

J. Y. Interpretation No.222 (February 12, 1988) *

ISSUE: Do Articles 2 and 4 of the Guidelines Governing the Examination, Endorsement, and Approval of Corporations' Publicly Issued Financial Reports Submitted by Accountants promulgated by the Securities and Exchange Commission, contradict the Constitution?

RELEVANT LAWS:

Article 37, Paragraph 1, of the Securities Exchange Act (證券交易法第三十七條第一項); Articles 2 and 4, of the Guidelines Governing the Examination, Endorsement, and Approval of Corporations' Publicly Issued Financial Reports Submitted by Accountants (會計師辦理公開發行公司財務報告查核簽證核准準則第二條及第四條); Regulation Governing the Review and Approval of the Qualifications of Certified Public Accountants (會計師檢覈辦法) .

KEYWORDS:

security transaction (證券交易), accounting offices (會計師事務所), public interest (公共利益) .**

HOLDING: The Guidelines Governing the Examination, Endorsement, and Approval of Corporations'

解釋文：財政部證券管理委員會於中華民國七十二年七月七日發布之「會計師辦理公開發行公司財務報告

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** Contents within frame, not part of the original text, are added for reference purpose only.

Publicly Issued Financial Reports Submitted by Accountants promulgated by the Securities and Exchange Commission on July 7, 1983, are a mandate authorized by Article 37, Paragraph 1, of the Securities Exchange Act. Article 2 of these guidelines states: "Corporations' publicly issued financial reports shall be jointly examined and endorsed by at least 2 practicing accountants of established accounting offices"; and Article 4 prescribes the requirements for the organization of accounting offices. The purposes of these provisions are to ensure the excellence of the system of examination and endorsement for corporations' publicly issued financial reports submitted by accountants. These provisions are in accordance with the purpose of the authorization made by the act mentioned above and the need to protect the investing public and advance the public interest; thus, they do not contradict the Constitution. However, since the promulgation of the Guidelines, security exchanges have been continuously evolving, and the Regulation Governing the Review and Approval of the Qualifications of Certified Public

查核簽證核准準則」，係證券交易法第三十七條第一項授權訂定之命令，其第二條規定：公開發行公司之財務報告，應由聯合會計師事務所之開業會計師二人以上共同查核簽證；第四條則對聯合會計師事務所組成之條件有所規定，旨在使會計師辦理公開發行公司財務報告查核簽證之制度，臻於健全，符合上開法律授權訂定之目的，為保護投資大眾、增進公共利益所必要，與憲法尚無牴觸。惟該準則制定已歷數年，社會環境及證券交易情形，均在不斷演變，會計師檢覈辦法亦經修正，前開準則關於檢覈免試取得會計師資格者，組成聯合會計師事務所之條件，與其他會計師不同之規定，其合理性與必要性是否繼續存在，宜由主管機關檢討修正，或逕以法律定之，以昭慎重，併予指明。

Accountants has already been revised. The terms of the former guidelines regarding requirements for the organization of accounting offices by those who acquire the qualification of accountant through review and approval without written examination are different from those of other accountants. Therefore, if the question of whether this differential is still reasonable and necessary should arise, the competent authority may assess and revise it, or directly regulate it by law.

REASONING: The Guidelines Governing the Examination, Endorsement, and Approval of Corporations' Publicly Issued Financial Reports Submitted by Accountants was promulgated by the Securities and Exchange Commission on July 7, 1983, based on the authorization of Article 37, Paragraph 1, of the Securities Exchange Act. Article 2 of the guidelines states: "Corporations' publicly issued financial reports shall be jointly examined and endorsed by at least 2 practicing accountants of accounting offices." Article 4 states: "I. Accounting offices shall be composed of at least 3 practicing account-

解釋理由書：財政部證券管理委員會依據證券交易法第三十七條第一項授權，於中華民國七十二年七月七日發布「會計師辦理公開發行公司財務報告查核簽證核准準則」，其第二條規定：「公開發行公司之財務報告，應由聯合會計師事務所之開業會計師二人以上共同查核簽證。」第四條規定：「一、聯合會計師事務所應由三人以上之開業會計師組成，其中應高等考試會計師及格或依會計師檢覈辦法檢覈面試及格者，不得少於二分之一；具有三年以上查帳經驗者，不得少於二人。二、助理人員總數不得少於九人；其中具有會計師法第十二條第一、二款資格或高

ants, where the number of those who passed the Higher Rank Examination for Accountants or passed the interview examination under the Regulation Governing the Review and Approval of the Qualifications of Certified Public Accountants may not be less than 1/2 of the total number of practicing accountants; the number of those who have at least 3 years auditing experience may not be less than 2 persons. II. The total number of assistant personnel may not be less than 9 persons; the number of those who have the qualification of Article 12, Subparagraphs 1 and 2, of the Accountant Act or passed the Higher Rank Examination for Accountants may not be less than 2/3; graduated from an accounting department in a university at the undergraduate or graduate level, or Accounting Auditors may not be less than 1/3 of those assistant personnel. III. The number of junior-level accountants of accounting offices who have not been penalized under the Securities Transaction Act by suspension of performance or of endorsement in the past 2 years, or have not been disciplined by suspension of practice under the Account-

等考試會計審計人員及格者，不得少於三分之二；會計研究所或大學會計系組畢業或高等考試會計師、會計審計人員及格者，不得少於三分之一。三、聯合會計師事務所之開業會計師，至少三人於最近二年度內未受證券交易法所定停止執行簽證之處分，或受會計師法所定停止執行業務之懲戒處分。四、聯合會計師事務所應具有共同之辦公處所。」旨在調和各會計師之學識經驗，提高簽證品質，強化其公信力，使會計師辦理公開發行公司財務報告查核簽證之制度，臻於健全，符合上開法律授權訂定之目的，為保護投資大眾、增進公共利益所必要，與憲法尚無牴觸。惟該準則制定已歷數年，社會環境及證券交易情形，均在不斷演變，會計師檢覈辦法亦經修正，前開準則關於檢覈免試取得會計師資格者，組成聯合會計師事務所之條件，與其他會計師不同之規定，其合理性與必要性是否繼續存在，宜由主管機關檢討修正，或逕以法律之，以昭慎重，併予指明。

ant Act shall be at least 3 persons. IV. The accounting offices shall have offices in common.” The purposes of these provisions are to ensure the educational background and experience of each accountant, enhance the quality of endorsement, strengthen his or her credibility before the public, and ensure the excellence of the system of examination and endorsement for corporations’ publicly issued financial reports submitted by accountants. These provisions are in accordance with the purpose of the authorization made by the Act mentioned above and the need to protect the investing public and advance the public interest; thus, they do not contradict the Constitution. However, since the promulgation of the Guidelines, security exchanges have been continuously evolving, and the Regulation Governing the Review and Approval of the Qualifications of Certified Public Accountants has already been revised. The terms of the former guidelines regarding the requirements for the organization of accounting offices by those who acquire the qualifications of accountant through review and approval without written examination

are different from those of other accountants. Therefore, if the question of whether this differential is still reasonable and necessary should arise, the competent authority may assess and revise it, or directly regulate it by law.