



**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS**  
**DIVISION OF PROFESSIONAL ETHICS**  
**PROFESSIONAL ETHICS EXECUTIVE COMMITTEE**  
**OPEN MEETING MINUTES**  
**May 9, 2018**

The Professional Ethics Executive Committee (Committee) held a duly called meeting on May 9, 2018 in Scottsdale, AZ. The meeting convened 9:00 a.m. and concluded at 4:30 p.m. on May 9, 2018.

<p><b><u>Attendance:</u></b>          Samuel L. Burke, Chair          Coalter Baker          *Carlos Barrera          Stanley Berman          Chris Cahill          *Tom Campbell          Robert E. Denham          Anna Dourdourekas          Brian S. Lynch</p> <p>*participated by phone</p>	<p>William Darrol Mann          William McKeown          Steven Reed          James Smolinski          Shelly Van Dyne          Lisa Snyder          Kelly Hunter          Sharon Jensen          Martin Levin          *Stephanie Saunders</p>
<p><b><u>Staff:</u></b>          James Brackens, VP - Ethics &amp; Practice Quality          Toni Lee-Andrews, Director          Ellen Gorla, Associate Director          Shelley Truman, Ethics Specialist          Brandon Mercer, Senior Manager</p> <p>*participated by phone</p>	<p>*April Sherman, Manager          *Shannon Ziemba, Manager          *James West, Manager          *Michele Craig, Manager          *Jennifer Kappler, Manager          *Jennifer Clayton, Senior Manager          *John Wiley, Manager          *Melissa Powell, Manager          *Henry Grzes, Lead Manager – Tax Practice &amp; Ethics</p>
<p><b><u>Guests:</u></b>          Jeff Lewis, Chair, Independence/Behavioral Standards Subcommittee          Ian Benjamin, Chair, Technical Standards Subcommittee          Jason Evans, BDO          Kelly Hnatt, External Counsel          Dan Dustin, VP State Board Relations, NASBA          *Catherine Allen, Audit Conduct          Sonia Araujo, PwC          *Paula Tookey, Deloitte          *George Dietz, PwC          *Jennifer Beneke, EY          *Jennifer Kary, Crowe Horwath          *Debbie Cutler</p>	

\*Nigel James (SEC)  
\*Lynette Linder (CTCPAS)  
\*Joe Scutellaro  
\*Participated via phone

1. **Welcome and Introductions**

Mr. Burke welcomed the Committee.

2. **Joint Meeting with Technical Issues Committee(TIC)**

The PEEC and TIC held a joint meeting with TIC to discuss regarding recent pronouncements, current PEEC projects, and other issues in the profession. The committees also discussed how they can collaborate in the standard setting process.

3. **Leases**

Mr. Mercer presented this agenda item. Mr. Mercer explained that the Task Force held two conference calls since the previous PEEC meeting to review comment letters received.

*Paragraph .01*

Mr. Mercer noted that the Task Force agreed to revise paragraph .01 to remove a redundancy in the proposal. Specifically, paragraphs .01 and .06 duplicate the exception for automobile leases addressed elsewhere in the Independence rule. The Task Force proposed, and PEEC agreed, to delete the sentence from paragraph .01 referencing automobile leases as it is duplicated at paragraph .06. The approved revision to paragraph .01 of the exposed proposal follows:

.01 When a covered member enters into a lease with an attest client, self-interest, familiarity, and undue influence threats to the covered member's compliance with the "Independence Rule" [1.200.001] may exist.

~~This paragraph excludes leases addressed by paragraph .04 of the "Loans and Leases With Lending Institutions" interpretation [1.260.020] of the "Independence Rule" [1.200.001].~~

*Paragraphs .02 and .03*

Mr. Mercer noted that the Task Force received comments on paragraphs .02 and .03 that expressed concerns over operationalizing the requirements, as well as concerns regarding the required application of a threats safeguards approach even if the lease meets the requirements of .02. Mr. Mercer noted that some commenters viewed this as overly broad and created unnecessary review of insignificant threats. Mr. Mercer also noted that one commenter expressed concerns regarding the materiality safeguard, specifically that it would create hardships for clients and firms, and should be a trigger for a conceptual framework approach rather than a bright line test.

After discussion, PEEC determined that the general scope of the materiality safeguard in paragraph .02 was appropriate, given the significant appearance concerns of such leases as noted by the Task Force. In addition, PEEC requested that the Task Force consider

redrafting .02c to be more concise rather than repeating the list of specific covered members.

Mr. Mercer noted that commenters did not general agree with paragraph .03 being a required evaluation. The Task Force noted that paragraph .03 should only apply to all leases not addressed by paragraph .02, and that if the member knows or has reason to believe that the lease creates significant threats to independence, the member should apply the Conceptual Framework. The Task Force also asked PEEC to consider whether f and g should be factors to consider. Several PEEC members noted that f and g should be thresholds for a threats/safeguards approach; that is, if the lease does not meet f and g, the member should apply the threats/safeguards to the lease. PEEC requested that the Task Force redraft the paragraph reflecting the discussions.

In the course of the discussion, one member asked why the proposal only addresses leases “entered into” throughout the proposal except paragraph .04. Mr. Mercer noted that entry was the time that threats were high due to the risk of “sweetheart deals,” and that existing leases are addressed elsewhere in the proposal. However, some members noted that the safeguards required in .02 only apply at entry, and others are ongoing. The Task Force was asked to consider this nuance in its deliberations.

#### *Paragraph .04*

Mr. Mercer noted that the Task Force was not able to discuss the comments on paragraph .04 in detail due to time constraints, but would discuss it on its next conference call. Mr. Mercer asked the PEEC if it was inconsistent to apply the Conceptual Framework to leases in paragraph .03, while existing leases in paragraph .04 would be subject to prescriptive requirements. The Task Force agreed to revisit this issue if the revisions to .02 and .03 do not resolve any possible inconsistencies.

#### *Paragraph .05*

Mr. Mercer noted that commenters generally felt the paragraph was not necessary as it merely references paragraph .04. One commenter recommended an exception for primary residence leases entered into during the period of professional engagement, but no PEEC members agreed with the commenter’s position. PEEC agreed that paragraph .04 would already apply to such leases, and that the paragraph should be deleted. However, some members asked if PEEC should consider noting primary residences somewhere, or consider adding examples around primary residences.

Mr. Mercer noted that the Task Force will have calls in June to further discuss comments and the PEEC’s feedback, and hopes to a draft for adoption at the August PEEC meeting.

#### **4. NOCLAR**

Mr. Denham reported on the Task Force’s activity since the February 2018 PEEC meeting. The Task Force, including the UAA co-chairs observing, has been meeting monthly to discuss comment letters received. The Task Force thus far has discussed comments that would likely not be considered by the UAA committee, and revised certain language based on those discussions. The Task Force has also discussed at a high level whether or not there should be distinctions made between audit and non-audit services for certain areas,

but no specific conclusions have been reached as these matters will be discussed in a more broader sense after the UAA Committee has begun its meetings. The Task Force is having an informal meeting before PEEC's closed session to talk about the principal items not yet discussed.

**5. Minutes of February 2018 PEEC Open Meeting**

It was moved, seconded and unanimously agreed to adopt the minutes from the February 2018 open meeting.

**6. Voluntary Tax Practice Reviews**

Mr. Mercer presented this agenda item, including a proposed interpretation for exposure. Mr. Grzes and Mr. Scutellaro assisted in the discussion. Mr. Mercer explained that the proposal provides an exception for voluntary tax practice reviews, or quality reviews, provided that the member determines that the review complies with the requirements of Treas. Reg. 7216, which addresses disclosures of confidential information exchanged in a quality or peer review. The Committee agreed to use the term "quality review" to be consistent with Treas. Reg. 7216 and to ensure that other quality reviews that may be named differently are not excluded from the guidance. The Committee agreed with the proposal and after edits, unanimously approved the proposal for exposure for comment with a sixty-day comment period. One member requested that the exposure draft include a question asking whether it is reasonably clear what types of reviews are being referenced in the proposal and that state and local tax information is included.

**7. Staff Augmentation**

Ms. Snyder presented this agenda item to the Committee. The Task Force requested PEEC feedback on whether it is reasonable to expect members to evaluate the skill, knowledge, and experience ("SKE") of the individual at the client who will supervise the augmented staff's activities. After discussion, PEEC agreed that the same standard should apply in augmented staff situations as would to any nonattest service. The Task Force also requested PEEC's input on whether the term "temporary" is the appropriate term to describe the nature of the augmented staff arrangement, compared to terms such as "recurring," "routine," "discrete," or "short term." Members noted that "temporary" is consistent with the IESBA Code and that other terms may not be clear on the intent of the provisions. If the Task Force uses terms other than temporary it should be clear on what those terms mean. One member noted that the activities should not create independence issues if the activities would otherwise be allowed under ET Sec. 1.295, but the client is supervising the activities. Another member noted that if performing nonattest services, and not going beyond what is allowed in ET Sec. 1.295, the only remaining independence threat would be that of the appearance, which is addressed in the proposal.

The Task Force requested suggestions for additional safeguards to include in the provisions related to the appearance of simultaneous employment. Examples noted by PEEC members included discussions with those charged with governance at the attest client, and rotation of the staff assigned to augmented staff activities.

The Task Force agreed to revise the proposal based on the feedback received and bring a proposal for possible exposure to the next PEEC meeting.

## **8. State & Local Government**

Ms. Miller explained the Task Force is recommending the GASB specific terminology be eliminated from the proposal since several commenters believe using definitions that are not consistent with GASB definitions would result in confusion. Ms. Miller went on to explain that instead, the Task Force is recommending adding the term “affiliate” to the terminology section and to define it to include the entities the exposure draft captured under the “downstream” and “upstream” sections. Additionally, the Task Force recommends the term “entity” be added to the terminology section to explain the various types of SLG “entities” that might exist. Ms. Miller explained that the Task Force believes this will significantly simplify the interpretation. The Committee suggested the Task Force consider adding a statement to the commercial definition of “affiliate” in section 0.400 that would clarify that the commercial definition not be used for purposes of the SLG interpretation.

Ms. Miller went on to explain that the Task Force is recommending the presumption that the primary government has more than minimal influence over the accounting or financial reporting process over a discretely presented component unit be eliminated as requested by commenters, since these entities are legally separate and should be evaluated on a case by case basis. However, since funds and blended component units are not legally separate entities, the Task Force believes it continues to be appropriate to presume that the primary government has more than minimal influence over the accounting or financial reporting process but allow for members to rebut that presumption when appropriate. The Committee did not express any concerns with the Task Force’s intended approach and provided minor grammatical edits to the revised paragraphs.

Ms. Miller went on to explain that the Task Force continues to believe that it is appropriate to require the Independence Rule and related interpretations be applied to an excluded entity, as defined in the interpretation, since these entities would result in a GAAP departure and so should not be overly burdensome to identify.

Ms. Miller explained that the exposure draft provides for an evaluation using the conceptual framework when a member knows or has reason to believe a relationship or circumstance exists with non-affiliate that could create significant threats to independence. She noted that a number of commenters requested clarity on this provision. The Task Force recommends that it believes providing examples of situations covered members may have with non-affiliates would be helpful to clarify how the provision is intended to be applied. The Committee requested the Task Force discuss whether the provision was intended to include entities that were not funds, component units or activities (i.e., outside of the financial reporting entity) and to clarify the connection between the two entities included in example c.

The Committee requested that the Task Force revise paragraph .01 to make it clear that the examples of special purposes governments are not intended to pull in entities that aren’t state or local government entities (e.g., private university). The Committee also requested

paragraph .07 be drafted consistent with the nonattest services exception found in the Client Affiliate interpretation for commercial entities.

#### **9. IESBA Update**

Ms. Gorla explained that during the March IESBA meeting progress was made on the professional skepticism consultation paper and the non-assurance briefing paper which were both expected to be released any day. She explained that these papers would be used to facilitate several round table discussions on these topics and that Mr. Burke and she planned to attend the round table being held in DC.

Ms. Gorla noted that the fees questionnaire received 70 responses from various stakeholder groups so far and while further analysis of the responses is necessary, at a high level the views expressed varied between the groups. For example, many large practitioners do not believe further changes to the Code are needed for fees because they already have processes in their firms that go beyond the requirements of the Code. One professional body noted that while it believes fees do have an impact on independence, the impact might be more on audit quality rather actual or perceived independence.

She also noted that the Board discussed the feedback received on the Inducements, Including Gifts and Hospitality proposal with a goal of approving the proposal at the May meeting. Also, the Board received an update on the eCode project which is an initiative to take advantage of technological advancements and apply them to the Code in a way that is user friendly, efficient, and effective.

Ms. Gorla also noted that the Monitoring Group plans to publish a feedback statement over the course of the next month and expects to engage in a second consultation in the fall of 2018.