
THE REVISED DEFINITION CONTAINED IN THIS DOCUMENT IS EFFECTIVE ON OCTOBER 31, 2015, AND THE NEW INTERPRETATION IS EFFECTIVE AS NOTED.

Ethics interpretations and definitions are promulgated by the executive committee of the Professional Ethics Division to provide guidelines about the scope and application of the rules but are not intended to limit such scope or application. Publication in the Journal of Accountancy constitutes notice to members. A member who departs from such guidelines shall have the burden of justifying such departure in any disciplinary hearing.

The Professional Ethics Executive Committee has adopted the following revised paragraph .02 of "Definitions" [0.400] and new interpretation under the "Independence Rule" [1.200.001] "Firm Mergers and Acquisitions" [1.220.040].

Text of Revised Definition of “Affiliate”

(Additions appear in **boldface italic**, and deletions are ~~stricken~~. Defined terms are hyperlinked and italicized.)

02. **Affiliate.** The following entities are affiliates of a [financial statement attest client](#):

- a. An entity (for example, subsidiary, partnership, or limited liability company [LLC]) that a [financial statement attest client](#) can [control](#).
- b. An entity in which a [financial statement attest client](#) or an entity [controlled](#) by the [financial statement attest client](#) has a [direct financial interest](#) that gives the [financial statement attest client](#) [significant influence](#) over such entity and that is material to the [financial statement attest client](#).
- c. An entity (for example, parent, partnership, or LLC) that [controls](#) a [financial statement attest client](#) when the [financial statement attest client](#) is material to such entity.
- d. An entity with a [direct financial interest](#) in the [financial statement attest client](#) when that entity has [significant influence](#) over the [financial statement attest client](#), and the interest in the [financial statement attest client](#) is material to such entity.
- e. A sister entity of a [financial statement attest client](#) if the [financial statement attest client](#) and sister entity are each material to the entity that [controls](#) both.
- f. A trustee that is deemed to [control](#) a trust [financial statement attest client](#) that is not an investment company.
- g. The sponsor of a single employer employee benefit plan [financial statement attest client](#).
- h. Any **entity, such as a union, or participating employer, or a group association of employers**, that has [significant influence](#) over a ~~multiple or multiemployer~~ employee benefit plan [financial statement attest client](#) **and the plan is material to such entity.**
- i. **The participating employer that is the plan administrator of a multiple employer employee benefit plan [financial statement attest client](#).**
- ~~i.j.~~ **A [single or multiple employer](#) employee benefit plan sponsored by either a [financial statement attest client](#) or an entity [controlled](#) by the [financial statement attest client](#). A ~~financial statement attest client that sponsors an employee benefit plan includes, but is not limited to, a union whose members participate in the plan and~~ **All participating employers of a multiple employer employee or multiemployer benefit plan are considered sponsors of the plan.****
- ~~j.k.~~ **A multiemployer employee benefit plan when a [financial statement attest client](#) or entity [controlled](#) by the [financial statement attest client](#) has [significant influence](#) over the plan and the plan is material to the [financial statement attest client](#).** An investment adviser, a general partner, or a trustee of an investment company [financial statement attest client](#) (fund) if the fund is material to the investment adviser, general partner, or trustee that is deemed to have either [control](#) or [significant influence](#) over the fund. When considering materiality, [members](#) should consider investments in, and fees received from, the fund.
- l. An investment adviser, a general partner, or a trustee of an investment company [financial statement attest client](#) (fund) if the fund is material to the investment adviser, general partner, or trustee that is deemed to have either [control](#) or [significant influence](#) over the fund. When considering materiality, [members](#) should consider investments in, and fees received from, the fund.

Nonauthoritative questions and answers related to the application of the independence rules to affiliates of employee benefit plans are available at <http://www.aicpa.org/InterestAreas/ProfessionalEthics/Resources/Tools/DownloadableDocuments/faqs-application-independence-rules-affiliates-of-employee-benefit-plans.pdf>.

[Prior reference: paragraph .20 of ET section 101]

[See Revision History Table.]

Note: Conforming changes to items b, c and d of paragraph .02 of the “Client Affiliates” interpretation [1.224.010] are necessary. Specifically, the phrase “...described under items *c–j* of the definition of *affiliate...*” was updated to read “...described under items *c–l* of the definition of *affiliate...*” These conforming changes were not published in the official release.

Text of New “Firm Mergers and Acquisitions” Interpretation
(*Defined terms are hyperlinked and italicized.*)

1.220.040 Firm Mergers and Acquisitions

01. When (1) a [member's firm](#) merges with or acquires another [firm](#) or entity or all or part of the business thereof (acquired firm) or (2) a [member's firm](#), or all or part of the business thereof, is merged with or acquired by another [firm](#) (acquiring firm), [threats](#) to compliance with the “[Independence Rule](#)” [1.200.001] may exist as a result of employment or association with, or the provision of nonattest services to, an [attest client](#) of the acquired or acquiring firm.
02. When determining which [firm](#) is the acquirer, [members](#) should consider the guidance contained in paragraphs .11–.15 of FASB ASC 805-10-55, among other sources.

Employment or Association With an Attest Client

03. If a [partner](#) or professional employee was formerly employed by or associated with an entity 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 and that entity becomes an [attest client](#) through a merger or acquisition, then [threats](#) will be at an [acceptable level](#) and [independence](#) will not be [impaired](#) provided all of the following [safeguards](#) are met:
 - a. The [partner](#) or professional employee terminates the relationship with the [attest client](#) (for example, resigns as a director) prior to the closing date of the merger or acquisition.
 - b. The [partner](#) or professional employee does not participate on the [attest engagement team](#) and is not an [individual in a position to influence the attest engagement](#) for the [attest client](#) when the [attest engagement](#) covers any period that includes his or her former employment or association with that [attest client](#).
 - c. The applicable disassociation [safeguards](#) in paragraph .04 of the “[Former Employment or Association With an Attest Client](#)” interpretation [1.277.010] are implemented prior to the closing date of the merger or acquisition.
 - d. As soon as practicable under the circumstances but before issuing the attest report, a responsible individual within the [firm](#) assesses the prior relationship of the [partner](#) or professional employee with the [attest client](#), as well as the position he or she holds at the [firm](#), to determine if [threats](#) are created that are not at an [acceptable level](#). If the responsible individual determines that [threats](#) are not at an [acceptable level](#), he or she should be satisfied that [safeguards](#) are applied to eliminate or reduce the [threats](#) to an [acceptable level](#). [Threats](#) will not be at an [acceptable level](#) if
 - i. the [partner](#) or professional employee will have interaction with members of the [attest engagement team](#) regarding the [attest client](#) or
 - ii. the [attest engagement team](#) is placed in a position of evaluating the [partner](#) or professional employee’s representations and work while he or she was employed or associated with the [attest client](#).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.
 - e. As soon as practicable under the circumstances but before issuing the attest report, the nature of the relationship and any [safeguards](#) that were applied are

discussed with [those charged with governance](#). Documentation of the substance of the discussion with [those charged with governance](#) is encouraged.

Nonattest Services

04. Nonattest services provided to an entity that becomes an [attest client](#) through a merger or an acquisition may create self-review, management participation, and advocacy [threats](#) to the [member's](#) compliance with the “[Independence Rule](#)” [1.200.001]. Specifically, [threats](#) may exist if, during the [period of the professional engagement](#) or the period covered by the [financial statements](#), nonattest services that would otherwise [impair independence](#) (prohibited nonattest services) under the interpretations of the “Nonattest Services” subtopic [1.295] are performed by
- a. the acquiring firm, with respect to an [attest client](#) of the acquired firm or
 - b. the acquired firm, with respect to an [attest client](#) of the acquiring firm.

Prohibited Nonattest Services Provided by Acquiring Firm

05. If the acquiring firm provided prohibited nonattest services to an [attest client](#) of the acquired firm during the period covered by the [financial statements](#), [threats](#) to compliance with the “[Independence Rule](#)” [1.200.001] will not be at an [acceptable level](#) and cannot be reduced to an [acceptable level](#) by the application of [safeguards](#). Accordingly, the acquiring firm’s [independence](#) will be [impaired](#) with respect to the [attest client](#).

Prohibited Nonattest Services Provided by Acquired Firm

06. If the acquired firm provided prohibited nonattest services to an [attest client](#) of the acquiring firm prior to the financial statement period covered by the acquiring firm’s next attest report, the acquiring firm’s [independence](#) would not be [impaired](#).
07. If the acquired firm provided prohibited nonattest services to an [attest client](#) of the acquiring firm during the [period of the professional engagement](#) (except as provided for in paragraph .06) or the period covered by the [financial statements](#), the acquiring firm’s [independence](#) would be [impaired](#) unless all of the following conditions are satisfied:
- a. The acquired firm terminates the prohibited nonattest services (or modifies the service offerings such that they would not [impair independence](#)) prior to the closing date of the merger or acquisition.
 - b. Any individual who participated in the engagement to provide the prohibited nonattest services is neither on the [attest engagement team](#) nor an [individual in a position to influence the attest engagement](#).
 - c. An evaluation of the [threats](#) is performed and [threats](#) are determined to be at an [acceptable level](#) or reduced to an [acceptable level](#) by the application of [safeguards](#). The evaluation should be conducted on the basis of the attribution of the results of the nonattest services to the acquiring firm. That is, if the nonattest services
 - i. can be attributed to the acquiring firm because the acquiring firm will assume responsibility for the results of the nonattest services, then the evaluation should assess all prohibited nonattest services that the acquired firm performed for the [attest client](#) during the financial statement period to be covered by the acquiring firm’s next attest report; or
 - ii. cannot be attributed to the acquiring firm, then the evaluation should assess all prohibited nonattest services that the acquired firm performed for the [attest client](#) during the period in which the merger or acquisition was

pending (that is, from the commencement of negotiations through the closing date of the merger or acquisition).

08. In evaluating the significance of any [threats](#), consideration should also be given to the following:
- Whether the nonattest service is attributed to the acquiring firm and whether the work performed or its results will be subject to attest procedures.
 - The significance of the results of the nonattest service to the [attest client's financial statements](#).
 - The extent to which the [attest client](#) and its management were involved in overseeing the nonattest services performed (including making any significant judgments and decisions with respect to the nonattest services) and whether the [attest client](#) and its management possessed the suitable skill, knowledge and/or experience to oversee such services.
 - Whether the nonattest services involved the assumption of a management responsibility.
09. If the [member](#) concludes that the [threats](#) to [independence](#) are not at an [acceptable level](#), the [member](#) should apply [safeguards](#) to reduce [threats](#) to an [acceptable level](#).
10. Examples of [safeguards](#) include the following:
- An individual not associated with the nonattest engagement reviews the nonattest services work performed.
 - Another [firm](#) performs an [attest engagement](#) on the subject matter of the nonattest service.
 - Another [firm](#) re-performs the nonattest service to the extent necessary for it to take responsibility for that service.
- If no [safeguards](#) exist that will eliminate or reduce the [threats](#) to an [acceptable level](#), [independence](#) will be [impaired](#).

Communications With Those Charged With Governance

11. As soon as practicable under the circumstances but before issuing the attest report, the nature of the prohibited nonattest services performed by the acquired firm that are subject to evaluation in paragraph .07b and any [safeguards](#) applied should be discussed with [those charged with governance](#). Documentation of the substance of the discussion with [those charged with governance](#) is encouraged.

Other Interests in and Relationships With an Attest Client

12. This interpretation addresses only [threats](#) to [independence](#) that may arise as a result of a merger or an acquisition relating to employment or association with, or the provision of nonattest services to, an [attest client](#). However other interests in, and relationships with, an [attest client](#) may also result in [threats](#) to compliance with the "[Independence Rule](#)" [1.200.001] or other rules during a merger or acquisition. Accordingly, [members](#) should take whatever pre-merger actions are necessary to be satisfied that the [firm](#) is in compliance with all relevant rules prior to the closing date of the merger or acquisition.

Confidentiality Considerations

13. Refer to the "Disclosing Client Information in Connection With a Review of the Member's Practice" interpretation [1.700.050] of the "Confidential Client Information Rule" [1.700.001] for additional guidance.
-

Effective Date

14. This interpretation is effective for mergers or acquisitions with closing dates on or after January 31, 2016. Early implementation is allowed.

