



Ernst & Young LLP
5 Times Square
New York, NY 10036-6530

Tel: +1 212 773 3000
Fax: +1 212 773 6350
ey.com

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BY EMAIL

Professional Ethics Division
American Institute of Certified Public Accountants
1211 Avenue of the Americas
New York, New York 10036
Ethics-ExposureDraft@aicpa.org

Comments on the Strategy and Work Plan

We are pleased to provide our comments on the American Institute of Certified Public Accountants (“AICPA”) Professional Ethics Division’s Strategy and Work Plan consultation paper developed by the Professional Ethics Executive Committee (“PEEC”).

We are supportive of PEEC’s effort to define its priorities for the next three years as outlined in the Strategy and Work Plan consultation paper. We believe it is important to focus efforts and resources on the most significant items of public interest and solicit input on future priorities for the AICPA Professional Ethics Division’s project agenda.

We are generally supportive of the proposed new projects outlined in the consultation paper. However, we do wish to provide the following comments.

Business relationships

The types of goods and services offered by CPA firms, and the way in which they are offered, have evolved since the interpretation on cooperative arrangements in section 1.265.010 was first adopted. We believe the AICPA Code of Professional Conduct (“AICPA Code”) should be updated to include a framework to assist members with determining whether specific interactions create a cooperative arrangement subject to paragraph 1.265.010.01. Such framework would be helpful in determining the potential impact to independence as the types of firm relationships continue to evolve. We encourage PEEC to consider further defining the term “cooperative arrangement” to address some of the more complicated types of relationships, and to provide examples of situations that would not be viewed as a cooperative arrangement. For example, we do not believe that two parties who are merely engaged directly by the same client to work together on the client’s project would be viewed as a cooperative arrangement.

We encourage PEEC to consider providing guidance on how materiality in the context of business relationships should be determined, including examples of material cooperative arrangements. In

particular, we believe it would be beneficial to address the determination of materiality when working with small or newly formed entities that may not yet have, for example, a demonstrated revenue base.

In the recent release by the Securities and Exchange Commission (“SEC”) on proposed changes to Rule 2-01 (Release No. 33-10738), the SEC noted that audit firms may contribute to multi-company arrangements through intellectual property or access to data using common technology platforms. The SEC requested comment on whether such arrangements present instances where an auditor’s objectivity and impartiality would not be impaired. Development of a framework to evaluate multi-company arrangements would be beneficial for assessing threats to independence and objectivity. These matters are increasingly impacting professional practice and additional guidance will be extremely valuable to foster consistency of assessment.

Finally, since 1.265.010 uses the term “member” rather than “covered member,” we believe clarification should be provided on whether the cooperative business arrangement interpretation applies to covered members or all professionals in a firm.

Definition of “office”

We do not believe the definition of “office” is a pressing issue. However, if a change is determined to be necessary, we encourage PEEC to consider the increasingly virtual nature of offices and how individuals work, particularly in medium and large firms, in defining covered members who reside in the same office in which the lead attest engagement partner or partner equivalent primarily practices in connection with the attest engagement.

Client affiliates

We believe the existing AICPA conceptual framework approach to assessing threats and safeguards is appropriate for addressing common ownership by individuals. To the extent common ownership through an individual is a subject of frequent inquiry, PEEC should consider issuing non-authoritative guidance in the form of a frequently asked question (“FAQ”) to address the more common fact patterns. For example, companies controlled by an individual that do business together or have other interrelations may pose greater threats to independence than similar entities that have no interactions.

Artificial intelligence

Artificial intelligence is a rapidly developing area and its potential uses for serving clients are largely undeveloped. Whether expansion into non-traditional service areas involving artificial intelligence may change the nature of professional services from traditional consulting services, and how firms will be viewed by the profession’s external stakeholders, is yet unknown. Although we do not believe there is an immediate need for guidance on ethics issues unique to the use of artificial intelligence while providing professional services, we believe this topic should be kept in the current Strategy and Work Plan and addressed in the latter half of the three-year period.

We encourage PEEC to consider the ability of artificial intelligence technologies to automate decision making and potential safeguards needed for client management to fulfill its responsibilities. Overreliance on artificial intelligence for decision making is a potential concern for both members in business and public practice. The ability of an artificial intelligence technology to make better and more complex considerations over time based on learning may raise ethical concerns as a result of both the potential error rate in the early period of use and potential overreliance on the tool as its capabilities evolve to more complex decision making. In establishing guidance, we encourage PEEC to consider the potential for unintended consequences from the use of artificial intelligence.

Simultaneous employment or association with an attest client

We support PEEC's proposed project to determine whether there should be additional exceptions to paragraph 1.275.005.02 and agree with the example provided in the consultation paper. We believe that among the relevant factors to consider would be both the individual's level at the firm as well as the individual's role and responsibilities at the audit client. For example, an intern or lower level staff person who is not a covered member may be perceived to pose a lower threat to independence and objectivity. However, if such non-covered member performs a managerial or accounting role at the audit client, the threat to independence could be significant. We do not believe it is appropriate for any professional employee, regardless of level, to be employed by an audit client in a key position. We encourage PEEC to consider developing a framework to evaluate whether the facts and circumstances of a particular simultaneous employment situation create a significant threat to independence and whether such threat could be reduced to an acceptable level with adequate safeguards.

We encourage PEEC to also consider limiting this interpretation to covered members from its current application to all professionals and permit a conceptual framework approach for non-covered members, provided that the role is not a key position.

Digital assets

We believe PEEC should consider issuing guidance to help practitioners understand whether digital assets (i.e., tokens and cryptocurrency) represent direct or indirect financial interests, for which existing guidance in section 1.240.010 can be applied. While ownership of cryptocurrency as a personal investment is the area most frequently affecting professional practice, PEEC may wish to consider whether future guidance is needed to address potential concerns with professional services related to digital assets. For example, whether mining (i.e., the process of adding a transaction record to a public ledger) of digital assets by members participating in the consensus mechanism of a blockchain could create a potential self-review threat if elements of a blockchain are considered as audit evidence. As with artificial intelligence, this is a developing area that may warrant further consideration as the uses of digital assets by enterprises increase with the adoption of blockchain.

529 college savings plans

The AICPA Code does not currently distinguish between 529 plans in which the owner chooses the underlying securities, such as mutual funds or exchange traded funds, and those in which the owner only chooses an established target-date portfolio for which the owner has no control or influence over the selection of the portfolio's underlying securities. Monitoring of the latter type of investment option and potential impact on covered members is challenging because the underlying investments may only be identified based on historical information obtained from the states on a quarterly basis. We believe the AICPA Code should be updated to differentiate between account owners who choose investment portfolio options that allow selection of securities and those that elect a target date portfolio in which the account owner does not have control over the underlying investment decisions. Further, PEEC should consider treating the underlying investments of 529 plan target date portfolios as indirect investments, similar to the approach for mutual funds in section 1.240.030.

Reporting of an independence breach to an affiliate that is also an attest client

We believe that guidance for members in this situation could be beneficial. Examples of any situations where communication would not be required, as well as guidance on any potential efficiencies in communicating breaches would be helpful.

De minimis fees

Unlike the approach by other regulators and standard setters, the AICPA Code does not provide for a materiality assessment with respect to unpaid fees. Rather, section 1.230.010 unambiguously states that independence is impaired, and no further evaluation is appropriate if there are any unpaid fees from an attest client for any professional service provided more than one year prior to the date of the current-year report. We believe that there are commercial circumstances when fees for a professional service may be unpaid for more than one year, and when such unpaid fees are immaterial to both the attest client and the covered member's firm, they do not affect the covered member's objectivity, in fact or appearance.

The consultation paper notes that the materiality concept is used in topic 1.240, *Financial Interests*. It is unclear why the consultation paper makes this point, as past due fees are not financial interests, but rather in some circumstances may be seen as the equivalent of a loan. In addition, even if materiality concepts in topic 1.240 are intended to be applied to section 1.230.010, topic 1.240 generally only permits materiality assessments for *indirect* financial interests (as defined), except for financial interests in mutual funds.

We recommend that PEEC amend the provisions of section 1.230.010 to be consistent with the International Ethics Standards Board for Accountants International Code of Ethics for Professional Accountants ("IESBA Code"), which considers the significance of the unpaid fees to be a factor in the evaluation of whether unpaid fees are in substance the equivalent of a loan to an attest client and an unacceptable threat to the covered member's independence.

Data security and breaches

We agree that ethical guidance would be helpful to guide practitioners through the steps they need to take when they experience a data breach. Requirements for handling breaches of personal information are set by laws and regulations in the US and Europe. However, there is a lack of guidance on how to address breaches of client confidential information that do not involve personal information. We believe PEEC should consider issuing guidance in the form of a framework to help members determine how and under what circumstances the client should be informed of a confidentiality breach to foster consistency in approach.

Conflicts of interest

We believe PEEC should consider enhancing the current conflicts of interest rules by providing more specificity around the definition of what constitutes “reasonable efforts” and “an effective conflict identification process” as used in paragraph 1.110.010.05 and .07. Specifically, we do not believe the existing guidance in paragraph 1.110.010.08, which states, “If the firm is a member of a network, the member is not required to take specific steps to identify conflicts of interest of other network firms,” is consistent with Section R310.7 of the IESBA Code, which states, “If the firm is a member of a network, a professional accountant shall consider conflicts of interest that the accountant has reason to believe might exist or arise due to interests and relationships of the network firm.”

In addition, we believe further guidance may also be appropriate in paragraph 1.110.010.14 which states that “[t]he member should determine whether the nature and significance of the conflict of interest is such that specific disclosure and specific consent are necessary, as opposed to general disclosure and general consent.” We believe that specific consent is generally required for all cases except in competitive situations where it would violate confidentiality.

Operational enhancements to the code

We support PEEC’s efforts to keep the AICPA’s tools and resources up to date and to make materials more user friendly for members.

Additional matters

We believe PEEC should continue to monitor and address changes made by regulators and other standard setters. In determining allocation of resources, we believe PEEC should consider the time commitment of resources needed for both influencing change and analyzing potential consequences of changes proposed by regulators and other standard setters. Providing input to IESBA on areas that PEEC is focused on, for example, can inform and enable future changes to the AICPA Code and development of non-authoritative guidance. Understanding the IESBA Strategy and Workplan and active involvement in IESBA task forces and standard setting process could support the advancement of PEEC’s projects on related topics and facilitate convergence. Further, we believe the PEEC should be proactively considering the International Auditing and Assurance Standards Board (“IAASB”) current projects that likely will be a focus at the US level over the next three years. The IAASB and IESBA have had increasing instances of projects that require input or feedback from the other board and have worked toward establishing more

formalized coordination protocols. We recommend that PEEC work with US Auditing Standards Board to establish a similar arrangement.

We support the PEEC's current project to compare the AICPA Code to the IESBA Code and believe a convergence matrix would assist members in understanding where the AICPA Code is less restrictive than the IESBA code and where IESBA topics are addressed in non-authoritative guidance.

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If you have any questions regarding any of the above comments, please contact Richard J. Huesken at +1 216 583 2400.

Sincerely,

