



**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS  
 PROFESSIONAL ETHICS DIVISION  
 PROFESSIONAL ETHICS EXECUTIVE COMMITTEE  
 OPEN MEETING MINUTES  
 November 6, 2018**

The Professional Ethics Executive Committee (Committee) held a duly called meeting on November 6-7, 2018 at the AICPA offices in Durham, NC. The meeting convened at 9:00 a.m. and adjourned at 4:00 p.m. on November 6, 2018. The meeting reconvened at 9:00 a.m. on November 7, 2018 and concluded at 9:45 a.m. on November 7, 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          Lisa Snyder          Kelly Hunter          Stephanie Saunders          Martin Levin</p> <p><b><u>Not in attendance:</u></b>          Shelly Van Dyne          Sharon Jensen          Greg Guin</p>
<p><b><u>Staff:</u></b>          James Brackens, VP - Ethics &amp; Practice Quality          Toni Lee-Andrews, Director          Ellen Gorja, Associate Director          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          Summer Young, Manager          Henry Grzes, Lead Manager – Tax Practice &amp; Ethics          Kristy Illuzzi, TIC Staff Liaison          Kelly Mullins – Manager, Support Services          Jackie Breeze – Administrative Assistant          Elaine Bagley – Administrative Assistant          Dee Talley – Administrative Assistant          Karen Puntch – Case Investigator</p>
<p><b><u>Guests:</u></b>          Jeff Lewis, Chair, Independence/Behavioral Standards Subcommittee</p>	

Ian Benjamin, Chair, Technical Standards Subcommittee  
Dan Dustin, NASBA  
Catherine Allen, Audit Conduct  
Nancy Miller, KPMG  
Jason Evans, BDO  
Kelly Hnatt, External Counsel  
Sonia Araujo, PwC  
Paula Tookey, Deloitte  
Jennifer Kary, Crowe Horwath  
Liese Faircloth  
James Dalkin, GAO  
Robert Cherry  
\*Barbara Romer, PwC  
\*Joe Scutellaro, Chair – AICPA Tax Practice & Ethics Committee  
\*Elliott Hendler, AICPA Independence/Behavioral Standards Subcommittee  
\*George Dietz, PwC  
\*Donna Oklok  
\*Gregory Arnott  
\*James Mytrohovich  
\*Flo Ostrum  
\*Farrell Steiner  
\*Heather Acker

\*Participated via phone

## 1. **Welcome and Introductions**

Mr. Burke welcomed the Committee.

## 2. **Leases**

Ms. Snyder presented the task force's agenda materials to the Committee, which included revisions to the exposed revisions to the Leases interpretation. Ms. Snyder noted that a specific subset of covered members (members of the engagement team, members in a position to influence the engagement, and the firm) are addressed in paragraph .02 and are subject to specific safeguards or requirements, including the requirement that the lease is not material to the covered member or the attest client. Since leases with other types of covered members are not specifically addressed in the revised interpretation, members would be required to use the Conceptual Framework to evaluate threats to independence created by a lease with the attest client. The Committee was in agreement with remaining silent, because the Code requires members to use the Conceptual Framework for scenarios that are not specifically address in the interpretations. In addition, if there is a change in circumstances after the lease us entered in compliance with paragraph .02, and the lease becomes non-compliant (for example, the lease becomes material to the covered member or the attest client), the member would be required to use the Conceptual Framework approach to evaluated the threats created by the circumstances. If the lease was not entered into during the period of professional engagement (i.e., entered into prior to independence being required), the member would apply the Conceptual Framework and

apply safeguards as necessary. The Committee made some minor edits and was in support of the proposed revisions.

Ms. Snyder presented the task force's proposed revisions to the Client Affiliates interpretation. The revisions provided that the Conceptual Framework approach would apply to leases between the subset of covered members named in paragraph .02 of the Leases interpretation and certain affiliates (type c – l) of the attest client. The Committee was in support of the suggested revisions.

Ms. Snyder noted that the task force suggested a final effective date of fiscal years beginning after December 15, 2019, with early implementation allowed.

It was moved, seconded, and unanimously passed to adopt the revised Leases interpretation and the revised Client Affiliates interpretation.

### **3. Staff Augmentation**

Ms. Snyder presented the task force's proposed standard to the Committee, and requested that the Committee approve exposure of the proposal for comments. The primary area of question was the notion of duration of an arrangement and related characteristics, such as frequency, exclusivity, and continuity. The task force's proposal included the term "limited period of time" to describe the concept as a safeguard in the proposal. However, some members questioned the clarity and suggested other terms such as short period of time. Some members noted that interpretation of short period of time can vary based upon the engagement. After discussion, the Committee determined that a question should be included in the exposure draft specifically requesting comment regarding the concept of duration and related terminology.

The Committee re-established its position that such arrangements are a non-attest service and that the proposed interpretation should be included within the Nonattest Services interpretation in the AICPA Code. In addition, the Committee agreed that it did not appear necessary to apply limitations for affiliates of an attest client at this time, although some noted that parent affiliates could create independence issues. The Committee agreed to include a specific request for comment regarding the limitations that should apply to affiliates and to revisit the issue in the comment period.

It was noted by several Committee members that some state board representatives are not in favor of the proposal in general, due to the potential impact on small firms that may perform services under such arrangements. There would be difficulty in knowing when a threshold is crossed from a duration view, more so with small firms. However, state board representatives will consider comments that come in through the comment letter review process and will update their position if necessary at a later date.

The Committee agreed that a proposed effective date with six months delay was appropriate, and a comment letter period of ninety days.

It was moved, seconded, and unanimously passed to expose the proposed interpretation for comment.

#### **4. Disclosing Information in Connection with a Quality Review**

Mr. Mercer and Mr. Grzes presented a summary of comment letters received in response to the exposure draft. Mr. Mercer noted that the primary suggested revision by staff is that the member should be satisfied that the reviewer is in compliance with the IRC requirements applicable to such reviews, rather than only aware of the requirements. After discussion, the Committee agreed that the member should be satisfied that the reviewer is aware and subject to the IRC requirements, rather than require the member to determine another's full compliance with the IRC.

After edits, it was moved, seconded, and unanimously passed to adopt the interpretation as revised, to be effective on the last day of the month in which notice appears in the Journal of Accountancy.

#### **5. Information Technology Services – Hosting Services**

Ms. Miller noted that the task force has begun clarifying the March 2018 proposed interpretation for better understandability and to help guard against obsolescence in a short period of time due to the rapid changes in technology.

In par. 01, the task force clarified that the interpretation applies to nonattest services, that is, does not address audit services, which resolved some of the comments.

The interpretation is financial statement audit-centric; the task force did not address other assurance engagements although they are considering a statement that would require members to analogize the interpretation to other nonaudit attest engagements, such as SOC engagements. Staff asked whether it would be preferable to revise the modified independence interpretation in the Code (1.297), which is applicable to nonaudit attestation engagements (e.g., SSAEs). One member thought adding a statement about other attest engagements would “muddy up” the interpretation. Ms. Miller noted that the Code does not include such independence guidance for other nonattest services and asked PEEC to consider other approaches. Some thought if the issue would not be discussed in detail in the interpretation, the task force should remove it completely as it adds confusion.

Jim Dalkin of the Government Accountability Office (GAO) thought this was an important issue – both in the US government and internationally. Another attendee noted that the issue of independence for nonaudit assurance engagements is currently on the IESBA's standard-setting agenda.

Ms. Miller noted that the task force's biggest challenge identified so far has been defining a financial information system (FIS). Defining certain prohibited activities is also a challenge. One member asked whether the task force would consider giving examples of a system that is not a FIS, e.g., e-mail, network systems, or SharePoint sites that (apparently) don't touch the financial statements.

The task force believes members will need implementation guidance, e.g., illustrations, etc. AICPA staff is keeping a running list. Guidance would be nonauthoritative; since technology changes so rapidly, using nonauthoritative guidance, e.g., a thought paper, and keeping the

Code's interpretation to concepts rather than detailed guidance, which may improve ongoing relevance.

#### **6. IESBA Update**

Ms. Gorla gave provided an update on the IESBA's recent activities. Ms. Gorla indicated that the professional skepticism project (renamed), which would apply to all professional accountants (not solely auditors), is moving forward, as are projects to examine nonaudit services and fees. Ms. Gorla noted that IESBA issued its Inducements standard and the AICPA staff has performed a gap analysis, concluding (at this point) that the AICPA Code appears to be more restrictive from an independence standpoint, but possibly less restrictive with respect to the Code overall (e.g., AICPA does not address the involvement of immediate family members). She will confirm whether IESBA considers inducements and independence an open issue, and if not, the PEEC can proceed with a convergence project on the subject.

#### **7. Monitoring Group**

Ms. Gorla provided an overview of the paper entitled "Perspectives on the Way Forward for Strengthening the Oversight and Operations of the International Audit & Assurance and Ethics Standards Boards" with the Committee. Ms. Gorla also noted that that the Public Interest Oversight Board and the MG have drafted a public interest framework. It was noted that the SEC Chief Accountant has been named chair of the MG. More information is expected in the coming months.

#### **8. NOCLAR**

Mr. Denham reported on task force activity since the August PEEC meeting. Mr. Denham, Ms. Hnatt, Mr. Brackens, and Ms. Lee-Andrews attended a combined UAA meeting to discuss NOCLAR on September 12-13th. At this meeting, Stavros Thomadakis, IESBA Chairman presented the evolution of NOCLAR at the international level and Mr. Denham presented PEEC's convergence efforts to date. In addition, breakout sessions were held with UAA committee members discussing their thoughts as to the direction of NOCLAR and included discussions regarding disclosure allowed or required when NOCLAR is discovered in attest engagements (after other measures are followed), disclosure of NOCLAR in non-attest engagements and if this determination should be deferred until a future date, and disclosure only allowed/required when corresponding whistleblower protection exists. There has been agreement that the PEEC NOCLAR task force should be expanded to include four additional UAA members (two AICPA UAA members and two NASBA UAA members) as well as the co-chairs. This approach will allow for more efficient progress moving forward. Though members of the UAA volunteered at the meeting to join the NOCLAR task force, NASBA wanted to wait until after their annual meeting to name their members as NASBA appoints their committee members after their annual meeting. Once those are determined, the next task force meeting will be scheduled. In addition, as previously reported, reach out has been made to several jurisdictions who reported on NOCLAR at the National Standard Setters meeting in May. Conversations with Canada and New Zealand have taken place thus far.

#### **9. External Directors**

Mr. McKeown presented the task force's agenda materials to the Committee. Mr. McKeown noted that the task force and staff have drafted a set of FAQ to address the applicability of

the Independence Rule to firms' external directors and will have a conference call in the near future to continue work on the FAQ. The general concept is that external directors may be covered members if they are in a position to influence the attest engagement (due to activities performed as a board member), and if they are not, they may be considered to be a professional employee of the firm. In either case, the task force is considering whether recusal would be an appropriate safeguard and whether other safeguards are appropriate in such situations. It was noted that not all directors would be involved in activities that would render the individual a covered member. One member suggested that the FAQ approach the question as what the director should avoid doing in his/her position. After discussion, Mr. McKeown noted that the task force would continue its discussions and report back to the Committee at the February meeting.

#### **10. Minutes of August 2018 PEEC Open Meeting**

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

#### **11. State and Local Government**

Ms. Miller discussed the latest revisions to the July 2017 ED that defines the affiliates of a SLG for purposes of independence.

##### *“Upstream” Entities*

Task Force Chair Nancy Miller said the task force believes there could be significant threats when an upstream entity (i.e., an entity that is “above” the financial statement attest client in its organizational structure) is affiliated with an audit client. However, the feedback received on the ED was that the operational cost of mandating the conceptual framework could outweigh the benefits. The task force offered the following compromise regarding when to apply the conceptual framework:

- Eliminate the mandate to consider upstream entities but say there could be situations where you would apply the framework; give several examples that are specific to the government environment.
- Create implementation guidance to assist members.

This results in an upstream entity not being treated as an affiliate, but members would consider situation when the application of the conceptual framework may be appropriate. Members expressed agreement with this approach.

##### *Re-exposure*

Ms. Miller stated that the task force believes there could be benefits gained from re-exposing the revised proposal, which they believe is responsive to the comments. However, they did not think re-exposure was necessary and asked the PEEC for their preference. PEEC members agreed it would be best to make final edits to the revised interpretation and vote on whether to re-expose to the membership for comment.

It was moved, seconded, and unanimously passed to re-expose the revised, proposed interpretation for a 60-day period.

The open meeting concluded at 9:45 a.m. on November 7, 2018.