



Professional Ethics Executive Committee

Open meeting agenda

February 21, 2023

Virtual



Open meeting agenda — February 21, 2023

Professional Ethics Division

Professional Ethics Executive Committee

Meeting link: https://aicpa.zoom.us/j/96150288904 Meeting ID: 961 5028 8904 Observers must register: www.aicpa.org/peecmeeting		
10:00–10:05 ET	Welcome Mr. Lynch will welcome the committee members and discuss administrative matters.	
10:05–10:50	IESBA convergence: Fees The task force will seek approval to expose two new interpretations and revisions to the conceptual framework for independence related to fees.	Agenda items 1A–1B
10:50–11:10	Solicitation or disclosure of CPA examination questions and answers Staff will seek approval to expose the revised interpretation.	Agenda items 2A–2B
11:10–11:55	IESBA convergence: Public interest entities The task force will seek approval to expose a new definition of publicly traded entity and a revised definition of public interest entity.	Agenda items 3A–3B
11:55–12:05	Unpaid fees The task force will seek input on a revised Q&A.	Agenda item 4
12:05–1:00	Break before afternoon session	
1:00–1:45	IESBA tax planning and related services Mr. Mintzer will provide an overview of the IESBA Tax Planning and Related Services exposure draft. Staff will seek input to consider for the joint PEEC/TEC comment letter.	Agenda items 5A–5B

1:45–2:00	<p>IESBA update</p> <p>Update on IESBA’s activities for the previous quarter including,</p> <ul style="list-style-type: none"> • Public interest entities rollout • Technology • Engagement team • Strategy and work plan • Sustainability • Experts 	Agenda items 6A–6G
2:00–2:10	<p>Simultaneous employment or association with an attest client</p> <p>The task force will provide an overview of recent activities and seek input on direction.</p>	
2:10–2:20	<p>Private equity investment in firms</p> <p>Staff will provide an overview of recent activities.</p>	
2:20–2:30	<p>Content and member communications</p> <p>Staff will provide an overview of recent activities.</p>	
2:30–2:35	<p>DOL independence rules</p> <p>Staff will provide an update on recent activities.</p>	
	<p>Future meeting dates</p> <p>May 9–10, 2023</p> <p>August 9–10, 2023</p> <p>November 8–9, 2023</p>	

IESBA convergence: Fees

Task force members

Alan Long (chair), Melanie Barthel, Anika Heard, Randy Milligan, Kathy Savage, Peggy Ullmann

Observers

Sonia Araujo, Brandon Mercer, Jan Neal

AICPA staff

Sarah Brack, Ellen Gorla

Task force charge

To develop a principles-based framework for members to determine when the level of fees and fee dependency impair independence.

Reason for agenda item

To seek approval to expose two new interpretations and fees-related revisions to the conceptual framework for independence.

Task force activities

At the November PEEC meeting, the committee provided feedback on proposed authoritative and nonauthoritative guidance developed as an IESBA convergence project. The following outlines the committee's feedback and the task force's responses:

1. *Committee feedback*: In the "Determining Fees for an Attest Client" interpretation paragraph .03, *all* other services performed, attest and nonattest, should not influence the fee for the specific attest service being evaluated.

Task force response: Changed interpretation name to "Determining Fees for an Attest Engagement" and changed "nonattest services" to "other services."

2. *Committee feedback*: The scope of the "Determining Fees for an Attest Client" interpretation as it relates to which members are covered will be clearer using the phrase "covered member *responsible for* determining the fees" rather than "covered member *involved with* determining the fees." This is because some covered members could be involved but not ultimately responsible.

Task force response: Revised the proposed interpretation accordingly.

3. *Committee feedback*: Paragraphs .01 and .02 of the "Determining Fees for an Attest Client" interpretation might conflict as .01 indicates that fees are for an attest engagement, but .02 generally talks about fees and indicates that the fees are for attest

or other services.

Task force response: Deleted the original content of paragraph .01 in the proposed interpretation.

4. *Committee feedback:* The proposed “Fee Dependency” interpretation needs to be clear that the evaluation of fee dependency should happen continuously, not just at the five-year mark.

Task force response: No changes to the interpretation because in concert with the nonauthoritative guidance expected in the Q&A outlined in paragraph 12 of the exposure draft’s overview section, it is clear that the threats created are present at any point when fees represent a large proportion of the total fees of the firm.

5. *Committee feedback:* There is concern about whether the “Fee Dependency” interpretation can be fairly enforced and whether it will create challenges for smaller firms.

Task force response: The principles-based approach and the availability of safeguards do not place a higher burden on smaller firms. The nonauthoritative guidance will assist members with evaluating the existence of the threats, the level of the threats, and ways the threats can be mitigated without the need for outside assistance.

6. *Committee feedback:* There is a concern about whether paragraph .05 in the “Fee Dependency” interpretation is necessary in the United States.

Task force response: Though joint audits are rare, they can occur. In the interest of converging where able, this paragraph remains in the proposal.

Affiliates

To ensure clarity, the task force has added a new paragraph .03 to the proposed “Fee Dependency” interpretation. It states that fees charged to affiliates of financial statement attest clients should be included in the determination of total fees generated by an attest client.

The scope of affiliates whose fees will need to be considered with this interpretation is greater than that contemplated in the IESBA fees standard because the AICPA’s affiliates definition is more expansive than IESBA’s related entity definition. Nonauthoritative guidance will help members who encounter difficulty identifying fees. The guidance will endorse a “best efforts” approach to obtaining information on fees generated by affiliates of financial statement attest clients.

Fees from Network Firms

IESBA's standard does not extend to network firms. The task force intends that the proposed interpretations be consistent with IESBA on this topic. The AICPA's definition of "firm" includes network firms for the purpose of complying with the "Independence Rule".

There is not currently anything in the interpretations on this topic. The task force would likely address the issue in a Q&A.

Questions for the committee

1. Does the committee agree that fees from an attest client should include fees received from all affiliates (as defined by the AICPA code), or just affiliates under the direct or indirect control of the financial statement attest client which is consistent with the IESBA related entity definition? If the committee believes the scope should align with IESBA, should the clarification be made in the proposed "Fee Dependency" interpretation or as an exception in paragraph .02 of the "Client Affiliates" interpretation?
2. Does the committee agree that network firms should be excluded from the determination of total fees of the firm in the proposed "Fee Dependency" interpretation? If so, should the clarification be made in the proposed interpretation or as a Q&A?
3. Does the committee approve exposure of the proposed new and revised interpretations as presented in agenda item 1B?
4. Does the committee agree that the exposure period should be until June 15, 2023?
5. Does the committee agree with the proposed effective date of January 1, 2025 with early adoption permitted?

Materials presented

Agenda item 1B: Proposed new and revised interpretations: Fees

Proposed new and revised interpretations: Fees

Invitation to comment

MONTH DAY, YEAR

Are you interested in the ethics of accounting? If so, we want to hear your thoughts on this ethics exposure draft. Your comments are integral to the standards-setting process, and you don't need to be an AICPA member to participate.

This proposal is part of the AICPA's Professional Ethics Executive Committee (PEEC) project to converge with ethics standards promulgated by the International Ethics Standards Board for Accountants (IESBA).

This exposure draft explains the proposed revisions to the AICPA Code of Professional Conduct and includes the full text of the guidance under consideration.

At the conclusion of the exposure period, PEEC will evaluate the comments and determine whether to publish the new and revised interpretations.

Again, your comments are an important part of the standards-setting process — please take this opportunity to comment. We must receive your response by June 15, 2023. All written replies to this exposure draft will become part of the public record of the AICPA and will be available at www.aicpa.org/peecprojects.

Please email your comments to ethics-exposedraft@aicpa.org.

Alternately, you can submit comments via our online form at aicpa.org/ethicscomments.

Sincerely,

Brian S. Lynch, Chair
Professional Ethics Executive Committee

Toni Lee-Andrews, Director, CPA, PFS, CGMA
Professional Ethics Division

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Explanation of the new and revised interpretations

As part of our convergence efforts, the Professional Ethics Executive Committee (PEEC) is exposing for comment two new interpretations and revisions to one interpretation:

- New “Determining Fees for an Attest Engagement” interpretation (ET sec. 1.230.030)
- New “Fee Dependency” interpretation (ET sec. 1.230.040)
- Revised “Conceptual Framework for Independence” interpretation (ET sec. 1.210.010)

If adopted as final, the new and revised interpretations will be applicable to members in public practice.

Overview

1. The objective of the International Ethics Standards Board for Accountants’ (IESBA’s) Fees project was to review the provisions in the IESBA code pertaining to fee-related matters. See links to the [final standard](#) and [basis for conclusions](#). IESBA’s Fees project responded to a public interest need for IESBA to deal with fee-related matters, including those that impact or are perceived to impact auditor independence - both independence of mind and independence in appearance. IESBA’s revisions to the fee-related provisions of the Independence section of their code include:
 - A prohibition on firms allowing the audit fee to be influenced by the provision of services other than audit to the audit client.
 - A requirement to cease to act as auditor if fee dependency on the audit client continues beyond a specified period.
 - For firms auditing public interest entities (PIEs), communication of fee-related information to those charged with governance (TCWG) and to the public to assist their judgments about auditor independence.
 - Enhanced guidance on identifying, evaluating and addressing threats to independence.
2. PEEC appointed a task force to evaluate these amended rules and determine whether revisions to the AICPA Code of Professional Conduct (code) are required. The task force met several times to evaluate the differences between the new IESBA guidance and the AICPA’s extant guidance, beginning with a gap analysis. Using that analysis, the task force determined where convergence was possible.

3. Based on that evaluation, PEEC is proposing two new interpretations to
 - a. require that a covered member responsible for determining fees for an attest engagement not allow those fees to be influenced by the provision of other services to that attest client.
 - b. require that a covered member determine whether the fees the firm receives from an attest client are at a level where the self-interest and undue influence threats are significant enough that safeguards must be applied (i.e., fee dependency).
4. PEEC is also proposing revising an example of a self-interest threat and adding a new undue influence threat to the “Conceptual Framework for Independence” interpretation to clarify and highlight fee-related threats that are described in the new interpretations.
5. PEEC is not addressing revisions that are specifically for PIEs. Rather, PEEC will determine what, if any, PIE provisions need to be added to the code based on the PIE convergence project.

Determining fees for the attest engagement

6. Consistent with IESBA’s requirements, PEEC acknowledges that determining fees is a business decision; cost savings achieved because of experience derived from the provision of other services to the client can be considered; and fees should not be dependent upon whether additional services are provided.
7. PEEC’s proposal does differ from the IESBA standard in that the proposal applies to attest engagements, not just financial statement audits and reviews. PEEC determined that the relevant threats could be present in any attest engagement; therefore, applying the requirements to all attest engagements is in the public interest.
8. PEEC’s proposed scope also differs from IESBA’s. Specifically, IESBA’s requirements extend to firms, whereas PEEC’s proposal extends to covered members that are responsible for determining the fees for the relevant attest engagement. PEEC’s scope is consistent with other provisions of the code and how the code is enforced. Further, firms are included in the definition of covered member.

Fee dependency

9. Consistent with IESBA’s requirements, PEEC proposes that safeguards be applied when fee dependency extends for five consecutive years.
10. PEEC’s proposal differs from IESBA’s guidance. In lieu of using the 30% threshold from the IESBA standard, PEEC proposes a principles-based approach which will allow members to use professional judgment to determine when specific facts and circumstances create threats.

11. The principle proposed is “total fees generated from an attest client by the firm represent a large proportion of the total fees of that firm” (i.e., fee dependency). When fee dependency exists, threats are created. When fee dependency extends for more than five years, threats are significant and proposes specific safeguards to reduce threats to an acceptable level.
12. When evaluating whether fees represent a large proportion, qualitative and quantitative factors such as the following may be helpful:
 - a. The size of the attest client, in terms of the percentage of fees or the dollar amount of fees versus total revenue of the firm, engagement partner, office, or practice unit of the firm.
 - b. The significance of the attest client to the firm, engagement partner, office, or practice unit of the firm in light of the following:
 - i. The amount of time the firm, partner, office, or practice unit devotes to the attest client
 - ii. The effect on the partner’s stature within the firm due to the partner’s relationships with the attest client
 - iii. The manner in which the partner, office, or practice unit is compensated
 - iv. The effect that losing the attest client would have on the firm, partner, office, or practice unit
 - c. The importance of the attest client to the firm’s growth strategies (for example, the firm is trying to enter a particular industry)
 - d. The stature of the attest client, which may enhance the firm’s eminence in the marketplace
 - e. Whether the firm also provides services to related parties (for example, also provides professional services to affiliates or owners of the attest client)
 - f. Whether the engagement is recurring
 - g. The operating structure of the firm
 - h. Whether the firm is expected to diversify such that any dependence on the attest client is reduced
13. When the factors indicate that an attest client may represent a large proportion of the firm’s fees, the following are examples of actions that might reduce the proportion:

- a. Reducing the extent of nonattest services provided to the attest client
 - b. Increasing the client base of the firm to reduce dependence on the attest client
 - c. Increasing the extent of services provided to other clients
14. As noted above, when fee dependency extends for more than five years, threats are significant and proposes that specific safeguards be applied. When fee dependency exists prior to the fifth year, actions such as the following may be helpful:
- a. Having an appropriate reviewer who has not provided attest or nonattest services to the attest client review the attest work performed before the current-year attest report is issued
 - b. Ensuring that the compensation of the partner is not significantly influenced by the fees generated from the attest client
 - c. Implementing policies and procedures for identifying and monitoring significant client relationships, including the following:
 - i. Consider client significance in the planning stage of the engagement.
 - ii. Base the consideration of client significance on firm-specific criteria or factors that are applied on a facts and circumstances basis.
 - iii. Periodically monitor the relationship. What constitutes periodic is a matter of judgment, but assessments of client significance that are performed at least annually can be effective in monitoring the relationship. During the course of such a review, a client previously deemed to be significant may cease to be significant. Likewise, clients not identified as significant could become significant whenever factors the firm considers relevant for identifying significant clients arise. (For example, additional services are contemplated.)
 - d. Assigning a second (or concurring) review partner who is not otherwise associated with the attest engagement and who practices in an office other than those who perform the attest engagement
 - e. Subjecting the assignment of engagement personnel to approval by another partner or manager
 - f. Periodically rotating engagement partners
 - g. Subjecting significant client attest engagements to internal firm monitoring

procedures

Fees from affiliates

15. To ensure clarity, paragraph .03 of the proposed interpretation states that fees charged to affiliates of financial statement attest clients be included in the determination of total fees generated by an attest client.
16. The scope of affiliates whose fees would need to be considered in this proposed interpretation is greater than that contemplated by the IESBA fees standard because the AICPA's affiliate definition is more expansive than IESBA's definition of a related entity for entities that are not listed entities. [Update for conclusion from PEEC meeting]
17. There may be cases where a covered member may not be able to obtain information on the fees that may have been generated by all known affiliates. In such a case, a covered member should expend their best efforts to obtain the information necessary.

Fees from Network Firms

18. [Add discussion from PEEC meeting]

Threat examples in the "Conceptual Framework for Independence"

19. PEEC discussed whether the "Conceptual Framework for Independence" interpretation (conceptual framework) (ET sec. 1.210.010) alone is sufficient to ensure that members will identify and evaluate the threats identified by IESBA's fees standard (self-interest and undue influence) without additional authoritative guidance.
20. Though use of the conceptual framework alone can help members determine that threats do exist, in practice, these threats may not be apparent. Therefore, PEEC is proposing revisions to the examples of threats in the conceptual framework to highlight that it can assist members with identifying fee-related threats.
21. To align with the proposed "Fee Dependency" interpretation, the example of a self-interest threat in paragraph .16c of the conceptual framework interpretation has been revised to clarify that the threat stems from reliance on "fees from attest and nonattest services" instead of just on "revenue".
22. IESBA adopted application guidance addressing the impact on the level of the undue influence threat when a large proportion of fees charged by the firm to an audit client is generated by providing services other than audit to the client, due to concerns about the potential loss of either the audit engagement or other services. This is an important consideration for covered members similar to the way that the cumulative effect of providing multiple nonattest services must be evaluated.
23. To highlight this potential threat, PEEC proposes a new example of an undue influence

threat that is present when a large proportion of fees charged to an attest client by the firm are generated by nonattest services. Considerations, such as the following could assist with determining if threats exist and how significant the threats are to independence:

- a. The ratio of fees for nonattest services to the attest engagement fee
- b. The length of time during which a large proportion of fees for nonattest services to the attest engagement fee has existed
- c. The nature, scope and purposes of the nonattest services, including:
 - i. Whether they are recurring services
 - ii. Whether law or regulation mandates the services to be performed by the firm

24. When such threats are not at an acceptable level, the following are examples of actions that might help reduce the level of threats:

- a. Having an appropriate reviewer who does not take part in the attest engagement assess the reasonableness of the fee proposed
- b. Having an appropriate reviewer who did not take part in the attest engagement review the work performed on the attest engagement

Effective date

25. PEEC recommends an effective date of January 1, 2025 and allowing for early adoption.

Request for comments

26. PEEC welcomes comments on all aspects of the proposed revisions to the code. In addition, PEEC is seeking feedback on the following specific aspects of the proposed interpretations and revisions:

- a. Do you agree with the use of covered member in the proposed new interpretations?
- b. Do you agree with the engagement scope in the proposed new interpretations, especially where the proposed scope goes beyond IESBA's?
- c. Is it clear that threats related to fee dependency should be considered each year not just at year 5?
- d. Do you believe the guidance in paragraphs 12-14, 23 and 24 of the explanation should be included either in the proposed interpretations or as non-authoritative guidance and why?

- e. Do you believe total fees from an attest client should include fees received from all affiliates (as defined by the AICPA code), or just affiliates under the direct or indirect control of the financial statement attest client which is consistent with the IESBA standard and related entity definition and why?
- f. Do you agree that the effective date provides adequate time to implement the proposals? If you disagree, please explain why.

DRAFT

Additions appear in ***boldface italic***. Deletions appear in ~~strikethrough~~.

Terms defined in the AICPA Code of Professional Conduct are italicized in this document. If you'd like to see the definitions, you can find them in "Definitions" ([ET sec. 0.400](#))

1.230.030 Determining Fees for an Attest Engagement

- .01 Determining the fees to be charged to an attest client, whether for attest or other services, is a business decision taking into account the facts and circumstances relevant to that specific engagement, including the requirements of technical and professional standards.***
- .02 The provision of other services to an attest client is not an appropriate consideration in determining the attest engagement fee, except as provided for in paragraph .03. If a covered member responsible for determining the attest engagement fee allows the attest engagement fee to be influenced by the firm's provision of other services to an attest client, the self-interest and undue influence threats to the covered member's compliance with the "Independence Rule" [1.200.001] would not be at an acceptable level and could not be reduced to an acceptable level by the application of safeguards. Accordingly, independence would be impaired.***
- .03 When determining the attest engagement fee, the firm may take into consideration the cost savings achieved as a result of experience derived from the provision of other services to an attest client.***

1.230.040 Fee Dependency

- .01 When the total fees generated from an attest client by the firm represent a large proportion of the total fees of that firm, the dependence on, and concern about the potential loss of, fees from attest and other services from that client impact the level of the self-interest threat and create an undue influence threat to a covered member's independence.***
- .02 In calculating the total fees of the firm, the covered member should include fees from attest and nonattest services and might use financial information available from the previous financial year and estimate the proportion based on that information if appropriate.***
- .03 When the attest client is a financial statement attest client, the covered member should include fees from affiliates of the financial statement attest client.***
- .04 When for each of five consecutive years total fees from an attest client represent, or are likely to represent, a large proportion of the total fees received by the firm, threats to the covered member's compliance with the "Independence Rule" [1.200.001] would not be at an acceptable level and independence would be impaired unless one of the following safeguards is applied:***
- a. Prior to the attest report being issued for the fifth year, an appropriate reviewer who is not a member of the firm issuing the report, reviews the fifth year's work; or***
 - b. After the attest report on the fifth year has been issued, and before the attest report is issued on the sixth year's attest engagement, an appropriate reviewer who is not a member of the firm issuing the report or a professional body, reviews the fifth year's attest work.***
- .05 If the total fees described in paragraph .04 continue to represent a large proportion, the covered member shall, each year, apply one of the safeguards .04a or .04b.***
- .06 When two or more firms are engaged to conduct an attest engagement, the involvement of the other firm in the attest engagement may be regarded each year as an action equivalent to that in paragraph .04a, if:***
- a. The circumstances addressed by paragraph .04 apply to only one of the firms performing the attest engagement; and***

- b. **Each firm performs sufficient work to take full individual responsibility for the report.**

1.210.010 Conceptual Framework for Independence

[Paragraphs .01–.15, .17, and .19–.23 are unchanged.]

.16 *Self-interest threat*. The *threat* that a *member* could benefit, financially or otherwise, from an interest in, or relationship with, an *attest client* or persons associated with the *attest client*. Examples of self-interest *threats* include the following:

- a. A *member* has a *direct financial interest* or *material indirect financial interest* in the *attest client*. [1.240.010]
- b. A *member* has a *loan* from the *attest client*, an officer or a director of the *attest client* with the ability to affect decision-making, or any individual with a *beneficial ownership interest* (known through reasonable inquiry) that gives the individual *significant influence* over the *attest client*. [1.260.010]
- c. A *member* or his or her *firm* relies excessively on revenue **fees from attest and nonattest services** from a single *attest client*. **[1.230.040]**
- d. A *member* or *member's firm* has a material joint venture or other material joint business arrangement with the *attest client*. [1.265]

.18 *Undue influence threat*. The *threat* that a *member* will subordinate his or her judgment to that of an individual associated with an *attest client* or any relevant third party due to that individual's reputation or expertise, aggressive or dominant personality, or attempts to coerce or exercise excessive influence over the *member*. Examples of undue influence *threats* include the following:

- a. Management threatens to replace the *member* or *member's firm* over a disagreement on the application of an accounting principle.
- b. Management pressures the *member* to reduce necessary audit procedures in order to reduce audit fees.
- c. The *member* receives a gift from the *attest client*, its management, or its significant shareholders. [1.285.010]
- d. **A large proportion of fees charged by the firm to an attest client is generated by providing nonattest services.**

Acknowledgments

Professional Ethics Executive Committee

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Many thanks

The Professional Ethics Division and PEEC are grateful for the input we received from observers and stakeholders while drafting these proposed changes to the Code of Professional Conduct.

Solicitation or disclosure of CPA examination questions and answers

AICPA staff

Summer Young

Reason for agenda item

To revise the AICPA Code of Professional Conduct (code) to address recent CPE course cheating issues.

Background

The SEC sanctioned several firms whose employees were discovered sharing answer keys to various CPE courses; consequently, several state boards of accountancy have taken action against individuals identified in these instances. As the extant code prohibits question and answer sharing only for the CPA exam, staff proposes the attached revisions to the three “Solicitation or Disclosure of CPA Examination Questions and Answers” interpretations ([ET sec. 1.400.020](#), [2.400.020](#), and [3.400.020](#)).

Staff activities

Based on feedback received at the November 2022 PEEC meeting, staff revised the proposed interpretation. Language was added to acknowledge that certain CPE courses allow for collaboration, so such sharing would not be a violation of the code. The language regarding state licensure, AICPA and state society membership was removed to clarify that cheating is not condoned in any situation.

Questions for the committee

1. Does the committee agree with staff’s recommended revisions?
2. Does the committee approve exposure of the proposed revisions to the “Solicitation or Disclosure of CPA Examination Questions and Answers” interpretations in agenda item 2B?
3. Does the committee agree that the exposure period can be limited to 60 days?
4. Does the committee agree with the proposal to make the revisions effective as soon as possible (that is, as soon as notice appears in the *Journal of Accountancy*)?

Materials presented

Agenda item 2B: Proposed revisions to the “Solicitation or Disclosure of CPA Examination Questions and Answers” interpretations

Proposed revisions to the “Solicitation or Disclosure of CPA Examination Questions and Answers” interpretations

Additions appear in ***boldface italic***. Deletions appear in ~~strike~~through.

Terms defined in the AICPA Code of Professional Conduct are italicized in this document. If you’d like to see the definitions, you can find them in “Definitions” ([ET sec. 0.400](#))

1.400.020 Solicitation or Disclosure of CPA Examination Questions and Answers

.01 A member who solicits or knowingly discloses the Uniform CPA Examination question(s) or answer(s), or both, without the AICPA’s written authorization shall be considered to have committed an act discreditable to the profession, in violation of the “Acts Discreditable Rule” [1.400.001]. [Prior reference: paragraph .07 of ET section 501]

.02 A member who solicits or knowingly discloses questions or answers, or both, of any continuing professional education course (other than one for which collaboration is expected) shall be considered to have committed an act discreditable to the profession, in violation of the “Acts Discreditable Rule” [1.400.001] ~~when the course is used by a member to meet a member’s~~

a. ~~State CPA licensure requirements;~~

b. ~~AICPA membership requirements, credentials, and certificate programs; or~~

c. ~~state CPA society membership requirements.~~

2.400.020 Solicitation or Disclosure of CPA Examination Questions and Answers

.01 A member who solicits or knowingly discloses the Uniform CPA Examination question(s) or answer(s), or both, without the AICPA's written authorization shall be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [2.400.001]. [Prior reference: paragraph .07 of ET section 501]

.02 A member who solicits or knowingly discloses questions or answers, or both, of any continuing professional education course (other than one for which collaboration is expected) shall be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [2.400.001] when the course is used by the member to meet the member's

- a. state licensure requirements;***
- b. AICPA membership requirements; or***
- c. state CPA society membership requirements.***

3.400.020 Solicitation or Disclosure of CPA Examination Questions and Answers

.01 A member who solicits or knowingly discloses the Uniform CPA Examination question(s) or answer(s), or both, without the AICPA's written authorization shall be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [3.400.001]. [Prior reference: paragraph .07 of ET section 501]

.02 A member who solicits or knowingly discloses questions or answers, or both, of any continuing professional education course (other than one for which collaboration is expected) shall be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [3.400.001] when the course is used by the member to meet the member's

- a. state licensure requirements;***
- b. AICPA membership requirements; or***
- c. state CPA society membership requirements.***

IESBA convergence: Public interest entities

Task force members

Lisa Snyder (chair), Cathy Allen, Greg Collins, Nancy Miller, Andrew Prather, Katherine Savage

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Jennifer Clayton, Ellen Gorla

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Jason Brodmerkel, Mary Foelster, Ahava Goldman, Sue Hicks, Kim Kushmerick, Ian MacKay, Melinda Nolan, Ashley Whitaker, Brian Wilson

Task force charge

To determine convergence needs related to the International Ethics Standards Board for Accountants (IESBA) [*Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code*](#).

The revised definitions and related standard are effective for audits of financial statements for periods beginning on or after December 15, 2024, and early adoption is permitted. IESBA also issued a related [basis for conclusion document](#) and brought [draft Q&As](#) to their June 2022 meeting for input.

Reason for agenda item

To seek approval to expose a new definition for “publicly traded entity” (PTE) and a revised definition of “public interest entity” (PIE).

Task force activities

At the November 2022 PEEC meeting, the task force presented a new definition for publicly traded entity and a revision to an existing definition of public interest entity.¹ PEEC suggested minor revisions to the mandatory categories included in the definition of PIE and offered their views on additional PIE categories being considered. The task force incorporated changes appropriately.

Recommendations

IESBA’s new PIE definition contains three mandatory categories of PIEs. The IESBA code includes more restrictive independence requirements for audits and reviews of PIEs. These

¹ The committee’s November 2022 agenda materials can be found [here](#).

three mandatory categories are already heavily regulated in the United States by the SEC, PCAOB, NAIC, and FDIC and these regulators have established appropriate independence requirements for the entities that they oversee.

The task force recommends a new definition for PTE and a revised definition of PIE be included in the code. The revised definition of PIE will include the IESBA mandatory categories but defer to the relevant regulators for purposes of the specific independence requirements. This approach mitigates the need to add a separate set of independence standards to the code.

Enforceability

The committee is asked whether the “compliance requirement” in the last paragraph of the proposed PIE definition should remain in the definition of a PIE or if it should be moved to a new interpretation under the Independence rule.

Currently, the “compliance requirement” in the proposed PIE definition states, “*Members* should refer to the *independence* regulations of applicable authoritative regulatory bodies when a *member* performs attest services and is required to be independent of the *attest client* under such regulations.”

If the committee believes this requirement should be in an independence interpretation instead, the task force recommends the committee consider the following:

1.200.007 Public interest entities

- .01 ***When an entity meets the definition of a public interest entity, a member should comply with refer to the independence rules and regulations of the applicable authoritative regulatory body or bodies when the member performs attest services and is required to be independent of the attest client under such rules and regulations.***

Questions for the committee

1. How would the committee like to treat the “compliance requirement” in the code?
2. Does the committee believe the interpretation or a Q&A is necessary to explain which independence rules and regulations should be applied when a member decides to treat an entity as a PIE that is not included in the definition of PIE? Should the determination be left to the member based on facts and circumstances and using their professional judgment? Or, should the member be expected to apply the SEC issuer independence rules?
3. Does the committee approve exposure of the proposed revisions and addition as presented in agenda item 3B?
4. Does the committee agree that the exposure period should be until June 15, 2023?
5. Does the committee agree with the proposed effective date for audits of financial statements for periods beginning on or after December 15, 2024, with early adoption permitted?

Effective date

The task force recommends that the proposed revisions be effective for audits of financial statements for periods beginning on or after December 15, 2024, with early adoption permitted.

Action needed

The committee is asked to approve for exposure the proposed revisions and addition in agenda item 3B. Given the complexity of the topic, staff recommends comments be requested by June 15, 2023.

Materials presented

Agenda item 3B: Proposed new definition of publicly traded entity and revised definition of public interest entity

Proposed new definition of publicly traded entity and revised definition of public interest entity

Invitation to comment

MONTH DAY, 2023

Are you interested in the ethics of accounting? If so, we want to hear your thoughts on this ethics exposure draft. Your comments are integral to the standards-setting process, and you don't need to be an AICPA member to participate.

This proposal is part of the AICPA's Professional Ethics Executive Committee (PEEC) project to converge with the International Ethics Standards Board for Accountants (IESBA) revisions to their definition of listed entity and public interest entity.

This exposure draft explains the proposed revisions to the AICPA Code of Professional Conduct and includes the full text of the guidance under consideration.

At the conclusion of the exposure period, PEEC will evaluate the comments and determine whether to publish the new definition and revised definition.

Again, your comments are an important part of the standards-setting process — please take this opportunity to comment. We must receive your response by June 15, 2023. All written replies to this exposure draft will become part of the public record of the AICPA and will be available at www.aicpa.org/peecprojects.

Please email your comments to ethics-exposuredraft@aicpa.org.

Alternately, you can submit comments via our online form at aicpa.org/ethicscomments.

Sincerely,

Brian S. Lynch, Chair
Professional Ethics Executive Committee

Toni Lee-Andrews, Director, CPA, PFS, CGMA
Professional Ethics Division

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DRAFT

Explanation of the new definition and revised definition

As part of our convergence efforts, the Professional Ethics Executive Committee (PEEC) is exposing for comment a new definition and a revision to a definition:

- New definition of “publicly traded entity” (ET sec. 0.400.43)
- Revised definition of “public interest entity” (ET sec. 0.400.41)

If adopted as final, the new and revised definitions will be applicable to members in public practice.

Overview

1. The International Ethics Standards Board for Accountants (IESBA) revised their [Definitions of Listed Entity and Public Interest Entity](#). IESBA has more restrictive independence requirements for public interest entities (PIEs) than the AICPA. For example, the IESBA code prohibits members from providing non-assurance – or nonattest, in the AICPA Code of Professional Conduct (code) – services to a PIE audit or review client if that service might create a self-review threat.
2. IESBA’s new PIE definition contains three mandatory categories of PIEs:
 - a. A publicly traded entity
 - b. An entity one of whose main functions is to take deposits from the public
 - c. An entity one of whose main functions is to provide insurance to the public

It also contains a general category described as an entity specified as such by law, regulation, or professional standards to meet the purpose described in paragraph 400.10.¹

3. IESBA’s application guidance explains that bodies responsible for setting ethics standards are expected to refine these categories more explicitly to align with their jurisdictions. The

¹ Paragraph 400.10 states “*Stakeholders have heightened expectations regarding the independence of a firm performing an audit engagement for a public interest entity because of the significance of the public interest in the financial condition of the entity. The purpose of the requirements and application material for public interest entities as described in paragraph 400.8 is to meet these expectations, thereby enhancing stakeholders’ confidence in the entity’s financial statements that can be used when assessing the entity’s financial condition.*”

application guidance also

- a. indicates that bodies responsible for setting ethics standards are expected to add categories but are not expected to remove any.
 - b. encourages firms to consider whether to treat additional entities as PIEs.
4. The application guidance provides ethics standards-setting bodies with a list of factors to consider when determining whether an entity should be considered a PIE because there is significant public interest in the entity's financial condition.

These are the factors provided for ethics standards-setting bodies to consider:

- a. Nature of the business or activities, such as the holding of assets in a fiduciary capacity for a large number of stakeholders taking on financial obligations to the public as part of the entity's primary business. Examples might include financial institutions, such as banks and insurance companies, and pension funds
- b. Whether the entity is subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations
- c. Size of the entity
- d. Importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure
- e. Number and nature of stakeholders including investors, customers, creditors and employees
- f. Potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity

Current regulation in the United States

5. The three mandatory categories covered by the new IESBA PIE definition are already heavily regulated in the United States by the SEC, PCAOB, FDIC, and National Association of Insurance Commissioners (NAIC). These regulators have established appropriate independence requirements for the entities they oversee.
6. As such, if these revisions are adopted, the AICPA code will include the mandatory categories in the definition of PIE and defer to the relevant regulators for purposes of the specific independence requirements. Adding a separate set of independence standards to the code for PIEs would result in significant complexity and could be inconsistent with rules of a particular regulator. This approach — adding one definition and revising another —

aligns with IESBA’s goals.

Mandatory Category 1: Publicly traded entity (SEC and PCAOB)

7. The first mandatory category of PIE is “publicly traded entity.” IESBA adopted the following definition of publicly traded entity to help users understand what would be included in this category:

An entity that issues financial instruments that are transferrable and traded through a publicly accessible market mechanism, including through listing on a stock exchange.

A listed entity as defined by relevant securities law or regulation is an example of a publicly traded entity.

- 8. The new IESBA definition is not intended to include only entities having shares, stock or debt traded on formal exchanges but also includes those on second-tier markets or over-the-counter (OTC) trading platforms.
- 9. The IESBA definition of “publicly traded entity” is appropriate to use in the AICPA PIE definition. However, IESBA’s example of “listed entity” is eliminated because the common term for this type of entity in the United States is “issuer.”
- 10. The SEC independence rules apply to auditors of issuers and certain nonissuers. The SEC independence rules that apply to issuer audits are in many respects considered to be substantially similar to IESBA’s independence requirements for PIEs.² Accordingly, this proposal refines this PIE category to extend only to auditors who are subject to the SEC issuer independence rules.

SEC independence rules that apply to issuer and non-issuer audits	Additional SEC independence rules that apply to issuer audits ³
<ul style="list-style-type: none"> • General standard of auditor independence (Rule 2-01(b)) • Financial relationships (Rule 2-01(c)(1)) • Employment relationships (Rule 2-01(c)) 	<ul style="list-style-type: none"> • Employment cooling-off for former members of the audit engagement team (Rule 2-01(c)(2)(iii)(B)-(C)) • Partner rotation (Rule 2-01(c)(6)) • Audit committee administration of the

² See IESBA’s [benchmarking reports](#).

³ PCAOB also has certain independence rules that apply to issuer audit clients (e.g., PCAOB Rules 3523, 3524, and 3525)

<p>(2)(i)-(iii)(A) and (c)(2)(iv))</p> <ul style="list-style-type: none"> • Business relationships (Rule 2-01(c)(3)) • Non-audit services (Rule 2-01(c)(4)) • Contingent fees/commissions (Rule 2-01(c)(5)) 	<p>engagement (i.e., audit committee pre-approval) (Rule 2-01(c)(7))</p> <ul style="list-style-type: none"> • Audit partner compensation (Rule 2-01(c)(8))
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11. The AICPA’s proposed new definition of “publicly traded entity” includes financial instruments such as governmental bonds and certain entities listed on the OTC trading platforms.
12. However, the refined scope in the revised definition of “public interest entity” clarifies that inclusion of such financial instruments in the definition of PIE depends on whether auditors of these entities are subject to SEC issuer independence rules.
13. Issuers, publicly traded mutual funds, and entities listed on the OTC trading platforms are considered PIEs if their auditors are subject to SEC issuer independence rules. Entities are not considered PIEs if their auditors are not subject to issuer independence rules.
14. This aligns with IESBA’s goal for the new definition to not only include entities having shares, stock, or debt traded on formal exchanges but to also include those on second-tier markets or OTC trading platforms.

Mandatory Category 2: Deposits from the public (FDIC)

15. PEEC is refining this category to include entities that meet the annual audit requirement imposed by Sections 363.1(a) and 363.2(a) of Part 363 of the FDIC’s regulations.
16. The FDIC audit requirement becomes applicable when the financial institution has more than \$500 million in assets and requires that the auditor be subject to SEC issuer independence rules. This refinement places significant importance on the size of the entity, which is a factor IESBA recommends considering during the refinement process.
17. Credit unions are not captured by this refinement as they are not subject to SEC issuer independence rules. However, they are regulated by the National Credit Union Administration (NCUA) which protects the interest of credit union members.
18. Auditors of credit unions are subject to AICPA independence rules. PEEC considered whether to include credit unions as a category under the PIE definition and concluded that they do not offer deposits to the public but rather, to their members. In addition, the regulator (NCUA) has deliberated and determined the appropriate independence standards auditors of credit unions should follow.

19. Accordingly, PEEC's decision to exclude credit unions places significant importance on the nature of the stakeholders (i.e., members, not the public) and that these entities are subject to the supervision of a regulator, which are factors IESBA recommends considering during the refinement process.

Mandatory Category 3: Insurance to the public (NAIC)

20. PEEC is refining this category to include only entities that are subject to the NAIC Annual Financial Reporting Model Regulation ([Model Audit Rule](#)) adopted by the respective state insurance department ([Model Audit Rule or MAR](#)), and whose auditor is required to follow independence requirements included in Section 7 (Qualifications of Independent Certified Public Accountant) of the Model Audit Rule.

21. This requirement excludes small insurance entities that are not currently subject to the NAIC audit requirement as set forth in Section 2 (Purpose and Scope) of the MAR.

22. This refinement places significant importance on whether the entity is subject to supervision of a regulator designed to provide confidence that the entity will meet its financial obligations and size of the entity, which are factors IESBA recommends considering during the refinement process.

23. Section 7 of the Model Audit Rule has independence requirements for auditors of insurers that are subject to the Model Audit Rule. These independence requirements are comparable to those of the SEC issuer independence rules as they contain provisions related to the following:

- Partner rotation
- Prohibited non-audit services
- Cooling off period for employment
- Audit committee preapproval
- Good standing with the standards of the profession

24. Other identified insurance entities that do not have uniform application of the Model Audit Rule specific requirements or regulations vary by state and include:

- Health maintenance organizations, managed care organizations, health care entities
- Warranty companies
- Captives

- Risk retention groups

25. These entities are not included in the refined PIE category as there is not uniform application of the Model Audit Rule. However, PEEC acknowledges regulators in the states, through either the departments of health or departments of insurance, determine the appropriate independence rules the auditors of these other entity types are required to follow.

Additional recommended categories

26. IESBA's application guidance indicates that ethics standards-setting bodies are expected to add categories. The application guidance identifies the following possible categories:

- Pension funds
- Collective investment vehicles
- Private entities with large numbers of stakeholders (other than investors)
- Not-for-profit organizations or governmental entities
- Public utilities

New Category: Pension funds

27. PEEC is proposing a new category to capture those employee benefit plans which are required to file Form 11-K with the SEC (Annual Report of Employee Stock Purchase, Savings, and Similar Plans Pursuant to Section 15(d) of the Securities Exchange Act of 1934).

28. This category is necessary because these plans have a company stock fund component, where participants can invest in the sponsor company's publicly traded stock and auditors must comply with the SEC issuer independence rules.

29. PEEC also considered other types of employee benefit plans in the United States, which include plans subject to Title 1 of ERISA (besides 11-K plans), governmental employee benefit plans, church plans, and other plans established and maintained solely for the purpose of complying with applicable workers' compensation, unemployment compensation, or disability insurance laws.

30. The population of employee benefit plan types is broad and includes significant variation in legal structure, governance, regulatory oversight, and type of arrangements covered (i.e., limited to certain pension arrangements as opposed to other post-employment benefits like health insurance). This diversity makes it challenging to refine this category further with any level of specificity. Also, further refinement of this category could scope in entities where

interest in the financial statements is limited to participants as opposed to the broader public interest which is a factor IESBA recommends considering during the refinement process.

31. Plans subject to Title 1 of ERISA are required to file a Form 5500 with the Department of Labor (DOL) along with other documents to be filed with the IRS and Pension Benefit Guaranty Corporation (PBGC). ERISA established participation, vesting, and minimum funding standards along with trust requirements.
32. Plans with more than 100 eligible participants are required to have a financial statement audit performed by an independent qualified public accountant. The DOL is the regulator of these plans and recently updated their independence rules, which in some respects are more restrictive than the AICPA and SEC independence rules (e.g., financial relationships) but in other respects, are not as extensive as the SEC's issuer independence rules.
33. These other plans regulated by the DOL are subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations. Governmental employee benefit plans or public pension plans are primarily regulated under state statutes, local ordinances, and state constitutions and the laws vary widely from jurisdiction to jurisdiction. Though public pension plans have no guarantor of plan benefits, states generally have constitutional or statutory provisions that dictate how pension plans are to be funded, protected, managed, or governed. PEEC is not including these entities in the refined PIE category given the significant variation in legal structure, governance, regulatory oversight.

New Category: Collective investment vehicles

34. PEEC is proposing a new category to capture investment companies (including mutual funds) that are registered with the SEC.
35. In this new category are "similar products" that are registered with the SEC, such as, real estate investment trusts (REIT), unit investment trusts (UIT), and business development companies (BDC). These additional entities, similar to registered investment companies, are subject to the SEC's issuer independence requirements.

New Category: General

36. PEEC is proposing a new category to capture any additional entities in which stakeholders have heightened expectations because of the significance of the public interest in the financial condition of the entity. This category relates to entities whose auditors are subject to the SEC issuer independence rules but are not be captured in one of the other proposed categories.

Categories not recommended

Non-issuer broker-dealers and certain funds

37. The definition of PIE excludes certain entities whose auditors are subject only to the nonissuer requirements of the SEC independence rules (see chart in paragraph 10 above) such as:

- a. non-issuer broker-dealers registered with the SEC
- b. private funds that are advised by an investment advisor registered with the SEC where the advisor chooses to rely on the audit of the fund to meet the exemption under SEC Rule 206(4)-2, Custody of funds or securities of clients by investment advisers, under the Investment Advisers Act of 1940 (the custody rule).

38. PEEC considered whether to include these types of entities as additional categories under the PIE definition as they are subject to SEC independence rules and nonissuer broker-dealers are also subject to certain PCAOB independence rules.

39. Because the SEC has not required the auditors of nonissuer broker-dealers or these private funds to be subject to the SEC issuer independence requirements under Rule 2-01⁴, PEEC concluded it is not appropriate to treat these entities as PIEs and subject their auditors to more restrictive independence requirements. The public's interests are protected by the existing independence standards required for auditors of these entities.

Not-for-profit and governmental entities

40. In 2018 the U.S. Government Accountability Office (GAO) strengthened the independence standards that apply to auditors of entities subject to the Yellow Book (i.e., *Government Auditing Standards*).

41. The revised independence standards are in some respects more restrictive than those of the AICPA (for example, the preparation of accounting records and financial statement preparation services are considered to create significant threats to independence).

42. PEEC acknowledges that not-for-profit entities and governments that expend \$750,000 or more of federal assistance require an audit subject to Yellow Book. Also, some state laws require compliance with the Yellow Book regardless of federal dollars received, but requirements are not consistent by state.

43. Because of the enhanced independence requirements established by the GAO and the fact that they did not believe it was necessary to adopt the more restrictive SEC issuer independence rules, combined with the application of these requirements on certain sized

⁴ In August 2003 the SEC issued a [Q&A](#) that clarified "...for brokers and dealers or investment advisors that are not issuers as defined in the Act, the auditors would not be subject to the rotation requirements, or the compensation requirements of the Commission's independence rules..."

entities and significant variation in state requirements, PEEC concluded it is not appropriate to treat not-for-profit and governmental entities as PIEs.

Firm provision

44. IESBA's application guidance also encourages firms to consider whether to treat additional entities as PIEs.

45. These are the additional factors IESBA provided for firms to consider in their evaluation:

- a. Whether the entity is likely to become a PIE in the near future
- b. Whether in similar circumstances, a predecessor firm has applied independence requirements for PIEs to the entity
- c. Whether in similar circumstance, the firm has applied independence requirements for PIEs to other entities
- d. Whether the entity has been specified as not being a PIE by law, regulation, or professional standards
- e. Whether the entity or other stakeholders required the firm to apply independence requirements for PIEs to the entity and, if so, whether there are any reasons for not meeting this request
- f. The entity's corporate governance arrangements, for example, whether those charged with governance are distinct from the owners or management

46. The revised definition of "public interest entity" will continue to encourage this consideration, which was also included in the extant definition of PIE. Accordingly, a member may determine that an entity should be treated as a PIE if the factors in paragraphs 4 and 45 lead to the conclusion that such treatment would be appropriate, even if the entity is not included in the PIE definition.

Transparency requirement

47. IESBA's standard also includes a transparency requirement where the firm shall publicly disclose that the firm has applied the independence requirements for public interest entities in performing an audit of the financial statements of an entity.

48. Because the requirement doesn't stipulate where the disclosure is made, the International Auditing and Assurance Standards Board (IAASB) has a project underway to determine where the disclosure should be made.

49. Based on the regulatory requirements applicable to each of the entities captured by the

proposed PIE definition, PEEC is not incorporating the transparency requirement into the code. The transparency requirement will be achieved through the regulations requiring disclosure of the applicable independence standards in the auditor's report (or in the case of the NAIC, through a letter attached to the auditor's report).

Effective date

50. PEEC recommends that the proposed revisions be effective for audits of financial statements for periods beginning on or after December 15, 2024, with early implementation allowed. This date aligns with IESBA's effective date.

Request for comments

51. PEEC welcomes comments on all aspects of the proposed revised definition and the new definition. In addition, PEEC is seeking feedback on the following specific aspects of this proposal:

- a. Do you agree with the refinement to the "publicly traded entity" category to include only those entities whose auditors are subject to Regulation SX, SEC Rule 2-01?
- b. Do you agree with the refinement to the "deposits from the public" category to include only those entities that meet the annual audit requirement imposed by Sections 363.1(a) and 363.2(a) of Part 363 of the FDIC's regulations (12 CFR 363 – "Annual Independent Audits and Reporting Requirements")?
- c. Do you agree with the refinement to the "insurance to the public" category to include only those entities that are subject to the NAIC Annual Financial Reporting Model Regulation (Model Audit Rule), and whose auditors are required to follow independence requirements included in Section 7 (Qualifications of Independent Certified Public Accountant) of the Model Audit Rule?
- d. Do you agree with the additional categories PEEC is proposing to include in the definition of PIE? If not, please explain why.
- e. Do you believe other entities should be included as PIEs and subject to the more restrictive independence requirements applicable to IESBA PIEs?
 - i. If so, which entities and why?
 - ii. If so, should the AICPA code incorporate a second set of more restrictive independence standards (i.e., consistent with IESBA PIEs), applicable to these other entities? If not, please explain an alternative approach.
- f. Is the definition of "publicly traded entity" clear? If not, please explain how it should be clarified.

- g. Do you agree that the effective date provides adequate time to implement the proposals? If you disagree, please explain why.

DRAFT

Terms defined in the AICPA Code of Professional Conduct are italicized in this document. If you'd like to see the definitions, you can find them in "Definitions" ([ET sec. 0.400](#))

Text of proposed new definition "publicly traded entity"

0.400 Definitions

.43 Publicly traded entity. An entity that issues financial instruments that are transferrable and traded through a publicly accessible market mechanism, including through listing on a stock exchange.

DRAFT

Additions appear in ***boldface italic***. Deletions appear in ~~strikethrough~~.

Terms defined in the AICPA Code of Professional Conduct are italicized in this document. If you'd like to see the definitions, you can find them in "Definitions" ([ET sec. 0.400](#))

Text of proposed revised definition "public interest entity"

0.400 Definitions

.41 Public interest entity. ***An entity is a public interest entity when it falls within any of the All of the following categories:***

- a. ~~All listed entities, including entities that are outside the United States whose shares, stock, or debt are quoted or listed on a recognized stock exchange or marketed under the regulations of a recognized stock exchange or other equivalent body. A~~ ***publicly traded entity whose auditor is subject to Regulation S-X, SEC Rule 2-01, "Qualifications of Accountants";***
- b. ***An entity one of whose main functions is to take deposits from the public that meets the annual audit requirement imposed by Sections 363.1(a) and 363.2(a) of Part 363 of the FDIC's regulations (12 CFR 363 – "Annual Independent Audits and Reporting Requirements");***
- c. ***An entity one of whose main functions is to provide insurance to the public that is subject to the NAIC Annual Financial Reporting Model Regulation (Model Audit Rule), and whose auditor is required to follow independence requirements included in Section 7 (Qualifications of Independent Certified Public Accountant) of the Model Audit Rule; or***
- d. ***An employee benefit plan that is required to file Form 11-K with the SEC under Section 15(d) of the Exchange Act;***
- e. ***An investment company or similar product that is registered with the SEC whose auditor is subject to Regulation S-X, SEC Rule 2-01, "Qualifications of Accountants"; or***
- b. f. Any entity, ***other than those set forth in a. – e. above,*** for which an audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to an audit of ***an issuer, as defined in***

Section 10A(f) of the Securities Act of 1934 listed entities (for example, requirements of the SEC, the PCAOB, or other similar regulators or standard setters).

Members may wish to consider whether additional entities should also be treated as public interest entities because they have a large number and wide range of stakeholders. Factors to be considered may include

- The nature of the business, such as the holding of assets in a fiduciary capacity for a large number of stakeholders;
- Size; and
- Number of employees.

When an entity meets the definition of a public interest entity, a member should comply with refer to the **independence rules and** regulations of **the** applicable authoritative regulatory **bodyies- or bodies** when **the** a member performs attest services and is required to be independent of the **attest client** under such **rules and** regulations. [Prior reference: paragraph .20 of ET section 100-1]

Acknowledgments

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Many thanks

The Professional Ethics Division and PEEC are grateful for the input we received from observers and stakeholders while drafting these proposed changes to the Code of Professional Conduct.

Unpaid fees

AICPA staff

Summer Young

Reason for agenda item

To address the concern raised by some committee members that the term “covered member” in the revised interpretation is too broad and Q&A 1 does not adequately address how to apply the term.

Background

The IESBA Convergence: Fees Task Force is using the phrase “covered member responsible for determining the attest engagement fees.” At the December 2022 IESBA Convergence: Fees Task Force meeting, AICPA staff asked if using the same phrasing in the “Unpaid Fees” interpretation ([ET sec. 1.230.010](#)) would be appropriate. The IESBA Convergence: Fees Task Force did not think the phrase would be appropriate for the Unpaid Fees interpretation because those responsible for setting the fees would not necessarily be those whose independence may be threatened by unpaid fees.

Revisions to Q&A 1 were circulated to the PEEC members and observers who were on the Unpaid Fees Task Force. Responses indicated agreement with the revision to Q&A 1.

Original Q&A 1

Inquiry — When determining whether unpaid fees impair independence, the evaluation needs to consider the significance of the unpaid fees to the [covered member](#). Given how the code defines *covered member*, is it necessary to consider the significance of the unpaid fee amounts to, for example, both the firm and the engagement partner?

Response — Yes, the revised interpretation pertains to all *covered members*, including the firm and the engagement partner.

If the unpaid fees are significant to the firm, the unpaid fees will likely be significant to the engagement partner also. However, there could be a situation in which the unpaid fees are clearly insignificant to the firm but could be significant, quantitatively or qualitatively, to the engagement partner.

For example, some firms have compensation structures dependent upon fee collection. An unpaid fee near the firm’s year-end may be clearly insignificant to the firm but significant to the engagement partner. Suppose unpaid fees older than one year are due from the engagement partner’s only attest client and those unpaid fees directly affect the engagement partner’s compensation. It is reasonable to believe this circumstance can create threats to the engagement partner’s independence.

Revised Q&A 1

Inquiry — When determining whether unpaid fees impair independence, the evaluation needs to consider the significance of the unpaid fees to the [covered member](#). Given how the code defines *covered member*, is it necessary to consider the significance of the unpaid fee amounts to all *covered members* where threats might be created?

Response — Yes, the revised interpretation pertains to all *covered members*. However, you should use professional judgment to determine whether unpaid fees may create self-interest or undue influence threats to a *covered member*.

The unpaid fees' significance to the firm itself will always be a factor to consider when evaluating whether threats are at an acceptable level. In addition, because the attest engagement partner is responsible for the attest engagement, including the collection of fees, the significance of the unpaid fees to the engagement partner could be a factor to consider when evaluating threats to independence.

For example, some firms have compensation structures dependent upon fee collection. In cases where unpaid fees older than one year are due from the engagement partner's attest client and those unpaid fees may have a significant impact on the engagement partner's compensation, it is reasonable to conclude the circumstances can create threats to the engagement partner's independence.

On the other hand, there may be other *covered members*, such as the audit senior or tax manager, who have no direct responsibility for the attest engagement or collection of fees and the effects of unpaid fees on such *covered members*, even if significant, would generally not create threats to independence.

Question for the committee

1. Does the committee agree with the recommended revisions?

IESBA tax planning and related services

Working group members

Brian Lynch (Chair), Cathy Allen, Arthur Auerbach, Conrad Davis, Kip Dellinger, James Newhard, Roby Sawyers, Gerard H. Schreiber Jr., Joseph J. Tapajna, Blake Vickers

AICPA staff

Ellen Gorla, Henry Grzes, John Wiley

Working group charge

To draft a comment letter to IESBA on its Tax Planning and Related Services exposure draft.

Reason for agenda item

To provide the committee with an overview of the IESBA Tax Planning and Related Services exposure draft and to solicit input for the working group to consider including in the joint comment letter that PEEC and the Tax Executive Committee (TEC) will send.

Convergence

One proposed provision goes beyond what the AICPA Statements for Standards in Tax Practice (SSTS) require. Specifically, it's the requirement that the professional accountant consider the reputational, commercial, and wider economic consequences that could arise from stakeholders' perception of the tax planning arrangement. The AICPA tax division is in the process of updating the SSTSs;¹ therefore, the TEC will discuss this provision during the comment letter process.

Action needed

The committee is asked to provide input for the working group to consider, including in the joint comment letter.

Materials presented

Agenda item 5B: Tax planning and related services exposure draft

¹ Comments on the [SSTS exposure draft](#) were due by December 31, 2022.

Exposure Draft
February 2023
Comments due: May 18, 2023

*International Ethics Standards Board
for Accountants®*

Proposed Revisions to the Code Addressing Tax Planning and Related Services



About the IESBA

The [International Ethics Standards Board for Accountants®](#) (IESBA®) is an independent global standard-setting board. The IESBA's mission is to serve the public interest by setting ethics standards, including auditor independence requirements, which seek to raise the bar for ethical conduct and practice for all professional accountants through a robust, globally operable [International Code of Ethics for Professional Accountants \(including International Independence Standards\)](#) (the Code).

The IESBA believes a single set of high-quality ethics standards enhances the quality and consistency of services provided by professional accountants, thus contributing to public trust and confidence in the accountancy profession. The IESBA sets its standards in the public interest with advice from the IESBA Consultative Advisory Group (CAG) and under the oversight of the Public Interest Oversight Board (PIOB).

The structures and processes that support the operations of the IESBA are facilitated by the International Foundation for Ethics and Audit™ (IFEATM).

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REQUEST FOR COMMENTS

This Exposure Draft, *Proposed Revisions to the Code Addressing Tax Planning and Related Services*, was developed and approved by the IESBA.

The proposals in this Exposure Draft may be modified in light of comments received before being issued in the final pronouncement. Comments are requested by **May 18, 2023**.

Respondents are asked to submit their comments electronically through the IESBA website, using the "[submit a comment](#)" link. Please submit comments in both PDF and Word files. Also, please note that first-time users must register to use this feature. All comments will be considered a matter of public record and will ultimately be posted on the website. Although the IESBA prefers that comments are submitted via its website, comments can also be sent to Ken Siong, IESBA Program and Senior Director, at KenSiong@ethicsboard.org.

This publication may be downloaded from the IESBA website: www.ethicsboard.org. The approved text is published in the English language.

PROPOSED REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

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EXPLANATORY MEMORANDUM

I. Introduction

1. This memorandum provides background to and explains the proposed revisions to the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the Code) addressing tax planning and related services.
2. The IESBA unanimously approved these proposed revisions for exposure at its [November–December 2022](#) meeting.

II. Background

3. In recent years, much public attention has focused on the topic of tax avoidance, considering revelations such as the “Paradise Papers”¹ and the “Pandora Papers,”² notwithstanding the legality of the tax mitigation schemes or related transactions to achieve desired tax outcomes. Questions have been raised regarding the ethical implications for professional behavior when individual professional accountants (PAs) in business (PAIBs) and professional accountants in public practice (PAPPs) are involved in developing tax minimization strategies that are perceived as “aggressive” or when firms provide advice to their clients on such strategies.
4. The issue is of such public interest significance³ that it has been discussed on the G20 agenda. Several global bodies have also focused on transparency and better disclosure of tax practices, among other policy actions. For example:
 - (a) The Organisation for Economic Cooperation and Development (OECD) launched the [Base Erosion and Profit Shifting \(BEPS\)](#) project in partnership with the G20. The project aims to ensure that the international tax rules do not facilitate shifting corporate profits away from where the actual economic activity and value creation occur. The premise for value creation is linked to the substance over form argument, which maintains that transactions in question should not be evaluated based on their formal legal structure but instead on the underlying substance of the transactions.
 - (b) The World Federation of Exchanges has included [tax transparency](#)⁴ as a “material Environmental, Social and Governance (ESG) metric” for reporting by listed companies.
 - (c) The International Federation of Accountants (IFAC) has called on jurisdictions to share information to promote [accountability and long-term global sustainability](#).⁵
 - (d) The International Accounting Standards Board (IASB) has worked on [changes to tax disclosure rules](#).⁶

¹ See, for example, the UK House of Commons [Briefing Paper](#), *The Paradise Papers* (November 2017).

² See, for example, <https://www.bbc.com/news/world-58780561>.

³ For example, in its article [What could a new system for taxing multinationals look like?](#) the Economist noted that in 2015, the OECD estimated that tax avoidance robs public coffers of \$100-240 bn, or 4-10% of global corporation tax revenues a year.

⁴ *Exchange Guidance & Recommendation* (October 2015), WFE Sustainability Working Group, World Federation of Exchanges.

⁵ *G20 Public Trust in Tax – Surveying Public Trust in G20 Tax Systems* (January 2019), Association of Chartered Certified Accountants (ACCA), Chartered Accountants Australia and New Zealand (CA ANZ) and IFAC.

⁶ IFRIC 23, *Uncertainty over Income Tax Treatments*.

5. In the light of these developments and pursuant to a commitment in its [Strategy and Work Plan 2019-2023](#), the IESBA formed a Working Group in September 2019 to:
 - (a) Gather an understanding of the regulatory, practice, and other developments in corporate and individual tax planning by PAIBs and PAPPs; and
 - (b) Identify and analyze the ethical implications of those developments and determine whether there is a need for enhancements to the Code or further actions.
6. In September 2021, the Working Group submitted its final [report](#) and recommendations to the IESBA. Based on this report and the related recommendations, the IESBA decided to launch a [standard-setting project](#) on the topic of tax planning and related services, establishing a Task Force to take it forward.

III. Project Objective

7. The objective of the project is to develop a principles-based framework, leveraging the fundamental principles and the conceptual framework of the Code, to guide PAPPs' and PAIBs' ethical conduct when providing tax planning (TP) and related services (TP services) to clients, or performing TP activities for employing organizations, thereby maintaining the Code's robustness and relevance as a cornerstone of public trust in the global accountancy profession.

IV. Consultation with Key Stakeholders

Global Roundtables

8. In April 2022, the IESBA hosted three global virtual roundtables to bring together a broad range of stakeholders to discuss the state of play on TP and explore how the IESBA could formulate a proposed ethical framework to guide PAIBs and PAPPs when providing TP services.
9. The three roundtables were organized to cover specific regions – the Americas, EMEA,⁷ and Asia Pacific. Excluding observers, close to 100 delegates participated in the events. They represented various stakeholder groups, including regulators and public authorities, representatives of the legal profession, national standard setters, preparers, professional accountancy organizations, firms, and academia. Observers included a member of the Public Interest Oversight Board (PIOB).
10. The input received was rich and diverse. The discussions highlighted how intertwined, complex, and multi-dimensional the ethical considerations can be in addressing TP services. Not surprisingly, the interactions between tax laws of different jurisdictions in cross-border situations were noted as an area needing particular care and sensitivity.
11. The discussions generated practical observations, which the IESBA considered in developing the proposals in this Exposure Draft (ED). Key comments or observations from the roundtables are referenced in the discussion of the significant matters included in this explanatory memorandum. The IESBA acknowledges that the way forward will need to balance the public interest benefits of the proposed revisions to the Code with considerations of global operability, practicality, and scalability for the users of the Code.

⁷ Europe, the Middle East, and Africa

V. Proposed Ethical Framework

Overarching Considerations

12. As a result of the consultation with key stakeholders, the IESBA came to the view that the Code can play a more substantive and practical role in guiding PAs' mindset and behavior when providing TP advice. This recognizes that while the Code does not and cannot override laws and regulations, ethics is broader than the law and can guide behaviors. In this regard, the notion that "what is legal is not necessarily ethical" often resonates with stakeholders and applies to TP just as much as to any other professional activities PAs may pursue. Yet, beyond the fundamental principles (FPs), conceptual framework (CF), and specific provisions aimed at safeguarding PAPPs' independence in the context of audit and other assurance engagements, the Code is silent on the topic. Additionally, from the perspective of impact, the IESBA agreed that the Code is better placed than non-authoritative material to influence and guide behavior because it is authoritative and enforceable.
13. Through its desktop research, the IESBA noted a wide variety of frameworks and guidance materials developed by various organizations in the area of TP. However, these frameworks and guidance materials are not entirely consistent with each other because they address different aspects of TP, have different objectives, or target different audiences. Outreach undertaken also indicates that some large accounting firms have developed proprietary guidelines on TP. Not all firms, however, have such guidance to assist their TP work, especially small and medium practices (SMPs), as they do not have the resources of the larger firms. Further, feedback from outreach indicates that there are stakeholder perceptions that the tax adviser community is not as closely regulated as the audit profession and therefore, generally feels less constrained in its advisory services. Accordingly, the IESBA believes it would be in the public interest to develop a unifying framework in the Code that would codify the relevant principles and best practices, thereby planting the guideposts to help PAs navigate the judgments and idiosyncrasies of TP. Such a framework would also have the benefit of providing a consistent practice baseline for all PAIBs and PAPPs globally.
14. Given the wide diversity of tax laws and regulations, the IESBA is cognizant that this framework will need to be jurisdiction-neutral (i.e., equally applicable in jurisdictions where the tax burden is high and where it is low). Likewise, the IESBA has been careful to steer clear of analyzing the merits of tax positions or strategies planned or adopted by individual or corporate taxpayers, judging the merits of the tax regimes or strategies of respective jurisdictions, or engaging in debates about tax policy.
15. Above all, the IESBA aspires to rise to the challenge of reinforcing public trust in the global accountancy profession. News headlines such as those concerning the Paradise and Pandora Papers noted above have led to public outcry about the role of consultants, including professional tax advisers, in enabling wealthy individuals and multinational corporations to engage in tax avoidance or evasion. While this project does not need to address tax evasion, which is unlawful and therefore already addressed under the Code,⁸ the accountancy profession has not escaped being painted with a broad brush as an "enabler" of tax malfeasance. Public mistrust in professional tax advisers has risen to such a level that in some major jurisdictions, legislation is being considered to regulate tax advice and tax advisers.⁹

⁸ Section 360 for PAPPs and Section 260 for PAIBs, both dealing with responding to non-compliance with laws and regulations (NOCLAR)

⁹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13488-Tax-evasion-aggressive-tax-planning-in-the-EU-tackling-the-role-of-enablers/public-consultation_en?mc_cid=c0c64ee350&mc_eid=5898f32087

16. The IESBA believes that developing an ethical framework in the Code to guide PAs' behaviors and actions concerning TP can go a long way towards protecting the public interest and the profession's reputation.

Outline of the Proposed Ethical Framework

17. To assist PAs in exercising judgment in navigating the complexities and uncertainties of TP and deciding on the appropriate course of action in the circumstances, the IESBA proposes an ethical framework that will guide PAs to:
 - Comply with the FPs and highlight the types of threats to such compliance that might be created when performing TP activities.
 - Exhibit the mindset and behavior expected of them following the [Role and Mindset](#) provisions of the Code. This includes guidance elaborating on the relevance and applicability of behavioral concepts and principles, such as demonstrating the strength of character and having an inquiring mind, as well as expectations of PAs to promote an ethics-based culture within their employing organizations and to uphold the profession's reputation.
 - Understand the applicable tax laws and regulations, which might include the legislative intent behind the relevant laws and regulations, and, if relevant, the economic purpose and substance of the transaction.
 - Exercise professional judgment to establish a credible basis for the TP advice in circumstances of uncertainty.
 - Consult internally or externally with experts as needed, which might be part of specific actions to address identified threats. The internal or external consultations should be conducted within the professional boundaries of referring work to experts, bearing in mind the PA's responsibility to remain objective.
 - Communicate relevant matters or concerns with the individual client, management, or those charged with governance, including as part of an escalation process where necessary.
 - Evaluate the need for transparency, having regard to PAs' duty of confidentiality under the Code. This includes the circumstances in which disclosure would be appropriate or justified, when informed consent for disclosure should be obtained in the case of clients, to whom disclosure might be made and when, and the matters that might be disclosed.
 - Develop an appropriate level of documentation throughout the process to substantiate their judgments, decisions, and actions.
 - Respond to suspected non-compliance with laws and regulations when they encounter information that suggests TP might have "stepped over the line" into an actual or suspected breach of tax laws and regulations.

18. These provisions do not address the issues of tax morality,¹⁰ tax fairness¹¹ and tax justice which the Board determined was outside the scope of this project.¹²

VI. Scope of Proposals

Proposed New Sections 380 and 280

19. The scope of the project encompasses Parts 2¹³ and 3¹⁴ of the Code, with consideration given to the need for any conforming amendments to other sections of the Code. The IESBA is of the view that the proposed ethical framework warrants new sections in Parts 2 and 3 focused on TP services or activities.
20. As part of its deliberations, the IESBA noted that the issues concerning TP services are unique compared with other professional services provided by PAs, given the sensitive nature of TP in terms of its financial impact on clients and employing organizations, the broader role of taxes in meeting jurisdictions' policy goals, and the complexity of the subject. In particular, the IESBA believes it is especially important to address the uncertainties PAs may face when providing TP services or performing TP activities, as threats to compliance with the FPs might be created in circumstances of uncertainty.
21. Therefore, the IESBA proposes that two new sections be added to the Code, namely Sections 380 and 280. In drafting these sections, the IESBA has endeavored to keep:
- Section 380 applicable to all clients, i.e., individuals and corporate clients.
 - Both sections applicable to all entities, from small- and medium-sized entities (SMEs) to large multi-national entities, regardless of whether they are public interest entities (PIEs).
- (See paragraphs 380.5 A4 and 280.5 A4.)
22. Consistent with any other provisions of the Code, the proposed provisions in Sections 380 and 280 do not override laws and regulations, including any anti-avoidance rules prevailing in a given jurisdiction.
23. Further, the IESBA notes that paragraph 100.7 A1 of the Code remains applicable, i.e., where a jurisdiction has provisions that differ from or go beyond those in the Code, PAs in that jurisdiction need to be aware of those differences and comply with the more stringent provisions unless prohibited by law or regulation.

¹⁰ [Tax Morale](#), as defined by the OECD, is "the intrinsic motivation to pay taxes." This concept is vital to the tax system as most tax systems rely on taxpayers' voluntary compliance for the bulk of their revenues.

¹¹ In the *Wealth of Nations* (1776) (Smith, A., & Cannan, E. (2003). *The Wealth of Nations*. New York, NY. Bantam Classic), Adam Smith argued that taxation should follow the four principles of fairness, certainty, convenience, and efficiency. Tax fairness is a concept which states that the system of taxation must be equitable to the public. A fair tax system encourages a fair contribution to the cost of maintaining public utilities and infrastructure.

¹² According to ActionAid, tax justice is a central concern for anyone working for social justice. Tax Justice UK sees a parallel in the movement for tax justice to the movement for women's rights and labor rights as important elements of a country's social fabric. It is a belief in genuinely progressive taxation, i.e., tax systems that generate sufficient public revenue while ensuring that this revenue is fairly redistributed and focused on rebalancing economic and gender inequalities.

¹³ Part 2 – Professional Accountants in Business

¹⁴ Part 3 – Professional Accountants in Public Practice

VII. Significant Matters

A. Scope of Services Addressed

Tax Planning

24. The IESBA is of the view that it is important to establish a description of “tax planning” in the proposed sections to circumscribe the scope of professional services and activities that the sections would address.
25. In considering how to describe TP, the IESBA has reviewed established descriptions of TP developed by the following organizations:

Organization	Description of Tax Planning
OECD	Arrangement of a person's business and/or private affairs in order to minimize tax liability ¹⁵
UK HMRC	Involves using tax reliefs for the purpose for which they were intended ¹⁶
Confédération Fiscale Européenne (CFE) (Tax Advisers Europe)	Focus on delivering savings to clients using legal vehicles and financial transactions specifically established to exploit these technicalities ¹⁷

26. The IESBA noted that the latter two descriptions appear limiting in scope for the purposes of this project in one way or another, or overly technical. The IESBA believes that the OECD description is closer to what should be the focus of the new sections, i.e., dealing with arrangements to minimize tax liability. The IESBA, however, considered that the term “tax efficiency” would be more neutral than “tax minimization.”
27. Accordingly, the IESBA proposes the following description:

Tax planning comprises a broad range of [services/activities] designed to assist [a client, whether an individual or an entity/an employing organization] in structuring [the client's/the employing organization's] affairs in a tax-efficient manner.

(See paragraphs 380.5 A1 and 280.5 A1.)

28. To facilitate consistent application, the IESBA is proposing in paragraphs 380.5 A2 and 280.5 A2 illustrative examples of TP services or activities covered under these sections.

Related Services or Activities

29. During the roundtable discussions and as part of the fact-finding work underpinning the project, the IESBA noted that there are other types of services or activities performed by PAs that are ancillary to the provision of TP services or the performance of TP activities. Such services or activities include, for example, assisting in resolving a dispute with the tax authority on a TP position that the PA or another party recommended, or preparing a tax return that reflects the position in the TP

¹⁵ <https://www.oecd.org/ctp/glossaryoftaxterms.htm>

¹⁶ [Tackling Tax Avoidance, Evasion, and Other Forms of Non-Compliance \(March 2019\)](#), HM Revenue & Customs, HM Treasury United Kingdom.

¹⁷ [Professional Judgment in Tax Planning - An Ethics Quality Bar for All Tax Advisers](#) (June 2021), CFE Tax Advisers Europe.

arrangement. These related services or activities are based on or linked to a TP service or activity. Consistent with the indicative scope in the [project proposal](#), the IESBA proposes that such related services or activities be within the scope of the ethical framework.

30. The IESBA is therefore proposing a description of related services in paragraph 380.5 A3 and related activities in paragraph 280.5 A3. As related services or activities are scoped in, the remainder of Sections 380 and 280 do not make further reference to them.

Non-Compliance with Laws and Regulations (NOCLAR)

31. As noted above, the proposals do not address tax evasion, which is unlawful. Nevertheless, to build in the proper linkage to the NOCLAR provisions of the Code,¹⁸ the IESBA proposes guidance that refers PAs to the NOCLAR sections of the Code when they become aware of tax evasion or suspected tax evasion, or other non-compliance or suspected non-compliance with tax laws and regulations by a client, management, those charged with governance (TCWG) or other individuals working for or under the direction of the client or employing organization.

(See paragraphs 380.7 A1 and 280.7 A1.)

B. Role of the Professional Accountant in Acting in the Public Interest

32. During the fact-finding phase of the project, the IESBA noted the benefits of having PAs provide TP services as they play a significant role in supporting and enhancing the effectiveness of the tax system. Indeed, TP is so important for employing organizations and clients that tax advisory services constitute a significant part of the profession's activities worldwide.¹⁹
33. As noted above, however, in recent times public concerns have risen significantly about the role tax advisers play in assisting tax avoidance by wealthy individuals and corporations, including concerns about multinational companies utilizing sophisticated TP strategies to minimize their taxes. Public mistrust of professional tax advisers has risen to such a level that legislation is being considered to regulate tax advice and tax advisers in some major jurisdictions, such as the EU.²⁰
34. The IESBA recognized that there was a perceived challenge concerning understanding who is considered the public and the interests of those groups of stakeholders PAs are expected to serve in acting in the public interest. Questions have been posed regarding which parties are

¹⁸ Section 360 for PAPPs and Section 260 for PAIBs

¹⁹ The global tax management market is expected to grow from USD 18.9 billion in 2021 to USD 32.5 billion by 2026, at a Compound Annual Growth Rate (CAGR) of 11.5% during the forecast period (<https://www.marketsandmarkets.com/PressReleases/tax-management.asp>)

²⁰ See, for example, https://www.accountancyeurope.eu/tax/tax-policy-220107/?mc_cid=73311ac0b2&mc_eid=5898f32087.

captured under the notion of “public interest” – society at large, legislators, or shareholders and regulators of the capital markets?

35. Many participants across the three roundtables acknowledged that PAs providing TP services play an essential public interest role in serving employing organizations’ or clients’ interests in accordance with tax laws and regulations, i.e., by facilitating compliance with tax laws and regulations.
36. In considering what it means for a PA to act in the public interest in relation to TP, whether done for a client or an employing organization, the following factors, as shared by roundtable participants, are relevant:
- *Interpretation of the tax legislation:* roundtable participants expressed the view that the notion of a PA acting in the public interest when performing TP activities is closely linked to the approval of the tax treatment or structure by the tax authority in the particular jurisdiction. Thus, they believed that if the tax authority agrees with a particular tax treatment or structure at the time of consultation, the PA has acted in the public interest. There was also a strong view that legislators and regulators consider the public interest when they develop tax laws and regulations; therefore, it was argued that complying with those laws and regulations represents acting in the public interest.
 - *PAs’ expertise and reputational risks:* roundtable participants generally accepted that PAs play a public interest role by providing their clients and employing organizations with high-quality TP advice, leveraging their training and expertise. Participants suggested that in providing high-quality TP advice, PAs need to consider the potential risks of the TP to their clients or employing organizations and the reputational risks to the PAs – considerations that are relevant to the public interest. By providing high-quality advice, and when the client or employing organization implements this advice, the PA is perceived as improving compliance within the tax system and collection in the particular jurisdiction – an outcome that is in the public interest.
 - *Perception issues:* Participants generally believed that the very nature of PAs helping their clients or employing organizations to obey the law is an embodiment of PAs acting in the public interest. Participants generally agreed that it is a balancing act – clients or employing organizations may view that PAs should be preserving their interests rather than those of the public at large.
 - *The complexity of TP transactions given complexity in the underlying tax codes or interactions between tax codes:* Some participants believed that it may be challenging to determine what is in the public interest, especially in situations where multiple jurisdictions are involved in cross-border transactions. It was observed that each jurisdiction would perceive the public interest differently. So, it was argued that it is an impossible task to determine what would be in the public interest in these circumstances. Each jurisdiction would try to protect its sovereignty by determining its tax regime for competitive or other reasons. The reality, therefore, is that tax laws can differ quite considerably among jurisdictions.
37. Considering all the observations during the roundtable discussions, the IESBA determined not to attempt to define or describe the public interest in the abstract given the variety of considerations that may influence its meaning. The IESBA instead proposes contextual guidance in Sections 380 and 280 that explains that:
- An important part of what acting in the public interest means for PAs is for them to contribute their knowledge, skills and experience to assist clients or employing organizations meet their

TP goals while complying with tax laws and regulations. In doing so, PAs help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest. (See paragraphs 380.4 A1 and 280.4 A1.)

- PAs play an important role in assisting clients or employing organizations in meeting their tax obligations and not seeking to circumvent them through tax evasion. However, when PAs provide such assistance, it might involve certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the FPs. (See paragraphs 380.4 A2 and 280.4 A2.)

38. The IESBA is also of the view that while the PA plays an important role in the efficient and effective operation of the tax system, it is ultimately for a court or other appropriate adjudicative body to determine whether a TP arrangement complies with the relevant tax laws and regulations. (See paragraphs 380.4 A3 and 280.4 A3.)

C. Responsibilities of Clients, Management, and Those Charged with Governance

39. During the roundtable discussions, the IESBA heard from stakeholders about the importance of recognizing that management and TCWG share a fiduciary duty, as strategic and governance leaders within their organizations, to ensure that they play the equally important role of facilitating the provision of accurate information to the PA. The responsibilities of management and TCWG also extend to ensuring the organization's tax affairs are aligned with its tax strategy or policies.

40. The IESBA believes that it is important to recognize the specific responsibilities of management and TCWG of clients and employing organizations in relation to TP within the proposed ethical framework. While proposed Sections 380 and 280 specify PAs' responsibilities when providing TP services or performing TP activities, nothing in those sections detracts from the obligations of management and TCWG.

41. As such, the IESBA proposes guidance that highlights several key responsibilities of management (including individual clients, as the case may be) and TCWG. These include:

- Ensuring that the client's or employing organization's tax affairs are conducted in accordance with the relevant tax laws and regulations.
- Maintaining all the books and records and implementing the systems of internal control necessary to enable the client or employing organization to fulfill its tax compliance obligations.
- In relation to a TP service provided to a client, making available all the facts and other relevant information needed to enable the PA to perform the TP service.
- Deciding whether to accept and implement the PA's recommendation or advice on a TP arrangement.
- Submitting the client's or employing organization's tax returns and dealing with the relevant tax authorities in a timely manner.
- Making such disclosures to the relevant tax authorities as might be required by tax laws and regulations or as might be necessary to support a tax position, including details of any TP arrangements.
- Ensuring that the client's or employing organization's TP arrangements are consistent with any publicly disclosed tax strategy or policies.

(See paragraphs 380.8 A1 and 280.8 A1.)

D. Responsibilities of All Professional Accountants

42. Equally, the IESBA proposes that the ethical framework specify some basic responsibilities for all PAs. Notably, the IESBA observed specific circumstances that pertain to the provision of TP services.
43. First, it is important to recognize that in some jurisdictions, there are anti-avoidance laws and regulations. Accordingly, the IESBA proposes that PAs obtain an understanding of those laws and regulations and advise the client or employing organization to comply with them when providing TP services or performing TP activities. (See paragraphs R380.6 and R280.6.)
44. Secondly, the IESBA agrees with roundtable participants who commented that PAs have a responsibility to be informed and to develop the professional competence to provide TP services or to perform TP activities. This is consistent with the FP of professional competence and due care.²¹ For the PA, it is a matter of not just adhering to the letter of the law but also being able to attest to being ethical in carrying out professional duties. In particular, a PA is expected to apply an inquiring mind and not advise on, or engage in, transactions that don't have a credible basis.²²
45. To that effect, if a PAPP is requested by a client to provide a TP service, the IESBA proposes that the PA obtain an understanding of the nature of the request prior to the PA undertaking any detailed work. The IESBA proposes that this understanding include:
- (a) Knowledge and understanding of the client, its owners, management and TCWG, and its business activities;
 - (b) The purpose and circumstances of the TP arrangement; and
 - (c) The relevant tax laws and regulations.
- (See paragraph R380.9)
46. The IESBA also considered the intersection of the proposed Sections 380 and 280 with other sections of the Code in the course of PAs providing TP services or performing TP activities. The IESBA proposes guidance that refers the PAPP to relevant provisions of the Code addressing client and engagement acceptance (Section 320), second opinions as the PAPP might be engaged to provide a second opinion on a TP arrangement (Section 321), professional competence and due care (Subsection 113), and the need to exercise professional judgment and have an inquiring mind (Section 120). (See paragraphs 380.9 A1 – 380.10 A1.)
47. For a PAIB involved in performing a TP activity, the IESBA proposes a similar requirement (paragraph R280.9) as well as guidance regarding professional competence and due care, and the need to exercise professional judgment and have an inquiring mind. (See paragraph 280.10 A1.)

²¹ Paragraph 110.1 A1(c) of the Code states that PAs are to attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation, and act diligently and in accordance with applicable technical and professional standards.

²² Paragraph 110.1 A1(e) of the Code states that PAs are to comply with the fundamental principle of professional behavior, which means complying with relevant laws and regulations, behaving in a manner consistent with the profession's responsibility to act in the public interest in all professional activities and business relationships, and avoiding any conduct that they know or should know might discredit the profession.

48. The IESBA also believes it is important that PAs explain the basis on which they recommended or otherwise advised on a TP arrangement to a client or an employing organization. Accordingly, the IESBA proposes requirements to that effect in paragraphs R380.18 and R280.18.

E. Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

49. During the fact-finding phase preceding the project's launch, stakeholders commented that in providing TP services, PAs might sometimes face situations where the legislative intent behind tax laws is unclear or uncertain, and the related regulations or tax forms lack clarity. To further explore this matter, the IESBA posed several questions during the roundtable discussions to understand how a PA would approach their advice to a client or employing organization if they were uncertain that the tax treatment would prevail based on the relevant tax laws and regulations. Participants were asked what specific factors the PA should consider in exercising their judgment in such circumstances.
50. In gaining an understanding of the challenges PAs face when the legislative intent behind tax laws is unclear or uncertain, the IESBA also thought it would be beneficial to identify specific scenarios to understand the extent to which PAs consider the legislature's intent, the approach PAs would take, and whether their assessment would change:
- If the situation concerns a cross-border transaction involving multiple jurisdictions.
 - If the tax strategy could be considered artificial or contrived.
51. In summary, the IESBA agrees with the observations shared by roundtable participants that PAs must take the necessary steps to establish a credible basis for their advice, taking into account, where the circumstances are unclear or uncertain, the intent of the tax legislation. In addition, participants also suggested several actions PAs can undertake to navigate situations where the legislative intent behind tax laws is unclear or uncertain:
- PAs may review rulings regarding specific cases to gather insight into what the legislature intended. It was noted that the PA's responsibility is to inform and educate the client or employing organization about the law's intent to better understand the underlying risks, if any, of the transaction.
 - As a general matter, participants commented that full transparency regarding the risks to the client or employing organization is essential. Participants shared that the threshold for success in terms of the TP arrangement being accepted by the relevant tax authorities is subject to debate in different jurisdictions. In such circumstances, participants expected that the PA would also explain the risks involved and advise the client or employing organization against taking unnecessary risks.
 - It would be important for PAs to document these risks as it was noted that jurisdictions have different definitions of what is considered a credible basis for the TP arrangement. Participants shared the view that what is a credible basis could vary from jurisdiction to jurisdiction as it depends on judgment in the circumstances. Participants agreed that it would be important for PAs to document the rationale for their judgments and decisions.
 - PAs are expected to address disclosure (subject to confidentiality) to the relevant tax authorities as an important matter.
 - Participants noted that understanding the legislature's intent is important to applying the tax legislation. In some jurisdictions, a PA is perceived to be acting negligently if the PA did not consider the legislature's intent.

- If the PA has reason to believe that the tax strategy does not have a credible basis and the client or the PA's immediate superior disagrees with the PA's assessment, participants commented that the PA should communicate their reservations to the client or the appropriate level of management within the employing organization. The PA might also consider seeking expert advice. If the expert advice aligns with the PA's assessment, participants agreed that the PA might need to decide whether to retain the client or resign from the engagement and client relationship if the client has not changed its position, or resign from the employing organization in the case of a PAIB.
52. In drafting the provisions, the IESBA deliberated various formulations that would convey the Board's intent for a PA to proceed with providing TP services or performing TP activities. The IESBA considered in particular using the phrase "to affirmatively advise" only when there is a credible basis. In considering this phrase, the IESBA was attempting to respond to concerns not to unduly preclude instances where the PA would be able to provide advice if the TP arrangement did not have a credible basis in the laws and regulations. For example, a client may be considering a TP arrangement that does not have a credible basis in laws and regulations and needs the accountant's advice to explore options that would have a credible basis in laws and regulations; or the client may advise the PA of a transaction that has already occurred that does not have a credible basis in laws and regulations and therefore needs advice on how to address it (e.g., complying with relevant disclosure requirements under the law).
 53. However, the IESBA noted that the phrase "to affirmatively advise" would be difficult to translate. The IESBA therefore determined not to use that phrase.
 54. Having regard to the above explanation, the IESBA proposes that the framework establish a principle that a PA recommend or otherwise advise on a TP arrangement to a client, or recommend or otherwise advise on a TP arrangement for an employing organization, only if the PA has determined that there is a credible basis in laws and regulations for the arrangement. (See paragraphs R380.11 and R280.11.)
 55. The IESBA is of the view that it is important to emphasize that PAs are able to communicate to their client or the responsible parties within their employing organization if they have determined that a particular TP arrangement does not have a credible basis. However, there is no obligation for the PA to recommend an alternative TP arrangement. (See paragraphs 380.11 A1 and 280.11 A1.)

Credible Basis

56. Recognizing that what is a credible basis in laws and regulations will vary from jurisdiction to jurisdiction, the IESBA proposes guidance setting out various actions a PA might take to establish a credible basis for the TP arrangement. (See paragraphs 380.11 A3 and 280.11 A3.) The IESBA is of the view that it would not be appropriate to ascribe a probabilistic numerical measure to a credible-basis threshold as doing so would convey a false sense of accuracy, more so given roundtable participants' feedback that there is a range of probabilities commonly understood and accepted in different jurisdictions.
57. The IESBA noted that the International Independence Standards use a "likely to prevail" threshold with respect to:
 - (a) A tax service or transaction relating to marketing, planning or opining in favor of a tax treatment for an audit client and a significant purpose of which is tax avoidance (paragraph R604.4), and

- (b) Circumstances in which providing tax advisory and TP services will not create a self-review threat (paragraph 604.12 A2(c)).
58. The IESBA believes that the likely-to-prevail threshold—reinforced through Section 604 referring to the need for the audit firm to have confidence about clearing the threshold—is higher than a credible-basis threshold, given stakeholders’ heightened expectations regarding auditor independence. In the context of TP services provided to clients that are not audit clients or TP activities performed for employing organizations, the IESBA believes a credible-basis threshold sets a more appropriate bar for PAs as it calls on them to establish reasonable grounds for their TP recommendation or advice. Establishing such grounds will require professional judgment, taking into account the various actions PAs may take in the particular jurisdictional context at the time of the determination, as explained in paragraphs 380.11 A2 – A3 and 280.11 A2 – A3.

Cross-Border Transactions

59. Concerning dealing with the complexities of cross-border transactions, which evolving tax laws may compound, the IESBA noted that there is a potential for polarization given that there may be conflicting considerations between different jurisdictions that PAs need to balance. Roundtable participants generally agreed that PAs who are not equipped with the necessary expertise or experience to recommend or otherwise advise a client or an employing organization in these circumstances need to rely upon the judgments of other firms or individual experts that have the appropriate expertise. PAs would then need to assume that these firms or experts will operate within a similar ethical framework as the PAs.
60. Roundtable participants also cautioned that in some jurisdictions, it is possible for a TP arrangement to have a very low likelihood of success in a court of law, yet not be deemed unacceptable such that fines and penalties would be levied in the event of an adverse ruling. Many participants were of the view that if the threshold was less than 50%, the PA should not recommend or otherwise advise the employing organization or client to proceed. This, however, was not a universal view as some participants indicated that the generally accepted threshold in their jurisdictions is lower than 50% particularly when safeguarded by transparency disclosure. For example, it was noted that in some jurisdictions, such as the U.S., it would be acceptable to recommend or otherwise advise on a TP arrangement, when a lower threshold exists since the position must be disclosed to the taxing authority.²³ Accordingly, there was a view that the Code should not contradict such practices.

F. Consideration of the Overall Tax Planning Recommendation or Advice

61. In the last few years, there has been a significant shift in investor concerns and societal expectations for companies to pursue more sustainable business models. There is also an increasing recognition among stakeholders that there is greater value in the notion of companies pursuing “profitable solutions for the people and the planet” than in serving the interests of shareholders exclusively.
62. TP has become an essential part of the increasing focus among investors and other stakeholders on how companies measure up against Environmental, Social and Governance (ESG) performance indicators. Additionally, stakeholders have a greater awareness of what it means for a PA to act in

²³ Reasonable Basis (20%): If a position is based on one or more authorities, it will generally satisfy reasonable basis even though it does not satisfy the substantial authority standard (not merely arguable or not merely a colorable claim). [Regs. Sec.1.6662-3(b)(3); Joint Committee on Taxation Interest and Penalty Study (JCS-3-99)] – AICPA Levels of Confidence for Tax Return Positions (May 2017)

the public interest, given a shift in perceptions regarding what is in the public interest. In particular, what may have been regarded as creative and skillful TP in the past may now be perceived to be “tax avoidance.”

63. The IESBA believes it is important that the proposed ethical framework include a consideration of how the overall TP recommendation or advice might be perceived by stakeholders given heightened public attention on the issue of “tax avoidance,” the fact that TP has become an important part of the calculus among investors and other stakeholders regarding how clients and employing organizations meet sustainability goals, and the need to protect the profession’s role and reputation in TP.
64. Therefore, the IESBA proposes that in addition to determining that there is a credible basis for the TP arrangement, the PA *consider* the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement – a “stand-back” test. (See paragraphs R380.12 and R280.12.) The IESBA is of the view that it is important for the PA to consider the wider consequences, as the case of [Starbucks](#) demonstrates.²⁴ The IESBA is proposing guidance explaining the meaning of reputational, commercial and wider economic consequences (see paragraphs 380.12 A1-A2 and 280.12 A1-A2).
65. The IESBA believes that this test is an important public interest element of the framework as it stimulates the PA to consider adverse consequences for the client or employing organization, as well as the relevant jurisdiction in terms of its tax base, in the light of how stakeholders might view the TP arrangement. The IESBA emphasized in its deliberations that the stand-back test is *not* about tax morality, tax justice or tax fairness. Equally, the IESBA does not intend for the PA to carry out research on the economic consequences other than giving the matter due consideration based on the PA’s general awareness and understanding of the current economic environment in the context of TP.
66. The IESBA notes that this consideration will assist the PA in complying with the FP of professional behavior. It is also consistent with paragraph 100.6 A4 of the Role and Mindset provisions that in acting in the public interest, a PA considers not only the preferences or requirements of an individual client or employing organization, but also the interests of other stakeholders when performing professional activities. Further, the test serves to support the OECD’s BEPS initiative.
67. If, having carried out the considerations set out in the stand-back test, the PA decides not to recommend or otherwise advise on a TP arrangement that the client or employing organization would like to pursue, the IESBA proposes that the PA inform the client or management and, if appropriate, those charged with governance, of this and explain the basis for the PA’s conclusion. (See paragraphs R380.13 and R280.13.)
68. The IESBA notes that the stand-back test need not be performed sequentially after determining that there is a credible basis but may be performed at the same time as carrying out such determination.

G. Describing the “Gray Zone” of Uncertainty

69. A PA might encounter circumstances giving rise to uncertainty as to whether a proposed TP arrangement will be in compliance with the relevant tax laws and regulations. Such uncertainty makes it more challenging for the PA to determine that there is a credible basis in laws and regulations for

²⁴ The Starbucks brand suffered in light of accusations of tax avoidance as key brand metrics plummeted and negative sentiment on social media spiked. A Reuters investigation claimed that Starbucks has paid only £8.6m in UK corporation tax since launching in 1998 and none since 2009. The newswire claims that despite generating £1.2bn in revenue in the UK over the last three years, Starbucks declared no profit here, which means it is not eligible to pay corporation tax.

the TP arrangement and might, therefore, create threats to compliance with the FPs. (See paragraphs 380.15 A1 and 280.15 A1.)

70. The IESBA has noted the challenge of identifying the appropriate terminology to use to refer to this “gray zone” of uncertainty. Various international organizations have attempted to address the issue and faced challenges in developing an appropriate term that would work globally.
71. During the global roundtables, the IESBA outlined the proposition to use terms such as “uncertain” and “egregious” to describe the gray zone and a sub-zone within the gray zone. Roundtable participants shared that this proposition suggests that TP activities can be easily categorized into subgroups within the gray zone when the situation can be significantly more complex in practice. Some also viewed the term “unacceptable tax planning” as embodying an element of moral judgment that they encouraged the IESBA to avoid.
72. A few roundtable participants offered suggestions for alternative terms or approaches. A suggestion was to use the term “reasonable” instead of “appropriate” or “proper” when referring to TP. Another suggestion was to focus on describing the characteristics of the gray zone without defining it. This would recognize that the gray zone is more context-sensitive, both from the societal or broader sustainability perspective and from the client’s or employing organization’s perspective.
73. Other participants noted that uncertainty is the key issue rather than the treatment of the tax scheme itself. It was noted that the main concern for PAs is the ambiguity around tax treatments and whether these will withstand evolving public perceptions or the scrutiny of a court of law. For example, it was observed that a tax strategy that is considered proper each year might be deemed improper a few years later.
74. The IESBA concurred with the views of the roundtable participants that, given the absence of a global consensus regarding the acceptability of TP practices, it is inappropriate to seek to categorize TP arrangements within the gray zone.
75. The IESBA also agreed with stakeholders who suggested care in not merging the boundaries of ethical behavior and moral judgment with respect to PAs performing TP activities.²⁵ Instead, the IESBA believes that PAs’ involvement in TP can contribute to their broader societal role, the sustainability of businesses, and the profession’s reputation.
76. The IESBA proposes guidance setting out various circumstances that might give rise to uncertainty. (See paragraphs 380.15 A2 and 280.15 A2.) The IESBA has endeavored as far as possible to take a generic approach to describing such circumstances, recognizing that its Technology Working Group²⁶ has identified the issue of uncertainty as potentially giving rise to threats in circumstances other than when providing TP services or performing TP activities.
77. Given that circumstances of uncertainty create risks, the IESBA is proposing that the PA discuss the nature of the uncertainty with the client or with management and, if appropriate, TCWG of the employing organization. The IESBA also proposes guidance as to the purposes such a discussion would serve. (See paragraphs R380.16 – 380.16 A1, and R280.16 – 280.16 A1.)

²⁵ The final [report](#) (September 2021) leading to the launch of the project highlighted the concept of tax morality and the OECD’s work on this topic. Tax morale, as defined by the OECD, is the intrinsic motivation to pay taxes. This is a vital aspect of the tax system as most tax systems rely on taxpayers’ voluntary compliance for the bulk of their revenues. As recommended in the report, the IESBA does not believe the Code should deal with tax morality.

²⁶ [Agenda item 7-A](#), IESBA Meeting (September 2020).

H. Applying the Conceptual Framework to Navigate the Gray Zone and Other Tax Planning Circumstances

78. A significant part of the proposed ethical framework is the application of the CF to assist PAs in navigating the gray zone and other TP circumstances. Considering the rich feedback from the roundtable discussions, the IESBA therefore proposed practical guidance in terms of:
- Illustrative examples of the types of threats that might be created by PAs providing a TP service or performing a TP activity. (See paragraphs 380.17 A1 and 280.17 A1.)
 - Factors that are relevant in evaluating the level of such threats. (See paragraphs 380.17 A2 and 280.17 A2.)
 - Examples of actions that might eliminate such threats. (See paragraphs 380.17 A3 and 280.17 A3.)
 - Examples of actions that might be safeguards to address such threats. (See paragraphs 380.17 A4-A5 and 280.17 A4-A5.)

I. Disagreement with Management

79. If the PA has reason to believe that the TP arrangement does not have a credible basis in laws and regulations and the client disagrees with the PA's assessment, roundtable participants commented that the PA should communicate their reservations to the client or employing organization. The PA might also consider seeking expert advice. In the case of a PAPP, if the expert advice aligns with the PA's assessment, participants agreed that the PA might need to decide whether to retain the client or resign from the engagement and client relationship if the client has not changed its position.
80. Where a client or an employing organization is perceived to be engaging in illegal activities, participants expected the PA to escalate the matter within the client or employing organization (such as to TCWG or whistleblower ombudspersons), consider reporting these activities to an appropriate authority, and consider the need to extricate themselves from the client or employment relationship.
81. Given this context, the IESBA believes that the proposed ethical framework should contain provisions to address circumstances where a disagreement arises with the management of a client regarding a TP arrangement. The IESBA therefore proposes certain required actions for a PAPP if the PA disagrees with management regarding whether a proposed TP arrangement has a credible basis in laws and regulations. If management determines to pursue the arrangement despite the PA's advice to the contrary, the IESBA proposes that the PA take steps to be disassociated from the engagement. This includes considering the need to withdraw from the engagement and the professional relationship. (See paragraphs R380.19 to R380.21.)
82. The IESBA proposes similar provisions for a PAIB in the case of disagreement with the PA's immediate superior or other responsible individual within the employing organization. The IESBA, however, recognizes that it is more likely that an escalation process would apply in the case of an employing organization. A PAIB might also have recourse to established protocols and procedures regarding how to raise ethical or other concerns internally within the employing organization. (See paragraphs R280.19 – 280.20 A2). The IESBA, however, has taken a more measured approach with respect to the PAIB in terms of disassociation from the TP arrangement, recognizing that, unlike PAPPs who generally have more than one client, the PAIB's employing organization will ordinarily be their sole employer. Accordingly, the IESBA is proposing that a PAIB might consider the need to resign from the employing organization in these circumstances.

J. Documentation

83. The IESBA proposes guidance highlighting the importance of documentation. The proposals guide PAs on the matters that would be beneficial to document and explain how such documentation will assist them. (See paragraphs 380.23 A1 – A2, and 280.21 A1 – A2).
84. As part of its deliberations, the IESBA considered whether to require documentation of the TP arrangement, discussions with the client or with responsible parties within the employing organization, and the PA's analysis, judgments and decisions. The IESBA considered that requiring documentation would ensure that the PA captures all the relevant facts and circumstances, and have a basis to address inquiries from, for example, tax authorities. The IESBA, however, also considered the view that documentation is a quality and risk management matter and not an ethics matter.
85. Recognizing the approach to documentation in Parts 2 and 3 of the Code, the IESBA proposes to encourage, but not require, that PAs prepare documentation. However, the IESBA believes that the reasons for documentation set out in paragraphs 380.23 A2 and 280.21 A2 are sufficiently persuasive that in the vast majority of cases, PAs will document the various matters set out in paragraphs 380.23 A1 and 280.21 A1.

K. Tax Planning Products or Arrangements Developed by a Third Party

86. One of the questions the IESBA posed to the roundtable participants was about the ethical considerations for a PA if the PA is contemplating introducing a client to a firm that specializes in developing TP products or arrangements for sale to the public. Participants were also asked whether the PA should disclose to the client any commission or referral fee the PA has received or will receive from the external provider.
87. As a general matter, participants agreed that if a PA is referring a client to another firm so that the client can benefit from expert advice, this is a positive outcome for the client. That said, where the PA is referring the client to a provider of packaged TP products to meet the client's needs, participants commented that the PA would need to inform the client of the PA's relationship with the external provider. Participants felt that the PA should ascertain that the provider has appropriate expertise in developing the TP product. Some participants were of the view that the PA should still be responsible for ascertaining the reliability and consequences of the particular product, including its impact on the client or the client's financial statements
88. The IESBA concurred with the roundtable participants' general observations that where a PA is referring a client to a provider of TP products or arrangements to meet the client's needs, the PA would need to inform the client of the PA's relationship with the external provider. In addition, the PA should ascertain the provider's competence in developing the TP product or arrangement. The IESBA also believes that the PA should still be responsible for ascertaining the credibility of the particular TP product or arrangement.
89. The IESBA is therefore proposing guidance in paragraph 380.22 A1 to the effect that where a PA refers a client to a third-party provider of TP products or arrangements, or where a client approaches a PA for advice on a TP product or arrangement developed by a third party, the provisions in Section 380 apply. The IESBA believes that in both situations, the responsibilities of the PA are no different than if the PA were the creator of the TP product or arrangement.
90. If the PA receives a commission or referral fee for the introduction, roundtable participants were almost unanimously of the view that the commission or referral fee should be disclosed to the client.

Participants felt that this would need to be disclosed to the client before the actual referral is made so that the client understands the full context and expectations. It was felt that such disclosure would also enable the PA to maintain objectivity.

91. Taking into account this input, the IESBA believes that the provisions in Section 330 addressing such type of remuneration are sufficient and applicable. Accordingly, the IESBA proposes the inclusion of a reference to the appropriate provisions in Section 330. (See paragraph 380.22 A2 – A3.)

L. Multi-jurisdictional Tax Benefit

92. During the global roundtables, an observation was raised that a client or employing organization might obtain a tax benefit from accounting for the same transaction in more than one jurisdiction. In such a case, it was suggested that while it would not be unlawful for the client or employing organization to obtain the same tax benefit twice in two different jurisdictions, there is a public interest argument for the PA to advise the client or employing organization to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions.
93. The IESBA accepted this point and proposes guidance to that effect in paragraphs 380.14 A1 – A2 and 280.14 A1 – A2.

M. Conforming Amendments

94. In developing an appropriate linkage to Section 321 addressing second opinions in the context of PAPPs, the IESBA noted the need for a few conforming amendments to that section to recognize that a PAPP might need to recommend or otherwise advise on the application of tax laws and regulations in the context of being approached by a client for a second opinion on a proposed TP arrangement. Section 321 currently does not contemplate a PAPP providing a second opinion on the application of laws and regulations.
95. The IESBA is therefore proposing a few conforming amendments to Section 321.

VIII. Analysis of Overall Impact of the Proposed Changes

96. The IESBA believes that the proposals will serve to enhance public trust in PAs providing TP services or performing TP activities by:
- (a) Promoting ethical TP conduct and practice by all PAs through a principles-based framework and guidance;
 - (b) Raising awareness about risks associated with “improper” TP to employing organizations, clients (individuals or corporate), and the profession;
 - (c) Protecting and strengthening the profession’s role and reputation in relation to TP; and
 - (d) Promoting the principles of accountability and transparency through guiding PAs’ conduct when involved in TP activities, consistent with their responsibility to act in the public interest.
97. Given the nature and extent of the proposed revisions to the Code, the IESBA believes that some of the proposals may entail significant changes to the policies and methodologies of firms and networks that carry out TP services. Such changes may result in increased costs, including with respect to the deployment of updated policies and procedures, and awareness raising and training initiatives.

98. The IESBA also expects costs related to adoption and implementation for national standard setters, professional accountancy organizations and other stakeholders, including translation where needed and education and training efforts.

IX. Project Timetable and Effective Date

99. The indicative remaining timeline for the project is set out below. This timeline takes into account a 90-day comment period which is intended to provide stakeholders with ample time to understand the proposals in the context of their relevant jurisdictional circumstances and undertake any necessary consultations at their levels or within their networks.
100. The indicative timeline for the completion of this project is set out below.

Indicative Timing	Milestone
June 2023	<ul style="list-style-type: none"> High level overview of respondents' comments to IESBA
September 2023	<ul style="list-style-type: none"> Discussion of significant matters raised on the ED and Task Force responses with IESBA CAG Full review of ED responses and first read post-exposure with IESBA
December 2023	<ul style="list-style-type: none"> IESBA approval of final pronouncement

101. The IESBA will determine an effective date for the final provisions in due course, taking into consideration the need to allow sufficient time for adoption and implementation activities.

X. Guide for Respondents

102. The IESBA welcomes comments on all matters addressed in this ED, but especially the matters identified in the Request for Specific Comments below. Comments are most helpful when they refer to specific paragraphs, include the reasons for the comments, and, where appropriate, make specific suggestions for any proposed changes to wording. When a respondent agrees with proposals in this ED, it will be helpful for the IESBA to be made aware of this view.

Request for Specific Comments

103. The IESBA welcomes comments on the following specific matters. Where a respondent disagrees with a proposal, it will be helpful for the respondent to explain why and to provide suggestions for other ways to address the particular matter.

Proposed New Sections 380 and 280

1. Do you agree with the IESBA's approach to addressing TP by creating two new Sections 380 and 280 in the Code as described in Section VI of this memorandum?

Description of Tax Planning and Related Services

2. Do you agree with IESBA's description of TP as detailed in Section VII.A above?

Role of the PA in Acting in the Public Interest

3. Do you agree with IESBA's proposals as explained in Section VII.B above regarding the role of the PA in acting in the public interest in the context of TP?

Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

4. Do you agree with the IESBA's proposals regarding the thought process for PAs to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement to a client or an employing organization, as described in Section VII.E above?
5. Are you aware of any other considerations, including jurisdiction-specific considerations, that may impact the proper application of the proposed provisions?

Consideration of the Overall Tax Planning Recommendation or Advice

6. Do you agree with the proposals regarding the stand-back test, as described in Section VII.F above?

Describing the Gray Zone and Applying the Conceptual Framework to Navigate the Gray Zone

7. Do you agree with the IESBA's proposals as outlined in Section VII.G above describing the gray zone of uncertainty and its relationship to determining that there is a credible basis for the TP arrangement?
8. In relation to the application of the CF as outlined in Section VII.H above, is the proposed guidance on:
- (a) The types of threats that might be created in the gray zone;
 - (b) The factors that are relevant in evaluating the level of such threats;
 - (c) The examples of actions that might eliminate threats created by circumstances of uncertainty; and
 - (d) The examples of actions that might be safeguards to address such threats sufficiently clear and appropriate?

Disagreement with Management

9. Do you agree with the proposals outlined in Section VII.I above which set out the various actions PAs should take in the case of disagreement with the client or with the PA's immediate superior or other responsible individual within the employing organization regarding a TP arrangement?

Documentation

10. Do you agree with the IESBA's proposals regarding documentation as outlined in Section VII.J above?

Tax Planning Products or Arrangements Developed by a Third Party

11. Do you agree with the IESBA's proposals as detailed in Section VII.K above addressing TP products or arrangements developed by a third party provider?

Multi-jurisdictional Tax Benefit

12. Do you agree with the IESBA's proposals regarding a multi-jurisdiction tax benefit as described in Section VII.L above?

Proposed Consequential and Conforming Amendments

13. Do you agree with the proposed consequential and conforming amendments to Section 321 as described in Section VII.M above?

Request for General Comments

104. In addition to the request for specific comments above, the IESBA is also seeking comments on the matters set out below:
- (a) *SMEs and SMPs* – The IESBA invites comments regarding any aspect of the proposals from SMEs and SMPs.
 - (b) *Tax Authorities* – The IESBA invites comments on the proposals from a regulatory perspective from members of the tax regulatory community.
 - (c) *Developing Nations* – Recognizing that many developing nations have adopted or are in the process of adopting the Code, the IESBA invites respondents from these nations to comment on the proposals, and in particular on any foreseeable difficulties in applying them in their environment.
 - (d) *Translations* – Recognizing that many respondents may intend to translate the final changes for adoption in their own environments, the IESBA welcomes comment on potential translation issues respondents may note in reviewing the proposals.

EXPOSURE DRAFT

PART 3 – PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE

PROPOSED SECTION 380

TAX PLANNING AND RELATED SERVICES

Introduction

- 380.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.
- 380.2 Providing tax planning and related services might create self-interest, advocacy or intimidation threats to compliance with the fundamental principles, particularly the principles of integrity, objectivity, professional competence and due care, and professional behavior.
- 380.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to the provision of tax planning and related services. This section also requires a professional accountant to comply with relevant tax laws and regulations when providing such services.

Requirements and Application Material

General

Professional Accountants' Public Interest Role in Relation to Tax Planning Services

- 380.4 A1 Professional accountants play an important role in tax planning by contributing their knowledge, skills and experience to assist clients in meeting their tax planning goals while complying with tax laws and regulations. In doing so, accountants help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest.
- 380.4 A2 Clients are entitled to organize their affairs for tax planning purposes. While there are a variety of ways to achieve such purposes, clients have a responsibility to pay taxes as determined by the relevant tax laws and regulations. In this regard, professional accountants' role is to advise their clients on how best to meet their tax planning goals. In addition, accountants play an important role in assisting clients to meet their tax obligations and not seek to circumvent them through tax evasion. However, when accountants provide such assistance, it might involve certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.
- 380.4 A3 It is ultimately for a court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations.

Description of Tax Planning and Related Services

- 380.5 A1 Tax planning services comprise a broad range of services designed to assist a client, whether an individual or an entity, in structuring the client's affairs in a tax-efficient manner.
- 380.5 A2 Examples of tax planning services include:
- Advising an individual to structure their tax affairs to achieve investment, retirement or estate planning goals.

- Advising an individual business owner on structuring their ownership and income from the business to minimize their overall taxes.
- Advising an entity on structuring its international operations to minimize its overall taxes including through transfer pricing arrangements.
- Advising on efficient ways to utilize available tax losses.
- Advising an entity on how to structure its capital distribution strategy in a tax-efficient manner.
- Advising an entity on structuring its compensation strategy for senior executives to optimize the tax benefits.

380.5 A3 Related services are those that are based on or linked to a tax planning service, whether provided by the professional accountant or another party. Such services include, for example, assisting a client in resolving a dispute with the tax authority on a tax planning position that the accountant or another party recommended to the client, or preparing the client's tax return that reflects the position in the tax planning arrangement.

380.5 A4 This section applies regardless of the nature of the client, including whether it is a public interest entity.

Compliance with Laws and Regulations

Anti-avoidance Laws and Regulations

R380.6 In some jurisdictions, laws and regulations, including those that are often referred to as anti-avoidance rules, limit or prohibit certain tax planning arrangements. A professional accountant shall obtain an understanding of those laws and regulations and advise the client to comply with them when providing tax planning services.

Non-compliance with Tax Laws and Regulations

380.7 A1 If, in the course of providing tax planning services, a professional accountant becomes aware of tax evasion or suspected tax evasion, or other non-compliance or suspected non-compliance with tax laws and regulations by a client, management, those charged with governance or other individuals working for or under the direction of the client, the requirements and application material set out in Section 360 apply.

Responsibilities of Management and Those Charged with Governance

380.8 A1 In relation to tax planning, management, with the oversight of those charged with governance, has a number of responsibilities, including:

- Ensuring that the client's tax affairs are conducted in accordance with the relevant tax laws and regulations.
- Maintaining all the books and records and implementing the systems of internal control necessary to enable the client to fulfill its tax compliance obligations.
- Making available all the facts and other relevant information needed to enable the professional accountant to perform the tax planning service.

- Deciding whether to accept and implement the professional accountant's recommendation or advice on a tax planning arrangement.
- Submitting the client's tax returns and dealing with the relevant tax authorities in a timely manner.
- Making such disclosures to the relevant tax authorities as might be required by tax laws and regulations or as might be necessary to support a tax position, including details of any tax planning arrangements.
- Ensuring that the client's tax planning arrangements are consistent with any publicly disclosed tax strategy or policies.

Responsibilities of All Professional Accountants

R380.9 As part of providing a tax planning service, a professional accountant shall obtain an understanding of the nature of the engagement including:

- (a) Knowledge and understanding of the client, its owners, management and those charged with governance, and its business activities;
- (b) The purpose and circumstances of the tax planning arrangement; and
- (c) The relevant tax laws and regulations.

380.9 A1 The requirements and application material in Section 320 apply with respect to client and engagement acceptance.

380.9 A2 A professional accountant might be engaged to provide a second opinion on a tax planning arrangement. In addition to the provisions in this section, the requirements and application material in Section 321 also apply in such circumstances.

380.10 A1 A professional accountant is expected to apply knowledge, expertise and due care in accordance with Subsection 113 when providing a tax planning service. The accountant is also expected to have an inquiring mind and exercise professional judgment in accordance with Section 120 when considering the specific facts and circumstances relating to the tax planning service.

Basis for Recommending or otherwise Advising on a Tax Planning Arrangement

R380.11 A professional accountant shall recommend or otherwise advise on a tax planning arrangement to a client only if the accountant has determined that there is a credible basis in laws and regulations for the arrangement.

380.11 A1 If the professional accountant determines that the tax planning arrangement does not have a credible basis in laws and regulations, paragraph R380.11 does not preclude the accountant from explaining to the client the accountant's rationale for the determination.

380.11 A2 The determination of whether there is a credible basis involves the exercise of professional judgment by the professional accountant. This determination will vary from jurisdiction to jurisdiction based on the relevant tax laws and regulations at the time.

380.11 A3 Actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement include:

- Reviewing the relevant facts and circumstances, including the economic purpose and substance of the arrangement.
- Assessing the reasonableness of any assumptions.
- Reviewing the relevant tax legislation.
- Reviewing legislative proceedings that discuss the intent of the relevant tax legislation.
- Reviewing relevant literature such as court decisions, law or industry journals, and tax authority rulings or guidance.
- Considering whether the basis used for the proposed arrangement is an established practice that has not been challenged by the relevant tax authorities.
- Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed.
- Consulting with experts within or outside the professional accountant's firm regarding what a reasonable interpretation of the relevant tax laws and regulations might be.
- Consulting with the relevant tax authorities, where applicable.

Consideration of the Overall Tax Planning Recommendation or Advice

R380.12 In addition to determining that there is a credible basis for the tax planning arrangement, the professional accountant shall exercise professional judgment and consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.

380.12 A1 The reputational and commercial consequences might relate to personal or business implications to the client or implications to the reputation of the client and the profession of a prolonged dispute with the relevant tax or other authorities. The implications to the client might involve adverse publicity, costs, fines or penalties, loss of management time over a significant period, and potential adverse consequences for the client's business.

380.12 A2 An awareness of the wider economic consequences might take into account the professional accountant's understanding of the impact of the tax planning arrangement on the tax base of the jurisdiction, or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the client operates.

R380.13 If, having considered the matters set out in paragraph R380.12, the professional accountant decides not to recommend or otherwise advise on a tax planning arrangement that the client would like to pursue, the accountant shall inform the client of this and explain the basis for the accountant's conclusion.

Tax Planning Arrangements Involving Multiple Jurisdictions

380.14 A1 A client might obtain a tax benefit from accounting for the same transaction in more than one jurisdiction, especially if there is no tax treaty between the jurisdictions. In such circumstances, while the client might be in compliance with the tax laws and regulations of each jurisdiction, the professional accountant might advise the client to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions.

380.14 A2 Relevant factors the professional accountant might consider in determining whether to advise the client to make such disclosure include:

- The significance of the tax benefits in the relevant jurisdictions.
- The likelihood that other entities in a similar circumstance to the client are taking advantage of the tax benefits.
- Stakeholders' perceptions of the client if the facts and circumstances were known to the stakeholders.

Circumstances of Uncertainty

380.15 A1 A professional accountant might encounter circumstances giving rise to uncertainty as to whether a proposed tax planning arrangement will be in compliance with the relevant tax laws and regulations. Such uncertainty makes it more challenging for the accountant to determine that there is a credible basis in laws and regulations for the tax planning arrangement and might, therefore, create threats to compliance with the fundamental principles.

380.15 A2 Circumstances that might give rise to uncertainty include:

- Difficulty in establishing an adequate factual basis.
- Difficulty in establishing an adequate basis of assumptions.
- Lack of clarity in the tax laws and regulations and their interpretation, including:
 - Gaps in the tax laws and regulations.
 - Challenges to previous court rulings.
 - Conflicting tax laws and regulations in different jurisdictions in circumstances involving cross-border transactions.
 - Innovative business models not addressed by the current tax laws and regulations.
 - Recent court or tax authority rulings or positions that cast doubt on similar tax planning arrangements.
 - Complexity in interpreting or applying the tax laws and regulations from a technical or legal point of view.
 - Lack of a legal precedent, ruling or position.
- Lack of clarity regarding the economic purpose and substance of the tax planning arrangement.
- Lack of clarity about the ultimate beneficiaries of the tax planning arrangement.

R380.16 Where there is uncertainty as to whether a proposed tax planning arrangement will be in compliance with the relevant tax laws and regulations, a professional accountant shall discuss the uncertainty with the client.

380.16 A1 The discussion serves a number of purposes, including:

- Explaining the professional accountant's assessment about how likely the relevant tax authorities are to have a view that supports the proposed tax planning arrangement where there is a lack of clarity in the interpretation of the relevant tax laws and regulations.
- Considering any assumptions that might need to be made or changed.
- Obtaining any additional information from the client that might reduce the uncertainty.
- Discussing any reputational, commercial or wider economic consequences in pursuing the proposed tax planning arrangement.
- Discussing potential courses of action to mitigate the possibility of adverse consequences for the client, including consideration of disclosure to the relevant tax authorities.

Potential Threats Arising from Providing a Tax Planning Service

380.17 A1 Providing a tax planning service to a client might create a self-interest, advocacy or intimidation threat. For example:

- A self-interest threat might be created when a professional accountant has a direct financial interest in a client and the accountant is involved in designing a tax planning arrangement that has an impact on the client's financial situation.
- A self-interest or advocacy threat might be created when a professional accountant actively promotes a particular tax position a client should adopt.
- A self-interest threat might be created when a professional accountant accepts a significant fee for an engagement to develop a tax planning arrangement for which the interpretation of the relevant tax laws and regulations is uncertain or unclear.
- Self-interest and advocacy threats might be created when a professional accountant advocates a client's position in a tax planning arrangement before a tax authority when there are indications that the arrangement might not have a credible basis in laws and regulations.
- Self-interest and intimidation threats might be created when a professional accountant provides services to a client who exerts significant influence over the design of a particular tax arrangement, in a way that might influence the accountant's determination that there is a credible basis for the arrangement in laws and regulations.
- Self-interest and intimidation threats might be created when a professional accountant is threatened with dismissal from the engagement or the accountant's firm concerning the position a client is insisting on pursuing regarding a tax planning arrangement.

380.17 A2 Factors that are relevant in evaluating the level of such threats include:

- The degree of transparency of the client, including, where applicable, the identity of the ultimate beneficiaries.
- Whether the proposed tax planning arrangement has a clear economic purpose and substance based on the underlying business transaction or circumstances.

- The nature and complexity of the underlying business transaction or circumstances.
- The complexity or clarity of the relevant tax laws and regulations.
- Whether the professional accountant knows, or has reason to believe, that the proposed tax planning arrangement would be contrary to the intent of the relevant tax legislation.
- The number of jurisdictions involved and the nature of their tax regimes.
- The extent of the professional accountant's knowledge, skills and experience in the relevant tax areas.
- The significance of the potential tax savings.
- The nature and amount of the fee for the tax planning service.
- The extent to which the proposed tax planning arrangement reflects an established practice that has not been challenged by the relevant tax authorities.
- Whether there is pressure being exerted by the client or another party on the professional accountant.
- The degree of urgency in implementing the tax planning arrangement.
- The known previous behavior or reputation of the client, including its organizational culture.

380.17 A3 Examples of actions that might eliminate such threats include:

- Referring the client to an expert outside the professional accountant's firm who has the necessary knowledge, skills and experience to advise the client on the proposed tax planning arrangement.
- Advising the client to structure the tax planning arrangement so that it is consistent with an existing interpretation or ruling issued by the relevant tax authorities.
- Obtaining an advance ruling from the relevant tax or other authorities, where possible.
- Not pursuing, or advising the client not to pursue, the proposed tax planning arrangement.

380.17 A4 Examples of actions that might be safeguards to address such threats include:

- Establishing the identity of the ultimate beneficiaries.
- Advising the client to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance.
- Advising the client to structure the tax planning arrangement based on an established practice that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities.
- Consulting with an expert within or outside the professional accountant's firm in the relevant tax areas.
- Obtaining an opinion from an appropriately qualified professional (such as legal counsel or another professional accountant) regarding the interpretation of the relevant tax laws and regulations as applied to the particular circumstances.

- Having an appropriate reviewer, who is not otherwise involved in providing the tax planning service, review any work performed or conclusions reached by the professional accountant with respect to the tax planning arrangement.
- Having the client provide full transparency about the tax planning arrangement to the relevant tax authorities, including the goals, business and legal aspects, and ultimate beneficiaries of the tax planning arrangement.

380.17 A5 Steps a professional accountant might take to establish the identity of the ultimate beneficiaries include, for example:

- Making inquiries of management and others within the client.
- Making inquiries of others within or outside the firm who have dealt with the client, having regard to the principle of confidentiality.
- Reviewing the client's tax records, financial statements and other relevant corporate records.
- Making inquiries of registrars where the client or entities within its legal structure are incorporated concerning the relevant shareholders.
- Researching relevant public records.

Communication of Basis of Tax Planning Arrangement

R380.18 A professional accountant shall explain the basis on which the accountant recommended or otherwise advised on a tax planning arrangement to the client.

Disagreement with Client

R380.19 If the professional accountant disagrees that a tax planning arrangement that a client would like to pursue has a credible basis, the accountant shall:

- (a) Inform the client of the basis of the accountant's assessment;
- (b) Communicate to the client the potential consequences of pursuing the arrangement in the event of an adverse ruling; and
- (c) Advise the client not to pursue the arrangement.

R380.20 If the client decides to pursue the tax planning arrangement, despite the professional accountant's advice to the contrary, the accountant shall take steps to disassociate from the engagement. In doing so, the accountant shall consider advising the client to:

- (a) Communicate internally to the appropriate level of management the details of the arrangement and the difference of views;
- (b) Make full disclosure of the arrangement to the relevant tax authorities; and
- (c) Communicate the details of the arrangement and the difference of views to the external auditor, where applicable.

380.20 A1 As part of communicating the matters set out in paragraphs R380.19 and R380.20, a professional accountant may consider it appropriate to raise the relevant matters with those charged with governance of the client.

R380.21 In light of the client's response to the professional accountant's advice, the accountant shall consider the need to withdraw from the engagement and the professional relationship.

Tax Planning Products or Arrangements Developed by a Third Party

380.22 A1 There might be circumstances where a professional accountant refers a client to a third-party provider of tax planning products or arrangements, or where a client approaches the accountant for advice on a tax planning product or arrangement developed by a third party. In both circumstances, the provisions in this section apply.

Referral Fee or Commission

380.22 A2 A self-interest threat to compliance with the principles of objectivity and professional competence and due care might be created if a professional accountant receives a referral fee or commission by referring a client to a third-party provider of tax planning products or arrangements. The provisions in paragraphs 330.5 A1 and A2 are relevant in such circumstances.

380.22 A3 In some jurisdictions, professional accountants are prohibited by law or regulation from receiving referral fees or commissions.

Documentation

380.23 A1 When providing a tax planning service, a professional accountant is encouraged to document on a timely basis:

- The purpose, circumstances and substance of the tax planning arrangement.
- The identity of the ultimate beneficiaries.
- The nature of any uncertainties.
- The accountant's analysis, the courses of action considered, the judgments made, and the conclusions reached in advising the client on the proposed tax planning arrangement.
- The results of discussions with the client and other parties.
- The client's response to the accountant's advice.
- Any disagreement with the client.

380.23 A2 Preparing such documentation assists the accountant to:

- Develop the accountant's analysis of the facts, circumstances, relevant tax laws and regulations, and any assumptions made or changed.
- Record the basis of the professional judgments at the time they were made or changed.
- Support the position if the tax planning arrangement is challenged by the relevant tax authorities.
- Demonstrate that the accountant has complied with the provisions in this section.

PART 2 – PROFESSIONAL ACCOUNTANTS IN BUSINESS

PROPOSED SECTION 280

TAX PLANNING AND RELATED ACTIVITIES

Introduction

- 280.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.
- 280.2 Performing tax planning and related activities might create self-interest, advocacy or intimidation threats to compliance with the fundamental principles, particularly the principles of integrity, objectivity, professional competence and due care, and professional behavior.
- 280.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to the performance of tax planning and related activities. This section also requires a professional accountant to comply with relevant tax laws and regulations when performing such activities.

Requirements and Application Material

General

Professional Accountants' Public Interest Role in Relation to Tax Planning Services

- 280.4 A1 Professional accountants play an important role in tax planning by contributing their knowledge, skills and experience to assist employing organizations in meeting their tax planning goals while complying with tax laws and regulations. In doing so, accountants help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest.
- 280.4 A2 Employing organizations are entitled to organize their affairs for tax planning purposes. While there are a variety of ways to achieve such purposes, employing organizations have a responsibility to pay taxes as determined by the relevant tax laws and regulations. In this regard, professional accountants' role is to advise their employing organizations on how best to meet their tax planning goals. In addition, accountants play an important role in assisting employing organizations meet their tax obligations and not seek to circumvent them through tax evasion. However, when accountants provide such assistance, it might involve certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.
- 280.4 A3 It is ultimately for a court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations.

Description of Tax Planning and Related Activities

- 280.5 A1 Tax planning activities comprise a broad range of activities designed to assist an employing organization in structuring its affairs in a tax-efficient manner.
- 280.5 A2 Examples of tax planning activities include:
- Advising management on structuring the employing organization's international operations to minimize its overall taxes, including through transfer pricing practices.

- Advising management on efficient ways to utilize available tax losses for the employing organization.
- Advising the employing organization on how to structure its capital distribution strategy in a tax-efficient manner.
- Advising management on structuring the employing organization's compensation strategy for senior executives to optimize the tax benefits for the employing organization.
- Advising a non-profit employing organization on how to structure its business to avoid breaching its non-profit status.
- Advising management on structuring the employing organization's investments to take advantage of tax incentives offered by jurisdictions or localities.

280.5 A3 Related activities are those that are based on or linked to a tax planning activity, whether provided by the professional accountant or another party. Such activities include, for example, assisting an employing organization in resolving a dispute with the tax authority on a tax planning position that the accountant or another party recommended to the employing organization, or preparing the employing organization's tax return that reflects the position in the tax planning arrangement.

280.5 A4 This section applies regardless of the nature of the employing organization, including whether it is a public interest entity.

Compliance with Laws and Regulations

Anti-avoidance Laws and Regulations

R280.6 In some jurisdictions, laws and regulations, including those that are often referred to as anti-avoidance rules, limit or prohibit certain tax planning arrangements. A professional accountant shall obtain an understanding of those laws and regulations and advise the employing organization to comply with them when providing tax planning activities.

Non-compliance with Tax Laws and Regulations

280.7 A1 If, in the course of performing a tax planning activity, a professional accountant becomes aware of tax evasion or suspected tax evasion, or other non-compliance or suspected non-compliance with tax laws and regulations by an employing organization, management, those charged with governance or other individuals working for or under the direction of the employing organization, the requirements and application material set out in Section 260 apply.

Responsibilities of Management and Those Charged with Governance of the Employing Organization

280.8 A1 In relation to tax planning, management, with the oversight of those charged with governance, has a number of responsibilities, including:

- Ensuring that the employing organization's tax affairs are conducted in accordance with the relevant tax laws and regulations.

- Maintaining all the books and records and implementing the systems of internal control necessary to enable the employing organization to fulfill its tax compliance obligations.
- Deciding whether to accept and implement the professional accountant's recommendation or advice on a tax planning arrangement.
- Submitting the employing organization's tax returns and dealing with the relevant tax authorities in a timely manner.
- Making such disclosures to the relevant tax authorities as might be required by tax laws and regulations or as might be necessary to support a tax position, including details of any tax planning arrangements.
- Ensuring that the employing organization's tax planning arrangements are consistent with any publicly disclosed tax strategy or policies.

Responsibilities of All Professional Accountants

R280.9 As part of performing a tax planning activity for an employing organization, the professional accountant shall obtain an understanding of the nature of the tax planning activity, including:

- (a) The purpose and circumstances of the tax planning arrangement; and
- (b) The relevant tax laws and regulations.

280.10 A1 A professional accountant is expected to apply knowledge, expertise and due care in accordance with Subsection 113 when performing a tax planning activity. The accountant is also expected to have an inquiring mind and exercise professional judgment in accordance with Section 120 when considering the specific facts and circumstances relating to the tax planning activity.

Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

R280.11 A professional accountant shall recommend or otherwise advise on a tax planning arrangement for an employing organization only if the accountant has determined that there is a credible basis in laws and regulations for the arrangement.

280.11 A1 If the professional accountant determines that the tax planning arrangement does not have a credible basis in laws and regulations, paragraph R280.11 does not preclude the accountant from explaining to the accountant's immediate superior or other responsible individual within the employing organization the accountant's rationale for the determination.

280.11 A2 The determination of whether there is a credible basis involves the exercise of professional judgment. This determination will vary from jurisdiction to jurisdiction based on the relevant tax laws and regulations at the time.

280.11 A3 Actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement include:

- Reviewing the relevant facts and circumstances, including the economic purpose and substance of the arrangement.
- Assessing the reasonableness of any assumptions.
- Reviewing the relevant tax legislation.

- Reviewing legislative proceedings that discuss the intent of the relevant tax legislation.
- Reviewing relevant literature such as court decisions, law or industry journals, and tax authority rulings or guidance.
- Considering whether the basis used for the proposed arrangement is an established practice that has not been challenged by the relevant tax authorities.
- Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed.
- Consulting with experts within or outside the employing organization regarding what a reasonable interpretation of the relevant tax laws and regulations might be.
- Consulting with the relevant tax authorities, where applicable.

Consideration of the Overall Tax Planning Recommendation or Advice

- R280.12** In addition to determining that there is a credible basis for the tax planning arrangement, the professional accountant shall exercise professional judgment and consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.
- 280.12 A1 The reputational and commercial consequences might relate to personal or business implications to the employing organization or implications to the reputation of the employing organization and the profession of a prolonged dispute with the relevant tax or other authorities. The implications to the employing organization might involve adverse publicity, costs, fines or penalties, loss of management time over a significant period, and potential adverse consequences for the employing organization.
- 280.12 A2 An awareness of the wider economic consequences might take into account the professional accountant's understanding of the impact of the tax planning arrangement on the tax base of the jurisdiction, or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the employing organization operates.
- R280.13** If, having considered the matters set out in paragraph R280.12, the professional accountant decides not to recommend or otherwise advise on a tax planning arrangement that the employing organization would like to pursue, the accountant shall inform management and, if appropriate, those charged with governance, of this and explain the basis for the accountant's conclusion.

Tax Planning Arrangements Involving Multiple Jurisdictions

- 280.14 A1 An employing organization might obtain a tax benefit from accounting for the same transaction in more than one jurisdiction, especially if there is no tax treaty between the jurisdictions. In such circumstances, while the employing organization might be in compliance with the tax laws and regulations of each jurisdiction, the professional accountant might advise management to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions.
- 280.14 A2 Relevant factors the professional accountant might consider in determining whether to make such disclosure include:
- The significance of the tax benefit in the relevant jurisdictions.

- Stakeholders' perceptions of the employing organization if the facts and circumstances were known to the stakeholders.

Circumstances of Uncertainty

280.15 A1 A professional accountant might encounter circumstances giving rise to uncertainty as to whether a proposed tax planning arrangement will be in compliance with the relevant tax laws and regulations. Such uncertainty makes it more challenging for the accountant to determine that there is a credible basis in laws and regulations for the tax planning arrangement and might therefore create threats to compliance with the fundamental principles.

280.15 A2 Circumstances that might give rise to uncertainty include:

- Difficulty in establishing an adequate factual basis.
- Difficulty in establishing an adequate basis of assumptions.
- Lack of clarity in the tax laws and regulations and their interpretation, including:
 - Gaps in the tax laws and regulations.
 - Challenges to previous court rulings.
 - Conflicting tax laws and regulations in different jurisdictions in circumstances involving cross-border transactions.
 - Innovative business models not addressed by the current tax laws and regulations.
 - Recent court or tax authority rulings or positions that cast doubt on similar tax planning arrangements.
 - Complexity in interpreting or applying the tax laws and regulations from a technical or legal point of view.
 - Lack of a legal precedent, ruling or position.
- Lack of clarity regarding the economic purpose and substance of the tax planning.
- Lack of clarity about the ultimate beneficiaries of the tax planning arrangement.

R280.16 Where there is uncertainty as to whether a proposed tax planning arrangement will be in compliance with the relevant tax laws and regulations, a professional accountant shall discuss the uncertainty with management and, if appropriate, those charged with governance.

280.16 A1 The discussion serves a number of purposes, including:

- Explaining the professional accountant's assessment about how likely the relevant tax authorities are to have a view that supports the proposed tax planning arrangement where there is a lack of clarity in the interpretation of the relevant tax laws and regulations.
- Considering any assumptions that might need to be made or changed.
- Obtaining any additional information from management and, if appropriate, those charged with governance that might reduce the uncertainty.

- Discussing any reputational, commercial or wider economic consequences in pursuing the proposed tax planning arrangement.
- Discussing potential courses of action to mitigate the possibility of adverse consequences for the employing organization, including consideration of disclosure to the relevant tax authorities.

Potential Threats Arising from Performing a Tax Planning Activity

280.17 A1 Performing a tax planning activity for an employing organization might create a self-interest, advocacy or intimidation threat. For example:

- A self-interest threat might be created when a professional accountant's career advancement prospects depend on developing a creative tax planning arrangement for which the interpretation of the relevant tax laws and regulations is unclear.
- A self-interest threat might be created when a professional accountant participates in an incentive compensation scheme impacted by the accountant's design of a tax planning arrangement.
- Self-interest and advocacy threats might be created when a professional accountant advocates an employing organization's position in a tax planning arrangement before a tax authority, when there are indications that the arrangement might not have a credible basis in laws and regulations.
- Self-interest and intimidation threats might be created when a dominant owner or leader of the employing organization exerts significant influence over the design of a particular tax arrangement, in a way that might influence the accountant's determination that there is a credible basis in laws and regulations.
- Self-interest and intimidation threats might be created when a professional accountant faces potential dismissal over the position the employing organization is insisting on pursuing regarding a tax planning arrangement.

280.17 A2 Factors that are relevant in evaluating the level of such threats include:

- The degree of transparency regarding the underlying business transaction or circumstances, including, where applicable, the identity of the ultimate beneficiaries.
- Whether the proposed tax planning arrangement has a clear economic purpose and substance based on the underlying business transaction or circumstances.
- The nature and complexity of the underlying business transaction or circumstances.
- The complexity or clarity of the relevant tax laws and regulations.
- Whether the professional accountant knows, or has reason to believe, that the proposed tax planning arrangement would be contrary to the intent of the relevant tax legislation.
- The number of jurisdictions involved and the nature of their tax regimes.
- The extent of the professional accountant's knowledge, skills and experience in the relevant tax areas.
- The significance of the potential tax savings.

- The nature and significance of any incentives offered to the professional accountant to develop the proposed arrangement.
- The extent to which the proposed tax planning arrangement reflects an established practice that has not been challenged by the relevant tax authorities.
- Whether there is pressure being exerted on the professional accountant.
- The degree of urgency in implementing the tax planning arrangement.
- The organizational culture of the employing organization.

280.17 A3 Examples of actions that might eliminate such threats include:

- Advising the employing organization to structure the tax planning arrangement so that it is consistent with an existing tax interpretation or ruling issued by the relevant tax authorities.
- Obtaining an advance ruling from the relevant tax or other authorities, where possible.
- Advising management not to pursue the proposed tax planning arrangement.

280.17 A4 Examples of actions that might be safeguards to address such threats include:

- Establishing the identity of the ultimate beneficiaries.
- Advising the employing organization to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance.
- Advising the employing organization to structure the tax planning arrangement based on an established practice that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities.
- Engaging an internal or external expert who has the necessary knowledge, skills and experience to advise the employing organization on the proposed tax planning arrangement.
- Obtaining an opinion from an appropriately qualified professional (such as legal counsel or another professional accountant) regarding the interpretation of the relevant tax laws and regulations as applied to the particular circumstances.
- Having a tax expert, who is not otherwise involved in the tax planning activity, review any work performed or conclusions reached by the professional accountant with respect to the tax planning arrangement.
- Having the employing organization provide full transparency about the tax planning arrangement to the relevant tax authorities, including the goals, business and legal aspects, and ultimate beneficiaries of the tax planning arrangement.

280.17 A5 Steps a professional accountant might take to establish the identity of the ultimate beneficiaries include, for example:

- Making inquiries of management and others within or outside the employing organization having regard to the principle of confidentiality.
- Reviewing the employing organization's tax records, financial statements and other relevant corporate records.

- Researching relevant public records.

Communication of Basis of Tax Planning Arrangement

R280.18 A professional accountant shall explain to management and, if appropriate, those charged with governance the basis on which the accountant recommended or otherwise advised on a tax planning arrangement to the employing organization.

Disagreement on the Tax Planning Arrangement

R280.19 If the professional accountant disagrees with the accountant's immediate superior or other responsible individual within the employing organization that a tax planning arrangement that the employing organization would like to pursue has a credible basis, the accountant shall:

- (a) Inform the immediate superior or other responsible individual within the employing organization, and if appropriate, those charged with governance, of the accountant's assessment;
- (b) Communicate to them the potential consequences of pursuing the arrangement in the event of an adverse ruling; and
- (c) Advise them not to pursue the arrangement.

R280.20 If the immediate superior or other responsible individual within the employing organization decides to pursue the tax planning arrangement despite the professional accountant's advice to the contrary, the accountant shall take steps to disassociate from the arrangement. In doing so, the accountant shall consider:

- (a) Taking steps to have the details of the arrangement and the difference of views communicated with the next higher level of authority within the employing organization and, if appropriate, those charged with governance;
- (b) Advising the employing organization to make full disclosure of the arrangement to the relevant tax authorities; and
- (c) Communicating the details of the arrangement and the difference of views to the employing organization's external auditor.

280.20 A1 In light of the response of the immediate superior or other responsible individual within the employing organization to the professional accountant's advice, the accountant might also consider the need to resign from the employing organization.

280.20 A2 Many employing organizations have established protocols and procedures regarding how to raise ethical or other concerns internally. These protocols and procedures include, for example, an ethics policy or internal whistle-blowing mechanism. Such protocols and procedures might allow matters to be reported anonymously through designated channels.

Documentation

280.21 A1 When performing a tax planning activity, a professional accountant is encouraged to document on a timely basis:

- The purpose, circumstances and substance of the tax planning arrangement.
- The identity of the ultimate beneficiaries.

- The nature of any uncertainties.
- The accountant's analysis, the courses of action considered, the judgments made, and the conclusions reached in advising the employing organization on developing the proposed tax planning arrangement.
- The results of discussions with the accountant's immediate superior and appropriate levels of management, those charged with governance and other parties.
- The response of the accountant's immediate superior, management and, where applicable, those charged with governance to the accountant's advice.
- Any disagreement with the accountant's immediate superior, management and, where applicable, those charged with governance.

280.21 A2 Preparing such documentation assists the accountant to:

- Develop the accountant's analysis of the facts, circumstances, relevant tax laws and regulations and any assumptions made or changed.
- Record the basis of the professional judgments at the time they were made or changed.
- Support the position if the tax planning arrangement is challenged by the relevant tax authorities.
- Demonstrate that the accountant has complied with the provisions in this section.

PROPOSED CONFORMING AMENDMENTS TO THE CODE
(Marked-up against extant Code)

PART 3 – PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE

SECTION 321

SECOND OPINIONS

...

Requirements and Application Material

General

...

321.3 A1 A professional accountant might be asked to provide a second opinion on the application of laws and regulations, such as tax laws and regulations, and accounting, auditing, reporting or other standards or principles to (a) specific circumstances, or (b) transactions by or on behalf of a company or an entity that is not an existing client. A threat, for example, a self-interest threat to compliance with the principle of professional competence and due care, might be created if the second opinion is not based on the same facts that the existing or predecessor accountant or other service provider had, or is based on inadequate evidence.

....

321.3 A3 Examples of actions that might be safeguards to address such a self-interest threat include:

- With the client's permission, obtaining information from the existing or predecessor accountant or other service provider.
- Describing the limitations surrounding any opinion in communications with the client.
- Providing the existing or predecessor accountant or other service provider with a copy of the opinion.

When Permission to Communicate is Not Provided

R321.4 If an entity seeking a second opinion from a professional accountant will not permit the accountant to communicate with the existing or predecessor accountant or other service provider, the accountant shall determine whether the accountant may provide the second opinion sought.

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IESBA update

Reason for agenda item

To provide project summaries for IESBA's key projects and task forces.

Division staff welcomes input on any of the projects.

Materials presented

- Agenda item 6B: PIE rollout
- Agenda item 6C: Technology
- Agenda item 6D: Engagement team
- Agenda item 6E: Strategy and work plan
- Agenda item 6F: Sustainability
- Agenda item 6G: Use of experts

PIE rollout

Project description

In April 2022, IESBA released the [*Final Pronouncement: Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code*](#) (PIE final pronouncement) along with a staff-prepared [Basis for Conclusions](#) document.

This project involves rollout activities to raise awareness and promote adoption and implementation of IESBA's revisions to the definitions of "listed entity" and "public interest entity" (PIE) in the code.

PEEC input on the project

Staff shared draft Q&As with PEEC's PIE task force.

Status

Key activities reported at the November–December 2022 IESBA meeting include the following:

- Panel discussion co-hosted by IFAC and ASEAN Federation of Accountants – October
- Panel discussion co-hosted by the Pan African Federation of Accountants – October
- Q&As – Expected issuance in January 2023
- Updated jurisdictional PIE definitions database project is in process

In addition, IESBA received a brief update on IAASB's narrow-scope PIE project and agreed to hold a virtual meeting in late January 2023 to clarify the scope of the transparency requirements to review engagements. This input will help inform IAASB's consideration of whether revisions are necessary to its standards addressing review engagements.

Technology

Convergence considerations

During the November–December 2022 meeting, IESBA adopted revisions to the IESBA code. Subject to Public Interest Oversight Board (PIOB) approval, IESBA expects to release the final standards in April 2023. The independence-related provisions will be effective for audits of financial statements for periods beginning on or after December 15, 2024, with early adoption permitted. All other provisions will be effective as of December 15, 2024.

Professional Ethics Division staff has not begun to perform a formal assessment of convergence needs. However, some convergence efforts may be necessary.

Project description

To propose technology-related revisions to the IESBA code and to develop nonauthoritative material.

The project has two workstreams. The standards-setting workstream is being performed by the Technology Task Force (TTF) and is focused on revisions to the IESBA code.

The second workstream is being conducted by the Technology Working Group (TWG). During the November–December 2022 meeting the TWG presented its proposed four-pillar approach to monitoring technology developments going forward, with a planned re-evaluation in December 2023.

The four-pillar approach consists of

- internal board education;
- environmental scanning;
- ad-hoc analysis of technology impacts on other workstreams as needed; and
- facilitating the implementation of the TWG's Phase 2 recommendations, including contributing to developing or facilitating the development of nonauthoritative resources.

In light of the reduced intensity of the monitoring work, IESBA agreed to reconstitute the TWG as a smaller working group. Part of the new working group's remit will be to maintain the liaison with the Technology Experts Group. IESBA will consider terms of reference for the reconstituted Technology Working Group at its March 2023 meeting.

PEEC input on the project

PEEC submitted a [comment letter](#) on the [exposure draft](#).

Status

Following is a summary of the components of the TTF's [exposure draft](#). Staff has noted where PEEC's comment letter expressed concern. In addition, staff included updates from the November–December 2022 IESBA meeting. For detailed information from the November–December 2022 meeting, refer to the [draft basis for conclusions](#) and [approved revisions](#)

NOTE: For context, history and background from previous PEEC meeting agendas are included in the following sections. Updates since PEEC's November meeting are highlighted.

Professional competence and due care

The proposal includes revisions to the *Professional Competence and Due Care* subsection.

One addition emphasizes that serving clients and employing organizations with professional competence and due care involves the application of interpersonal, communication, and organizational skills. The TTF acknowledges that these skills are not necessarily limited to technology; however, they are increasingly regarded as critical skills for the future-ready accountant.

In the comment letter, PEEC expressed disagreement that interpersonal, communication, and organizational skills should be required for professional competence. Professional accountants have varying levels of soft skills and abilities and, as drafted, the proposal could be taken to imply that neurodiverse individuals are not competent.

PEEC also noted that application paragraphs should not contain requirements and offered a suggested revision to the proposal. The other addition to this subsection is a requirement that when professional accountants believe it is appropriate to make users aware of the limitations inherent in their services or activities, they provide sufficient information to enable the recipient to understand the implications of such limitations. Though the TTF acknowledges this communication is not limited to technology, they believe this addition is in line with increasing public demand for transparency.

The [approved revisions](#) to this section address PEEC's concern that application paragraphs should not contain requirements. However, the approved revisions do not fully address PEEC's concern that professional accountants have varying levels of soft skills and abilities. This is because paragraph 113.1 A2 continues to state that "...interpersonal, communication and organizational skills facilitate the professional accountant's interaction with entities and

individuals with whom the accountant interacts.”

Confidentiality

The proposal includes an addition to the *Confidentiality* subsection to emphasize the professional accountant’s role in more actively protecting confidential information given changes in public expectations as well as a definition of confidential information.

The proposal also includes refinements to enhance the flow of the *Confidentiality* subsection and to modernize the characterization of means of communications.

PEEC’s Protecting Client Confidentiality and Data Security Task Force provided the following feedback that was included in PEEC’s comment letter:

- The definition of confidential information seems broad enough to accommodate for changes in technology without having to revise.
- With respect to the addition to the *Confidentiality* subsection to emphasize the professional accountant’s role in more actively protecting confidential information given changes in public expectations
 - Encourage IESBA to retain the phrase “appropriate action.” The task force believes this will allow jurisdictions to adopt the necessary clarity needed to align with their laws and regulations.¹
 - Request that IESBA provide clarity into why they used both professional and business relationships. The task force believes that when a professional accountant has a business relationship with an entity or individual, a professional relationship also exists. Perhaps clarifying what relationships are covered by each would help provide guidance about what the appropriate guardrails are.

During the November–December 2022 meeting IESBA agreed to make some revisions. Two such revisions were to add the following:

- A requirement that the professional accountant not “...use or disclose information in respect of which the duty of confidentiality applies notwithstanding that the information has become publicly available, whether properly or improperly.” There is an exception to this and that is when there is a legal or professional duty or right to do so or there is authorization by the client to do so (and not prohibited by law or regulation).
- Application guidance about what should be communicated to the entity when seeking

¹ The task force noted that if this phrase is adopted by IESBA, PEEC might consider using the reasonable third-party test when converging with the standard.

authorization to use or disclose confidential information.

Complex circumstances and applying the conceptual framework

The proposal recognizes that complex circumstances might increase the challenges of applying the conceptual framework but is not a new threat per se. It describes the facts and circumstances that increase the challenges in applying the conceptual framework in complex circumstances and provides examples of actions that might help professional accountants manage and mitigate the challenges arising from such circumstances.

The proposal explains that complex circumstances arise where the relevant facts and circumstances involve (a) elements that are uncertain and (b) multiple variables and assumptions, which are interconnected or interdependent. The proposal also acknowledges that these facts and circumstances might also be rapidly changing.

Following are examples of possible actions included in the proposal:

- Consulting with others, including experts, to ensure appropriate challenge and additional input as part of the evaluation process
- Using technology to analyze relevant data to better inform the accountant's judgement
- Making the firm or employing organization and, if appropriate, relevant stakeholders aware of inherent uncertainties or difficulties arising from the facts and circumstances
- Monitoring any developments or changes in facts and circumstances and assessing whether they might impact any judgments the accountant has made

PEEC expressed concern with the clarity of the guidance and therefore, the potential for inconsistent application. PEEC recommended addressing this topic in nonauthoritative materials so that examples or scenarios could be used to demonstrate how complexity can play a role when applying the conceptual framework.

Some of the reservations expressed by other commenters include these:

- Lack of clarity
- Content too vague
- Whether the application material was really needed in the code
- Whether the guidance is consistent with the IAASB's guidance

To address some of these reservations, the content was relocated to the conceptual framework as part of the "Exercising Professional Judgment" discussion. The [approved revisions](#) to this section simplify the discussion to help with the understanding and read as follows

The circumstances in which professional accountants carry out professional activities and the factors involved vary considerably in their range and complexity. The professional judgment exercised by accountants might need to take into account the complexity arising from the compounding effect of the interaction between, and changes in, elements of the facts and circumstances that are uncertain and variables and assumptions that are interconnected or interdependent.

Managing complexity involves the following:

- Making the firm or employing organization and, if appropriate, relevant stakeholders aware of the inherent uncertainties or difficulties arising from the facts and circumstances.
- Being alert to any developments or changes in the facts and circumstances and assessing whether they might impact any judgments the accountant has made.

Managing complexity might involve the following:

- Analyzing, and investigating, as relevant, any uncertain elements, the variables and assumptions and how they are connected or interdependent.
- Using technology to analyze relevant data to inform the professional accountant's judgment.
- Consulting with others, including experts, to ensure appropriate challenge and additional input as part of the evaluation process.

Organizational culture

The proposal includes application guidance to the conceptual framework that explains professional accountants are expected to demonstrate ethical behavior in dealings with business organizations and individuals with which the accountant or the firm or employing organization has a professional or business relationship.

The [approved revisions](#) were substantially consistent with the proposal. In addition, the basic concepts were also incorporated into part 2 (200.5 A3) and part 3 (300. A2).

Factors that affect the application of the conceptual framework when technology is used

The proposal explains that when a professional accountant (in business or in public practice) relies on output from technology, the following factors may help identify threats to the fundamental principles:

- Whether the information about how the technology functions is available to the accountant

- Whether the technology is appropriate for the purpose in which it is to be used
- Whether the accountant has the professional competence to understand, use and explain the output from the technology
- Whether the technology incorporates expertise or judgments of the accountant or the employing organization/firm
- Whether the technology was designed or developed by the accountant or employing organization/firm and therefore might create a self-interest or self-review threat

PEEC recommended that IESBA specify which threats relate to each consideration as done in the final bullet above.

The [approved revisions](#) did link the factors to specific threats. In addition, application guidance was added to highlight that the professional accountant's evaluation of the level of a threat associated with the use of technology might also be affected by the work environment within the employing organization and its operating environment.

Using or relying on the work of others or on the output of technology

The proposal adds explicit references to technology relating to using or relying on the work of others and provides factors to consider when determining whether reliance on technology is reasonable. The proposal also highlights that the professional accountant's position may be a factor to consider because the position could affect the opportunity and ability to obtain the needed information.

The factors included in the proposal are as follows:

- The nature of the activity to be performed by the technology
- The expected use of, or extent of reliance on the output from the technology
- The professional accountant's ability to understand the output from the technology for the context in which it is to be used
- Whether the technology is established and effective for the purpose intended
- Whether the technology has been appropriately tested and evaluated for the purpose intended
- The reputation of the developer of the technology if acquired from or developed by an external vendor
- The employing organization's or firm's oversight of the design, development, implementation, operation, maintenance, monitoring or updating of the technology
- The appropriateness of the inputs to the technology, including data and any related decisions

PEEC recommended that this content not be combined with the discussion about relying on the work of others, rather appear as its own discussion. In addition, PEEC recommended IESBA explain why the scope of the guidance in part 2 and part 3 differs (reliance on versus use of the output of technology). PEEC also requested that IESBA provide additional guidance on how professional accountants should apply the factors, including practical examples.

The [approved revisions](#) do separate the discussion about relying on the work of others and on technology as separate sections. In addition, the approved revisions make a number of clarifications to the factors.

Prohibition on assuming management responsibilities

The proposal includes a reminder that when technology is used in performing a professional activity for an attest client, the prohibition on assuming a management responsibility applies regardless of the nature or extent of such use. IESBA approved this reminder.

Business relationships

The proposal expands one of the examples and adds an additional example of what could constitute a close business relationship to the *General* subsection of the *Business Relationships* section of the IISs.

The example that explains a close business relationship would include situations where a firm or client distributes or markets the other's products was expanded to include situations where the products or services or sold or resold. The new example of a close business relationship involves arrangements under which the firm or a network firm develops jointly with the client, products or solutions which one or both parties sell or license to third parties.

In response to the 24 percent of survey respondents who indicated that they did not think that nonassurance services (NAS) provisions are relevant when a firm licenses technology that performs NAS to the audit client, the proposal adds a reminder to the Business Relationship section (section 520) that the NAS provisions in fact do apply. The reminder also clarifies that this not only applies when a firm licenses technology but when a firm provides, sells, or resells such technology. This reminder was also added to the introduction discussion of the NAS provision (section 600). PEEC was not supportive of adding either of these reminders.

The [approved revisions](#) were substantially consistent with the proposal but do clarify NAS provisions applicability depends upon the facts and circumstances. The draft basis for conclusion document does clarify in paragraph 73 that the NAS provision will not be applicable when an accountant just passes through the license to a client as a reseller.

Threats when providing nonassurance services

The proposal includes an additional technology-related factor that is relevant in identifying the different threats that might be created by providing NAS to an audit client and evaluating the

level of such threats.

The client's dependency on the service, including the frequency with which the service will be provided.

IESBA approved this.

Accounting and bookkeeping services

The proposal adds application guidance to the *Accounting and Bookkeeping Services* subsection of the IISs to highlight that automated nonattest services are not necessarily routine and mechanical.

Accounting and bookkeeping services can either be manual or automated. In determining whether an automated service is routine or mechanical, factors to be considered include how the technology functions and whether the technology is based on expertise or judgment attributable to the firm or the network firm.

PEEC requested clarification about the relevance of how the technology functions when determining whether an automated service is routine and mechanical. If IESBA chooses not to add the clarification, PEEC recommended the phrase "factors to be considered include how the technology functions and" be replaced by "a firm may consider."

The [approved revisions](#) make the following clarifying revisions.

Accounting and bookkeeping services can either be manual or automated. In determining whether an automated service is routine or mechanical, factors to be considered include **the activities performed by, and the output of, the technology, and how the technology functions and whether the technology is based on provides an automated service that is based on or** requires the expertise or judgments of the firm or a network firm

Information technology system services

The proposal adds the following application guidance to the *Information Technology System Services* subsection of the IISs:

- Provides an expanded description of information technology (IT) systems services to highlight that the services related to IT systems extend beyond the design, or implementation of hardware or software systems. The expanded description includes
 - Designing or developing hardware or software IT systems
 - Implementing IT systems, including installation, configuration, interfacing, or customization

- Operating, maintaining, monitoring, or updating IT systems
- Collecting or storing data or managing (directly or indirectly) the hosting of data on behalf of the audit client
- Clarifies what the client is required to do to ensure the firm does not assume a management responsibility and adds two examples of services that would involve assuming a management responsibility. One example added is when a firm or network firm operates the audit client’s network security, business continuity or disaster recovery function. The other example added is when the firm or network firm provides services in relation to the hosting (directly or indirectly) of an audit client’s data. With respect to the hosting services example, it is clarified that collection, receipt and retention of data provided by the audit client to enable the provision of a permissible service would not result in assuming a management responsibility.
- Incorporates examples of IT systems services that might create a self-review threat when they form part of or affect an audit client’s accounting records or system of internal control over financial reporting:
 - Designing, developing, implementing, operating, maintaining, monitoring, or updating IT systems
 - Supporting an audit client’s IT systems, including network and software applications
 - Implementing accounting or financial information reporting software whether or not it was developed by the firm or a network firm

PEEC expressed several concerns with these elements of the exposure draft, including the following:

- The proposal should clarify that an IT system does not include a tool that performs only discrete calculations when the audit client evaluates and accepts responsibility for the input and assumptions and the audit client has sufficient information to understand the calculation and the results.
- With respect to hosting services, the parenthetical text “(directly or indirectly)” should be clarified using the discussion from the explanatory material. If such clarification is not added, then the parenthetical text should not be included in the code and should be addressed as a Q&A.
- The examples of services that do not create self-review threats should remain in the code and be expanded to include examples of commercial-off-the-shelf implementation services.

The [approved revisions](#) do address concerns commenters had related to the use of portals, however none of PEEC's comments were incorporated.

Engagement team

Convergence considerations

During the November–December 2022 meeting, IESBA adopted the engagement team revisions to the IESBA code. The revisions are expected to be effective for periods beginning on or after December 15, 2023. The revisions and basis for conclusion document are expected to be issued by early April 2023.

Professional Ethics Division staff is currently performing the preliminary assessment of convergence needs. The AICPA Code of Professional Conduct (code) does not provide guidance related to component auditors who are outside of the network firm. Therefore, PEEC may need a convergence project to provide specific guidance for these auditors that may include a change to the code for the definition of *attest engagement team*. Currently the AICPA definition reads “The attest engagement team includes all employees and contractors retained by the *firm* who participate in the *attest engagement*...” that would seem to include those component auditors outside of the network firm.

However, PEEC may not need a convergence project for engagement quality reviewers (EQRs) as the definition of *attest engagement team* in the AICPA code seems to be drafted broadly enough to include EQRs. The AICPA definition reads “Those individuals participating in the *attest engagement*, including those who perform concurring and **engagement quality reviews**.” (Emphasis added)

Project description

To ensure that the International Independence Standards (IISs) provide clear and consistent guidance on independence.

For quality management purposes, the International Auditing and Assurance Standards Board (IAASB) changed the definition of *engagement team* in International Standard on Auditing (ISA) 220 to include component auditors that are not part of the network firm and service providers. This revision raised several questions about these individuals’ compliance with the IISs in the context of a group audit.

The purpose of this project is to ensure that the IISs provide clear and consistent guidance on independence for the following:

- Engagement quality reviewers who are not in the firm or network
- Component auditors who are performing audit procedures and who are outside of the audit firm’s network (i.e., individual independence requirements)
- The firms that these component auditors are in (i.e., firm independence requirements)

ISA 600 (Revised), like the extant ISA 600, establishes a requirement that the group audit engagement partner take responsibility for obtaining a confirmation from component auditors that ethical requirements have been fulfilled for the group audit engagement, including those related to independence.¹

If the component auditor does not meet the independence requirements relevant to the group audit, ISA 600 (Revised) requires the group engagement team to obtain sufficient appropriate audit evidence relating to the work performed at the component without involving that component auditor.²

Under the extant IESBA code, if a component auditor is from the same network as the group auditor, the component auditor will apply the same independence requirements applicable to the group engagement team when auditing a component. For example, if the parent entity is a public interest entity (PIE),³ all network firms are required to comply with the provisions on nonassurance services (NAS) that apply to the PIE and its related entities (applying the related entity principle in paragraph R400.20).⁴

In contrast, the IESBA code is effectively silent on the principles that should apply to a component auditor outside the group auditor's network. Accordingly, subject to a different agreement between the group auditor and the component auditor, the component auditor will apply the independence requirements in the IESBA code relevant to its audit client (i.e., the component).

¹ ISA 600 (Revised), *Special Considerations-Audits of Group Financial statements (including the Work of Component Auditors)*, paragraph 20(c).

² ISA 600, paragraph 22.

³ The AICPA code defines "public interest entity" as (a) a listed entity; or (b) an entity: (i) defined by regulation or legislation as a public interest entity; or (ii) for which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation might be promulgated by any relevant regulator, including an audit regulator.

⁴ Paragraph R400.20 states the following: As defined, an audit client that is a listed entity includes all of its related entities. For all other entities, references to an audit client in this Part include related entities over which the client has direct or indirect control. When the audit team knows, or has reason to believe, that a relationship or circumstance involving any other related entity of the client is relevant to the evaluation of the firm's independence from the client, the audit team shall include that related entity when identifying, evaluating and addressing threats to independence.

PEEC input on the project

PEEC submitted a [comment letter](#) on the [exposure draft](#).

Status

Following is a summary of the components of the [exposure draft](#). Staff has noted where PEEC's comment letter expressed concern. In addition, staff included updates from the November–December 2022 IESBA meeting. For detailed information from the November–December 2022 meeting, refer to the [memo](#) that outlines the significant issues raised and the task force's proposals.

NOTE: For context, history and background from previous PEEC meeting agendas are included in the following sections. Updates since the PEEC's November meeting are highlighted.

Engagement quality reviewers

Because the extant definitions of the terms *audit team*, *review team*, and *assurance team* scope in only engagement quality reviewers (EQRs) within the firm or the network, the proposal revises these definitions to scope in EQRs from outside of the firm or network.

To do this, the proposal adds to all three definitions individuals who can directly influence the outcome of the engagement by including those who are engaged by the firm. The proposal also revises item (b) (iii) in each definition as follows (excerpted from the “Glossary, Including Lists of Abbreviations” section of the IESBA code):

- Audit team (b)(iii): Those who ~~provide~~ **perform an engagement quality review, or review consistent with the objective of** ~~control for the audit engagement, including those who perform the~~ **an** engagement quality ~~control~~ review, for the engagement; and
- Assurance team (b)(iii): Those who ~~provide~~ **perform an engagement quality review, or review consistent with the objective of an engagement quality review,** ~~control for the assurance engagement, including those who perform the engagement quality control review for the engagement;~~ and
- Review team (b)(iii): Those who ~~provide~~ **perform an engagement quality reviews, or review consistent with the objective of an engagement quality review,** ~~control for the engagement, including those who perform the engagement quality control review for the engagement;~~ and

During the September 2022 meeting the task force reported that there was “broad support” for these revisions and that the board did not recommend any edits on these specific points.

There were no changes to these during the November–December 2022 meeting.

Definition of engagement team

The proposal

- revises the extant definition of *engagement team* to align with the definition of that term in International Standard on Quality Management (ISQM) No. 1.
- includes additional guidance to clarify the nature of the various teams in reference to the different parts of the code.

The proposal revises the definition of *engagement team* as follows

Engagement team: All partners and staff performing the engagement, and any **other** individuals engaged by the firm or network firm who perform assurance procedures on the engagement. This excludes **excluding** external experts engaged by the firm or by a network firm **and internal auditors**. The term “engagement team” also excludes individuals within the client’s internal audit function who provide direct assistance on **the** an audit engagement when the external auditor complies with the requirements of ISA 610 (Revised 2013), *Using the Work of Internal Auditors*. This excludes external experts engaged by the firm or by a network firm.

In Part 4A, the term “engagement team” refers to individuals performing audit or review procedures on the audit or review engagement, respectively. This term is further described in paragraph 400.A.

ISA 220 (Revised) provides further guidance on the definition of engagement team in the context of an audit of financial statements.

ISA 620 deals with the auditor’s responsibilities relating to the work of an individual or organization in a field of expertise other than accounting or auditing, when that work is used to assist the auditor in obtaining sufficient appropriate audit evidence.

ISA 610 (Revised 2013) deals with the auditor’s responsibilities if using the work of internal auditors, including using internal auditors to provide direct assistance on the audit engagement.

In Part 4B, the term “engagement team” refers to individuals performing assurance procedures on the assurance engagement.

PEEC recommended the definition of an “engagement team” also exclude other individuals that the group auditor does not direct, supervise, or assume responsibility for (for example, component auditors referred to in a group auditor’s report). PEEC suggested that if IESBA does

not include this in the definition, clarification could be done through nonauthoritative means.

During the September 2022 meeting the task force reported that commenters “generally supported” the proposed approach for aligning the engagement team definition of the IESBA code to the revisions to the definition of the same term in the ISQM 1 and ISA 220 (Revised).

To address requests to more clearly align the text related to ISA 620 to the standard and to clarify the auditor’s responsibility, the task force recommended the following revisions

~~ISA 620 deals with the auditor’s responsibilities relating to the work of~~ **defines an auditor’s expert as** an individual or organization **possessing expertise** in a field of ~~expertise~~ other than accounting or auditing, ~~when that~~ **whose work in that field** is used **by the auditor** to assist the auditor in obtaining sufficient appropriate audit evidence. **ISA 620 deals with the auditor’s responsibilities relating to the work of such experts.**

Notwithstanding the general support for the definition, commenters expressed concerns (1) related to service providers and experts; (2) with the application material; and (3) with the complexity of including engagement team members as audit team members.

The task force did not recommend any revisions to the proposals to address these concerns. However, to address the concerns related to the complexity of including engagement team members as audit team members the task force developed a diagram to help users.

During the November–December 2022 meeting IESBA incorporated the auditor’s responsibility from ISA 620 as requested above. In addition, the task force reviewed the use of the terms “audit work” and “audit procedures” in the proposed section 405. This was due to the IAASB’s position that “audit work” refers more broadly to the entirety of the work effort, including with respect to the work requested to be performed by component auditors. The task force revisited the references to “audit work” and “audit procedures” in the proposals to follow the IAASB’s practice in ISA 600 (Revised). The task force proposed referring to “audit work” to capture a broader scope of work. To address this the following revisions were made

400.9 An engagement team for an audit engagement includes all partners and staff in the firm who perform audit ~~work procedures~~ on the engagement, and any other individuals who perform **audit** ~~such~~ procedures who are from:

(a) A network firm; or

(b) A firm that is not a network firm, or other service provider

For example, an individual from a component auditor firm who performs audit procedures on the financial information of a component for purposes of a group audit is

a member of the engagement team for the group audit.

Individual independence

IESBA believes that the same independence considerations that apply to individuals from component auditor firms within the network should be applied to component auditors outside of the group auditor's network. This is because the work of the individuals from the non-network firms contributes to the audit opinion on the group financial statements just as much as the work performed by individuals from component auditor firms within the network.

IESBA believes that taking a consistent approach to personal independence, whether an individual is from a network firm or non-network firm, will eliminate any perception that the independence of component auditors on the engagement team outside the network is less important than that of component auditors on the engagement team within the network.

In addition, because the concept of a component⁵ under ISA 600 is no longer limited to a corporate entity, the independence standards should also require independence of the individuals involved in the group audit engagement of any components that are not related entities.

The requirement that members of the group audit team be required to be independent of the group audit client was clarified through the following proposed addition:

R405.4 All members of the audit team for the group audit shall be independent of the group audit client in accordance with the requirements of this Part that are applicable to the audit team.

PEEC indicated that it will be challenging for individuals (and firms) from a component audit firm outside of the group audit firm's network (non-network) to maintain independence with respect to related entities of the group audit client. PEEC recommended a threats and safeguard approach be applied to non-network firms and individuals from those firms versus what is currently being proposed. PEEC recommended that if IESBA adopts the strict requirement that either IESBA or IAASB provide guidance that would address matters such as what the group auditor should communicate to these non-network component audit firms.

It would be helpful to clarify that when an entity undergoes a standalone audit, the auditor will

⁵ ISA 600 (Revised) defines a "component" as follows: "A location, function or activity (or combination of locations, functions or activities) determined by the group engagement team for purposes of planning and performing audit procedures in a group audit." Paragraph A4 of ISA 600 notes that "the group engagement team uses professional judgment in determining the components for which audit procedures will be performed (by the group engagement team or component auditors on its behalf). The way components are viewed for purposes of planning and performing a group audit may be influenced by the group structure but may or may not be aligned with the way in which the group is organized, which could be, for example, by legal entities, geographic locations, or lines of business."

not need to comply with Section 405 when the group engagement partner concludes that the entity is not a component audit client for purposes of the group audit.

During the September 2022 meeting the task force reported that commenters “generally supported” the proposed approach for individuals. One concern expressed was that a more balanced approach that focuses only on relationships with entities more likely to threaten the individual's independence be considered.

The cost of implementing a system that could support compliance with such independence requirements at a component auditor firm level, especially for SMPs, could be disproportionate relative to the likelihood of threats created. Besides the cost factor, the task force recognized that this could become a significant compliance task that would take resources and time away from the component auditor firm’s focus on the audit work, potentially adversely impacting audit quality. The task force also acknowledged that monitoring compliance with respect to all relevant related entities of the group audit client could raise some client confidentiality issues at the component auditor firm outside the group auditor firm's network.

Consequently, irrespective of whether the group audit client is a publicly traded entity, the task force proposed that the code should not require an individual from, or engaged by, a component auditor firm outside the group auditor firm's network who is involved in a group audit to be independent of the following related entities of the group audit client or other components in the group:

- Any entity that has direct or indirect control over the group audit client.
- Any sister entities of the group audit client.
- Any entities in which the group audit client, or its controlled entity, has a direct financial interest that gives it significant influence over such entities and the interest is material to the group audit client and its controlled entity.
- Any components in the group that are not related entities.

As a proportionate approach, the task force believes that audit team members within, or engaged by, a component auditor firm outside the group auditor firm’s network need to be independent of the component audit client, and the entity on whose group financial statements the group auditor firm expresses an opinion. The task force believes that those are the entities where the greatest threat to independence lies with respect to these audit team members. This proposal was referred to as option 3 in the [marked text](#) of the September 2022 papers.

The task force explained that in addition to this option, they also considered the following approaches for scoping in any controlled entities of the group audit client:

- Independence would also be required in relation to all entities that are directly or indirectly controlled by the group audit client. This was referred to as option 1 in the [marked text](#) of the September 2022 papers.
- The scope should additionally capture only the controlled entities connected with the component audit client, i.e., entities that also have direct or indirect control over the component audit client. This was referred to as option 2 in the [marked text](#) of the September 2022 papers.

IESBA favored option 3 during its discussion of this issue at the September 2022 meeting.

During the November–December 2022 meeting the representatives of the ISA 600 task force and the IAASB staff suggested clarifying that, in line with the principles set out in paragraph 21 of ISA 220 (Revised), it is ultimately the responsibility of the group engagement partner to determine whether independence requirements have been fulfilled. To address this, the following application paragraph added to the standard

405.4 A1 If a matter comes to the attention of the group engagement partner that indicates that a threat to independence exists, ISA 220 (Revised) requires the group engagement partner to evaluate the threat and take appropriate action.

Responding to practical challenges for component auditor firms outside the group auditor firm’s network, the IESBA task force considered that there are potentially two ways an individual can determine their independence in the group audit contest:

Option (a): Based on the list of all the related entities and components of the group audit client the individuals were provided with, they could assess in relation to each related entity or component whether there are any relationships or circumstances that would impact their independence when performing audit procedures at the component audit client; or

Option (b): The individuals could assess whether they have any relationship or other circumstance addressed by the International Independence Standards, and whether that relationship or circumstance is tied to the group audit client.

IESBA did not pursue option (a) above, because it could pose a significant risk that this would become a compliance exercise that would draw time and attention of the group audit team members and the component audit firms outside of the group audit firm’s network away from their focus on addressing the significant risks in the component audit, which would be detrimental to audit quality.

An alternative approach, based on option (b) above, was agreed upon. The alternative approach allows the group audit team members within and outside of the group audit firm’s network to take

into account the different circumstances, thus providing a more thoughtful and better targeted evaluation. To convey this approach, the following was added to the code:

R405.7 In relation to related entities or components within the group audit client other than those covered in paragraph R405.6, a member of the group audit team within, or engaged by, a component auditor firm outside the group auditor firm's network shall notify the component auditor firm about any relationship or circumstance the individual knows, or has reason to believe, might create a threat to the individual's independence in the context of the group audit.

405.7 A1 Examples of relationships or circumstances involving the individual or any of the individual's immediate family members, as applicable, that are relevant to the individual's consideration when complying with paragraph R405.7 include:

- A direct or material indirect financial interest in an entity that has control over the group audit client if the group audit client is material to that entity (see Section 510).
- A loan or guarantee involving (see Section 511):
 - An entity that is material and involves an entity that is not a bank or similar institution; or
 - That is not made under the bank or similar institution's normal lending procedures, terms and conditions.
- A business relationship that is significant or involves a material financial interest (see Section 520).
- An immediate family member who is: (see Section 521)
 - A director or officer of an entity; or
 - An employee in a position to exert significant influence over the preparation of an entity's accounting records or financial statements.
- The individual serving as, or having recently served as: (see Section 522 and Section 523)
 - A director or officer of an entity; or
 - An employee in a position to exert significant influence over the preparation of an entity's accounting records or financial statements

R405.8 Upon receiving the notification as set out in paragraph R405.7, the component auditor firm shall evaluate and address any threats to independence created by the individual's relationship or circumstance.

This approach better achieves the desired outcome by focusing the attention of the group audit team members on the actual relationships or circumstances that could create a threat to their independence. Paragraphs R405.7 and 405.7 A1 would also be applicable to independent service providers who are engaged by a component audit firm outside of the group audit firm's network and who also performs audit procedures for the group audit.

Firm independence of component auditor outside of network

When a component auditor is within the group auditor's network the IESBA code already requires network firms to be independent. Accordingly, the proposal focuses on firms that are outside of the group auditor's network.

The general rule proposed is that a firm that is outside of the group auditor's network (and any of its network firms), should be independent of the component it is auditing using the PIE or non-PIE standard that is applicable to the group audit client. To help firms apply this general rule, the proposal includes in paragraphs 405.12 A1 and 405.12 A2 three examples of how firms should apply the NAS services provisions.

In addition, the proposal requires the component firm *not* have a financial interest in the entity on whose group financial statements the group auditor firm expresses an opinion (R405.6 (b)). While initially this prohibition was drafted to only apply to PIEs, after feedback, the prohibition was expanded to be applicable for *all* group audit clients. IESBA does not believe that the level of the threats to independence warrant going beyond this entity (e.g., ultimate parent entity that is above the group audit client or sister entity to the component entity). This prohibition, however, would not extend to the component firm's network firms⁶.

The proposal extends the requirements and application material related to loans and guarantees (Section 511) to component firms that are outside of the network (paragraph R405.6 (c)).

The proposal requires that when a component auditor firm outside the group auditor firm's network knows, or has reason to believe, that a relationship or circumstance:

- involving the group audit client is relevant to the evaluation of the component auditor firm's independence from the component audit client, the component auditor firm shall include that relationship or circumstance when identifying, evaluating, and addressing

⁶ This less restrictive position is not applicable to the firm issuing the audit opinion on the group financial statements and its network firms. These entities would need to be independent of the group audit client, its related entities and any other components scoped in under proposed ISA 600 (Revised).

threats to independence (R405.7).

- of a firm within the component auditor firm's network with the component audit client or the group audit client creates a threat to the component auditor firm's independence, the component auditor firm shall evaluate and address any such threat (R405.8).

The proposal also clarifies when the component audit partner is required to apply the provisions applicable to key audit partners. This is required when the group engagement partner communicates to the component audit partner that they are considered a key audit partner because they make key decisions or judgements on significant matters with respect to the group audit client.

PEEC's comments above related to individuals are also applicable to firms. In addition, PEEC recommended clarification about which PIE requirements the component audit team should apply with respect to the group audit when the component entity and group audit client are both PIEs but reside in different jurisdictions. This is important because the PIE definition may be refined differently by the jurisdictions.

During the September 2022 meeting the task force reported commenters "generally supported" the proposed approach but raised some issues to be considered.

In response to the comment about which refined PIE definition should be applied (PEEC's comment above) the task force noted that if the group audit client (the entity under group audit) is a PIE or non-PIE based on national laws, that distinction at the group level should flow to the component level for group audit purposes, regardless of whether the entity at the component level would be regarded as a PIE by national laws in that entity's jurisdiction. In addition, for group audit purposes, a component auditor firm is required to be independent of the component audit client following the code's relevant provisions, along with national requirements applicable to the group audit client (the entity under the group audit).

To address concerns related to clarifying responsibility, the task force recommended adding a new sub-section to Section 405 on communication between the group auditor firm and component auditor firms to better emphasize the group auditor firm's responsibility. This sub-section includes a requirement that calls on the group auditor firm to communicate the necessary information at appropriate times to enable the component auditor firm to meet its responsibilities under Section 405. Furthermore, it includes application material to provide specific examples of matters the group auditor firm might communicate as well as a requirement that the component auditor firm communicate its compliance with the relevant ethical requirements to the group auditor firm. (See paragraphs R405.3, 405.3 A1 and R405.4 in the [marked text](#) of the September 2022 papers.)

The task force clarified that when the group audit client is a PIE, a component auditor firm outside the group auditor firm's network must comply with the NAS provisions (i.e., Section 600)

that are applicable to PIEs with respect to the component audit client, except paragraphs R600.21 to R600.24. The task force also proposed the following clarifications regarding “key audit partners at component level”

- Elevate the application material to a requirement and explicitly state that determining a key audit partner at a component level for group audit purposes, and communicating that determination to the relevant individual, are the engagement partner’s responsibility. (See paragraph R405.15(a) in the [marked text](#) of the September 2022 papers.)
- Require the group engagement partner to indicate the specific independence requirements applicable to the key audit partner at a component auditor firm for the purposes of the group audit. (See paragraph R405.15(b) in the [marked text](#) of the September 2022 papers.)

During the November–December 2022 meeting, the task force reiterated that the exposure draft proposed a proportionate approach regarding the independence considerations applicable to a component auditor firm outside the group auditor firm’s network, requiring the component auditor firm:

- To be independent of the component audit client in accordance with Part 4A of the Code, and
- Not to hold certain financial interests, loans, and guarantees with respect to the entity on whose group financial statements the group auditor firm expresses an opinion.

As a substantial number of the respondents supported this proportionate approach in the exposure draft, there are no compelling reasons to revisit this approach.

The task force has proposed changes to the glossary arising from approved revisions to the definition of listed entity and public interest entity. These changes have been revised as part of the PIE project which will come into effect only a year later, in December 2024. The proposals include the following definition changes:

Audit client⁷ An entity in respect of which a firm conducts an audit engagement. When the client is a publicly traded entity, in accordance with paragraphs R400.22 and R400.23, audit client will always include its related entities. When the audit client is not a

⁷ The proposed conforming amendments will come into effect with the changes to the audit client definition in the Final Pronouncement, *Revisions to the Definition of Listed Entity and Public Interest Entity in the Code*, issued on April 11, 2022.

publicly traded entity, audit client includes those related entities over which the client has direct or indirect control. (See also paragraph R400.22.)

In Part 4A, the term “audit client” applies equally to “review client”.

In the case of a group audit, see the definition of group audit client.

Group Audit Client - The entity on whose group financial statements the group auditor firm conducts an audit engagement. When the entity is a publicly traded entity, the group audit client will always include its related entities and any other components at which audit work is performed. When the entity is not a publicly traded entity, the group audit client includes related entities over which such entity has direct or indirect control and any other components at which audit work is performed.

See also paragraph R400.22.

Changes in component audit firms

The proposal reminds component auditors to consider relationships it had (or has) with the component auditor prior to agreeing to perform audit work. The reminder not only highlights nonattest services the component auditor firm may have provided (or is providing) but financial or business relationships (405.13 A1 and A2).

PEEC recommended that IESBA address situations that could change the independence requirements of the component auditor as it applies to mergers or acquisitions by the group audit client. An example is when a PIE group audit client acquires a non-PIE entity during or after the period covered by the group financial statements.

During the September 2022 meeting the task force reported commenters “generally supported” the proposed application material relating to changes in component auditor firms during or after the period covered by the group financial statements. The task force noted that commenters raised a few more scenarios for IESBA's consideration that they believe the code should also explicitly address. To address these suggestions the task force proposed additional guidance regarding how to apply the provisions in Section 400 in the context of a group audit when:

- A firm has provided a NAS to a component audit client prior to the period covered by the group financial statements. (See paragraph 405 .17 A3 in the [marked text](#) of the September 2022 papers.)
- A firm has provided a NAS to a component audit client prior to becoming the component auditor firm in a PIE group. (See paragraph 405.18 A1 in the [marked text](#) of the September 2022 papers.)
- The group audit client later becomes a PIE. (See paragraph 405 .18 A2 in the [marked](#)

[text](#) of the September 2022 papers.)

The task force clarified that the process outlined in the code to address mergers or acquisitions should be followed when the group auditor firm determines – after the period during which independence is required has commenced – that audit procedures are required to be performed at a component that is not a related entity. (See paragraph R405.16 in the [marked text](#) of the September 2022 papers.)

During the November–December 2022 meeting there were no changes to the proposed requirements related to changes in components or changes in component auditor firms.

Breaches of an independence requirement by a component auditor outside of network
The general approach for a breach of independence by a component auditor that is outside of the network is the same as the process that should be followed by a component auditor that is in the network except, the component auditor outside of the network would not need to communicate with those charged with governance (TCWG).

At a high level, the process for a component auditor outside of the network would be as follows:

- Evaluate the significance of the breach and its impact on the firm’s objectivity and ability to express an opinion on the component audit client’s financial information for group reporting purposes.
- Determine whether it is possible to take action that satisfactorily addresses the consequences of the breach and whether such action can be taken and is appropriate in the circumstances.
- Promptly report the breach to the group audit partner and include the assessment of the significance of the breach and any actions proposed or taken to address the consequences of the breach.

Upon receiving notification of a breach by a component auditor outside of the firm, the group audit partner should do the following:

- Review the assessment of the significance of the breach and any actions proposed or taken to address the consequences of the breach.
- Evaluate whether the breach would prohibit them from relying on the component auditor.
- Determine if any further action is necessary.
- Discuss with TCWG the details of the breach, whether the action proposed or taken addresses the breach, and the firm’s rationale for how the breach impacts its objectivity.

If TCWG do not concur that the actions proposed or taken by the component auditor firm satisfactorily address the consequences of the breach at the component auditor firm, the group auditor firm should not use the work for the group audit. In addition, the group audit firm should

determine whether to perform further or alternative procedures or perform itself the necessary audit work procedures on the component audit client, to obtain such concurrence.

During the September 2022 meeting the task force reported many respondents supported the proposals on breaches and agreed that it is appropriate to address a breach of independence by a component auditor firm. The comments on the proposed subsection mainly highlight practical challenges regarding the application of the provisions.

To address some of the practical challenges, the task force proposed

- amendments to the introductory paragraph of the subsection to clarify that the focus of the component auditor firm's and the group auditor firm's assessment is to determine the significance and the impact of the breach on the component auditor firm's objectivity and not to reassess or review the group auditor firm's objectivity or ability to issue the group audit report. (See paragraphs 405.19 A1 and A2 in the [marked text](#) of the September 2022 papers.)
- component auditor firms within the group auditor firm's network apply the same process to address a breach of an independence provision as a component auditor firm outside of the group auditor firm's network. (See paragraph R405.20 in the [marked text](#) of the September 2022 papers.)
- additional application material in line with the extant code's provisions to help a component auditor firm evaluate the significance and the impact of the breach. (See paragraph 405.20 A1 in the [marked text](#) of the September 2022 papers.)
- including a requirement for component auditor firms to communicate their assessment of the significance of the breach and any actions proposed or taken to the group engagement partner in writing. (See paragraph R405.20(d) in the [marked text](#) of the September 2022 papers.)
- adding application material, in line with the extant code's relevant provisions, to assist a component auditor firm in considering any actions that might be taken to address the breach. (See paragraph 405.20 A1 in the [marked text](#) of the September 2022 papers.)
- clarifying that when the group engagement partner receives communication from a component auditor firm about a breach, the group engagement partner cannot evaluate the impact of the breach on the component auditor firm's objectivity. Rather, based on the available information, the group engagement partner would only be able to review the component auditor firm's assessment of the significance of the breach and its impact on the component auditor firm's objectivity. (See paragraph R405.21 in the [marked text](#) of the September 2022 papers.)
- clarifying that when a breach occurs at a component auditor firm within the group auditor's firm's network, TCWG must be informed since the policies and procedures of the group auditor firm's network are relevant to the considerations of TCWG regarding

the group auditor firm's independence. (See paragraph 405.23 A1 in Agenda Item 5-B.)

During the November–December 2022 meeting the task force stated that there is a strong argument to require written communication between the component auditor firm and the group engagement partner as this forms a basis of subsequent reviews and discussion internally and with those charged with governance.

The task force also noted that the communication on breaches at a component auditor firm mirrors the communication of breaches in the extant code. Paragraphs R400.81 and R400.82 of the extant code also require the firm to discuss with those charged with governance the significance of the breach and the actions proposed or taken to address the breach. Further, the firm is also required to communicate in writing to those charged with governance:

- The matters discussed
- Relevant information about the firm's policies and procedures

As such, paragraph R405.27 requires the group auditor firm to discuss with those charged with governance of the group audit client the significance of the breach and the actions proposed or taken to address the breach. The component audit firm is required to obtain the concurrence from those charged with governance of the group audit client that the actions can be, or have been, taken to satisfactorily address the consequences of the breach. If those charged with governance do not concur that the actions proposed or taken satisfactorily address the consequences of the breach at the component audit firm, the group audit firm cannot use the work of the component audit firm for the purposes of the group audit and must use other means to obtain the necessary audit evidence on the component audit client's financial information. The task force proposed adding the following requirement:

R405.28 The group auditor firm shall communicate in writing to those charged with governance of the group audit client all matters discussed in accordance with paragraph R405.27 and obtain the concurrence of those charged with governance that action can be, or has been, taken to satisfactorily address the consequences of the breach.

Effective Date

The task force proposed that the effective date for the proposed changes align with the effective date of ISA 600 (Revised). The task force is recommending that the changes and Section 405 become effective for audits and reviews of financial statements and audits of group financial statements for periods beginning on or after December 15, 2023.

Respondents generally supported this proposal while some representatives of the Forum of Firms have raised concerns that the proposed effective date does not provide sufficient time for adoption and implementation. They noted a risk that this could lead to inconsistent application.

There are challenges related to the short period available for adoption and implementation, but it is in the public interest for the relevant provisions to become effective at the same time as ISA 600 (Revised).

Based on the proposed Section 405, if the group audit client is a PIE, a component auditor firm outside the group auditor firm's network is required to comply with the provisions in Section 600 applicable to PIE audit clients (subject to the exception provided in paragraph R405.17) with respect to the component audit client. This requirement applies irrespective of whether the component audit client is a PIE. The task force proposes changes to the glossary as follows:

Revisions to the definition of listed entity and public interest entity (Chapter 7) will be effective for audits of financial statements and group financial statements for periods beginning on or after December 15, 2024. The list of changes to the audit client definition in the Final Pronouncement, *Revisions to the Definitions of Listed Entity, Issued on and Public Interest Entity in the Code*, issued on April 11, 2022, will come into effect with the conforming amendments in Chapter 7.

In line with the NAS final pronouncement issued in April 2022, the task force proposes a transitional provision for NAS engagements between the component auditor firm and the component audit client that have started before the proposed effective date of the requirements in Section 405 as follows:

For non-assurance services engagements a component auditor firm outside the group auditor firm's network has entered into with a component audit client before December 15, 2023 and for which work has already commenced, the component auditor firm may continue such engagements under the extant provisions of the Code until completed in accordance with the original engagement terms.

Strategy and work plan

Project description

To seek stakeholder input on what key trends, developments, or issues IESBA should consider as it begins the process of developing its Strategy and Work Plan (SWP) 2024–2027.

Status

During the November–December 2022 meeting, IESBA considered a [first-read draft of the SWP Consultation Paper](#) and a [report-back](#) jointly prepared by the Technology Task Force and Technology Working Group regarding the recommendations from the Technology Working Group’s phase 2 report.

IESBA also agreed that its focus over the next two years should be on its new sustainability and use of experts projects and acknowledged the need to allow for flexibility to revisit priorities if unforeseen circumstances arise.

AICPA staff’s preliminary observations

Following are staff’s preliminary observations on the [first-read draft of the consultation paper](#). The committee’s input would be appreciated.

Delayed effective dates

In our comment letters on the technology and engagement team projects PEEC suggested IESBA consider a minimum two-year delayed effective date but allow for early implementation so that those that can converge swiftly can do so. It may be helpful to convey this concern again as an overarching comment in its comment letter to the eventual consultation paper.

Importance of scalable standards and a principle-based code

Upon reviewing the draft consultation paper, it appears as though several projects may be moving away from scalable principle-based standards toward more rules-based standards. In addition, several projects seem to question the validity of previous conclusions reached that went through the robust standards-setting process. It is important that reconsideration of previous conclusions be supported by evidence and have diverse stakeholder support. When support is limited to certain types of stakeholders (e.g., security regulators) before pursuing projects, IESBA should conduct research to identify the issues and provide the board with a report for it to determine whether standards-setting is needed or if thought leadership or nonauthoritative guidance could be useful.

Project descriptions

Providing more details about the scope and goal of the projects would be helpful to assist readers in thoughtfully responding to the consultation paper.

Collective investment vehicles (CIV), pension funds, and investment company complexes (ICC)

A project description that more clearly describes the goal of the project would be helpful.

If the project includes adding additional mandatory categories to the PIE definition, given the complexity of these arrangements or structures and the degree of variation across jurisdictions combined with the fact that PEEC's PIE convergence project is considering these entities, it might be useful to delay this project until after IESBA has a better sense for how national standard setters have handled these entities.

Business relationships

If this project is pursued, staff believes the definition of a business relationship and the attributes or characteristics of a business relationship need to allow for scalability and use of professional judgement.

With respect to revisiting section 520 and whether materiality and significance should be retained, in addition to standards needing to be scalable and to allow for the use of professional judgment, it could be problematic that IESBA is reconsidering previous conclusions that have been through the robust standards-setting process without empirical evidence in the consultation paper that supports that the previous conclusions were somehow flawed. This recommendation came from only one commenter and would move us away from the principles-based and scalable approach back toward the rules-based approach we are moving away from.

Definitions and descriptions of terms

The first component of the project where they would align the terms "financial statements", "firm", independence", "review engagement", and "special purpose financial statements" with IAASB could be useful.

With respect to the second component of the project:

- Moving away from the definition of "audit team" and instead toward a "covered member" approach would be a better option. This is the approach used by the U.S. SEC (i.e., covered person).
- The term "employee" should not be defined to include those that act in a capacity of an employee at a client. Defining it so would blur the line on permitted non-assurance services. The AICPA eliminated this concept from the AICPA Code of Professional Conduct in May 1999. This was just in advance of the AICPA independence modernization project where the conceptual framework approach was implemented. This allows for professional judgement to determine the significance of threats. If the project proceeds, IESBA should ensure it is scalable especially for entities that are not overseen by security regulators.

- The definition of “engagement period” provides enough flexibility to address the concern of matters coming to the attention after the report is issued in a Q&A.
- This project should be limited to aligning with the IAASB definition of firm. It is important to keep the definition of firm broad so that it doesn’t conflict with local regulation.
- More research is necessary on the proposed network firm project in order to understand the changing landscape. Conducting research into the landscape would be a preferable project before committing to a specific course of action.
- Including retired or inactive professional accountants in a global code is not necessary and can be left up to local jurisdictions to determine whether these individuals should be held accountable to aspects of the code.
- There is no harm in clarifying that when a PA is working in a firm but in a capacity that would be aligned with a PA in business that the individual should be applying Part 2 (PAIB) standards. However, this does not necessarily need to be done within the code and could be done in a Q&A. If a Q&A is published then it could also include an example of when a PAPP happens to serve on a board of an entity and that in that capacity their activities would be governed by part 2 (PAIB).

Audit Firm – Audit Client Relationship

This project may not be necessary for the reasons outlined in the consultation paper. There is no clear indication of how the audit client payor model is going to change.

If however, there are other reasons such as the engaging entity being different than the entity that is subject to the attest procedures, then that might be a better lens to look at. That way the code could clarify which requirements are applicable to each entity. For example, if the entity that engages you and pays you is different from the entity that you are performing the procedures on, which entity do you need to evaluate the fee standard against? This could be addressed by a Q&A using an example or examples.

Role of CFOs and Other Senior PAIBs

It’s unclear what IESBA plans to develop in addition to what already exists in the code. Perhaps IESBA could consider thought leadership pieces or other nonauthoritative guidance that might be helpful to explain ethical leadership responsibilities of senior PAIBs, which were addressed under recent projects, such as the role and mindset and technology projects.

SWP other possible workstreams

Given the recent extensive standards-setting, so that the code can continue to be more principles-based and less rules-based, would it be prudent to recommend that other possible workstreams be focused on research and information gathering with a report that outlines

possible opportunities for thought leadership and nonauthoritative guidance and only where research supports it, enhancements to the code?

Documentation

In several instances the code encourages documentation. This allows local jurisdictions flexibility to elevate documentation to a requirement when appropriate. Before moving toward a requirement, it would be important for IESBA to perform additional research to support the need for the project so that previous conclusions that went through the robust standards-setting process are not called into question.

Matters Arising from Quality Management (QM)-Related Conforming Amendments to the Code

The description of the possible project needs clarification before the board would conclude whether to undertake such project. For example, defining a network because two firms collaborate jointly on a project does not seem to be enough to elevate the firms to be independent of one another's attest clients.

Breaches of the Code

R100.8 requires a PA to determine whether to report the breach to the relevant parties (e.g., regulatory body, an oversight authority, etc.). Removing this optionality would be challenging due to various legal provisions in local jurisdictions.

It is important for the code to remain principles-based and allow the PA to apply professional judgment and determine what actions might be appropriate in the unique situation.

If there are some specific situations that IESBA has in mind, maybe IESBA could address them in a nonauthoritative document (e.g., Q&A or case study) to help PAs understand the application of the breach guidance.

Sustainability

Project description

IESBA initiated this project to develop profession-agnostic independence and ethics standards for all sustainability assurance providers, and those who prepare sustainability information.

IESBA will coordinate development with the International Auditing and Assurance Standards Board (IAASB), the International Sustainability Standards Board (ISSB), and the International Organization of Securities Commissions (IOSCO).

Status

IESBA approved the project proposal in December 2022 and are planning a series of roundtables to obtain input from a broad range of stakeholders, including non-professional accountants. The roundtables are planned for March and April 2023 and will contribute to exposure draft development.

Project proposal

The project proposal has two goals:

- To develop ethics and independence standards for use by all sustainability assurance providers, which includes professional accountants and non-professional accountants
- To revise the IESBA code to address ethics issues related to sustainability reporting.

The project will include revisions to Part 2, 3, 4A, and 4B of the IESBA code. Work will be performed in two workstreams, which are outlined in sections below:

- Workstream 1: Independence in sustainability assurance engagements and assurance,
- Workstream 2: Ethics in sustainability reporting and assurance

Workstream 1: Independence in sustainability assurance engagements

IESBA's proposed standard will provide independence requirements for professional accountants and non-professional accountants.

The IESBA code has two sets of independence provisions. Those in part 4A apply to financial statement audits and reviews, and those in part 4B apply to other assurance engagements. Part 4A has significantly more requirements than part 4B and under the current scopes of part 4A and part 4B, assurance engagements on sustainability information would fall under part 4B.

Due to the public interest nature of sustainability reports, part 4B is no longer viewed an appropriate set of independence provisions to apply when providing sustainability assurance. Instead, IESBA believes part 4A is the appropriate starting point for developing independence

requirements for sustainability assurance engagements This is more consistent with the AICPA Code of Professional Conduct.

This workstream will consider the following:

- Which independence standards are applicable based on specific scenarios. For example, when the assurance on sustainability information is with the financial information, when assurance is on the information is prepared in accordance with a general-purpose framework (such as International Sustainability Standards Board (ISSB) standards), and when assurance is on information not prepared in accordance with a general-purpose framework.
- What constitutes management responsibility and whether there is a need for examples of management responsibilities for sustainability-related activities.
- Whether certain activities or services should be permissible rather than prohibited in an sustainability assurance engagement.
- New terminology and revisions to existing terminology to ensure sustainability engagements are addressed appropriately.
- How the revised International Standard on Quality Management (ISQM) standards are dealt with in International Standard on Sustainability Assurance (ISSA) 5000 when considering extending the code to non-PAs.
- New examples of factors for evaluating the extent of public interest in the sustainability aspect of an entity.
- The appropriate independence period for sustainability-related information.
- How ISSA 5000 addresses group sustainability engagements.

Workstream 2: Ethics in sustainability reporting and assurance

IESBA's proposed standard will provide ethics requirements related to sustainability reporting and assurance. Because sustainability information tends to involve less quantitative factors (e.g., human rights and other social factors), this may require different skills and mindsets from professional accountants and IESBA will consider whether the fundamental principles, the conceptual framework, and mindset requirements in the code are still appropriate for the various services that could be provided related to sustainability.

This consideration will involve providing guidance to address threats that may arise when undertaking sustainability-related tasks and activities, and appropriate safeguards. Such guidance may include addressing

- the potential misleading sustainability information (i.e., greenwashing).
- risks that a professional accountant will accept information without performing appropriate procedures when the information is prepared by a sustainability expert or via a sustainability-related technology.
- pressures to act unethically when faced with unrealistic goals or targets.
- identification and mitigation of conflicts of interest issues.
- guidance to assist preparers of sustainability information in exercising discretion and professional judgement, especially when a general-purpose framework is not available.

This workstream will also review part 2 requirements that are not in part 3 of the IESBA code, and whether they apply to sustainability reports. This consideration will include

- whether ethics responsibilities should vary based on the role and seniority of a professional accountant in business.
- whether a new section should be added to part 3 to provide guidance for professional accountants that are engaged to assist their clients in sustainability-related tasks and activities.
- how to address situations when the preparation of sustainability information is carried out by non-PAs.

Project output

The project outputs will be based on input from stakeholders and are expected to include

- Profession-agnostic ethics and independence standards for sustainability assurance engagements (based on work performed in workstreams 1 and 2) under either option A or B:
 - Option A: Revisions to code to integrate sustainability-related independence provisions in part 4A or as a new “part 4A” that would apply to sustainability assurance engagements. This option would also include nonauthoritative guidance to explain how to apply the code in its entirety that could be used by non-PAs.
 - Option B: A stand-alone set of ethics and independence standards for sustainability (separate handbook or a new part 5) using extant ethics and independence requirements as a starting point.

- Revisions to parts 1-3 to provide specific ethics requirements and guidance relevant to sustainability reporting based on work performed by workstream 2.

IESBA anticipates holding further discussions on the project’s output during its June 2023 meeting after receiving input from stakeholders.

Timeline

The workstreams are moving at an accelerated pace so the project outputs will be available at the same time as the new sustainability-related standards the IAASB and ISSB are developing.

The current project timeline is as follows:

December 2022	Project proposal approved
February – March 2023	Discussion of Issues with IESBA, IESBA CAG and NSS
March - April 2023	Global roundtables
April - June 2023	First read of proposals to IESBA
September 2023	Discussion of proposals with IESBA CAG
September/December 2023	Discussion with IESBA and approval of exposure draft (expected comment period is 90 days)
June 2024	Update to IESBA, including an overview of key comments from exposure draft respondents
September 2024	IESBA’s full review of exposure draft responses and first read of revisions
December 2024	IESBA’s approval of final revisions

Use of experts

Project description

IESBA initiated this project to develop revisions to the International Code of Ethics for Professional Accountants (IESBA code) that will address the ethics and independence issues that can arise when experts work alongside professional accountants (PAs) in business (PAIBs) and in public practice (PAPPs). These following ethics and independence considerations are included:

- Use of an external expert in audit and assurance engagements (ethics and independence)
- Involvement of an expert (both internal or external to the employing organization or firm) in the preparation and presentation of financial and non-financial information, including sustainability information, and other activities (ethics)
- Involvement of an expert in the provision of other services, such as tax planning and technology-related activities (ethics)

Status

IESBA believes it's in the public interest for the use of experts revisions to be effective at the same time as the IAASB's sustainability assurance standard. This project will progress in tandem with the sustainability project.

Project proposal

Involvement of external experts is growing in the profession, especially in areas such as estimates, technology, and sustainability. This is likely to result in a need for ethics guidance on identified issues, especially if IESBA expands its code to cover sustainability assurance providers who are not PAs.

With these considerations in mind, IESBA approved the use of experts project at its December 2022 meeting.

IESBA will assess whether the nature of the experts' work and contribution to the audit opinion requires further independence requirements, similar to other individuals that are part of the engagement team.

IESBA is holding four global roundtables in March and April 2023 in the hopes that these discussions will lead to better understanding of how involved parties are using experts for sustainability engagements, including the nature of external experts' work and contribution to audit and assurance reports.

Timeline

IESBA is prioritizing the experts project and anticipates having a first draft of revisions by September 2023 and an exposure draft in December 2023.