



**Sent via email:** [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

March 16, 2020  
Vanessa A. Countryman, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File Number S7-26-19 Amendments to Rule 2-01, Qualifications of Accountants

Dear Members and Staff of the Commission:

The American Institute of Certified Public Accountants' (AICPA) Professional Ethics Executive Committee (PEEC) respectfully submits the following comments on the proposed amendments to update certain aspects of the Securities and Exchange Commission's (SEC or Commission) auditor independence framework (SEC proposal).

The AICPA is the world's largest member association representing the CPA profession, with more than 429,000 members in the United States and worldwide, and a history of serving the public interest since 1887. The AICPA members represent many areas of practice, including business and industry, public practice, government, education, and consulting.

The AICPA sets ethical standards for its members and U.S. auditing standards for private companies, nonprofit organizations, and federal, state, and local governments; provides educational materials to its members; develops and grades the Uniform CPA Examination; monitors and enforces compliance with the profession's technical and ethical standards; offers specialized credentials; builds the pipeline of future talent; and drives professional competency development to advance the vitality, relevance and quality of the profession.

Throughout its history, the AICPA has been deeply committed to auditor independence. It is a core tenet of the accounting profession, which has a more than 100-year history of working to uphold auditor independence. All members of the profession engaged in auditing and attest services are required to maintain independence in accordance with detailed and regularly updated independence rules and interpretations. Through PEEC, the AICPA devotes significant resources to independence and ethics activities, including evaluating existing standards, proposing new standards, and interpreting and enforcing those standards.

### **General comments**

We support the SEC's proposal to modernize and amend select aspects of its auditor independence rules framework (Regulation S-X, Rule 2-01, Qualification of Accountants) in an

effort to effectively focus the independence analysis on relationships or services that would more likely pose threats to an auditor's objectivity and impartiality.

Additionally, we applaud the Commission for the steps taken in the SEC proposal to more closely align its standards to the AICPA independence standards as well as international standards. Similar to the AICPA, the International Federation of Accountants' (IFAC) International Ethics Standards Board of Accountants (IESBA) sets out a comprehensive framework for independence standards. IESBA's standards are used primarily by foreign audit firms and U.S. multi-national audit firms, and U.S. based audit firms are educated on and familiar with these standards. As a member of IFAC, the AICPA continues to support global convergence through PEEC's standard setting efforts.

Overall, we support the Commission's proposed amendments. Below we note the Commission's decision to converge partially with the AICPA in certain areas. We believe the AICPA Code of Professional Conduct (AICPA code) is rigorous and detailed in many areas covered by the Commission's proposed amendments. Therefore, we recommend the Commission to consider further convergence in these areas for the reasons stated in the following specific comments. Taking such action would further align with international standards.

### **Specific comments**

PEEC supports many of the Commission's proposed amendments to its rules on auditor independence, and our comments and observations offered herein are intended to support the Commission with its efforts. PEEC offers comments and additional considerations for the following areas of the SEC proposal:

#### *Definition of affiliate-Rule 2-01 (f)(4)(i)*

We support the SEC's proposal to include a materiality requirement with respect to entities under common control and the Commission's recognition that audit firms providing services to, or having relationships with, sister entities that are not material to the controlling entity do not typically present issues with respect to the audit firm's objectivity or impartiality.

The Commission references the AICPA's materiality evaluation in its proposal to support the application of the proposed rule by auditors. The SEC proposal specifically states that a materiality evaluation as it relates to sister entities is consistent, in part, with the definition of 'affiliate' used by the AICPA in its ethics and independence rules, which are the independence rules typically applied when domestic companies are not subject to SEC and Public Company Accounting Oversight Board (PCAOB) independence requirements.<sup>1</sup>

Additionally, in footnote 20 of the SEC proposal, the Commission acknowledges that the proposed amendment for sister entities is different from the AICPA's rules. The reason provided by the SEC for focusing on only the materiality of the sister entity is that the SEC believes a

---

<sup>1</sup> See page 13 of the [SEC proposal](#)

materiality requirement between the entity under audit and the controlling entity may exclude from the proposed definition sister entities whose relationships with or services from an auditor would impair the auditor's objectivity and impartiality.

We believe that the Commission should consider further convergence with the AICPA's affiliate definition with respect to sister entities and not limit the materiality requirement to only the sister entity, but instead apply the materiality requirement to both the sister entity and the entity under audit.<sup>2</sup> That is, the entity under audit and the sister entity would each have to be material to the common controlling entity in order for the sister entity to be considered an affiliate of the entity under audit.

Furthermore, we believe the Commission should also consider convergence with the AICPA's affiliate definition with respect to upstream controlling entities<sup>2</sup> and apply a materiality threshold to the entity under audit in determining whether an affiliate relationship exists. That is, the controlling entity would be considered an affiliate if the entity under audit is material to the controlling entity.

These additional materiality qualifiers, as suggested in the previous paragraphs, would not diminish the audit firm's objectivity or impartiality. IESBA's standards use the same materiality qualifiers as the AICPA in its definition of "related entity" for listed audit entities,<sup>3</sup> therefore, convergence with the AICPA definition would also achieve international convergence.

We believe that the Commission's standards would remain robust if converged with the AICPA affiliate definition as there are current provisions in the Commission's guidance that would subject relationships with any sister entity to an independence analysis. As support for the proposed amendment to affiliates, the SEC states in its proposal, "We note that a determination under the proposed amendments that sister entities are not material to the controlling entity, by itself, does not conclude the independence analysis under Rule 2-01. This is because, as explained above, auditors and audit clients must consider 'all relevant facts and circumstances' when assessing independence pursuant to the general standard in Rule 2-01(b)."<sup>4</sup>

We believe these provisions further support convergence with the AICPA guidance related to sister entities and controlling entities under the affiliate definition, as other significant relationships or services that may reasonably be thought to bear on an auditor's independence would be addressed by the SEC's guidance under Rule 2-01(b).<sup>5</sup> This rule has similar characteristics to the requirement under the AICPA's conceptual framework.<sup>6</sup> Both the SEC

---

<sup>2</sup> See AICPA code's "affiliate" definition under the "Definitions" section (0.400.02) available at <http://pub.aicpa.org/codeofconduct/resourceseamlesslogin.aspx?prod=ethics&tdoc=et-cod&tpr=et-cod0.400.02>

<sup>3</sup> See IESBA "related entity" definition in the glossary section of the International Code of Ethics for Professional Accountants available at <https://www.iesbaecode.org/glossary.html>

<sup>4</sup> See page 13 of the [SEC proposal](#)

<sup>5</sup> See page 80 of the [SEC proposal](#)

<sup>6</sup> See the AICPA code's "Conceptual Framework for Independence" interpretation (1.210.010) available at <http://pub.aicpa.org/codeofconduct/resourceseamlesslogin.aspx?prod=ethics&tdoc=et-cod&tpr=et-cod1.210.010>

Rule 2-01(b) and the AICPA conceptual framework require an analysis of circumstances that raise concerns or threats to independence, but are not specifically addressed by the independence rules.

*Clarification of the term “entity under audit”*

The PEEC noted that the Commission’s terms “entity under audit” and “audit client” appear to be used interchangeably. This may create confusion when applying the SEC’s proposed rule, especially given the use of the term “entity under audit” in the proposed amendments to the investment company complex (ICC) definition (Rule 2-01(f) (14)).

We recommend that the Commission clarify its standards by using the term “audit client” when referring to both “entity under audit” and “affiliates” and using the term “entity under audit” when the guidance does not apply to affiliates. This would include replacing the term “audit client” with “entity under audit” throughout the rules where the intent is not to include affiliates. For example, the term “audit client” used in the definition of “affiliate” under Rule 2-01(f)(4)(i)(A) through (D) would be replaced with “entity under audit”.

This recommendation is similar to the AICPA’s affiliate guidance<sup>7</sup> where the term “financial statement attest client” is used to identify the entity whose financial statements are being audited and the term “affiliate” is used for entities that are related to the financial statement attest client that are subject to the AICPA independence requirements.

*Definition of audit and professional engagement period - Rule 2-01(f)(5)(iii)*

We support the Commission’s proposed amendment to Rule 2-01(f)(5) that shortens the look back period for all issuers filing, or required to file, a registration statement or report with the Commission for the first-time (first-time filers) to align domestic issuers with foreign private issuers.

We agree with the Commission that the potential adverse effect of the shortened period would be mitigated by the auditor’s requirements to comply with the AICPA’s independence standards as well as other inherent safeguards in place<sup>8</sup> for periods prior to the most recent year presented in the first time filing. The AICPA’s independence guidance is robust, and we believe it is an appropriate standard for those prior period audits covered by registration statements or reports filed with the Commission. In addition, the IESBA standards are robust and include similar independence guidance as the AICPA and are also appropriate standards for prior period audits.

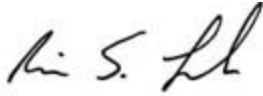
---

<sup>7</sup> See the AICPA code’s “Client affiliate” interpretation (1.224.010) available at <http://pub.aicpa.org/codeofconduct/resource Seamlesslogin.aspx?prod=ethics&tdoc=et-cod&tpr=et-cod1.224.010>

<sup>8</sup> See page 60 of the [SEC proposal](#)

We appreciate this opportunity to comment. We would be pleased to discuss in further detail our comments and any other matters with respect to the Commission's proposed amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian S. Lynch". The signature is fluid and cursive, with the first name "Brian" and last name "Lynch" clearly distinguishable.

Brian S. Lynch, Chair  
Professional Ethics Executive Committee

cc: **SEC**

Jay Clayton, Chairman  
Hester M. Peirce, Commissioner  
Elad L. Roisman, Commissioner  
Allison Herren Lee, Commissioner  
Sagar Teotia, Chief Accountant  
Marc A. Panucci, Deputy Chief Accountant

**PCAOB**

William D. Duhnke III, PCAOB Chairman  
J. Robert Brown, Jr., PCAOB Board Member  
Duane M. Des Parte, PCAOB Board Member  
Rebekah Goshorn Jurata, PCAOB Board Member  
James G. Kaiser, PCAOB Board Member