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May 15, 2015

Professional Ethics Executive Committee
Attention: Lisa A. Snyder, Director
Professional Ethics Division
American Institute of Certified Public Accountants
1211 Avenue of the Americas, 19th Floor
New York, NY 10036

Via e-mail: lsnyder@aicpa.org

Re: Proposed Interpretation 1.220.040 *"Firm Mergers and Acquisitions" under "Independence Rule"* 1.200.001

Dear Ms. Snyder:

We appreciate the opportunity to provide comments on the Professional Ethics Executive Committee's ("PEEC") proposed Interpretation [1.220.040] *Firm Mergers and Acquisitions* of the AICPA Code of Professional Conduct (the "AICPA Code") issued on December 10, 2014.

We have included comments and recommendations on specific requested matters as well as comments and recommendations on other matters that we believe warrant consideration by the PEEC.

Specific Feedback Request

The Exposure Draft requested feedback in three (3) specific areas:

1. Whether an evaluation of threats and the application of safeguards as proposed for scenario (a) is also appropriate for scenario (b):

   (a) An acquired firm provided prohibited nonattest services to an attest client of the acquiring firm during the period of the professional engagement or the period covered by the financial statements;
   (b) An acquiring firm provided prohibited nonattest services to an attest client of the acquired firm during the period of the professional engagement or the period covered by the financial statements.

   The proposed Interpretation allows for an evaluation of threats to independence and an application of safeguards that may reduce the threats to independence to an acceptable level for scenario (a). However, for scenario (b), it asserts that threats to independence would be considered so significant that they could not be reduced to an acceptable level by the application of any safeguards and, therefore, independence would be impaired.

   We are uncertain as to the PEEC's rationale for disparate conclusions with respect to the two scenarios. In both scenarios, the combined "member's firm" will comprise Partners and employees of the legacy firms. We believe that an evaluation of the substance of the circumstances, rather than the form of the merger or acquisition, would determine whether the personnel of the combined "member's firm" would be in position to complete the attest engagement with an appropriate level of objectivity, independence, and professional skepticism necessary to issue an attest report. Accordingly, we believe the guidance should allow for an assessment of independence threats arising from the provision of nonattest services and the

application of appropriate safeguards to eliminate or reduce those threats to an acceptable level in both scenarios.

2. Whether the proposed interpretation provides sufficiently clear guidance with respect to the evaluation of threats to independence based on the attribution of the results of the nonattest services (provided by the acquired firm) to the acquiring firm:

   As noted in item #1 above, we believe an evaluation of threats to independence arising from the performance of prohibited services in order to determine whether such threats are at an acceptable level is appropriate for both scenarios (a) and (b). Further, in our view, the proposal does not provide sufficient guidance to assist practitioners in making determinations on whether the results of nonattest services performed by one firm should or should not be attributed to the other firm. We believe that the PEEC should expand the Interpretation to include specific guidance and examples to assist practitioners in making such determinations. For instance, guidance should be added on legal or contractual obligations and responsibilities, such as those inherent in a stock versus asset purchase that would or would not attribute the results of nonattest services to the other firm.

3. Whether the effective date of the proposal is appropriate or a transition period is necessary:

   We believe that the new Interpretation should apply only to mergers and acquisitions entered into after a transition period to allow in-process transactions negotiated without consideration of the guidance in the new Interpretation to be completed with minimal disruption to all parties involved. We recommend that the PEEC consider an effective date of 180 days after publication of the final rule in the Journal of Accountancy.

Additional Comments and Feedback

Applicability of the proposal to situations other than formal firm merger or acquisition transactions

The proposal appears to be limited to formal firm merger or acquisition transactions. That is, while the proposal references acquisitions of all or parts of a business, it is unclear whether this would include situations where a firm takes on only certain professionals and clients of another firm but there is no formal transaction to acquire all or part of a firm. In our view, an evaluation of threats to independence and the application of safeguards would be appropriate in these situations similar to more formal merger and acquisition transactions. We suggest the PEEC consider whether the substance of such arrangements are covered by the exiting language in the proposal, or whether the Interpretation should be expanded or clarified to include specific reference to these types of arrangements.

Comment on the use of the term “effective date of the merger or acquisition” in the Interpretation

The term “effective date of the merger or acquisition” is used in numerous instances in the proposed Interpretation in both the sections on Employment or Association with an Attest Client and Nonattest Services. There often are many critical dates associated with a merger or acquisition transaction such as an initial agreement effective date and a final transaction closing date. Accordingly, if the PEEC intends to link the proposed rule provisions to the date of the final merger or acquisition closing date, we believe that the Interpretation should reference the “***closing date*** of the merger or acquisition” or any equivalent terminology in the accounting literature to avoid any confusion with respect to the appropriate periods under consideration.

Comment on Paragraph 03 items (d) and (e) of the proposed Interpretation on assessing and communicating the details of prior employment or associations

Paragraph 03 of the proposed Interpretation describes the safeguards that must be implemented in order to conclude that the threats to independence arising from a partner or professional employee’s prior employment or association (e.g., as a director, officer, employee, promoter, underwriter, voting

trustee, trustee of any pension or profit sharing trust of the entity, or in any capacity equivalent to that of a member of management) with an entity that becomes an attest client through a merger or acquisition are at an acceptable level.

While items (a), (b), and (c) of paragraph 03 closely align with the current rules on "Former Employment or Association With an Attest Client" (Section 1.277.010), the prescriptive steps outlined in item (d) regarding the assessment of the prior employment or association with the attest client, and the requirement in item (e) that the relationship be communicated to those charged with governance impose requirements that exceed what is required when a Partner or professional joins a firm from an attest client in situations unrelated to a firm merger or acquisition.

With respect to paragraph item 3(d), we are uncertain as to PEEC's rationale for imposing additional requirements to assess the prior relationship of the partner or professional at the attest client for former associations arising from a firm merger or acquisition that are not required for such relationships outside of a firm merger or acquisition scenario. In our view, threats to independence are substantively similar in both scenarios and thus the requirements should be consistent. We also believe that existing rule provisions in Section 1.277.010 allow for an appropriate reliance on professional judgment regarding the assessment of threats to independence arising from such relationships and this approach is preferable to the imposition of prescriptive steps and procedures outlined in the proposed Interpretation.

In addition, the final reference in paragraph 3(d) provides that *"In **such situations**, an individual within the firm with the appropriate stature, expertise and objectivity should review the subsequent attest engagement prior to issuing the attest report to determine whether the attest engagement team maintained integrity, objectivity, and as appropriate, professional skepticism."* We are unclear of the intended meaning of **"such situations**" and recommend that the PEEC either clarify whether this sentence relates only to the paragraph 3(d) safeguard or identify the sentence as an additional safeguard listed under paragraph 3.

Further, paragraph 3(e) and paragraph 11 impose a requirement to communicate with those charged with governance the details of former employment or association relationships of partners or professionals, and the details of nonattest services performed by the acquiring or acquired firm arising out of a firm merger or acquisition, and encourages documenting the substance of this discussion. There is no similar requirement in the AICPA Code for the same types of relationships not connected to a firm merger or acquisition, or for any other relationship between a member's firm and its attest client under the current AICPA Code except as required under AICPA Code Section1.298.010, *Breach of an Independence Interpretation*.

We recommend that the PEEC remove these requirements from the proposed Interpretation and consider undertaking a separate project to study the adoption of a requirement to communicate all applicable relationships to those charged with governance similar to the requirements of PCAOB Rule 3526, *Communication with Audit Committees Concerning Independence*.

<u>Comment on the application of the proposed Interpretation to Network Firms</u>

The definition of Firm in Section .0400, *Definitions* of the AICPA Code indicates in part that *"for purposes of applying the "Independence Rule," a firm includes a network firm when the engagement is either a financial statement audit or review engagement and the audit or review report is not restricted, as set forth in the AICPA SASs and SSARSs (AICPA, Professional Standards). [Prior reference: paragraph .11 of ET section 92]"*. Based on this definition, it would appear that the proposal would apply to relationships at all network firms of the acquiring and acquired firms.

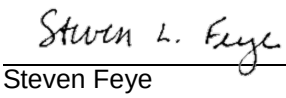
In our view, threats to independence associated with the employment and nonattest services relationships occurring at other network firm's would likely be at a reduced level when compared with those at the firm involved in the merger or acquisition. Accordingly, we recommend the PEEC consider whether it would be appropriate to include an exception for employment and nonattest service

relationships in connection with a firm merger or acquisition similar to the one for consideration of nonattest services performed at network firms included in the recently adopted interpretation on the "*Cumulative Effect on Independence When Providing Multiple Nonattest Services*" (Section 1.295.0200).

* * * *

We would be pleased to discuss our comments and recommendations with members of the PEEC. If you wish to do so, please feel free to contact Steven Feye at (203) 563-2660 or sfeye@deloitte.com; Richard Goligoski at (203) 761-3423 or rgoligoski@deloitte.com; or Vincent A. DiBlanda at (203) 761-3215 or vdiblanda@deloitte.com.

Sincerely,



Steven Feye

Deloitte LLP Managing Partner National Office Independence Consultation and National Director of Independence Consultation