



Deloitte LLP

695 E. Main Street
Stamford, CT 06901-2150

Tel: +1 203 761 3000

Fax: +1 203 761 3013

www.deloitte.com

February 28, 2020

Mr. Brian S. Lynch, Chair
Professional Ethics Executive Committee
Ms. Toni Lee-Andrews, Director
Professional Ethics Division
American Institute of Certified Public Accountants
1345 Avenue of the Americas, 27th Floor
New York, NY 10105

Re: Strategy and Work Plan Consultation Paper

Dear Mr. Lynch and Ms. Lee-Andrews:

Deloitte LLP ("Deloitte," "our," "we") appreciates the opportunity to respond to the request for input from the Professional Ethics Executive Committee ("PEEC") of the American Institute of Certified Public Accountants (the "AICPA") on its *Strategy and Work Plan Consultation Paper* ("Consultation Paper").

We commend the PEEC for soliciting input on proposed new standard-setting and member enrichment projects. Broadly sharing planned actions and seeking external feedback contribute to the transparency with which the AICPA develops its professional standards and guidance, and further demonstrates the PEEC's commitment to engaging with stakeholders in fulfilling its standard-setting responsibilities. We value the opportunity to be among the stakeholders that provide input to the PEEC.

We are providing the following comments related to the proposed new standard-setting and member enrichment projects for the PEEC's consideration.

I. Proposed new standard-setting projects

a. Business relationships

We agree business relationships continue to evolve in today's marketplace. The roles, responsibilities, contractual obligations, and other business terms inherent in any business relationship may vary widely based upon specific facts and circumstances. While the types of relationships may vary and change over time, we believe the extant Code includes the relevant principles and guidance necessary for members to analyze and evaluate the potential independence implications related to such relationships.

b. Definition of "office"

We agree there have been many changes to how accounting firms practice in today's marketplace. The advanced technologies that have been developed and cultural shifts in today's workplace environment have resulted in broad changes to how and where today's workforce operates. In addition, the varying size and scale of firms providing

services and their evolving real estate strategies and footprint have contributed to these changes.

While the workplace environment has and will continue to evolve, we believe the extant Code includes the relevant principles and guidance necessary for members to analyze and evaluate specific facts and circumstances, including those related to physical location and other workplace dynamics.

The extant Code states, in part:

*.400.36 **Office.** A reasonably distinct subgroup within a firm, whether constituted by formal organization or informal practice, in which personnel who make up the subgroup generally serve the same group of clients or work on the same categories of matters. **Substance should govern the office classification.** [Emphasis added.] For example, the expected regular personnel interactions and assigned reporting channels of an individual may well be more important than an individual's physical location.*

We agree there may be certain challenges and judgments involved in application of the existing Code. However, if the PEEC chooses to pursue potential new rule-making or other guidance in this area, close coordination with other rule-making bodies (e.g., International Ethics Standards Board for Accountants ("IESBA"), Securities and Exchange Commission ("SEC")) is necessary considering existing rules and requirements of such other bodies.

c. Client affiliates

We understand the current definition of affiliate in the extant Code does not explicitly include common ownership by individuals. When we evaluate affiliates, we make no distinction between common ownership by an "entity" or by an "individual," as we believe the relevant independence considerations and principles are applicable to both. The PEEC may consider clarifying the definition of affiliate to provide for consistent application of the Code.

We note the SEC recently issued proposed amendments to its independence rules, including matters related to affiliates. If the PEEC chooses to pursue potential new rule-making or other guidance in this area, we suggest such activities be coordinated in connection with the SEC's potential rule-making process.

d. Artificial intelligence ("AI")

We agree AI is an area that presents significant opportunities for CPAs. AI's influence on data collection, organization, and analysis continues to evolve and have a broad impact across many industries and markets.

As part of any AI platform or framework, there are several ethical and operational factors to be considered, including:

- Governance over AI applications.
- Data protection.
- Secondary data usage.
- Bias in existing data.

In addition, AI continues to challenge organizations in developing appropriate policy, governance, and monitoring over AI applications.

Accordingly, we agree with the PEEC that a task force should be established to further explore and understand these and other potential AI considerations when providing

professional services. The task force should coordinate its efforts with other relevant standard-setting bodies within the AICPA (e.g., Auditing Standards Board) to ensure a consistent approach in addressing this area.

e. Simultaneous employment or association with an attest client

We agree with the PEEC that a project related to the *Simultaneous Employment or Association with an Attest Client* interpretation (1.275.005) should be considered. When applying the interpretation, there may be certain circumstances in which limited or no threats to independence exist. The project's scope should include focus on the core principles and underlying objectives of the extant Code, and the varying degrees of threats to independence observed in its application.

If the PEEC chooses to pursue potential new rule-making or other guidance in this area, close coordination with other rule-making bodies (e.g., IESBA, SEC) is necessary considering existing rules and requirements of such other bodies.

f. Digital assets

We recognize the extant Code does not provide explicit guidance related to ownership interests in digital assets. We consider digital assets a type of *financial interest*, as defined in the Code, and therefore, apply the financial interest rules and guidance to such holdings.

We recognize this is an area that continues to evolve. We agree with the PEEC to establish a task force to monitor developments and further explore potential independence considerations in this area.

g. 529 college savings plans

We recognize certain operational and practical challenges may exist in demonstrating and maintaining compliance with the Code related to 529 college savings plans. We would be supportive of the PEEC establishing a task force to further explore this area.

If the PEEC chooses to pursue potential new rule-making or other guidance in this area, close coordination with other rule-making bodies (e.g., IESBA, SEC) is necessary considering existing rules and requirements of such other bodies.

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

In our view, the *Breach of an Independence Interpretation* (1.298.010) and *QC section 10, A Firm's System of Quality Control* provide sufficient guidance for members to analyze and evaluate breach reporting requirements to those charged with governance. If a breach identified at an attest client is determined to be a breach at an affiliate that is also an attest client, we believe the reporting requirements apply to such affiliate.

i. De minimis fees

We agree the PEEC should pursue a project to consider potential modifications to the Code regarding unpaid fees to further align with existing IESBA standards and provide for consistency in application of the Code.

As discussed in the Consultation Paper, the extant Code does not include reference to or consideration of materiality. The Code states, in part:

1.230.10.1 Unpaid Fees

*.02 Threats to the covered member's compliance with the "Independence Rule" [1.200.001] would not be at an acceptable level and could not be reduced to an acceptable level by the application of safeguards if a covered member **has unpaid fees** [emphasis added] from an attest client for any previously rendered professional service provided more than one year prior to the date of the current-year report. Accordingly, independence would be impaired. Unpaid fees include fees that are unbilled or a note receivable arising from such fees.*

Conversely, the extant IESBA Code states, in part:

Fees – Overdue

410.7 A1 A self-interest threat might be created if a **significant part** [emphasis added] of fees is not paid before the audit report for the following year is issued. It is generally expected that the firm will require payment of such fees before such audit report is issued.

We recommend the PEEC establish a task force to explore and consider modifications to the extant Code to further align with existing IESBA standards. The task force may also consider existing SEC independence rules related to unpaid fees.

II. Proposed new member enrichment projects

a. Data security and breaches

We believe the PEEC should form a task force to explore and understand the professional and ethical considerations related to data security and breaches. This is a dynamic and continuously evolving area being addressed at various state, legislative, and international levels. The task force should include subject matter experts familiar with current and/or proposed ethical guidelines being considered by various constituencies in order to effectively evaluate and develop potential member enrichment guidance in this area.

b. Conflicts of interest

In our view, the *Conflicts of Interest for Members in Public Practice* subtopic (1.110) provides sufficient guidance for members to analyze and evaluate potential conflicts of interest.

As indicated in the Consultation Paper, there has been an increase in the number of member inquiries related to conflicts of interest. It would be helpful to understand the nature of such inquiries to determine what, if any, enrichment materials may be needed.

In addition, in the area of conflict consent and disclosure, we believe the PEEC should consider potential modifications to the Code to further align with existing IESBA standards and provide for consistency in application of the Code.

The extant Code states, in part:

Disclosure of a Conflict of Interest and Consent

.12 When a conflict of interest exists, the *member* should disclose the nature of the conflict of interest to *clients* and other appropriate parties affected by the conflict and obtain their consent to perform the *professional services*. The member should disclose the conflict of interest and obtain consent even if the *member* concludes that *threats* are at an *acceptable level*.

Application of this guidance requires members to disclose a conflict of interest and obtain consent under **ALL** circumstances.

Conversely, the extant IESBA code states, in part:

310.9 A3 It is **generally necessary** [emphasis added]:

- a. To disclose the nature of the conflict of interest and how any threats created were addressed to clients affected by a conflict of interest; and
- b. To obtain consent of the affected clients to perform the professional services when safeguards are applied to address the threat.

In addition, the IESBA's *Basis for Conclusion* (issued March 2013) states, in part:

25. The IESBA took the view that consent is not a safeguard but did not wish to prevent a sophisticated client from providing consent if the professional accountant is able to conclude that the threat is already at an acceptable level and it would not, therefore, be necessary to obtain consent. Therefore, wording was introduced to clarify that consent is generally necessary "when safeguards are required to reduce the threat to an acceptable level."

27. The IESBA does not agree that disclosure is always necessary in a global Code because there are many diverse situations making it impractical to mandate disclosure and consent in all cases. However, the intention is that the professional accountant should not avoid disclosure and consent when it is appropriate. An additional provision has been inserted requiring the professional accountant to determine when specific disclosure and explicit consent are necessary and recognizing that it is a matter of professional judgment when specific disclosure and explicit consent are appropriate.

We recommend the PEEC establish a task force to further explore and consider modifications to the extant Code to further align with existing IESBA standards.

Considering our comments above, the PEEC may consider in its deliberations the following modification to the extant Code (**bold** text represents additions, strikethrough deletions):

.12 When a conflict of interest exists, **it is generally necessary for** the ~~member to should~~ disclose the nature of the conflict of interest to *clients* and other appropriate parties affected by the conflict and, **when safeguards are required to reduce the threat to an acceptable level**, obtain their consent to perform the *professional services*. ~~The member should disclose the conflict of interest and obtain consent even if the member concludes that threats are at an acceptable level.~~

We appreciate the opportunity to provide our perspectives on the PEEC's *Strategy and Work Plan Consultation Paper* and look forward to engaging further as it is finalized and implemented. If you have any questions or would like to discuss our views further, please contact Christopher Cahill at (212) 436-4841 or ccahill@deloitte.com or Paula Tookey at (202) 378-5098 or ptookey@deloitte.com.

Sincerely,

The Deloitte logo, featuring the word "Deloitte" in a stylized, cursive script font, followed by a large, stylized "UP" in a similar script font.