS 2705.

³⁵ When the letter is furnished by the accountants for a subsidiary and they are not also accountants for the parent company, the letter should include the following phrase at this point: "and for the use of the accountants for [*name of issuer*] in furnishing their letter to the underwriters."

Footnotes (Appendix - Examples):

¹ The example includes financial statements required by SEC regulations to be included in the filing. If additional financial information is covered by the comfort letter, appropriate modifications should be made.

² The example assumes that the accountants have not previously reported on the interim financial information. If the accountants have previously reported on the interim financial information, they may refer to that fact in the introductory paragraph of the comfort letter as follows:

Also, we have reviewed the unaudited condensed consolidated financial statements as of March 31, 19X6 and 19X5, and for the three-month periods then ended, as indicated in our report dated May 15, 19X6, which is included (incorporated by reference) in the registration statement. The report may be attached to the comfort letter (see paragraph .29). The accountants may agree to comment in the comment letter on whether the interim financial information complies as to form in all material respects with the applicable accounting requirements of the rules and regulations adopted by the SEC.

³ The accountants should discuss with the secretary those meetings for which minutes have not been approved. The letter should be modified to identify specifically the unapproved minutes of meetings that the accountants have discussed with the secretary.

⁴ If the interim financial information is incomplete, a sentence similar to the following should be added: "The financial information for April and May is incomplete in that it omits the statements of cash flows and other disclosures."

⁵ If there has been a change in accounting principle during the interim period, a reference to that change should be included herein.

⁶ AS 4105 does not require the accountants to modify the report on a review of interim financial information for a lack of consistency in the application of accounting principles provided that the interim financial information appropriately discloses such matters.

⁷ See footnote 3 of the Appendix.

⁸ See footnote 4 of the Appendix.

⁹ In some cases it may be considered desirable to combine in one paragraph the substance of paragraphs 7 and 9. This may be done by expanding the identification of items in paragraph 9 to provide the identification information contained in paragraph 7. In such cases, the introductory sentences in paragraphs 7 and 9 and the text of paragraph 8 might be combined as follows: "For purposes of this letter, we have also read the following information and have performed the additional procedures stated below with respect to such information. Our audit of the consolidated financial statements . . ."

¹⁰ In some cases the company or the underwriter may request that the independent accountants report on "selected financial data" as described in AS 3315, *Reporting on Condensed Financial Statements and Selected Financial Data*.

When the accountants report on this data and the report is included in the registration statement, separate comments should not be included in the comfort letter (see paragraph .30).

¹¹ Other methods of summarizing the descriptions may also be appropriately used. For example, the letter may present a matrix listing the financial information and common procedures employed and indicating the procedures applied to specific items.

¹² See footnote 10 of the Appendix.

¹³ See paragraph .55.

* Assumes no exercise of the Underwriters' overallotment option. See "Underwriting".

¹⁴ See footnote 3 of the Appendix.

¹⁵ See footnote 3 of the Appendix.

¹⁶ See footnote 5 of the Appendix.

¹⁷ See footnote 4 of the Appendix.

¹⁸ See footnote 3 of paragraph .03.

¹⁹ This same example could be used in conjunction with a municipal bond offering in which the accountant has not received the representation letter described in paragraphs .06 and .07.

²⁰ This example may also be used in connection with a filing under the Securities Act of 1933 (the Act) when a party other than a named underwriter (for example, a selling shareholder) has not provided the accountant with the representation letter described in paragraphs .06 and .07. In such a situation, this example may be modified to include the accountant's comments on independence and compliance as to form of the audited financial statements and financial statement schedules with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC. Example paragraph 1a(ii) may include an inquiry, and the response of company officials, on compliance as to form of the unaudited condensed interim financial statements.

²¹ See paragraphs .31 and .32 for guidance in commenting on independence.

²² See footnote 3 of the Appendix.

²³ See footnotes 4 and 5 of the Appendix.

²⁴ Generally, accountants should recognize that the criteria for summarized financial information have not been established for entities other than SEC registrants.

²⁵ In some cases it may be considered desirable to combine in one paragraph the substance of paragraphs 2 and 4. This may be done by expanding the identification of terms in paragraph 4 to provide the identification information contained in paragraph 2. In such cases the introductory sentences in paragraphs 2 and 4 and the text of paragraph 3 might be combined as follows: "At your request, we have also read the following information and have performed the additional procedures stated below with respect to such information. Our audit of the consolidated financial statements. . . ."

²⁶ See footnote 10 of the Appendix.

²⁷ See footnote 7 to paragraph .09.

²⁸ The example includes financial statements required by SEC regulations to be included in the filing. If additional financial information is covered by the comfort letter, appropriate modifications should be made.

²⁹ If the accountant has performed a review of the company's annual MD&A, the opening paragraph of the comfort letter should be revised accordingly.

³⁰ The accountant has elected to attach the previously issued reports to the comfort letter (see paragraph .29).

³¹ See footnote 30 of the Appendix.

³² See footnote 3 of the Appendix.

³³ See footnote 4 of the Appendix.

³⁴ See footnote 5 of the Appendix.

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General Auditing Standards



Audit Procedures



Auditor Reporting



Matters Relating to Filings Under Federal Securities Laws



Other Matters Associated with Audits



[AS 6101: Letters for Underwriters and Certain Other Requesting Parties](#)

[AS 6105: Reports on the Application of Accounting Principles](#)

[AS 6110: Compliance Auditing Considerations in Audits of Recipients of Governmental Financial Assistance](#)

[AS 6115: Reporting on Whether a Previously Reported Material Weakness Continues to Exist](#)



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TAB 4

Form of Comfort Letter
(per Examples A, B and F in AS 6101)

June 28, 19X6

[Addressees]

Dear Sirs:

We have audited the consolidated balance sheets of The Blank Company, Inc. (the company) and subsidiaries as of December 31, 19X5 and 19X4, and the consolidated statements of income, retained earnings (stockholders' equity), and cash flows for each of the three years in the period ended December 31, 19X5, and the related financial statement schedules, all included (incorporated by reference) in the company's annual report on Form 10-K for the year ended December 31, 19X5, and incorporated by reference in the registration statement (no. 33-00000) on Form S-3 filed by the company under the Securities Act of 1933 (the Act); our report with respect thereto is also incorporated by reference in that registration statement. The registration statement, as amended on June 28, 19X6, is herein referred to as the registration statement.

In connection with the registration statement —

1. We are independent certified public accountants with respect to the company within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC.
2. In our opinion, the consolidated financial statements and financial statement schedules audited by us and incorporated by reference in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Act and the Securities Exchange Act of 1934 and the related rules and regulations adopted by the SEC.
3. We have not audited any financial statements of the company as of any date or for any period subsequent to December 31, 19X5; although we have conducted an audit for the year ended December 31, 19X5, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 31, 19X5, and for the year then ended, but not on the consolidated financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the unaudited condensed consolidated balance sheet as of March 31, 19X6, and the unaudited condensed consolidated statements of income, retained earnings (stockholders' equity), and cash flows for the three-month periods ended March 31, 19X6 and 19X5, included in the company's quarterly report on Form 10-Q for the quarter ended March 31, 19X6, incorporated by reference in the registration statement, or on the financial position, results of operations, or cash flows as of any date or for any period subsequent to December 31, 19X5.

4. For purposes of this letter, we have read the 19X6 minutes of the meetings of the stockholders, the board of directors, and [*include other appropriate committees, if any*] of the company and its subsidiaries as set forth in the minute books at June 23, 19X6, officials of the company having advised us that the minutes of all such meetings through that date were set forth therein; we have carried out other procedures to June 23, 19X6, as follows (our work did not extend to the period from June 24, 19X6, to June 28, 19X6, inclusive):

a. With respect to the three-month periods ended March 31, 19X6 and 19X5, we have—

- (i) Performed the procedures specified by the Public Company Accounting Oversight Board (United States) for a review of interim financial information as described in AS 4105, *Reviews of Interim Financial Information*, on the unaudited condensed consolidated financial statements for these periods, described in 3, included in the company's quarterly report on Form 10-Q for the quarter ended March 31, 19X6, incorporated by reference in the registration statement.
- (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited condensed consolidated financial statements referred to in a(i) comply as to form in all material respects with the applicable accounting requirements of the Securities Exchange Act of 1934 as it applies to Form 10-Q and the related rules and regulations adopted by the SEC.

b. With respect to the period from April 1, 19X6, to May 31, 19X6, we have —

- (i) Read the unaudited consolidated financial statements of the company and subsidiaries for April and May of both 19X5 and 19X6 furnished us by the company, officials of the company having advised us that no such financial statements as of any date or for any period subsequent to May 31, 19X6, were available.
- (ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited consolidated financial statements referred to in b(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements incorporated by reference in the registration statement.

The foregoing procedures do not constitute an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations about the sufficiency of the foregoing procedures for your purposes.

5. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that—

a.

- (i) Any material modifications should be made to the unaudited condensed consolidated financial statements described in 3, incorporated by reference in the registration statement, for them to be in conformity with generally accepted accounting principles.
- (ii) The unaudited condensed consolidated financial statements described in 3 do not comply as to form in all material respects with the applicable accounting requirements of the Securities Exchange Act of 1934 as it applies to Form 10-Q and the related rules and regulations adopted by the SEC.

b.

- (i) At May 31, 19X6, there was any change in the capital stock, increase in long-term debt, or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown in the March 31, 19X6 unaudited condensed consolidated balance sheet incorporated by reference in the registration statement or
- (ii) for the period from April 1, 19X6, to May 31, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

6. As mentioned in 4*b*, company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to May 31, 19X6, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after May 31, 19X6, have, of necessity, been even more limited than those with respect to the periods referred to in 4. We have inquired of certain officials of the company who have responsibility for financial and accounting matters whether (*a*) at June 23, 19X6, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the consolidated companies as compared with amounts shown on the March 31, 19X6, unaudited condensed consolidated balance sheet included in the registration statement or (*b*) for the period from April 1, 19X6, to June 23, 19X6, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income. On the basis of these inquiries and our reading of the minutes as described in 4, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

7. For purposes of this letter, we have also read the following, set forth in the registration statement on the indicated pages.

<i>Item</i>	<i>Page</i>	<i>Description</i>
<i>a</i>	4	"Capitalization." The amounts under the captions "Amount Outstanding as of June 15, 19X6" and "As Adjusted." The related notes, except the following in Note 2: "See 'Transactions With Interested Persons.' From the proceeds of this offering the company intends to prepay \$900,000 on these notes, pro rata. See 'Use of Proceeds.'"
<i>b</i>	13	"History and Business—Sales and Marketing." The table following the first paragraph.
<i>c</i>	22	"Executive Compensation—19X5 Compensation."
<i>d</i>	33	"Selected Financial Data."

8. Our audit of the consolidated financial statements for the periods referred to in the introductory paragraph of this letter comprised audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred to therein, or any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.

9. However, for purposes of this letter we have performed the following additional procedures, which were applied as indicated with respect to the items enumerated above.

Item in 7 Procedures and Findings

- a.* We compared the amounts and numbers of shares listed under the caption "Amount Outstanding as of June 15, 19X6" with the balances in the appropriate accounts in the company's general ledger at May 31, 19X6 (the latest date for which posting had been made), and found them to be in agreement. We were informed by company officials who have responsibility for financial and accounting matters that there have been no changes in such amounts and numbers of shares between May 31, 19X6, and June 15, 19X6. We compared the amounts and numbers of shares listed under the caption "Amount Outstanding as of June 15, 19X6," adjusted for the issuance of the debentures to be offered by means of the registration statement and for the proposed use of a portion of the proceeds thereof to prepay portions of certain notes, as described under "Use of Proceeds," with the amounts and numbers of shares shown under the caption "As Adjusted" and found such amounts and numbers of shares to be in agreement. (However, we make no comments regarding

- the reasonableness of the "Use of Proceeds" or whether such use will actually take place.) We compared the description of the securities and the information (except certain information in Note 2, referred to in 7) included in the notes to the table with the corresponding descriptions and information in the company's consolidated financial statements, including the notes thereto included in the registration statement, and found such description and information to be in agreement.
- b. We compared the amounts of military sales, commercial sales, and total sales shown in the registration statement with the balances in the appropriate accounts in the company's accounting records for the respective fiscal years and for the unaudited interim periods and found them to be in agreement. We proved the arithmetic accuracy of the percentages of such amounts of military sales and commercial sales to total sales for the respective fiscal years and for the unaudited interim periods. We compared such computed percentages with the corresponding percentages appearing in the registration statement and found them to be in agreement.
 - c. We compared the dollar amounts of compensation (salary, bonus, and other compensation) for each individual listed in the table "Annual Compensation" with the corresponding amounts shown by the individual employee earnings records for the year 19X5 and found them to be in agreement. We compared the dollar amount of aggregate executive officers' cash compensation on page 22 with the corresponding amount shown in an analysis prepared by the company and found the amounts to be in agreement. We traced every item over \$10,000 on the analysis to the individual employee records for 19X5. We compared the dollar amounts shown under the heading of "Long-Term Compensation" on page 24 for each listed individual and the aggregate amounts for executive officers with corresponding amounts shown in an analysis prepared by the company and found such amounts to be in agreement.

We compared the executive compensation information with the requirements of item 402 of Regulation S-K. We also inquired of certain officials of the company who have responsibility for financial and accounting matters whether the executive compensation information conforms in all material respects with the disclosure requirements of item 402 of Regulation S-K. Nothing came to our attention as a result of the foregoing procedures that caused us to believe that this information does not conform in all material respects with the disclosure requirements of item 402 of Regulation S-K.

- d. We compared the amounts of net sales, income from continuing operations, income from continuing operations per common share, and cash dividends declared per common share for the years ended December 31, 19X5, 19X4, and 19X3, with the respective amounts in the consolidated financial statements on pages 27 and 28 and the amounts for the years ended December 31, 19X2, and 19X1, with the respective amounts in the consolidated financial statements included in the company's annual reports to stockholders for 19X2 and 19X1 and found them to be in agreement.

We compared the amounts of total assets, long-term obligations, and redeemable preferred stock at December 31, 19X5 and 19X4, with the respective amounts in the consolidated financial statements on pages 27 and 28 and the amounts at December 31, 19X3, and 19X2, and 19X1 with the corresponding amounts in the consolidated financial statements included in the company's annual reports to stockholders for 19X3, 19X2, and 19X1 and found them to be in agreement.

We compared the information included under the heading "Selected Financial Data" with the requirements of item 301 of Regulation S-K. We also inquired of certain officials of the company who have responsibility for financial and accounting matters whether this information conforms in all material respects with the disclosure requirements of item 301 of Regulation S-K. Nothing came to our attention as a result of the foregoing procedures that caused us to believe that this information does not conform in all material respects with the disclosure requirements of item 301 of Regulation S-K.

10. It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of the amounts or percentages listed above. Further, we have addressed ourselves solely to the foregoing data as set forth in the registration statement and make no representations regarding the adequacy of disclosure or regarding whether any material facts have been omitted.

11. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the company in connection with the offering of the securities covered by the registration statement, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the registration statement or any other document, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the registration statement.

Very truly yours,

[Name of Auditors]

[Enclosures]

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TAB 5

Top 10 Practice Tips: Comfort Letters

A Practical Guidance® Practice Note by Anna Pinedo and Ryan Castillo, Mayer Brown LLP



Anna Pinedo
Mayer Brown LLP



Ryan Castillo
Mayer Brown LLP

This practice note discusses 10 practice points that can help you, as counsel to underwriters or initial purchasers, skillfully navigate the task of reviewing and negotiating comfort letters. A comfort letter is a letter delivered by an issuer's independent accountants to the underwriters or initial purchasers in connection with an offering that provides certain assurances with respect to financial information included in a registration statement, prospectus, or offering memorandum used for the securities offering.

Underwriting agreements and purchase agreements typically require the delivery of one or more comfort letters, in form and substance reasonably acceptable to the underwriters, initial purchasers, or their counsel, as a condition to closing the securities offering. Comfort letters assist underwriters in establishing a due diligence defense under Section 11 of the Securities Act and in creating a record of their reasonable investigation of the issuer and its financial condition to ensure there are no material misstatements or omissions in the offering document.

1. **Review AS 6101 and Relevant Comfort Letter Precedents.** The first order of business is to familiarize yourself with Auditing Standards No. 6101: Letters for Underwriters and Certain Other Requesting Parties (AS 6101) issued by the Public Company Accounting Oversight Board (PCAOB). AS 6101, available at <https://pcaobus.org/Standards/Auditing/Pages/AS6101.aspx>, superseded AU Section 634 of the PCAOB which, in turn, had codified the earlier Statements on Auditing Standards No. 72 (SAS 72) issued by the American Institute of Certified Public Accountants (AICPA). While AS 6101 is the latest iteration of the relevant U.S. accounting standard, in common practice, the term SAS 72 has nonetheless stuck and practitioners today often refer to a SAS 72 comfort letter or a SAS 72 review. AS 6101 provides guidance to auditors on the form and content of comfort letters, including whether it is appropriate for auditors to comment on specified matters, and if so, the form that those comments should take. It also contains sample language and forms of letters suitable for various offerings, and sets forth practical suggestions on how to reduce or avoid uncertainties regarding the nature and extent of the accountant's responsibilities in connection with a comfort letter. You also should review the Appendix in AS 6101 as it contains sample comfort letters that are oftentimes either replicated verbatim or substantially adopted by auditors. For instance, Example A in the Appendix prescribes language to be employed in a typical comfort letter, while Example B shows the language to use when the issuer files a short-form registration statement (such as a Form S-3) that incorporates by reference previously filed Forms 10-K and 10-Q.

Next, you should gather relevant comfort letter precedents. These would include comfort letters issued by the same audit firm for the same issuer in earlier offerings that are similar in type as the current offering; those issued by the same audit firm in securities offerings for other issuers that are peers of, or are active in the same industry as, the issuer; or those delivered by audit firms, in earlier similar deals, to joint book-runners or initial purchasers that are also participating in the current deal.

2. **Obtain a SAS 72 Rep Letter for Unregistered Offerings and Coordinate with Auditors Regarding Any Needed Preliminaries.**

In an SEC-registered offering, accountants may issue a comfort letter to named underwriters, as well as to other parties with a statutory due diligence defense under Section 11 of the Securities Act, such as, for instance, an agent under a registered medium-term note program. In the latter case, the requesting party must deliver to the accountants either an opinion from counsel that such party has a due diligence defense under Section 11 of the Securities Act or a SAS 72 representation letter as described below. In an exempt offering (such as a Rule 144A or a Regulation S offering), accountants may issue a comfort letter to a broker-dealer or other financial intermediary, acting as principal or agent in an offering of securities, if such broker-dealer or financial intermediary delivers a signed SAS 72 representation letter. In such a letter, the broker-dealer or financial intermediary represents that the due diligence undertaken by it in connection with the exempt offering is substantially consistent with the diligence that would have been undertaken in connection with acting as an underwriter in an SEC-registered offering. An example of a SAS 72 representation letter is provided in paragraph .07 of AS 6101, although in practice, each audit firm will have its own standard form. It is important for counsel to coordinate early with auditors and the broker-dealers regarding a requirement for, and the form and content of, the SAS 72 representation letter. Note that, in some instances, absent a signed SAS 72 representation letter, some audit firms will not participate in an accounting due diligence session or commence work on the comfort letter process. Also, remember that a named underwriter in an SEC-registered offering need not provide a SAS 72 representation letter. Ask the accountants to confirm that they are in a position to timely deliver the comfort letter and that any administrative or preliminary matters they need completed prior to their issuance of the comfort letter have been accomplished. Since the auditors are

engaged by the issuer itself, some audit firms will not deliver or release the comfort letter absent receipt of a signed engagement letter from the issuer or a management representation letter.

3. **Plan Ahead.** Be mindful of the nature of the deal and communicate in advance comfort letter coverage, timing, and logistics with the auditors. Capital markets transactions come in different shapes and sizes and have varying execution time lines. A good lawyer always plans ahead, clearly communicates goals, expectations, and follows through. Recognize that shelf takedowns, such as investment grade debt offerings, can go to market quickly, hence the comfort letter process must commence immediately and proceed on an accelerated time line. Right after the kickoff call or deal engagement, and with the permission of the issuer or its counsel, reach out to the audit firm so that they are aware of the deal, the offering time line, the documents as to which comfort will be requested, and the required timing for delivery of the comfort letter and any bring-down comfort letter. Bear in mind that audit firms themselves have their own internal processes (e.g., national office approval), and these often require some lead time. Identify at the start of the transaction which documents would be covered by the comfort letter. These would include not only financial information contained in the actual offering document (e.g., financial information and schedules included in an offering document), but also documents incorporated by reference into the offering document (e.g., the issuer's financial statements and financial schedules included in the short-form registration statement, its Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statement, and any free writing prospectus). Request a draft of the comfort letter from the auditors, provide comments on the draft, and send to the auditors the draft circle-up early in the offering process. Agree on the final form of the comfort letter as soon as practicable before pricing the offering. Ideally, the final draft of the comfort letter should be in agreed form before filing the registration statement or before finalizing the preliminary offering document (e.g., the preliminary offering memorandum or preliminary prospectus supplement) that is used to market the deal to investors. Note that the practice in most U.S. underwritten offerings is that a fulsome comfort letter is delivered at pricing (the time of sale) and a shorter, bring-down comfort letter is issued at closing. Make sure the auditors are aware of the time of pricing and confirm they are able to deliver the comfort letter shortly thereafter. The accountants

will usually ask to see the executed underwriting agreement before they release the signed comfort letter on pricing day. For closing, note that a number of audit firms will only issue and release the bring-down comfort letter on the closing date itself, so remember to remind the auditors regularly that they will need to deliver the bring-down letter early in the morning so that settlement of the deal can commence promptly on closing day. Note that the timing and frequency of comfort letters may also vary depending on the nature of the transaction. For instance, in medium-term note programs and at-the-market offerings, comfort letters are required in connection with the establishment of the program and may be brought down in the future, for instance, periodically, on a quarterly or annual basis, or in connection with a syndicated takedown.

4. **Mind the 135-day Rule and the Dates for Delivery of the Comfort Letter.** Accountants may provide negative assurance as to subsequent changes in specified financial statement items as of a date **less than** 135 days from the end of the most recent period for which the accountants have performed an audit or a review. If 135 days or more have elapsed since the date of the issuer's most recent audited annual financial statements or reviewed interim financial statements, on one hand, and the cut-off date of the comfort letter, on the other hand, then auditors will not be able to give any negative assurance as to subsequent changes in specified financial statement items. Rather, they will be limited to reporting procedures performed and findings obtained. To illustrate, if the accountants have reviewed the issuer's interim financial statements for the third quarter ended September 30, 2021, then they may provide negative assurance on increases or decreases in specified financial statement items as of any date up to February 11, 2022 (134 days subsequent to September 30, 2021). From February 12, 2022, which is the 135th day, the auditors will refuse to give negative assurance on the change period, since the September 30, 2021 interim financial statements then would not be less than 135 days old. See paragraphs .46 and .47 of AS 6101 for some illustrations of the application of the 135-day rule. Since the type of comfort that auditors would be willing to provide underwriters will be limited (i.e., from negative assurance to agreed-upon procedures) as of the 135th day following the most recent audited or reviewed financial statements, it is important to pay particular attention to the issuer's financial reporting cycle and factor this in the deal time line. Underwriters will often be unwilling to proceed with the deal if

they do not receive negative assurance on the change period. In the above illustration, the underwriters may decide to postpone the deal until after the issuer files its 2021 Form 10-K (that contains the year-end audited financial statements) in March 2022.

Pay particular attention to the dates specified in the comfort letter. The comfort letter is dated and delivered as of the date of the pricing of the offering, while the bring-down comfort letter is dated and issued as of the closing date. The comfort letter will include a cut-off date, which is the date up to which the auditors have performed their procedures as specified in the comfort letter. Paragraph .23 of AS 6101 says that the comfort letter should state that the inquiries and other procedures performed by the auditors do not cover the period from the cut-off date to the date of the comfort letter. While the cut-off date is subject to some negotiation, it is common practice for a comfort letter to have a cut-off date that is one to three business days before the date of the comfort letter, and for a bring-down comfort letter to have a cut-off date that is one to two business days before the closing date.

5. **Understand the Different Levels of Comfort That Auditors Provide.** The procedures undertaken by accountants with respect to financial information contained in or incorporated by reference into the offering document will dictate the level of comfort they are willing to give on such information. In reviewing the comfort letter to determine whether you are receiving the appropriate level of comfort, visualize a cascading waterfall, where each level represents a particular time period in the issuer's financial reporting cycle, the procedures performed by the accountants on available financial numbers covering that period, and the corresponding level of comfort accountants are willing to give as a result of those procedures.
 - **Year-End Audit of Annual Financial Statements.** At the top level are annual financial statements audited by accountants in accordance with the standards of the PCAOB and covered by an auditor's unqualified opinion. Regulation S-X under the Securities Act generally requires reporting companies to include two years of audited balance sheets and three years of audited statements of income, comprehensive income, changes in stockholders' equity, and cash flows in their registration statement and in the Annual Report on Form 10-K. Remember that the preparation of financial statements is the responsibility of management. Accountants in turn perform an audit, which consists of a set of

procedures that enable them to obtain reasonable assurance that the financial statements present fairly in all material respects the financial results of the issuer and are free from material misstatements. Such procedures include testing evidence that support amounts and disclosures in the financial statements, assessing accounting principles used and assumptions and estimates made by management, obtaining and testing samples from the company's accounting records, and evaluating management's presentation. The objective of the audit is for auditors to express an unqualified opinion that (1) the financial statements audited present fairly, in all material respects, the financial condition and results of operations of the issuer and its consolidated subsidiaries as of and for the periods covered and (2) that the financial statements have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP) or International Financial Reporting Standards (IFRS) as adopted by the International Accounting Standards Board (IASB). This positive assurance or formal opinion is the highest level of comfort possible. Since the audited financial statements and the auditor's report containing the auditor opinion are typically included in the registration statement or incorporated by reference into the offering document, no additional procedures need to be performed on the audited financials for purposes of the comfort letter. The comfort letter need not repeat the contents of the auditor opinion. Instead, the comfort letter will contain an acknowledgment that the accountants have audited the issuer's annual financial statements included in the offering document and have issued an opinion. Moreover, it is typical for underwriters to request accountants for another form of positive assurance, one relating to compliance as to form of the audited financials. In particular, underwriters will usually request, and the comfort letter will contain, language to the effect that, in the opinion of the accountants, the consolidated financial statements audited by them and included in or incorporated by reference in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act and related rules and regulations adopted by the SEC.

- **Interim Review of Quarterly Financial Statements.**

AS 6101 states that procedures short of an audit provide accountants with a basis for expressing, at most, negative assurance. Negative assurance consists of a statement by accountants that, as a

result of performing specified procedures, nothing came to their attention that caused them to believe that specified matters do not meet a specified standard. With respect to quarterly financial statements of reporting companies, accountants perform a limited interim review in accordance with Auditing Standards No. 4105: Reviews of Interim Financial Information (AS 4105) issued by the PCAOB, which was formerly codified as Statements on Auditing Standards No. 100 (SAS 100) issued by AICPA. A review of interim financial information differs significantly from an audit of financial information because a review does not include the collection of corroborative evidence through the performance of typical substantive audit tests. In performing a SAS 100 review, the accountants will, among other things, (1) review minutes of shareholder and board meetings, (2) make inquiries of management as to whether the interim financial statements are prepared in accordance with GAAP and whether there have been any changes in accounting principles or practices or in business activities, (3) compare current interim period financial statements to the comparable prior interim period financial statements, and (4) compare recorded amounts to expectations. The resulting level of comfort will be one of negative assurance. The typical formulation would be that, nothing has come to the attention of the accountants that caused them to believe that (1) any material modifications should be made to the unaudited quarterly financial statements for these to be in conformity with GAAP and (2) the unaudited quarterly financial statements do not comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act and related rules and regulations adopted by the SEC.

- **Specified Procedures on Internal Monthly Financial Statements.**

The period between the end of the last fiscal quarter up to the cut-off date of the comfort letter is commonly referred to as the "change period" or "bring-down period." This period can be further divided into the time period for which the issuer has prepared internal monthly financial statements, and the remaining period for which no internal financial statements are available. The procedures accountants can perform on the period covered by internal monthly financials are more limited than a SAS 100 review. These would include reading the monthly financial statements and making certain inquiries of officials of the issuer who have responsibility for financial and accounting matters, such as whether

the monthly statements are stated on a basis substantially consistent with the audited consolidated financial statements incorporated by reference in the offering document. Accountants will compare (1) key balance sheet items found in the most recent monthly statements against the corresponding items found in the most recent balance sheet included or incorporated by reference in the offering document and (2) key income statement line items found in the most recent monthly statements against the corresponding items found in the income statements for the comparable period in the prior year. Key line item changes usually include changes in common stock or preferred stock, increases in long-term debt, decreases in consolidated total assets or shareholder's equity, decreases in consolidated total revenues or net sales, decreases in total or per share amounts of income before extraordinary items, and decreases in total or per share amounts of net income. The list of key financial statement line items may change depending on the issuer's business or industry practice. On the basis of applying such procedures, accountants can provide negative assurance that, except as disclosed in the comfort letter or except for changes, increases, or decreases that the registration statement discloses have occurred or may occur, nothing has come to their attention that caused them to believe that there was any change in specified balance sheet items compared with the prior quarter or that there was any change in specified income statement items as compared with the prior-year period. If material changes in key financial statement line items have in fact occurred during the change period, counsel should disclose this fact to the underwriters and determine if it is necessary to craft disclosure describing those changes, for inclusion in the offering document.

- **Specified Procedures for Remaining Period Where No Internal Monthly Financial Statements are Available.** The accountant's procedures for this period would be much more limited and would usually consist of reading the minutes and making inquiries of responsible officers of the issuer regarding changes to key line items since the last balance sheet and period-end date. Based on these procedures, auditors can provide negative assurance that nothing has come to their attention that caused them to believe there had been any change to the key line items except for changes specifically identified in the comfort letter or except for such

changes that the registration statement discloses have occurred or may occur.

6. **Circle like a Pro.** In preparing your circle-up of the offering document and the documents incorporated by reference into the offering document, know what to circle, what not to circle, and why. Generally, accountants will only provide tick-and-tie comfort to those circled numbers that can be traced back to or derived from the issuer's audited financial statements, reviewed interim financial statements or internal accounting records. Paragraph .55 of AS 6101 provides that accountants should generally only comment on information that (1) is expressed in dollars (or percentages derived from such dollar amounts) and that has been obtained from the issuer's accounting records that are subject to its controls over financial reporting, (2) has been derived directly from such accounting records by analysis or computation, or (3) is quantitative and that has been obtained from an accounting record if the information is subject to the same controls over financial reporting as the dollar amounts. Examples of numbers you should generally not circle include square footage of facilities, number of employees (except as related to a given payroll period), and backlog information. AS 6101 also tells accountants not to comment on information subject to legal interpretation, such as beneficial share ownership. There is no need to circle up the actual numbers appearing in the audited financial statements and accompanying notes because those have already been audited, are covered by the auditor opinion, and are incorporated by reference into the offering document. Same with the numbers appearing in the actual quarterly financial statements and accompanying notes since those have been reviewed by the auditors, covered by the negative assurance in the comfort letter and are incorporated by reference into the offering document. Do not circle numbers that do not pertain to the issuer such as general industry data, market statistics, or other nonfinancial or market data about the issuer's industry or competitors. Do not circle numbers pertaining to estimates and projections, as auditors generally comment only on historical figures. Other examples of numbers that are generally not comforted by accountants include operating statistics, contracted amounts such as interest rates of financial instruments, or the principal amount of notes outstanding reflected in a global note or indenture, other legal concepts, non-GAAP financial information, and certain financial ratios of banks and bank holding companies. Note however that there are variations

in practice and some audit firms may be willing to provide a low level of tick-and-tie comfort on certain of these numbers, rather than not comforting them altogether. Auditors may also comfort certain numbers covering issuers in particular industries (e.g., real estate investment trusts, banks). It is always a good idea to review relevant comfort letter precedents for their circle-up and tick-and-tie comfort for comparison. In some instances, accounting firms may take the lead in circling up numbers and provide underwriter's counsel with a draft comfort letter, along with their tick-and-tie comfort, instead of underwriter's counsel preparing the initial circle-up.

7. **Aim High but Be Realistic.** Negotiate for the highest level of tick-and-tie comfort possible, but recognize that auditors can ultimately comfort only what they can trace back to audited or reviewed financial statements or verifiable accounting records. Accountants will review the circle-up, and for each circled number, provide a tickmark that "ties" or traces back the number to a particular source. The applicable tickmark letter, number, or symbol is placed next to each circled number in the offering document or documents incorporated by reference. The tickmarks represent varying levels of comfort depending on whether information is derived from audited financials, reviewed interim financials, or other accounting books or records of the issuer. Generally speaking, there are several possible levels of tickmark comfort, including (arranged in descending order of comfort), that the auditors have compared or recalculated the number or percentage (1) to or from amounts in the audited financial statements and found them to be in agreement, (2) to or from amounts in the reviewed interim financial statements and found them to be in agreement, (3) to or from amounts in the company's accounting records and found them to be in agreement, (4) to or from amounts in a schedule prepared by the company based on its accounting records, and (5) that the auditors have verified the arithmetic accuracy of certain calculations. The legend explaining the particular meaning of each tickmark is usually provided in tabular format in the comfort letter. With respect to levels (3) and (4), note that based on AS 6101, accountants can cover such numbers if they are derived from the company's accounting records that are subject to the company's system of internal accounting controls. If circled numbers are not derived from the issuer's accounting records and are not subject to internal control over financial reporting, then the accountants may not cover these items. Internal control over financial reporting

refers to systems and processes that are designed to provide reasonable assurance regarding the reliability of financial reporting. If those systems are weak, then accountants may have reason to provide no comfort. Pay particular attention to numbers that are tied to a company-prepared schedule. If the numbers in those schedules are tied back to anything other than the issuer's financial statements or accounting books and records, then the value of such comfort decreases. If the sources are themselves not comforted by the accountants, then the numbers in the company-prepared schedule may be valueless.

8. **Pay Special Attention to Pro Forma Information.** Obtaining comfort on pro forma financial information requires special attention and advance planning. Pro forma information presents historical balance sheet and income statement information adjusted as if a transaction had occurred at an earlier period. Pro formas assist investors in understanding the impact of a significant transaction, such as a merger, business combination, or disposition, by showing how such consummated or proposed transaction might have affected the issuer's historical financial numbers. Auditors will typically only provide negative assurance that the pro forma financial information complies as to form in all material respects with the applicable accounting requirements of Rule 11-02 of Regulation S-X. Accountants may also be asked to comment on the arithmetic accuracy of the pro forma adjustments to confirm whether the pro forma adjustments have been properly applied to the historical amounts in the compilation of the pro forma financial statements. Note however that, per AS 6101, accountants may provide such negative assurance or such comment only if (1) they "have an appropriate level of knowledge of the accounting and financial reporting practices" of the entity (or, in the case of a business combination, of a significant constituent part of the combined entity) and (2) they have performed an audit of the annual financial statements, or an AS 4105 review of the interim financial statements, of the entity (or, in the case of a business combination, of a significant constituent part of the combined entity) to which the pro forma adjustments were applied. On a practical level, these limitations can be problematic where the pro formas include large acquisitions of companies that the issuer's accounting firm did not audit or review. In such situation where the financial statements of the target company or target companies are required to be included in the offering document, then there would be multiple audit firms issuing multiple comfort

letters (e.g., one for the acquirer and one for each target). Counsel should ensure to discuss these matters with issuer, issuer's counsel, and the underwriters and involve the target's auditors as early in the offering time line as practicable.

9. **Pay Attention to Special Considerations for Foreign Private Issuers (FPIs) and for Comfort Letters Issued by Non-U.S. Accounting Firms.** When dealing with FPIs, remember that certain rules and practices come into play and these may differ from those applicable to U.S. domestic issuers. FPIs generally do not prepare their financial statements in accordance with U.S. GAAP, but rather, in accordance with IFRS. If those financial statements are prepared in accordance with IFRS as issued by the IASB, then the FPI can utilize those statements without need for any reconciliation to U.S. GAAP. FPIs do not usually prepare quarterly financial statements and are not required to file unaudited quarterly financial information on Quarterly Reports on Form 10-Q, unlike U.S. domestic issuers. Certain FPIs that are Canadian issuers may utilize certain rules and procedures under the Multijurisdictional Disclosure System (MJDS) adopted by the SEC and Canadian Securities Administrators, which allow them to utilize streamlined registration statements permitting reliance on Canadian periodic filings to satisfy U.S. securities requirements.

All of these may impact the content and preparation process of the comfort letter. For example, the comfort letter should state that the accountants are "independent" not only within the meaning of the Securities Act and the applicable rules and adopted by the SEC and the PCAOB, but also in accordance with the local standards applicable to the non-U.S. accounting firm. For MJDS issuers, the comfort letter would typically also state that the issuer's audited financial statements comply as to form in all material respects not only with the Securities Act and Securities Exchange Act, but also with related rules and regulations adopted by the SEC applicable to entities filing under the MJDS. FPIs that utilize IFRS instead of U.S. GAAP may provide negative assurance on compliance of the interim financial statements with the IASB's International Accounting Standard No. 34, Interim Financial Reporting, instead of AS 4105 for U.S. domestic issuers. Pay particular attention to applicable standards cited in the comfort letter. Since FPIs may not have readily available quarterly financial statements, discuss this early on with issuer, issuer's counsel, and underwriters. Note however

that a number of the larger FPIs that regularly issue securities into the U.S. market do prepare and file quarterly financial statements in Form 6-Ks with the SEC. Moreover, currency translations can add a layer of complexity to tick-and-tie comfort in the comfort letter, so discuss the same with the auditors. Last, some audit firms in non-U.S. jurisdictions request a written letter of "arrangement" or "engagement" (especially if the securities are intended to be sold outside of the United States) that are commonly used outside of the United States. Some of these letters may limit the liability of and provide indemnification for, the accountants. Review these letters closely, socialize and discuss with underwriters' in-house counsel if appropriate, and ensure that any exculpation or indemnification provisions do not limit the value of the comfort letter in possible future litigation.

10. **Have a Back-Up Plan.** Take comfort that it's not the end of the world if you receive no or limited comfort from auditors or unearth red flags. Comfort letters are a part of the larger process of establishing a due diligence defense under the federal securities laws. They are not prepared, reviewed, and negotiated in a vacuum. Any financial numbers not comforted by auditors should be covered by another type of diligence and additional back-up. Ask the issuer's CFO to confirm the accuracy of such numbers by way of a CFO certificate. This is a standard document that is widely used and accepted in securities offerings. A management letter to the same effect can also be utilized. Prepare a supplemental circle-up or back-up request covering these numbers and ask the issuer to provide documentary support. Employ heightened due diligence procedures to address limited comfort or red flags including discussing with auditors the underlying reasons for being unable to provide the desired comfort level, arranging specific calls with management and auditors on recent financial results or other significant developments or trends, and having conversations with auditors and the issuer's accounting team and audit committee, particularly with respect to tracing back numbers to accounting records, and the adequacy of existing internal controls. Consider beefing up the offering document to add protective or enhanced disclosure in the risk factors, management discussion and analysis (MD&A), overview, trend disclosure, or recent developments sections. Consider strengthening issuer representations related to financial information in the underwriting agreement. After exhausting alternatives, do not be afraid to take out problematic financial information that cannot be

adequately addressed. Create and maintain a clear, organized written record that adequately documents the steps you have taken to assist your clients' conduct of a reasonable investigation of the issuer and its financial results.

Anna Pinedo, Partner, Mayer Brown LLP

Anna Pinedo is a partner in Mayer Brown's New York office and a member of the Corporate & Securities practice. She concentrates her practice on securities and derivatives. Anna represents issuers, investment banks/financial intermediaries and investors in financing transactions, including public offerings and private placements of equity and debt securities, as well as structured notes and other hybrid and structured products.

She works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including technology, telecommunications, healthcare, financial institutions, REITs and consumer finance. Anna has worked closely with foreign private issuers in their securities offerings in the United States and in the Euro markets. She also works with financial institutions in connection with international offerings of equity and debt securities, equity- and credit-linked notes, and hybrid and structured products, as well as medium term note and other continuous offering programs.

In the derivatives area, Anna counsels a number of major financial institutions acting as dealers and participants in the commodities and derivatives markets. She advises on structuring issues as well as on regulatory issues, including those arising under the Dodd-Frank Act. Her work focuses on foreign exchange, equity and credit derivatives products, and structured derivatives transactions. Anna has experience with a wide range of transactions and structures, including collars, swaps, forward and accelerated repurchases, forward sales, hybrid preferred stock and off-balance sheet structures. She also has advised derivatives dealers regarding their Internet sites and other Internet and electronic signature/delivery issues, as well as on compliance matters.

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Frederick Ryan Castillo is a partner in Mayer Brown's New York office and a member of the Capital Markets practice. His work focuses on securities and corporate finance transactions. Ryan advises issuers, investment banks and sponsors in connection with public offerings and private placements of debt, equity and hybrid securities, including initial public offerings, follow-on offerings, investment grade and high-yield debt offerings, private investment in public equity, tender and exchange offers, consent solicitations, medium term note programs and other capital markets transactions in the United States, Canada and the Euro markets. He represents companies and financial intermediaries involved in a broad range of industries, including financial services, technology, telecommunications, retail, life sciences, real estate and energy.

Ryan earned his Master of Laws degree with a concentration in international finance from Harvard Law School, where he served as an editor of the *Harvard Business Law Review*. He earned his JD with honors from the Ateneo de Manila Law School, where he served as captain of the World Champion team in the 45th Philip C. Jessup International Law Moot Court Competition. He holds a BA in Economics, with honors, from the Ateneo de Manila University. Ryan was previously an associate in the capital markets group of another global law firm in New York. Prior to that, he was a corporate associate in a regional law firm headquartered in Singapore, where he worked on capital markets and cross-border transactions for clients across the Asia-Pacific.

Ryan is co-author of *A Deep Dive Into Capital Raising Alternatives* (2020) and author of *Non-GAAP Explained* (2017), published by the International Financial Law Review. He regularly writes on securities law issues and has authored a number of capital markets-related pieces, including *Debt Capital Markets in the United States: Regulatory Overview* (2019) published by Practical Law, *Top 10 Practice Tips: Comfort Letters* (2018) published by Lexis Practice Advisor and *The Coconundrum* (2011) published by the Harvard Business Law Review.

Ryan is named a "Rising Star" for the Americas in the Capital Markets category in Euromoney's *Expert Guides: Rising Stars 2021*. He was also named a "Rising Star" in the capital markets category by Euromoney in its *Rising Stars Americas Awards 2020*. Ryan is ranked as a "Rising Star" for Capital Markets: Debt and Capital Markets: Equity in the United States by *IFLR1000 2021*, *IFLR1000 2020* and *IFLR1000 2019*. *The Legal 500 US* also named him a "Next Generation Partner" (2021), "Rising Star" (2020) and recommended lawyer for Capital Markets: Debt. Ryan is recognized by *Best Lawyers: Ones to Watch 2021* for his work in Securities and Capital Markets law in the United States.

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TAB 6

Form of SAS 72 Representation Letter
(found in paragraph .07 of AS 6101)

[Date]

Dear ABC Accountants:

[Name of financial intermediary], as principal or agent, in the placement of [identify securities] to be issued by [name of issuer], will be reviewing certain information relating to [issuer] that will be included (incorporated by reference) in the document [if appropriate, the document should be identified], which may be delivered to investors and utilized by them as a basis for their investment decision. This review process, applied to the information relating to the issuer, is (will be) substantially consistent with the due diligence review process that we would perform if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act). We are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Act. We hereby request that you deliver to us a "comfort" letter concerning the financial statements of the issuer and certain statistical and other data included in the offering document. We will contact you to identify the procedures we wish you to follow and the form we wish the comfort letter to take.

Very truly yours,

[Name of Financial Intermediary]

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TAB 7

Comfort Letter Procedures Relating to Capsule Financial Information Presented In a Registration Statement Prior to the Issuance of the Year-End Financial Statements

This white paper is not authoritative and users are urged to refer directly to applicable authoritative pronouncements for the text of the technical literature. This document does not purport to be applicable or sufficient to the circumstances of any work performed by Members. It does not set any standards, nor has it been approved by any regulatory body or the AICPA. It is not intended to be a substitute for professional judgment applied by practitioners. The information upon which this white paper is based may change from time to time. As a result, the information, commentary or guidance contained herein may not be current or accurate and the CAQ and its predecessor CPCAF are under no obligation to update such information. Readers are therefore urged to refer to current authoritative or source material.

Notice to Readers

Issuers sometimes undertake securities offerings after their year-ends, but before the issuance of their annual audited financial statements. This paper provides a framework for evaluating the types of comfort letter procedures that an independent accountant could perform in connection with information included or incorporated by reference in securities offerings related materials relating to an issuer's fourth quarter when the annual audited financial statements have not been issued.

This paper was developed by, and reflects the views of, a task force of the Center for Public Company Audit Firms' SEC Regulations Committee. It provides knowledgeable individuals with a framework to assess the types of procedures that could be performed, however caution and individual judgment, based on facts and circumstances should be exercised when considering performing procedures on information which is the subject of ongoing audit procedures and/or which is subject to change until the issuance of the annual audited financial statements.

The PCAOB is the regulatory body authorized to establish audit and attestation standards for registered public accounting firms in the preparation and issuance of audit reports as required by the Sarbanes-Oxley Act. *This framework has not been approved, disapproved, or otherwise acted upon by the PCAOB or its staff.*

Executive Summary

Issuers frequently prepare registration statements after year-end but before issuing their year-end financial statements. Those registration statements oftentimes include capsule financial information for the recently completed 4th quarter and fiscal year (e.g., information that is included in an earnings release).

As part of their due diligence procedures, underwriters frequently request accountants to perform procedures with respect to the capsule financial information.

Accountants must exercise caution when considering performing procedures and reporting results that relate to information which is the subject of ongoing audit procedures and/or which is subject to change once the issuer finalizes and issues its year-end financial statements.

Issue

Underwriters frequently ask accountants to provide a comfort letter in connection with securities offerings that take place after the issuer's fiscal year-end but prior to the date that the issuer has "issued" its year-end financial statements¹.

Registration statements prepared during this timeframe oftentimes include² capsule financial information for the fourth quarter and/or full year notwithstanding the fact that the year-end financial statements have not been "issued".

A number of questions arise as to what level of comfort the accountant should consider providing (at the request of the underwriter) on the fourth quarter or full year capsule financial data in connection with a registration statement that is declared effective prior to the issuance of the year-end financial statements.

Underwriter requests for comfort on this type of capsule data generally include one or more of the following:

1. Positive assurance that the year-end capsule financial information has been audited (or the year-end financial statements have been audited);
2. Negative assurance that the capsule information for full year or the 4th quarter have been reviewed pursuant to Statement on Auditing Standards No. 100 "Interim Financial Information" (or that the underlying 4th quarter or full year financial statements have been reviewed under SAS 100);
3. Reading unaudited financial information for the 4th quarter and reporting certain changes in specified financial statement elements;

¹The term "issued" in this paper is used in the context as it was interpreted by the SEC staff in EITF Topic No. D-86. Financial statements are considered issued "as of the date they are distributed for general use and reliance in a form and format that complies with generally accepted accounting principles (GAAP) and, in the case of annual financial statements, that contain an audit report that indicates that the auditors have complied with generally accepted auditing standards (GAAS) in completing their audit. Issuance of financial statements then would generally be the earlier of when the annual or quarterly financial statements are widely distributed to all shareholders and other financial statement users or filed with the Commission." Financial statements would not be considered issued as of the date of either an earnings release or posting of financial statements to the registrant's web site.

²Throughout this paper references to "included" are intended to mean "included or incorporated by reference".

4. Inquiring of company officials as to changes in specified financial statement elements;
5. Agreeing the 4th quarter or full year capsule financial information to the company's accounting records (commonly referred to as "tickmark" comfort).

The purpose of this paper is to explain what types of procedures accountants are generally willing to perform on behalf of and report to underwriters relating to 4th quarter and full year capsule financial information included in a registration statement prior to the time that the year-end financial statements have been issued.

Background

Section 11 of the Securities Act of 1933 (the "Act") provides that underwriters could be liable if any part of a registration statement contains material omissions or misstatements. Specifically, Section 11(a) of the Act provides (in part) that every underwriter with respect to a security may be sued by any person acquiring that security if any part of the registration statement contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

Section 11(b)(3) of the Act, however, provides that the underwriter would not be liable if he sustains "the burden of proof that (among other things)...:

as regards any part of the registration statement not purporting to be made on the authority of an expert [e.g., the capsule financial information]...he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading;..."

The standard of reasonableness for purposes of determining what constitutes a reasonable investigation and a reasonable ground for belief under Section 11(b)(3) "...shall be that required of a prudent man in the management of his own property".³ This is commonly referred to as the "due diligence" defense.

³See Section 11(c) of the Act.

Underwriters generally request that accountants issue a comfort letter with respect to certain information included in the registration statement as one of a number of procedures that may be used to establish that an underwriter has conducted a reasonable investigation⁴.

Statement on Auditing Standards No. 72 “Letters for Underwriters and Certain Other Requesting Parties” (SAS 72/AU 634) provides guidance to accountants for performing and reporting on the results of engagements to issue comfort letters to underwriters. SAS 72 provides for several different types of procedures which an accountant may, at the request of the underwriter, consider⁵ performing.

The Parties Involved

There are three key parties involved with a comfort letter to be issued in connection with an underwritten registered offering: the issuer, the underwriter and the accountant.

The issuer is responsible for preparing the registration statement and determining its contents. By including the capsule financial information in the document, the issuer is likely attempting to ensure that investors have the most current information available for purposes of making an investment decision. The information that the issuer determines to present in the registration statement is a key factor in establishing the population of information that the underwriter must consider in designing his “due diligence” procedures.

The underwriter is also striving to ensure that the offering materials contain the appropriate information. However, unlike issuers which are always directly liable for material misstatements or omissions in the registration statement (including the capsule financial information), the underwriter may have the ability to “avoid” liability for a material misstatement or omission in the registration statement (including the capsule financial data) if the underwriter can show that after reasonable investigation, the underwriter had reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

⁴AU 634.12 states: “What constitutes a reasonable investigation of unaudited financial information sufficient to satisfy an underwriter’s purposes has never been authoritatively established. Consequently, only the underwriter can determine what is sufficient for his or her purposes.”

⁵It is important to note that neither the Act nor SAS 72 obligates the accountant to issue a comfort letter and there is nothing which would preclude the underwriter from performing (for himself) all of the “due diligence” procedures he believes are necessary in order to demonstrate that a reasonable investigation was performed.

The accountant's primary role is to audit the annual financial statements included in the registration statement. However, as a service, an accountant may also issue a comfort letter reporting the results of certain procedures (selected by the underwriter as considered necessary in connection with performing his "due diligence").

Performing Procedures on Information that Is Subject to Change

There is a natural tension that exists when an underwriter asks the accountant to perform procedures on capsule financial information for a period more current than the financial statements included in the registration statement.

The issuer, by not including the year-end financial statements in the registration statement, is acknowledging that the audited financial statements are, in fact, not available.⁶

The underwriter, however, wants to ensure that the registration statement has the appropriate level of current information while protecting himself from liability.

Accountants want to facilitate, to the extent practical and appropriate, the capital formation process, but are reluctant to perform procedures on capsule financial information and report findings in the context of a comfort letter when the financial statements underlying that data are not yet complete and have not been issued. In fact, oftentimes, the accountant is in the process of performing an audit of the underlying financial statements at the time that the comfort letter is issued, thus putting the accountant in the position of being asked to comment on balances and amounts which are subject to change⁷ and which are currently being subjected to a higher level⁸ of professional service.

⁶Rule 3-12(c) of Regulation S-X states that: "Where a filing is made near the end of a fiscal year and audited financial statements for that fiscal year are not included in the filing, **the filing shall be updated with such audited financial statements if they become available** prior to the anticipated effective date, or proposed mailing date in the case of a proxy statement." [emphasis added]

⁷Even if audit fieldwork is substantially complete or the date of the audit report has passed, both the issuer and the auditor are responsible for evaluating post-balance sheet (pre-issuance) subsequent events for their impact on the financial statements and disclosures **up to the issuance date**.

⁸An audit (the expression of an opinion, or positive assurance, as to whether a particular set of financial statements presents fairly, in all material respects, the financial position, and results of operations and cash flows in conformity with generally accepted accounting principles) is a higher level of professional service as compared to reporting in a comfort letter either negative assurance or findings as a result of applying agreed upon procedures specified by the underwriter.

Reporting the results of procedures on balances and amounts, which are the subject of ongoing, soon to be undertaken or completed auditing procedures, and which are still subject to change, is a risky proposition that the accountant must approach with caution to avoid assuming undue and disproportionate risk.

There are, however, a number of procedures which accountants are generally willing to perform on capsule financial information prior to the date that the year-end financial statements are issued. However, prior to considering any level of comfort on 4th quarter or full fiscal year capsule financial information, the accountant must first consider the issuer's circumstances such as the internal control environment, past history of audit adjustments, open contingencies (including the likelihood of resolution prior to "issuance" of the financial statements) and the nature of the business.

A discussion of the various types of comfort letter procedures on capsule financial information that underwriters may request accountants to perform prior to the date that the year-end financial statements are issued (together with any relevant milestones that must be achieved prior to the accountant being in a position to give the indicated comfort) is presented below:

Negative assurance that the capsule information for the full year has been reviewed pursuant to Statement on Auditing Standards No. 100 "Interim Financial Information" (or that the underlying full year financial statements have been reviewed under SAS 100)

An accountant cannot give SAS 100 negative assurance on financial information for a company's full fiscal year because SAS 100 only applies to interim financial information as that term is defined in AU 722.02.

Negative assurance that the capsule information for the 4th quarter has been reviewed pursuant to SAS 100 (or that the underlying 4th quarter financial statements have been reviewed under SAS 100)

Paragraphs 37 and 38 of AU 634 state that accountants can comment, in the form of negative assurance, on unaudited condensed interim information when they have conducted a SAS 100 review, in which case the accountants must (i) state in the comfort letter that the information has not been audited and (ii) disclaim an opinion thereon. Paragraph 39 of AU 634 states that accountants can comment, in the form of negative assurance, on capsule financial information only when they have conducted a SAS 100 review of the financial statements underlying the capsule financial information.⁹

⁹AU 634.39 provides that negative assurance as to conformity with GAAP is limited to capsule information that complies with the minimum disclosure requirements of Accounting Principles Board (APB) Opinion No. 28. Otherwise, negative assurance is limited to consistency with the audited financial statements.

However, as noted above, management is responsible for evaluating subsequent events until the time that year-end financial statements are issued. Therefore, until the financial statement issuance date, management is not in a position to assert that the financial statements are final. Additionally, until the audit is complete and the financial statements are issued, there may well be adjustments to the balances and amounts included in the capsule financial information and those adjustments may be material.

Even though SAS 72 does not otherwise place specific conditions on giving SAS 100 negative assurance on 4th quarter financial statements or capsule information, the facts that i) financial statement balances and amounts are subject to change and ii) are subject to on-going audit procedures should result in the exercise of extreme caution by the accountant.

Recognizing this, the accountant should wait until audit fieldwork is substantially complete¹⁰ and the year-end financial statements are in substantially final form¹¹ before considering providing SAS 100 negative assurance on the 4th quarter financial statements or capsule information. If the accountant is in a position to give this level of comfort, 4th quarter financial statements must be prepared (at an S-X Article 10 level of detail, with all required financial statements and disclosures) and must be attached to the comfort letter if not included in the registration statement (see AU 634.41).

Reading unaudited financial information for the 4th quarter and reporting certain changes in specified financial statement elements

SAS 72 permits an accountant to give negative assurance that he has read the issuer's financial information for October, November and December (for a calendar year end company) and that he is unaware of certain specified changes in financial statement amounts (see paragraphs 4b and 5b of Example A to SAS 72).

¹⁰ The independent accountant must exercise professional judgment in determining what constitutes "substantially complete". Some accountants may view "substantially complete" as fieldwork being complete (having reached the audit report date). Other accountants may view "substantially complete" as audit procedures having sufficiently advanced to a point that the accountant is satisfied that there are no significant matters that would likely cause a change in the numbers on which comfort is being considered.

¹¹ The independent accountant must exercise professional judgment in determining what constitutes "substantially final form". Some accountants may view "substantially final form" as being the same as "issued". Other accountants may view "substantially final form" as having been through the full measure of a company's internal quality control procedures (including any planned involvement/review by senior management, company counsel, the disclosure committee, the audit committee and the board of directors) but not requiring that the financial statements be issued. Still others may view "substantially final form" as being primary financial statements with key footnote disclosures (but not necessarily through the full measure of internal quality control procedures and senior management/audit committee/board/counsel/disclosure committee review).

Even though SAS 72 does not otherwise place specific conditions on giving negative assurance as to specified changes in financial statement amounts based on reading subsequent financial statements through the end of a fiscal year, the facts that i) the 4th quarter/year-end financial information cannot be finally determined until the year-end financial statements are “issued” and ii) the accountant either has been engaged to perform or is performing an audit on the annual period, indicate that the accountant should exercise extreme caution in providing this level of comfort prior to the completion of the audit.

Recognizing this, the accountant should consider providing negative assurance as to specified changes in financial statement amounts based on reading subsequent financial statements through the end of a fiscal year only after audit fieldwork is substantially complete¹²(even if the annual financial statements are not in substantially final form)¹³. The accountant could however provide negative assurance that he has read financial information for a shorter period within the fourth quarter (e.g., one or two months) even if the audit fieldwork is not substantially complete.

Inquiring of company officials as to changes in specified financial statement elements

SAS 72 permits an accountant to give negative assurance that he has inquired of company officials and that he is unaware of certain specified changes in financial statement amounts up to a date that is less than 135 days from the end of the most recent period for which the accountant has performed an audit or review (see paragraph 6 of Example A to SAS 72).

Even though SAS 72 does not otherwise place specific conditions on giving negative assurance as to specified changes in financial statement amounts based on inquiries as of or subsequent to the end of a fiscal year, the facts that i) the 4th quarter/year-end financial information cannot be finally determined until the year-end financial statements are “issued” and ii) the accountant either has been engaged to perform or is performing an audit on the annual period, indicate that the accountant should exercise extreme caution in providing this level of comfort prior to the completion of the audit.

¹²See footnote 10.

¹³ The independent accountant should apply judgment and may determine that prior to agreeing to provide this level of comfort that the company must publicly disseminate 4th quarter information (e.g., an 8-K with primary financial statements but no footnotes) as evidence supporting management’s assertion that the information has been prepared on a basis consistent with the audited financial statements and has been subjected to the appropriate internal quality control processes. Additionally, the accountant may decide to comment in the comfort letter that the accountant has not completed the audit of the full year financial statements and that the 4th quarter information is still subject to change.

Recognizing this, if the cut-off date is year-end, the accountant should make these inquiries only after substantially completing the year-end audit field work (even if financial statements are not in substantially final form)¹⁴.

The accountant can consider making these inquiries and reporting the results even if he has not substantially completed the audit or fourth quarter SAS 100 review procedures as long as the cutoff date is not the year-end¹⁵ (mindful of the 135 day rule discussed above).

Agreeing the 4th quarter or full year capsule financial information to the company's accounting records (commonly referred to as "tickmark" comfort)

Paragraph 55 of AU 634 permits an accountant to agree certain information relating to an unaudited period to an issuer's accounting records if the accountant has performed an audit of the financial statements for a period including or immediately prior to the unaudited period or if they have otherwise obtained knowledge of the issuer's internal control (as described in AU 634).

Even though SAS 72 does not otherwise place specific conditions on commenting on financial amounts related to the recently completed fiscal year or fourth quarter thereof, the facts that i) the 4th quarter/year-end financial information cannot be finally determined until the year-end financial statements are issued and ii) the accountant either has been engaged to perform or is performing an audit on the annual period, indicates that the accountant should exercise caution in providing this level of comfort prior to the completion of the audit.

Recognizing this, an accountant should agree fourth quarter and full year information to the issuer's accounting records (so-called "tick mark comfort") only after audit fieldwork is substantially complete (even if financial statements are not substantially in substantially final form)¹⁶.

¹⁴Ibid.

¹⁵ If the cut-off date extends beyond year-end, the accountant may wish to wait until audit fieldwork is substantially complete and apply the guidance in footnote 13 above. Alternatively, the accountant may decide to restrict his comments to reporting the results of the inquiries (rather than expressing negative assurance) similar to paragraph 4c of Example O of SAS 72.

¹⁶See footnote 13.

Positive assurance that the year-end capsule financial information has been audited (or the year-end financial statements have been audited);

Underwriters sometimes request that accountants make a statement in the comfort letter indicating that an audit of the recently ended fiscal year is complete prior to the date that the client has issued the underlying annual financial statements.

The accountants should not comment on the completion (or the status, other than the fact that the audit is pending completion) of the audit prior to the issuance of the underlying financial statements. Even though audit fieldwork may be substantially complete or the date of the audit report has passed, both the company and the auditor are responsible for evaluating post-balance sheet (pre-issuance) subsequent events for their impact on the financial statements and disclosures **up to the issuance date.** Therefore management cannot assert that the financial statements are complete until the date that the financial statements are issued. Since management is not in a position to represent that the financial statements are complete, the auditor cannot indicate that the audit is complete. Additionally, as noted above, if the audited financial statements were complete (and therefore, by definition, “available”), S-X 3-12(c) would require that they be included in the registration statement.

Summary of Procedures and Milestones

	<u>Y e a r e n d</u>		Fourth	Fourth
	F/S Issued	F/S In Substantially(1) Final Form	Audit Fieldwork Substantially(2) Review Complete	Quarter SAS 100 Review Complete
SAS 100-level assurance on full-year f/s or capsule information	Precluded by SAS 100			
Audit-level assurance on full-year f/s	Yes			
SAS 100-level assurance on 4 th quarter f/s or capsule information	*** ⁽⁴⁾	Yes ⁽³⁾		Yes ⁽³⁾
Read 4 th quarter info and report changes	***	Yes	Yes ⁽³⁾	***
Read info for 1 st two months of 4 th quarter and report changes	***	***	Yes	Yes ⁽⁵⁾
Inquire of mgt. with respect to changes—cut-off date <u>after</u> year-end	***	***	Yes ⁽⁶⁾	*** ⁽⁶⁾
Inquire of mgt. with respect to changes—cut-off date <u>before</u> year-end	***	***	***	***
Inquire of mgt. with respect to changes—cut-off date is year-end	***	***	*** ⁽⁷⁾	*** ⁽⁷⁾
Inquire of mgt. with respect to changes—cut-off date <u>before</u> year-end	***	***	Yes ⁽⁶⁾	*** ⁽⁶⁾
Agree 4 th quarter or full year information to the books and records (tickmark comfort)	***	***	***	***
	***		Yes ⁽⁶⁾	*** ⁽⁶⁾

Yes = Must be completed prior to giving the indicated level of comfort.

*** = Subject to the accountant's judgment, need not be completed prior to giving the indicated level of comfort.

- (1) Refer to footnote 11 on page 7.
- (2) Refer to footnote 10 on page 7.
- (3) Given that issuance of audited financial statements is a pre-requisite to giving this level of comfort, financial statements must be in final form and the audit and 4th quarter SAS 100 reviews must also be complete.
- (4) Given that there is likely an audit of the fiscal year that is ongoing or to begin shortly, the independent accountant should exercise judgment and may conclude that prior to giving SAS 100 negative assurance on the 4th quarter capsule financial information (or 4th quarter financial statements) that the audited financial statements must be issued.



- (5) The 4th quarter financial statements must be prepared using an S-X Article 10 level of detail, including all required financial statements and disclosures, and must be attached to the comfort letter (if not included in the document).
- (6) See footnote 13 on page 8.
- (7) See note 15 on page 9.

2023 SEC Filing Deadlines and Financial Statement Staleness Dates

FILING DEADLINES FOR CALENDAR YEAR COMPANIES¹

JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

■ Large Accelerated Filers
 ■ Accelerated Filers
 ■ All Other Filers
 ■ Form 10-K Part III Information (Proxy Statement or Form 10-K/A)
 ■ Federal Holiday—SEC Closed

ANNUAL AND QUARTERLY REPORTS ²	LARGE ACCELERATED FILER	ACCELERATED FILER	ALL OTHER FILERS
FORM 10-K FOR FISCAL YEAR Ended December 31, 2022*	March 1	March 16	March 31
FORM 10-Q FOR FISCAL QUARTER Ended March 31, 2023	May 10	May 10	May 15
FORM 10-Q FOR FISCAL QUARTER Ended June 30, 2023	August 9	August 9	August 14
FORM 10-Q FOR FISCAL QUARTER Ended September 30, 2023	November 9	November 9	November 14

***Definitive Proxy Statement (DEF 14A):** If the Form 10-K incorporates Part III information from the proxy statement, either the proxy statement must be filed by May 1 (120 days after fiscal year end) or the 10-K must be amended by that date to add the Part III information.

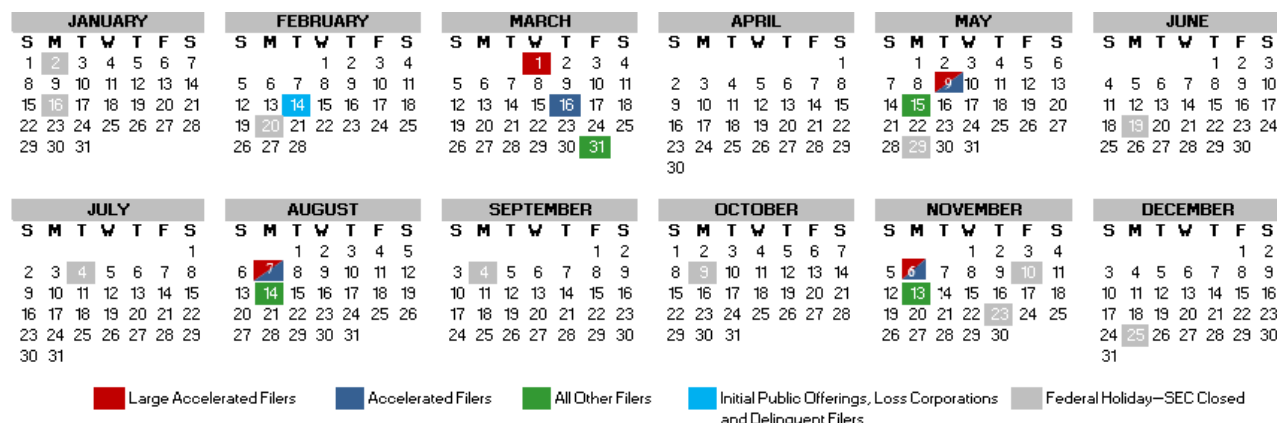
OTHER FORMS	DATE
FORM 3	10 days after the individual becomes a reporting person or no later than the effective date of the registration statement if the issuer is registering equity under Section 12 of the Securities Exchange Act for the first time
FORM 4	2 business days after the transaction date giving rise to a change in beneficial ownership
FORM 5	February 14 (45 days after fiscal year end)
FORM 8-K	Generally, 4 business days after triggering event
FORM 11-K (Annual Reports for Certain Employee Plans)	<i>Not subject to ERISA:</i> March 31 (90 days after the plan's fiscal year end) <i>Subject to ERISA:</i> June 29 (180 days after the plan's fiscal year end)
FORM 20-F	(Foreign Private Issuers) May 1 (4 months after fiscal year end)
FORM 40-F	(Canadian MJDS Issuers) Same date the issuer's annual report is filed in Canada
SCHEDULE 13G**	February 14 (45 days after calendar year end covering the schedule)
SCHEDULE 13D**	10 days after acquisition of more than 5% beneficial ownership; amendments due promptly after material changes
FORM 13F (Institutional Investment Managers)³	February 14 (45 days after calendar year end) and May 15, August 14 and November 14 (45 days after each of the first three calendar quarters)
FORM 13H (Large Trader Registration)	10 days after transactions in securities of 2M shares or \$20M on any day or 20M shares or \$200M in any month; February 14 (45 days after calendar year end); amendments due promptly after quarter end for inaccuracies
FORM SD (Specialized Disclosure)	No later than May 31 of each year

** The SEC has proposed amendments that, if adopted, would shorten the filing deadlines for Schedules 13G & 13D. See our [Legal Update](#).

Late Filing Reports: A notification of the inability to timely file all or any portion of a Report on **Form 10-K, 10-Q, 20-F** or **11-K** must be filed by 5:30 p.m. Eastern Time no later than the next business day after the original due date (Securities Exchange Act Rule 12b-25)

FINANCIAL STATEMENT STALENESS DATES FOR CALENDAR YEAR COMPANIES⁴

Financial statements are considered stale under the rules of the US Securities and Exchange Commission (SEC) when they are too old to use in a prospectus or proxy statement. Accordingly, if financial statements have gone stale, an issuer must file the most recent required financial statements before using a prospectus or proxy statement. Deadlines vary based on the type of issuer.



STALENESS DATE	FINANCIAL STATEMENT	REGULATORY DEADLINE ⁵
FEBRUARY 14	2022 Q3 financial statements for initial public offerings, delinquent filers and loss corporations	45 days after year end ⁶
MARCH 1	2022 Q3 financial statements for large accelerated filers	60 days after year end
MARCH 16	2022 Q3 financial statements for accelerated filers	75 days after year end
MARCH 31	2022 Q3 financial statements for all other filers	90 days after year end
MAY 9	2022 year-end financial statements for large accelerated filers and accelerated filers	129 days after year end
MAY 15	2022 year-end financial statements for all other filers	134 days after year end
AUGUST 7	2023 Q1 financial statements for large accelerated filers and accelerated filers	129 days after Q1 end
AUGUST 14	2023 Q1 financial statements for all other filers	134 days after Q1 end
NOVEMBER 6	2023 Q2 financial statements for large accelerated filers and accelerated filers	129 days after Q2 end
NOVEMBER 13	2023 Q2 financial statements for all other filers	134 days after Q2 end

Special Accommodation for Gap Periods: Staleness dates and Form 10-Q deadlines do not always correspond, resulting in gap periods during which registration statements may not be filed or declared effective and proxy statements may not be mailed. The SEC staff typically accommodates repeat issuers that have timely filed for the last 12 months by making the staleness date the same as the 10-Q deadline. The SEC may ask the issuer to confirm that the 10-Q will be timely filed after effectiveness or mailing, as applicable and that there have been no material trends, events or transactions since the date of the latest balance sheet included in the filing that would materially affect an investor’s understanding of the issuer’s financial condition and results of operations.⁷

FOREIGN PRIVATE ISSUERS (FPIs)

Generally, FPIs’ audited financial statements go stale after 15 months, and interim financial statements (covering at least 6 months) go stale after 9 months, subject to the exceptions noted below.⁸

EXCEPTIONS

- The 15-month and 9-month periods are extended to 18 months and 12 months, respectively, for the following offerings: (1) exercises of outstanding rights granted pro rata to all existing security holders;
- (2) dividends or interest reinvestment plans; and (3) conversions of outstanding convertible securities or exercises of outstanding transferable warrants.
- In an initial public offering of an FPI not public in any jurisdiction, audited financial statements go stale after 12 months unless the FPI sufficiently represents to the SEC: (1) compliance is not required in any other jurisdiction and (2) it is impracticable or involves undue hardship.
- If financial information for an annual or interim period more current than otherwise required is made available in any jurisdiction, such information should be included. The new financial information does not need to be reconciled to US GAAP, but narrative explanations of the differences in accounting principles should be provided and material new reconciling items should be quantified; however, such requirements do not apply to issuers filing audited financial statements prepared under IFRS.

EDGAR HOURS OF OPERATION

EDGAR filings may be made from 6:00 a.m. to 10:00 p.m. Eastern Time on weekdays (excluding federal holidays). Filings submitted after 5:30 p.m. Eastern Time receive the next business day's filing date (except filings for Section 16, Schedule 14N and filings pursuant to Rule 462(b), which receive the actual date of filing).

For more information about the topics raised in this Legal Update, please contact any of the lawyers listed below.

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Endnotes

- ¹ Dates reflect filing deadlines in light of weekends and federal holidays (Securities Exchange Act Rule 0-3(a)).
- ² Form 10-K is due 60 days, 75 days and 90 days after the fiscal year end for large accelerated filers, accelerated filers and all other filers, respectively. Form 10-Q is due 40 days after the fiscal quarter end for large accelerated and accelerated filers and 45 days after the fiscal quarter end for all other filers.
- ³ Beginning in 2024, Institutional Investment Managers filing a Form 13F and exercising voting discretion will also be required to file a Form N-PX disclosing the manager's voting decisions with respect to say-on-pay matters. The SEC's adopting release is available at <https://www.sec.gov/rules/final/2022/33-11131.pdf>.
- ⁴ Dates reflect staleness in light of weekends and federal holidays (Securities Act Rule 417).
- ⁵ Regulation S-X Rule 3-12.
- ⁶ Regulation S-X Rules 3-01(c) and 3-12(b).
- ⁷ SEC Division of Corporation Finance, Financial Reporting Manual (FRM) Section 1220.5, available at <https://www.sec.gov/divisions/corpfin/cffinancialreportingmanual.pdf>
- ⁸ Regulation S-X Rule 3-12(f), Item 8 of Form 20-F and FRM Section 6220.

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