



**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS  
 PROFESSIONAL ETHICS DIVISION  
 PROFESSIONAL ETHICS EXECUTIVE COMMITTEE  
 OPEN MEETING MINUTES  
 February 12, 2019**

The Professional Ethics Executive Committee (Committee) held a duly called meeting on February 12, 2019 at the Ritz Carlton in New Orleans, LA. The meeting convened at 9:00 a.m. and adjourned at 4:00 p.m. on February 12, 2019.

<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          Greg Guin*          Brian S. Lynch</p>	<p>William Darrol Mann          William McKeown          Steven Reed          James Smolinski          Lisa Snyder          Kelly Hunter          Stephanie Saunders          Shelly Van Dyne          Sharon Jensen</p> <p><b><u>Not in attendance:</u></b>          Martin Levin</p>
<p><b><u>Staff:</u></b>          Sue Coffey, Executive VP          James Brackens, VP - Ethics &amp; Practice Quality          Toni Lee-Andrews, Director          Ellen Gorla, Associate Director          Brandon Mercer, Senior Manager          Jennifer Clayton, Senior Manager*          Michele Craig, Lead Manager*          Summer Young, Lead Manager*          Liese Faircloth, Manager*          Iryna Klepcha, Manager*          Jennifer Kappler, Manager*</p>	<p>Melissa Powell, Manager*          Michael Schertzinger, Manager*          April Sherman, Manager*          John Wiley, Manager*          Shannon Ziemba, Manager*          Bob Dohrer, Chief Auditor*          Michael Glynn, Senior Manager*          Judith Sherinsky, Senior Manager*          Henry Grzes, Lead Manager – Tax Practice &amp; Ethics*          Kristy Illuzzi, TIC Staff Liaison*</p>
<p><b><u>Guests:</u></b>          Jeff Lewis, Chair, Independence/Behavioral Standards Subcommittee          Ian Benjamin, Chair, Technical Standards Subcommittee          Kelly Hnatt, External Counsel          Catherine Allen, Audit Conduct          Sonia Araujo, PwC          Dan Dustin, NASBA          Jason Evans, BDO          Jennifer Kary, Crowe Horwath          Nancy Miller, KPMG</p>	<p>Lindsey Fouts, KY SS*          Elliot Lesser, NY SS*          Kathy Meyer, MO SS*          Jessica Mytrohovich, GA SS*          Dora Burzenski, Deloitte*          Debbie A. Cutler, Cutler Forensics*          George Dietz, PwC*          Jeremy "Hank" Farrah, RKO-CPAs*          Kara Lomex*          Karen Moncrieff, Ernst &amp; Young*          Christine Piche, CLA*          Barbara Romer, PwC*</p>

Paula Tookey, Deloitte James Dalkin, GAO* Vassilios Karapanos, SEC* *Participated via phone	Anna Seto, TPRC/KMPG* Joan Sterling, BDO* Ivona Szady, Deloitte* Joseph Tapajna, TPRC/Deloitte* James West, BDO*
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1. **Welcome and Introductions**

Mr. Burke welcomed the Committee.

2. **Information Technology**

*Hosting Services*

The Committee discussed the hosting services FAQs and provided the following feedback to the Task Force:

- Members should not be required to terminate a client’s access to data or records in a portal prior to the effective date of the Hosting Services interpretation but that this should be done within a reasonable period of time as described in the third FAQ.
- The answer to the question regarding “whether having a third party’s general ledger software on the member’s server would result in the member providing hosting services to a bookkeeping client” should only explain when hosting services would be provided. The Committee did not believe the answer should also explain that the member would not be housing the attest client’s general ledger or data or records if the bookkeeping client has financial records in its possession in sufficient detail for a third party to perform a financial statement attest engagement.
- Helpful to draft a FAQ that would help members understand whether they would be providing hosting services if the member used software to facilitate the delivery of an otherwise permitted nonattest service such as payroll.

*Information System Services*

Ms. VanDyne reviewed the Task Force’s recommendations related to the feedback received on the “Information System Services” exposure draft. The Committee recommended certain editorial revisions and discussed the following subjects.

The Committee believed it was still unclear what the term “significantly” was intended to measure. The Committee suggested that it would be clearer that significance was intended to measure the impact on financial reporting matters as opposed to the significance of the management’s decisions if the phrase “about matters” was added after the phrase “decision making” to read as

“A system that gathers data that **is used in** assist management’s **decision** in making **that could significantly** decisions that directly impact **ing** financial reporting **matters, such as an analytical or reporting tool.**

A Committee member suggested the Task Force consider developing an FAQ to highlight that a dashboard is an example of an analytical or reporting tool. The Task Force was also asked to add an example of a system that is used only in connection with controlling the efficiency and effectiveness of operations but could never be used as a financial information system.

Ms. Van Dyne asked the Committee for its thoughts on what a member's responsibility would be should they encounter a situation where they are asked to design a system that can be used two ways, one which would significantly impact financial reporting matters and the other which wouldn't. The Committee believed the member has a responsibility to consider not only how the system would be used but how the system could be used.

The Committee requested the Task Force consider whether the level of significance should also be a safeguard, and to clarify whether "routine and mechanical" or some other description would help explain what is meant by a "discrete" calculation. The Committee requested the Task Force consider whether such clarification should be done within the interpretation or in an FAQ that emphasizes that a member should apply judgement when determining if the tool performs a discrete calculation. To demonstrate the importance of professional judgement and that clear lines can't be drawn, it was suggested that the Task Force consider drafting an FAQ that discusses the vast range of complexity in tax provision software.

The Committee agreed that the client's designated hosting site could include a "cloud-based server". While the Committee believed this phrase would be well understood it did request the Task Force discuss whether there might be a clearer phrase.

The Committee also recommended the Task Force revise the last sentence of paragraph .09 to eliminate the use of the double negative. Two suggestions were made on how this could be done. The first suggestion was to replace the last sentence "For purposes of this interpretation, configuring a COTS FIS financial information system software solution does not involve developing new software code or features to modify or alter the functionality of the COTS software solution in ways not pre-defined by the third-party vendor." with "If, however the member developed new software code or features that modify or alter the functionality of the COTS software solution, the member would not be providing configuration services." The second suggestion modified the first option slightly. In this option the last sentence would be modified instead of replaced as suggested in option 1 but then the to revise the last sentence to explain that configuration could include developing new software code or features to modify or alter the functionality of the COTS software, provided this was done in ways pre-defined by the vendor and then add the sentence suggested in option 1:

For purposes of this interpretation, ~~configuring a COTS **FIS** financial information system software solution does not involve~~ developing new software code or features to modify or alter the functionality of the COTS software solution **must be** in ways not pre-defined by the **third-party** vendor **in order to be considered configuring a COTS FIS software solution. If, however the member developed new software code or features that modify or alter the functionality of the COTS software solution, the member would not be providing configuration services.**

With respect to paragraphs .15 and .18 which discuss the use of an interface application, the Committee recommended it would be clearer if these paragraphs explained that the member would not be designing or developing code provided the interface application enables the COTS FIS to function as designed.

### **3. External Directors**

Mr. McKeown presented the agenda materials to the Committee. The materials included draft FAQ for the Committee's review. The FAQ address the application of the independence requirements to external directors of a firm. Mr. Brackens noted that some firms have "quality councils" that are advisory in nature, and asked if the FAQ covered such bodies. Mr. McKeown noted that the FAQ are only intended to address members of the firm's board of directors or similar body, rather than advisory councils.

Mr. McKeown reviewed the four FAQ with the Committee. As noted in FAQ1, the extant Code applies certain provisions to any professional employee, and contains additional provisions for covered members. FAQ1 stipulated that such individuals should be subject to the same requirements as any individual that is a covered member or a professional employee. For example, as noted in FAQ1, if the individual performed any of the functions listed in the definition of an individual in a position to influence the attest engagement, but was not already a professional employee, the individual would be a covered member and subject to the applicable requirements. Mr. McKeown noted that FAQ2 addresses controlled entities and immediate family of a covered member, which are not exempt from the provisions applicable to covered members. Mr. McKeown pointed out that FAQ3 addresses recusal as an appropriate safeguard. FAQ4 addresses scenarios where the individual is not a covered member and not a professional employee, utilizing the Conceptual Framework approach for such scenarios.

The Committee discussed the FAQ, making the following points:

- Financial interest and employment relationships are likely the most common independence concerns in such situations.
- Mr. Denham noted that the Board of Directors normally would not perform the activities noted in the definition of "covered member," but if supervising the CEO and deciding compensation, the definition of an individual under the position to influence the attest engagement would make the person a covered member. Another member noted that the definition includes "all successive senior levels." Mr. McKeown noted that the firm should be able to determine who is in the chain of command.
- Mr. Benjamin asked why recusal would be appropriate here, but not elsewhere in the extant Code. Mr. McKeown responded that recusal removes the individual from the role that makes him/her a covered member with respect to the specific attest client. Mr. Denham asked what the member would be recusing from, and Mr. McKeown pointed out that, for example, the member should recuse from any evaluation or compensation related activities of the appropriate individuals.
- Ms. Snyder pointed out that the Code would apply the requirements upward in the chain of command, not necessarily by a specific client. Additionally, Ms. Dourdourekas noted that the individual may just participate in firm wide matters related to his/her own firm, that are not necessarily applicable to a specific client.

Ms. Snyder noted that the requirement to consider independence factors should apply to the appropriate individual at the firm rather than the individual board member, who might not be a member of the AICPA and would not be subject to AICPA jurisdiction. That is, the appropriate individual should evaluate threats and safeguards. Regarding the use of "should consider," Ms. Snyder cautioned that such language may be viewed as a requirement, which

may not be appropriate for a nonauthoritative FAQ. The consensus was that the FAQ should be revised in that regard.

Mr. Burke asked the Committee if it is in the public interest to have external directors, should the task force be looking at an exemption to certain provisions. For example, if the individual is not involved in certain matters, the individual is not subject to certain independence requirements. Mr. Burke cautioned that the guidance should remove burden rather than adding it. Mr. Denham agreed that the current approach in the FAQ should be revised to reflect the approach recommended by Mr. Burke to avoid discouraging the practice. Mr. Campbell noted that the task force should inquire as to what other agencies or bodies input is on the matter before doing an exemption, of the Committee pursued that route.

Mr. McKeown agreed that he would collaborate with Mr. Mercer to revise the FAQ and bring the revised document for the Committee's review at the May 2019 meeting.

**4. Transfer of Client Files and Return of Client Records in Sale, Transfer or Discontinuance of Member's Practice**

Ms. Sherman presented the agenda item to the committee. The agenda proposed an FAQ that clarified that the *Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice* interpretation would apply in instances where a member sells his/her practice and remains an employee instead of an owner. The FAQ also clarifies that, if a member does retain ownership in the firm, the interpretation will not apply, regardless of the percentage of ownership. The Committee approved the FAQ.

Ms. Gorla questioned how paragraph .05 of the interpretation (which requires a member purchasing a practice to be satisfied that the selling firm gained client consent) would apply if the selling firm was is a nonmember (and thus not required to obtain consent). The Committee believed this to be a separate issue for staff to discuss and address at the next Committee meeting.

**5. References to Prior AICPA Code**

Mr. Mercer presented the agenda item to the Committee. Mr. Mercer noted that when the Code was revised effective December 15, 2014, a section in the Preface indicated that cross-references to the location in the prior Code and Appendix D (Mapping Document) would be included in the revised Code for a period of four years, until December 15, 2018. Mr. Mercer noted that ethics staff still find the cross-references helpful for cross-referencing and researching historic positions that may impact inquiries or enforcement actions and requests that the Committee retain the cross references. The only required action would be to revise the Preface to indicate that the references would remain in the Code without a removal date. Such changes do not require exposure to membership for comment. PEEC unanimously carried a motion to have staff make the revisions to the Code to retain the references and the Mapping Document.

**6. IESBA Update**

Ms. Gorla provide an update on the IESBA activities. She noted that IESBA finalized its Strategy and Work Plan (SWP) and the final document would be available shortly and that it included some projects that were currently underway like "Role and Mindset", "Fees" and "Consistency with ISAE 3000" as well as projects that were scheduled to begin shortly like

“Tax”. Ms. Gorla reported that IESBA is developing an e-code, which is expected to be launched during the second quarter of 2019. She also reported that IESBA would conduct a review of how and what challenges member bodies had implementing the NOCLAR and long association standards.

#### **7. Staff Augmentation**

Ms. Snyder noted that the comment letter deadline for the Staff Augmentation exposure draft is March 7, 2019 and that one comment letter came in prior to the meeting. The Task Force expects more comment letters to arrive by the deadline and will report on its comment letter review at the next Committee meeting.

#### **8. State and Local Government**

Ms. Miller reported that Staff is developing non-authoritative guidance to assist members with implementing the interpretation. She explained that the current plans include an implementation guide as well as a checklist but other materials may be developed once comments are received.

#### **9. Independence and Selected Procedures**

Mr. Mercer presented the agenda materials, which included background information and an explanation of the ask of PEEC, which is for feedback on questions presented by the ASB/ARSC task force addressing “Selected Procedures,” or engagements where there is no assertion made by the attest client and the client is not measuring or evaluating the subject matter against the specified criteria. In essence, the practitioner is measuring or evaluating the subject matter and reporting the results. During the comment letter process, questions were raised regarding the independence implications of such engagements. Mr. Mercer noted that PEEC and the Selected Procedures task force of PEEC previously communicated with the ASB/ARSC task force that independence from the subject matter was required, but that such engagements did not create additional threats to independence. Some members of PEEC and ASB held two conference calls recently to discuss the issues further, and it was determined that the prior PEEC positions as described in the agenda materials had not changed. However, most agreed that the positions of PEEC could be referenced in some manner by the standard or in some practice aid format regarding implementation. Mr. Lynch requested that examples may be needed to get better clarity on when these types of services are performed. Mr. Burke indicated that the May 2018 letter from PEEC to the ASB/ARSC task force had not changed. Staff agreed to formulate a final FAQ format document to address the ASB/ARSC questions and consider the FAQ at a subsequent meeting.

#### **10. NOCLAR**

Mr. Denham reported on task force activity since the November PEEC meeting. A joint task force consisting of an equal number of state board and AICPA members, while also being equally balanced between UAA members and PEEC members, will be formed in an effort to move forward in a collaborative manner. The purpose of this task force will be to develop a blueprint of the way forward with NOCLAR; specifically, to reach agreement on the major issues and determine where the issues should be addressed – the UAA or the Code of Conduct. Once such agreement is reached, the UAA Committee and PEEC NOCLAR Task Force will separately address language changes for their respective areas. Bob Denham (co-chair), Carlos Barrera, Stephanie Saunders, and Lisa Snyder will represent PEEC on the joint task force. Accordingly, the current PEEC NOCLAR Task Force will be suspending its

deliberations until the joint task force completes its work. At that time, this task force will resume discussions as to the applicable Code revisions.

#### **11. Association Update**

Ms. Coffey provided the Committee with an overall update of the Association.

#### **12. Strategy and Work Plan**

Ms. Lee-Andrews presented the agenda materials, which noted feedback received in previous outreach efforts to external and internal stakeholders regarding the types of issues PEEC should consider as part of its ongoing project agenda, in line with the Association Strategic Plan. Ms. Lee-Andrews requested that the Committee brainstorm and discuss any topics or issues that the PEEC Planning Subgroup and staff should consider in forming the PEEC Three-Year Project Agenda. The specific topics noted are listed below:

- *Modified independence for SSAE engagements*: As these engagements are based on the report being restricted use, are there any other services that should be included or excluded from the modified independence treatment in 1.297?
- *Business relationships*: Is there adequate guidance for subcontracting arrangements?
- *Cybersecurity, blockchain*: General awareness / education needed regarding the issue and obligations of members to report cybersecurity breaches.
- *De minimus provisions*: Should de minimus provisions extend to non-attest services? In addition, should areas such as unpaid fees or financial interests have similar provisions?
- *Gifts and Hospitality*: Should the AICPA converge with IESBA as it relates to gifts and hospitality?
- *Rules Comparison Tools*: Comparisons of AICPA and GAO/SEC/IESBA rules would be helpful to develop.
- *Marijuana Industry*: Does the Committee position on services provided to clients in the marijuana industry need to be updated or revised based on any state board or regulatory developments?
- *Additional Guidance for the following*:
  - o Outsourcing engagements
  - o Non-financial statement engagements (extant language focused on financial statement engagements, expanded guidance would be helpful)
  - o Financial interests in 529 Education Plans: challenging as it relates to identifying and evaluating the underlying investments.

Staff agreed to add the feedback to the comments previously obtained from stakeholders and work with the Planning Subgroup in working up the Committee's Three-Year Project Agenda.

#### **13. Minutes of November 2018 Open Meeting**

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

The open meeting concluded at 4:00 p.m. on February 12, 2019.