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# TOP 10 PRACTICE TIPS: COMFORT LETTERS

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

## 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, superseded AU Section 634 of the PCAOB which, in turn, had codified the earlier Statements on Auditing Standards No. 72 (SAS 72) issued by the American Institute of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 US 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, 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 that can be suitable for various offerings, and offers 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 in case 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 earlier 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 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 or a placement 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 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. 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 provide written responses to diligence questions 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 to be 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 delivery logistics with the auditors. Capital markets transactions come in different shapes and sizes and have varying execution timelines. A good lawyer always plans ahead, clearly communicates goals, expectations and steps, and follows through. Recognize that shelf take-downs, such as investment grade debt offerings, can go to market quickly, hence the comfort letter process must commence immediately and proceed on an accelerated timeline. 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 timeline, 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 issued 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 significant or 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 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. To illustrate, if the accountants have reviewed the issuer's interim financial statements for the third quarter ended September 30, 2018, then they may provide negative assurance on increases or decreases in specified financial statement items as of any date up to February 11, 2019 (134 days subsequent to September 30, 2018). From February 12, 2019, which is the 135th day, the auditors will refuse to give negative assurance on the change period, since the September 30, 2018 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 timeline. 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 2018 Form 10-K (that contains the year-end audited financial statements) in March 2019.

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 business day 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 performed 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 performance 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 (US 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, (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 prior interim period financial statements and (iv) 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 them 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 (i) 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 (ii) 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, and (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 timeline 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 that are not FPIs. 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 US 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 incorporation by reference of Canadian periodic filings.

All 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 US 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 US 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 United States 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, 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 condition.

