



**SENT VIA E-MAIL:** [KenSiong@ethicsboard.org](mailto:KenSiong@ethicsboard.org)

June 4, 2020

International Ethics Standards Board for Accountants  
International Federation of Accountants  
529 Fifth Avenue, 6<sup>th</sup> Floor  
New York, NY 10017

Re: *Proposed Revisions to the Non-Assurance Services Provisions of the Code*

Dear Members of the International Ethics Standards Board for Accountants:

The AICPA Professional Ethics Executive Committee (PEEC) respectfully submits the following comments to the IESBA on its *Proposed Revisions to the Non-Assurance Services Provisions of the Code* (NAS 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. 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.

Through PEEC, the AICPA devotes significant resources to ethics activities, including evaluating existing standards, proposing new standards, and interpreting and enforcing those standards.

PEEC has the following comments regarding the proposal.

***Clarify how the proposal will be coordinated with public interest entity (PIE) project***

We believe the definition of PIE is fundamental to the NAS proposal and so the NAS proposal should not be finalized until the "*Project on Definitions of Listed Entity and PIE*" project (PIE project) is finalized. This is especially important if the PIE project goes beyond developing factors for national standard setters to consider and instead develops a definition for PIE.

Because the NAS proposal significantly expands the prohibition of non-assurance services that professional accountants can provide to their PIE audit clients, we recommend the IESBA implement a procedure that will allow for commenters to provide additional input on the NAS proposal once the PIE project is finalized.

The following comments are based upon the definition of a PIE as it appears in the 2018 edition of the IESBA code. Our responses may change based upon the results of the PIE project.

***Enhanced prohibitions for PIEs because of heightened expectations of stakeholders, not because safeguards can't be applied***

Paragraph 600.13 A1 explains that “When the audit client is a public interest entity, stakeholders have heightened expectations regarding the firm's independence. These heightened expectations are relevant to the reasonable and informed third party test used to evaluate a self-review threat created by providing a non-assurance service to an audit client that is a public interest entity.”

Paragraph 600.13 A2 goes on to explain that “Where the provision of a non-assurance service to an audit client that is a public interest entity creates a self-review threat, that threat cannot be eliminated, and safeguards are not capable of being applied to reduce that threat to an acceptable level.”

We believe application paragraphs 600.13 A1 and 600.13 A2 could lead to confusion about how to apply the requirement in paragraph R600.14 that “A firm or a network firm shall not provide a non-assurance service to an audit client that is a public interest entity if a self-review threat will be created in relation to the audit of the financial statements on which the firm will express an opinion.”

We believe the second sentence in paragraph 600.13 A1 implies that the public accountant could use the reasonable and informed third party test to determine whether safeguards can be applied when the self-review threat is identified. This directly conflicts with R600.14.

We believe the proposal supports the enhanced prohibitions for PIEs because of the heightened expectations of stakeholders but does not provide adequate evidence to support the conclusion in paragraph 600.13 A2 that safeguards cannot be applied when the self-review threat is identified. Also, the conclusion in paragraph 600.13 A2 could call into question why safeguards can be applied in the non-PIE environment but not in a PIE environment. Therefore, we recommend paragraphs 600.13 A1 and 600.13 A2 be eliminated and the first sentence from 600.13A1 be added as the first sentence to R600.14.

***Self-review threat***

Paragraph 600.11 A2 provides three criteria to identify whether the provision of a non-assurance service to an audit client will create a self-review threat.

***600.11 A2***

Identifying whether the provision of a non-assurance service to an audit client will create a self-review threat involves determining whether there is a risk that:

- (a.) The results of the service will affect the accounting records, internal controls over financial reporting, or the financial statements on which the firm will express an opinion;
- (b.) In the course of the audit of those financial statements, the results of the service will be subject to audit procedures; and
- (c.) When making an audit judgment, the audit team will evaluate or rely on any judgments made or activities performed by the firm or network firm in the course of providing the service.

As drafted, we believe this paragraph could be interpreted to mean that the self-review threat would be created even if there is a remote possibility of the criteria existing. We recommend the phrase “there is a risk that” be deleted so that the professional accountant can factor in the probability of the criteria existing. If, however, the IESBA prefers to retain a qualifier, we recommend a qualifier that is more closely aligned to the phrase “will create a self-review threat” be used.

### ***Advice and recommendations***

Paragraph 600.12 A1 states

Providing advice and recommendations might create a self-review threat. Whether providing advice and recommendations creates a self-review threat involves making the determination set out in 600.11 A2. This includes considering the nature of the advice and recommendations and how such advice and recommendations might be implemented by the audit client. If a self-review threat is identified, application of the conceptual framework requires the firm to address the threat where the audit client is not a public interest entity. If the audit client is a public interest entity, paragraph R600.14 applies.

We do not believe paragraph 600.12 A1 is clear and are concerned that the proposed revision could be interpreted as prohibiting a professional accountant from providing *any* advice or recommendations. We recommend the IESBA add examples of situations both where the self-review threat may exist and is not likely to exist to help clarify when providing advice and recommendations would not impair independence. Advice and recommendations related to technical accounting matters could be used as an example.

We believe the paragraph would be further clarified by connecting this guidance to the provision moved to paragraph 400.14 A4 that states in part “...providing advice and recommendations to assist the management of an audit client in discharging its responsibilities is not assuming a management responsibility.”

### ***Accounting and bookkeeping services***

Paragraph 601.2 A3 provides a list of examples of accounting and bookkeeping services. The last example listed is “Providing technical advice on accounting issues, including the conversion of existing financial statements from one financial reporting framework to another.”

We believe this example, without further clarification, could be read to mean that typical communications between a firm and an audit client related to technical accounting matters that take place as part of the audit process could result in the performance of a non-assurance service that creates a self-review threat. We recommend this example not be included in this paragraph. If, however, the IESBA prefers to retain the example, we recommend the IESBA edit the example so that it only addresses converting existing financial statements from one financial reporting framework to another.

### ***Tax services threshold***

We would support the threshold used in paragraph R604.4, “have a basis in tax law that is likely to prevail” provided it is not intended to be higher than the U.S. threshold “more likely than not.”<sup>1</sup>

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<sup>1</sup> The threshold “more likely than not” is used in PCAOB Rule 3522(b) *Tax Transactions*; Internal Revenue Code (IRC) Regulation Sec. 1.6662-4(d) *Substantial understatement of income tax*. – *Substantial*

### ***Tax advice and tax planning services***

Paragraph R604.13 stipulates when a professional accountant should not provide tax advisory or tax planning services to an audit client:

A firm or a network firm shall not provide tax advisory and tax planning services to an audit client when:

- (a.) The effectiveness of the tax advice depends on a particular accounting treatment or presentation in the financial statements; and
- (b.) The audit team has doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework.

We believe the materiality qualifier for non-PIEs should not be deleted. We recommend that the following be added to R604.13:

- (c.) ***The outcome or consequences of the tax advice will have a material effect on a non-PIE's financial statements on which the firm will express an opinion.***

### ***Forensic or investigative services***

Paragraph 607.6 A1 provides the following example of a litigation support service that is prohibited:

An example of a service that is prohibited because it gives rise to a self-review threat is providing advice in connection with a legal proceeding which affects the quantification of any provision in the financial statements on which the firm will express an opinion.

We recommend an example of a permitted litigation support service be added. We believe an appropriate example could be internal investigations, such as investigations directed by those charged with governance. We believe internal investigations are consistent with the role of an independent professional accountant and could improve audit quality.

### ***Expert witness services***

The proposal indicates in paragraph 607.7 A3 that an advocacy threat is created when expert witness services are provided to an audit client except when the appointment to provide these services is made by a tribunal or court. We recommend that another exception be added. This additional exception would arise when expert witness services are provided to a large group of plaintiffs or defendants that includes one or more audit clients of the firm, provided that at the outset of the engagement:

- the firm's audit clients constitute less than 20 percent of the members of the group, voting interests of the group, and the claim;
- no audit client within the group is designated as the lead plaintiff or defendant of the group; and
- no audit client has the sole decision-making power to select or approve the selection of the expert witness.

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*authority*, IRC section 6694 - *Understatement of taxpayer's liability by tax return preparer* and Treasury Department Circular 230, Regulations Governing Practice before the Internal Revenue Service- § 10.34 - *Standards with respect to tax returns and documents, affidavits and other papers.*

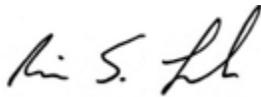
We believe in such situations threats are at an acceptable level and do not require the application of safeguards (such as the use of a professional that is not and has never been an audit team member) provided for in paragraph 607.8 A1.

***Corporate finance services***

Paragraph 610.2 A1 provides examples of corporate finance services. One such example is “Performing due diligence in relation to potential acquisitions and disposals.” We believe performing due diligence in relation to potential acquisition and disposals is not a corporate finance service and recommend it be removed.

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 *Proposed Revision to Non-Assurance Services Provisions of the Code*.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian S. Lynch". The signature is written in a cursive, flowing style.

Brian S. Lynch, Chair  
Professional Ethics Executive Committee

cc: Andrew Mintzer, CPA, IESBA Member  
Myriam Madden, IESBA Member  
Toni Lee-Andrews, CPA, PFS, CGMA, Director – Professional Ethics