

MEMO# 30885

September 25, 2017

SEC Staff Extends Loan Provision Relief for Purposes of Auditor Independence

[30885]

September 25, 2017 TO: ICI Members SUBJECTS: Audit and Attest
Audit Committees

Fund Accounting & Financial Reporting RE: SEC Staff Extends Loan Provision Relief for
Purposes of Auditor Independence

Late Friday, the SEC's Division of Investment Management issued a letter extending the period of relief offered to entities in an "investment company complex" relying on audit services performed by public accounting firms whose independence might be compromised.^[1] The letter extends relief, which was set to expire in December, from a June 2016 no-action letter addressing auditor independence issues related to a provision in Regulation S-X ("Loan Provision").^[2] The extension makes no changes to the scenarios or representations in the original no-action letter and provides relief until the effectiveness of any amendments to the Loan Provision designed to address the concerns expressed in that letter.

The SEC's current 2017 Regulatory Flexibility Agenda includes a reference to a rulemaking in this area, and ICI will continue to engage with the SEC and its staff on any such potential rulemaking.^[3]

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endnotes

^[1] See Fidelity Management & Research Company, et al. (pub. avail. Sept. 22, 2017), available at: <https://www.sec.gov/divisions/investment/noaction/2017/fidelity-management-research-092217-regsx-rule-2-01.htm>.

[2] See Fidelity Management & Research Company, et al. (pub. avail. June 16, 2016), *available at*: <https://www.sec.gov/divisions/investment/noaction/2016/fidelity-management-research-company-062016.htm>. The “Loan Provision” states, in relevant part, that:

[a]n accountant is not independent when the accounting firm, any covered person in the firm, or any of his or her immediate family members has . . . [a]ny loan (including any margin loan) to or from an audit client, or an audit client’s officers, directors, or record or beneficial owners of more than ten percent of the audit client’s equity securities. . .

Rule 2-01(c)(1)(ii)(A) of Regulation S-X. Under the provision, the term “audit client” includes, not only the entity being audited, but any affiliates of the entity and any entity in the investment company complex when the audit client is part of an investment company complex. Therefore, a public accounting firm may not be not independent under the Loan Provision when it has a lending relationship with any entity having a record or beneficial ownership of more than ten percent of an entity in the investment company complex. For a summary of the original no-action letter, see ICI Memorandum No. 29994 (June 22, 2016), *available at*: https://www.ici.org/my_ici/memorandum/memo29994.

[3] See SEC Agency Rule List – Update 2017: Auditor Independence With Respect to Loans or Debtor-Creditor Relationships (as of Sept. 25, 2017), *available at*: https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCd=3235&Image58.x=58&Image58.y.