



Exposure Draft – Omnibus Proposal Conceptual Framework Summary of Comment Letters

Appendix Reference	Name
<u>A</u>	Walter J. Kucharski - Commonwealth of Virginia
<u>B</u>	Arthur A. Hayes – Tennessee Department of Audit
<u>C</u>	Chris Darragh – Montana Legislative Audit Division
<u>D</u>	James Kendrick, CPA
<u>E</u>	Thomas H. McTavish – State of Michigan Office of the Auditor General
<u>F</u>	Richard G. Edsall, CPA, Chair, Accounting Principles and Auditing Standards Committee – Florida Institute of CPAs
<u>G</u>	David Chandler, Chair, Accounting, Auditing and Review Standards Committee – Washington Society of CPAs
<u>H</u>	C. Jeff Gregg, Chair, Professional Standards Committee - Texas Society of CPAs
<u>I</u>	Eugene F. Svatek, Chair, Professional Ethics Committee - Ohio Society of CPAs
<u>J</u>	Edward J. Knauf, Chair PCPS Technical Issues Committee – AICPA
<u>K</u>	Auston G. Johnson, President, NSAA
<u>L</u>	Grant Thornton, LLP
<u>M</u>	Curtis R. Eakin, Chair Professional Conduct Committee – California Society of CPAs
<u>N</u>	Melanie Thompson, Presiding Officer, Texas State Board of Public Accountancy
<u>O</u>	Randy Tongier Kansas Legislative Post Audit
<u>P</u>	Stephen F. Langowski, President – New York State Society of CPAs



COMMONWEALTH of VIRGINIA

Auditor of Public Accounts

WALTER J. KUCHARSKI
AUDITOR

POST OFFICE BOX 1295
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(804) 225-3350

November 8, 2005

Lisa A. Snyder
Director, Professional Ethics Division
AICPA
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

Dear Ms. Snyder:

We appreciate the opportunity to respond to the AICPA exposure draft for the proposed revision to "Other Considerations" in Interpretation 101-1, *Interpretation of Rule 101*, under Rule 101, and proposed Conceptual Framework for AICPA Independence Standards. Our response contains issues we believe need additional consideration or clarification and we encourage you to consider them when finalizing the proposed framework.

We agree that independence is essential to our profession. However, in the complex modern world in which we operate, we also need a practical approach to defining independence. We believe a conceptual framework for independence, rather than a rules based approach, is the more practical way to approach independence.

A conceptual framework should provide the basis that is the foundation for all of the rules. Any specific rules that are necessary should build upon the framework. However, this exposure draft establishes a framework based on concepts not applied in the existing independence interpretations and rulings in Rule 101.

For example, under the existing guidance in Rule 101, no consideration is given to safeguards that would mitigate potential impairments. If the purpose of this exposure draft is to truly establish the conceptual framework for evaluating independence, the Institute should revisit the existing interpretation and rulings and apply the same concepts included in the framework.

We also have the following specific concerns:

In paragraph 21, while we agree that members should be aware of and understand the independence and ethics rules in order to evaluate whether they are independent, we do not believe that this would mitigate or eliminate the actual threat to independence and therefore are not a safeguard.

Appendix A

Lisa A. Snyder
November 8, 2005
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In paragraph 22, we do not believe members should consider safeguards implemented by an attest client when evaluating the independence of the member. The exposure draft indicates that safeguards should eliminate the threats or reduce to an acceptable level the threat's potential to compromise professional judgment. The **member** must use professional judgment when performing the service for the client. Therefore, we believe member's firm or the profession should create the safeguards in order for the member to be independent in appearance.

We appreciate the efforts of the Committee and the opportunity to provide our comments. Should you have any questions or need additional information regarding our response, please contact me or Martha Mavredes at (804) 225-3350.

Sincerely,



Walter J. Kucharski
Auditor of Public Accounts

WJK:aom

December 8, 2005

Lisa A. Snyder, Director
Professional Ethics Division
American Institute of Certified Public Accountants
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

Dear Ms. Snyder:

On behalf of the Department of Audit, we thank you for the opportunity to comment on the Exposure Draft (ED) of the proposed *Professional Ethics Division Proposed Revision to "Other Considerations" in Interpretation 101-1, Interpretation of Rule 101, Under Rule 101, and Proposed Conceptual Framework for AICPA Independence Standards*.

We generally agree with the proposed ED. However, we have the following suggestions to improve the document:

1. Page 5 – In addition to defining terms such as “independence, impair, threats, and safeguards,” the PEEC should also define or, at a minimum, clarify the term “reasonable person.”
2. Pages 5 & 14 – With the PEEC utilizing a risk-based approach for the independence Conceptual Framework, consider including a decision tree or flow chart in an appendix to assist practitioners in consistent application of the Code of Professional Conduct. The decision tree or flow chart would incorporate the seven broad categories of threats and the three broad categories of safeguards (or more based on comment #3 below).
3. Page 6 – The PEEC makes reference to seeking consistency with the IFAC’s and ISB staff’s conceptual frameworks on ethics. However, the PEEC appears to have made no consideration for the Independence Standard (principles-based) established by the Government Accountability Office (GAO). In particular, the GAO issued independence guidance (*Governmental Auditing Standards* issued by the Comptroller General of the United States) based on two overarching principles and several safeguards. Those principles and the safeguards should also be incorporated into the PEEC’s conceptual framework.
4. Page 9 – The PEEC should reevaluate or analyze ALL current Rulings and Interpretations to ensure that no conflicts exist with the Conceptual Framework, which should be the basis for those conclusions (e.g., ¶17 on page 12 of this ED is a perfect example).
5. Pages 5, 8, and 9 – The PEEC should clarify that this guidance is addressing personal impairments to independence.
6. ¶24 on page 14 – The last sentence should contrast with an unacceptable threat as described in ¶1 on page 9. Therefore, add to the last sentence the following phrase: “as opposed to an unacceptable threat as described in ¶1.”

Appendix B

Should you have questions or need clarification on any of our comments, please contact Gerry Boaz (615) 747-5262 or me at (615) 747-5251.

Sincerely,

Arthur A. Hayes, Director
Division of State Audit

Appendix B

To: Lisa A Snyder,
Director, Professional Ethics Division
lsnyder@aicpa.org

From: Chris Darragh
Senior Auditor

Date: December 12, 2005

Re: Proposed revision to “other considerations” in interpretation 101-1, interpretation of rule 101, under rule 101, and proposed conceptual framework for AICPA Independence standards. September 15, 2005

Staff members of the Legislative Audit Division have reviewed the proposed changes to interpretation 101-1 and the Conceptual Framework. We believe the goal of providing members with guidance in complying with the requirement, and the new requirement to document the threats to independence that are not at an acceptable level and the safeguards applied to address those threats have been met.

We have two comments over the Proposed Conceptual Framework for AICPA Independence Standards. While we understand that the examples cannot cover every situation, we suggest the Familiarity Threat could have an example of a best friend in a key position at a client. Independence issues always cover spouses and family members but never discuss other relationships, such as long-term friendships, that may create independence concerns. Our second comment related to Familiarity Threat is that a spouse (friend) could be in other “key positions” at a client that could affect a member of the attest engagement team’s independence rather than just the CEO position. We suggest incorporating other key positions, e.g. CFO and chief legal counsel, in the example.

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-----Original Message-----

From: James Kendrick [mailto:james4vintage@sbcglobal.net]
Sent: Tuesday, December 13, 2005 4:13 PM
To: Snyder, Lisa
Subject: Proposed Revision to "Other Considerations"

I am writing to comment on the Proposed Revision to "Other Considerations" in Int. 101-1 and Proposed Conceptual Framework (Sep. 15, 2005).

Although further defining standards and issuing guidance in the area of ethics is very important to our industry, consideration must be given to how new standards affect the small firm and sole-proprietors. Although the Conceptual Framework appears to be workable by larger, multi-office firms, to whom the proposal is directed, I'm sure, the safeguards are not, in many instances, practical in a small firm or sole-proprietorship.

For example, it seems to me that the issue dealing with "Financial self-interest" will set a barrier to entry into the attest market much too high for small newcomers. If a small company is presented with an opportunity to gain a large audit client, the "Financial self-interest" threat could preclude a small company from taking on the work for no other reason than that the fees charged could be substantial to the firm, thus creating "Financial self-interest." What would a small company be able to do in this case? The simple answer would be to generate more revenues elsewhere so that the threat would be eliminated. However, it is very difficult for a small firm or sole-proprietor who is just beginning its/his/her practice to generate more revenues. Is it fair to set a standard that would restrict the ability of a firm/sole-proprietor to grow his business quickly or enter new markets? Why should anyone have to give up the opportunity for a great account because the fees charged are substantially higher than the other services that they typically provide?

This is a threat to free market in the accounting industry among smaller firms and sole-proprietors. This risk will unfairly keep small firms out of the attest market. How is a small company or sole-proprietor supposed to apply safeguards when the staff may not be available to allocate the various duties required for safeguarding independence.

In addition, under the term "Financial self-interest," "Excessive reliance on revenue from a single attest client" is not defined. Does this mean that if 10% of revenues come from a client, or related group in which one of the parties is an attest engagement, you have a significant risk? What about 20% or 80%? What about an accountant that is just "going out on his own" and the client that makes it possible, by the amount of fees the accountant can charge, is an attest client? Of course this accountant is going to have a "Financial self-interest." However, to preclude such an individual from being able to perform the attest engagement in this situation is a serious threat to free enterprise, in my opinion.

I understand the need for dealing with the "Financial self-interest" threat, especially in light of Enron. However, the problem has been with the larger companies and usually not with the smaller companies. The "Financial self-interest" threat is a threat that will most likely affect the smaller company rather than the large companies. There needs to be some way for small companies to be able to evaluate independence without regard to "Financial self-interest." This would be necessary unless your goal is to prevent entry into the attest market and put small companies out of business or at best relegated to compete with the likes of H&R Block.

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Having to give up attest engagements because of "Financial self-interest" would personally put me out of business. When in fact, I am completely objective in my attest engagements regardless of the fee that I receive.

There needs to be an exceptions from overly burdensome standards that are impossible to comply with for the small firm. One of these exceptions needs to be for the "Financial self-interest." Would it not be possible to exclude firms with revenues under a certain level?

Sincerely,

James Kendrick, CPA



STATE OF MICHIGAN
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THOMAS H. MCTAVISH, C.P.A.
AUDITOR GENERAL

December 14, 2005

Ms. Lisa A. Snyder, Director
AICPA Professional Ethics Division
American Institute of Certified Public Accountants
Harborside Financial Center
201 Plaza Three
Jersey City, New Jersey 07311-3881

Dear Ms. Snyder:

We have reviewed the AICPA Professional Ethics Executive Committee's (the Committee) Exposure Draft (ED) – *Proposal of Professional Ethics Division – Proposed Revision to "Other Considerations" in Interpretation 101-1, Interpretation of Rule 101, Under Rule 101, and Proposed Conceptual Framework for AICPA Independence Standards* dated September 15, 2005. We generally agree with the provisions of the proposed ethics interpretation and conceptual framework. We consider this revision as beneficial to members as it will provide additional guidance when assessing situations not specifically addressed in other interpretations.

We considered the additional documentation requirements regarding the application of safeguards to threats to independence that are not at an acceptable level as appropriate for the circumstances.

We offer the following specific comments relating to the Conceptual Framework:

Paragraph 13d – We request the Committee define "officer" of the client. Could this term apply to a "middle manager" within a government unit or was this intended to only encompass "senior executive management"?

Paragraph 18 – The last line discusses limiting threats that compromise professional judgment. We interpreted "professional judgment" as a member's "independence of mind" as stated in paragraph 4a. We suggest the Committee also consider whether a safeguard can limit a threat to a member's "independence in appearance" as defined in paragraph 4b. Consequently, we suggest the

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Ms. Lisa A. Snyder
Page 2 of 2
December 14, 2005

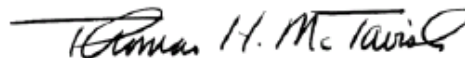
Committee consider replacing "compromise professional judgment" with "impair independence." We would consider the revised wording as encompassing both aspects of independence as defined in paragraphs 4a and 4b. For example:

To be effective, safeguards should eliminate the threat or reduce to an acceptable level the threat's potential to ~~compromise professional judgment~~ impair independence.

This same issue would also apply to the final words in paragraph 25b.

We appreciate the opportunity to comment on this Exposure Draft. Should you have any questions or desire further details on our comments, please contact me or Craig M. Murray, C.P.A., Director of Professional Practice.

Sincerely,

A handwritten signature in black ink that reads "Thomas H. McTavish". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Thomas H. McTavish, C.P.A.
Auditor General



FLORIDA INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

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December 14, 2005

Lisa A. Snyder, Director
Professional Ethics Division, AICPA
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201 Plaza Three
Jersey City, NJ 07311-3881

Via email: lsnyder@aicpa.org

Re: Exposure Draft: Proposed Revision to “Other Considerations” in Interpretation 101-1, *Interpretation of Rule 101*, Under Rule 101, and Proposed *Conceptual Framework for AICPA Independence Standards*

Dear Ms. Snyder:

The Accounting Principles and Auditing Standards Committee of the Florida Institute of Certified Public Accountants (the “Committee”) has reviewed and discussed the above referenced Exposure Draft

The Committee agrees with the Proposed Revision to Interpretation 101-1 and agrees that the increasing complexity of circumstances affecting independence warrants the establishment of a conceptual framework. However, the Committee has the following comments regarding the proposed conceptual framework:

- While the outline format is relatively easy to follow and organizes the thought process, the Committee believes that this should not be an all-inclusive “checklist” regarding all independence matters.
- The Committee agrees with the distinction between “impairments” of and “threats” to independence and understands that certain threats to independence may carry more weight than others, considering the individual circumstances and the availability of safeguards.
- Specifically, the Committee believes that item “c” under # 14, “Undue influence threat”, should be expanded to include services received from the client.

The Committee appreciates this opportunity to share our views and concerns. The members of the Committee would be pleased to discuss any questions that you might have regarding this communication.

Appendix F

Sincerely,

Richard G. Edsall

Richard G. Edsall, CPA, Chairperson
FICPA Accounting Principles and Auditing Standards Committee

Committee members assisting in this response:

Lillian M. Conrad, CPA
Richard G. Edsall, CPA



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Lisa A. Snyder, Director
AICPA Professional Ethics Division
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

Via Email: lsnyder@aicpa.org

December 8, 2005

Ladies and Gentlemen:

We are pleased to provide our comments on the *Proposal of Professional Ethics Division – Proposed Revision to “Other Considerations” in Interpretation 101-1*. Our comment is limited to the Text of Proposed Conceptual Framework definition no. 13 Familiarity threat.

We feel that definition #13(b) – *A partner of the firm who has provided the client with attest services for a prolonged period* is too subjective and should further define what constitutes a prolonged period and needs to provide guidance on safeguards to address this threat. Though these may seem simple issues for a larger firm who has multiple partners and offices, our concerns are directed to the numerous small firms and sole proprietorships providing independent attest services that do not have the options available to them of a larger firm. Without guidance on defining what constitutes a prolonged period or safeguards to address the threat, we feel that we are leaving this open for the attorneys to define for us in litigation. Without providing some guidance for smaller firms and sole proprietorships we may be leaving them no ability to provide independent attest services such as independent compilation reports just because they have provided this service for the client’s bank for

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several years. However, we do not feel that just because a service has been provided for several years necessarily adversely affects ones ability to be independent. Therefore we feel more guidance on defining what constitutes a prolonged period and the safeguards to address this threat are needed.

Respectfully submitted,

David Chandler
Washington Society of Certified Public Accountants
Chair, Accounting, Auditing and Review Standards Committee



Texas Society of
Certified Public Accountants

December 14, 2005

Lisa A. Snyder, Director
Professional Ethics Division
American Institute of Certified Public Accountants
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

RE: Proposed Revision to "Other Considerations" in Interpretation 101-1, *Interpretation of Rule 101, Under Rule 101, and Proposed Conceptual Framework for AICPA Independence Standards, and*

RE: Proposed new Interpretation 101-16 Under Rule 101: *Indemnification, Limitation of Liability, and ADR Clauses in Engagement Letters*. Proposed Deletion of Ethics Ruling No. 94 Under Rule 101. Proposed Deletion of Ethics Ruling No. 95 Under Rule 101. Proposed New Interpretation 101-17 Under Rule 101: *Performance of Client Advocacy Services, Fact Witness Testimony, and Forensic Accounting Services*.

Dear Ms. Snyder:

One of the expressed goals of the Texas Society of Certified Public Accountants (TSCPA) is to speak on behalf of its members when such action is in the best interest of its members and serves the cause of Certified Public Accountants in Texas, as well as the public interest. The TSCPA has established a Professional Standards Committee (PSC) to represent those interests on matters related to proposed changes in the standards of the accounting profession. We appreciate the opportunity to provide input into your deliberations on the above-referenced Exposure Drafts prepared by the AICPA Professional Ethics Executive Committee (PEEC).

The comments noted below regarding the above-referenced Exposure Drafts relate to issues the PSC would like the PEEC to consider prior to issuing the final versions of the exposure drafts. It may be assumed that any issue included in the exposure drafts not commented upon by the PSC are considered to reflect appropriate guidance acceptable to the PSC.

Our comments related to the exposure draft on *Other Considerations in Interpretation 101-1, Interpretation of Rule 101, Under Rule 101, and Proposed Conceptual Framework for AICPA Independence Standards* are as follows.

On page 8 of this exposure draft the phrase "a reasonable person aware of the relevant facts" is problematic. This phrase presumes, and ignores, that a reasonable person who is well respected but may not be aware of all the facts cannot raise a valid question about the independence of a member that others believe has credibility. If independence in appearance truly matters, you cannot ignore reasonable people who

Lisa A. Snyder
American Institute of Certified Public Accountants
Page Two

may not be aware of all the relevant facts. The solution to this dilemma seems to center on how to communicate one's independence.

The information in paragraph 1 on page 9 basically indicates that risk is acceptable even though a situation is perceived as compromising by a third party not having knowledge of all relevant information. This notion is somewhat compelling, but in most instances perception is reality. If the third party is highly respected in his or her field and/or community, his or her perception creates a risk that is being ignored.

Similarly, paragraph 4b on page 9 refers to "having knowledge of all relevant information." While this notion has relevance from a theoretical perspective, it does not really address the fact that a member's appearance of independence is based on what the observer perceives, whether or not that observer has knowledge of all relevant facts.

The issue of familiarity threats addressed in paragraph 13 on page 11 should be expanded to include other professional relationships (e.g., board memberships in common on non-client or not-for-profit entities) and non-professional relationships (e.g., social club memberships and civic organizations). Such relationships could cause third parties to question a member's independence because of the association that develops in these situations.

In summary, our reaction to this issue, regardless of the underlying direction of the Conceptual Framework, is that there are risks that result from a third party's perception of a member's independence that cannot be mitigated by merely stating that the third party does not have knowledge of all relevant information. We believe the solution is for the member to communicate why he or she would be independent in light of the appearance issues that exist.

Our comments related to the exposure draft on Proposed New Interpretations 101-16 and 101-17 are as follows:

Proposed Interpretation 101-16 states, "...there are critical differences between public or regulated entities and nonpublic companies...." The interpretation goes on to categorize the notion of indemnification and limited liability into types of damages (actual vs. punitive), types of parties (client vs. third parties), and types of acts (member negligence vs. client's knowing misrepresentation, willful misconduct or fraudulent behavior). We note that the SEC recognizes no such distinctions for public company auditors (FRR 602.02.f.i). We recommend that the PEEC enumerate what these critical differences are and explain how its notion(s) of various forms of indemnification and limited liability are supported by its definition of independence in its proposed Conceptual Framework. From a non-legal perspective it appears to our committee that the PEEC has complicated a simple concept by adding different scenarios that are not addressed or supported by the definition of independence found in the Conceptual Framework.

Regarding Proposed Interpretation 101-17 our committee believes the guidance will be helpful to members in understanding the impairment issues related to the provision of

Lisa A. Snyder
American Institute of Certified Public Accountants
Page Three

the services covered by the Interpretation. We further agree with the categorization and related definitions. Our only concern involves the guidance in the area of expert witness services. Our committee is of the opinion, based on individual experiences, that information obtained in relation to such services is normally subject to some form of confidentiality provision, either in the engagement letter or by court order. Thus, we feel that being engaged by an audit client to act as an expert witness will almost always result in an impairment of independence under the Proposed Interpretation.

On a practical level, let us assume one partner of a public accounting firm who is providing expert witness services to an audit client discovers information that would be critical to the audit partner and his or her engagement. However, due to a confidentiality agreement the information cannot be exchanged between the two partners. This would cause an interesting dilemma for the partner performing the expert witness service. If we consider this dilemma on a theoretical level we are hard pressed to support the conclusion reached by the PEEC. Thus, we support the notion that there would be a problem if one partner could not talk to another partner without reservation, but we would appreciate the PEEC clarifying the basis for its conclusion.

We appreciate the opportunity to provide input into the standard setting process.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Jeff Gregg". The signature is written in a cursive, slightly slanted style.

C. Jeff Gregg, CPA, Chair
Professional Standards Committee
Texas Society of Certified Public Accountants

December 16, 2005

Lisa A. Snyder, Director
Professional Ethics Division
AICPA
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

Dear Ms. Snyder:

The Professional Ethics Committee of The Ohio Society of CPAs reviewed the following exposure drafts and would like to submit comments for consideration:

Omnibus Proposal of Professional Ethics Division Interpretations and Rulings, dated September 15, 2005

Proposed Interpretation 101-16: Indemnification, Limitation of Liability, and ADR Clauses in Engagement Letters:

1. Paragraph 2: "...where the member seeks to limit or eliminate his or her liability with respect to actual damages arising from the member's negligence or the client's negligence, independence would be considered to be impaired. In such cases, the threat to independence posed by a member's performance of insufficient attest procedures in reliance on the belief that he or she is protected through an indemnification or limitation of liability clause could not be reduced to an acceptable level."

The committee had several significant concerns about the above assumption:

- This interpretation potentially swings open the gate of lawsuits against CPAs with respect to interpretations about what constitutes ordinary rather than gross negligence.
- The committee questioned the base presumption that the presence of an indemnification or limitation of liability clause for client negligence is a likely threat to independence that would lead to conducting insufficient attest procedures.
- If the underlying fundamental proposal addresses insufficient attest procedures, then standards establishing guidelines for sufficient attest procedures should be adopted. This is a better approach than tying the standard to negligence limitations, which may or may not be directly related to the same.

Appendix I

- As noted in paragraph 5, conducting insufficient attest procedures is a violation of due care and adherence to professional standards, which the committee considers appropriate.
 - The committee is concerned that the implication of the above assumption is an additional obligation for the practitioner to audit for client negligence, in excess of the requirements of professional standards.
2. The committee had the following additional concerns about engagement letters under this interpretation:
- This interpretation draws some fine distinctions that will upon occasion require legal interpretation, adding a compliance burden of questionable benefit.
 - Who will be responsible for “policing” engagement letters to interpret whether indemnification and limitation of liability clauses are in compliance with the interpretation (will this become an additional requirement of peer reviewers?)
 - The exposure draft should include sample engagement letter language, so that practitioners can respond on an informed basis about the liability implications of required language changes.
 - The committee had significant concerns that this interpretation voluntarily and unnecessarily exposes the profession to additional liability not necessary to comply with the letter or intent of professional standards.
 - Misdrafting an engagement letter now becomes a 101 violation, subjecting the member to a potential loss of membership rights, rather than a 202 violation, typically requiring corrective action.
3. Committee members advanced the following technical comments:
- Throughout the interpretation, language should be clear that this requirement applies to all attest services, not just audits.
 - Committee members were concerned that the draft does not sufficiently outline the rationale for the threat discussed in point 1, and fears additional “trickle down” from SEC rules without sufficient consideration of applicability to private company attest engagements. Recommended voluntary implementation of such “trickle down” has already been seen in non-AICPA implementation materials such as PPC guides.

Proposed Interpretation 101-17, Performance of Client Advocacy Services, Fact Witness Testimony, and Forensic Accounting Services:

4. The exposure draft suggests that if the CPA is engaged to be a consultant or expert on a litigation support engagement, the CPA must either have the client and attorney specifically waive attorney client privilege to accept an attest engagement for that client, or the CPA may not accept the

engagement, due to the threat that the CPA may encounter information relevant to the attest engagement.

The committee discussed many situations where the nature of the litigation support services is such that the likelihood of encountering information relevant to the attest engagement is remote. The committee recommends the alternative that the acceptance of the attest engagement be prohibited when there is a reasonable expectation that there will be information that could have a material impact on the financial statements or attest report.

5. Throughout the interpretation, references to the “period of the professional engagement” should be clarified as to whether they reference the attest engagement or the consulting engagement.

Proposed Revision to “Other Considerations” in Interpretation 101-1, Interpretation of Rule 101, Under Rule 101, and Proposed Conceptual Framework for AICPA Independence Standards

6. While the committee agrees with the base presumption of this draft, referencing the conceptual framework when there is not a specific rule that applies, committee members expressed that the conceptual framework should remain principles-based. Examples of specific safeguards and threats as outlined in the draft were recommended to be included in non-authoritative practice aids and implementation guidance.

The risk proposed by the threats and safeguards listed for consideration in the draft is that their inclusion in authoritative guidance elevates what the committee considered best practices to a new level. When faced with litigation, the CPA will not be asked how they assessed these options in evaluating and establishing independence; instead, they will be asked why they did not implement all of them. Implementing the guidance in recognition of this legal threat will cause practitioners to hold ourselves to a higher standard than objectivity requires.

7. The committee had particular concern with the inclusion of the following:
 - 13(b) Familiarity threat: A partner of the firm who has provided the client with attest services for a prolonged period
 - 23(f) Safeguards within the firm’s own systems and procedures: The use of different partners and engagement teams that have separate reporting lines in the delivery of permitted nonattest services to an attest client, particularly when the separation between reporting lines is significant.

The implication of these two examples in combination is that firms with one attest partner cannot have sufficient safeguards in place to mitigate some threats (i.e. sole proprietors should not provide attest services?)

Appendix I

Professional Ethics Committee
Letter of Comment
December 16, 2005

8. The committee believed that the following safeguards were more appropriate for public company engagements, and should be deleted:
 - 23(t) The involvement of another firm to perform part of the attest engagement
 - 23(y) Policies that preclude audit partners from being directly compensated for selling nonattest services to the audit client.

The committee appreciates the opportunity to respond to the AICPA Professional Ethics Executive Committee proposals. If you have any questions about the committee's discussions, I can be contacted at 216.573.2330 or g.svatek@walthall.com.

Sincerely,

Eugene F. Svatek, CPA
Chair, Professional Ethics Committee
The Ohio Society of CPAs

December 19, 2005

Ms. Lisa Snyder, Director
Professional Ethics Division
American Institute of Certified Public Accountants
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201 Plaza Three
Jersey City, NJ 07311-3881

Re: September 15, 2005 Exposure Draft (ED) of a Proposed Revision to “Other Considerations” in Interpretation 101-1, *Interpretation of Rule 101*, Under Rule 101, and Proposed *Conceptual Framework for AICPA Independence Standards*

Dear Ms. Snyder:

One of the objectives that the Council of the American Institute of Certified Public Accountants (AICPA) established for the PCPS Executive Committee is to act as an advocate for all local and regional firms and represent those firms’ interests on professional issues, primarily through the Technical Issues Committee (TIC). This communication is in accordance with that objective.

TIC has reviewed the proposed exposure draft and is providing the following comments for your consideration.

GENERAL COMMENTS

TIC agrees that a conceptual framework document to help practitioners evaluate relationships between a member and a client, not specifically addressed in the AICPA Code of Conduct, would be helpful in identifying potentially unacceptable threats to independence. TIC also believes that:

- A risk-based approach is the best method for assessing potential threats in these circumstances; and
- Members that identify threats that compromise their objectivity (prior to applying safeguards) should be required to document such threats and the safeguards applied to eliminate the threat or reduce it to an acceptable level.

However, TIC believes several changes should be made to the ED before it is finalized and incorporated into the authoritative literature.

TIC believes there are key elements missing from the definition of independence and that the relationship between independence of mind and appearance needs clarification. TIC

Appendix J

recommends that the ED be revised to more closely mirror the key principles in the Independence Standards Board (ISB) Staff Report, *A Conceptual Framework for Auditor Independence* (July 2001).

Other changes necessary to improve the usefulness and flow of the document include changes in the placement of the discussion of the risk-based approach, an alternative presentation of illustrative examples and more guidance concerning the evaluation of safeguards for public interest entities.

Our specific comments below discuss these concerns in greater detail.

SPECIFIC COMMENTS

Definition of Independence

In evaluating this ED, TIC reviewed several old documents published by the ISB on a conceptual framework for auditor independence (Discussion Memorandum: DM 00-1 [February, 2000], Exposure Draft ED 00-2 [November, 2000], TIC's comment letters thereon and a final ISB Staff Report [July, 2001].

Based on this review, TIC noted that the conceptual framework is lacking a statement of goals/objectives, which is needed to serve as an appropriate foundation for resolving independence issues in the absence of specific authoritative guidance. In addition, TIC believes the existing definitions in the PEEC ED blur the distinctions between independence of mind and independence in appearance and cause the framework to be harder to understand.

TIC therefore recommends that the PEEC framework be revised as follows to incorporate a number of elements from the ISB Staff Report (the Report) cited above:

- Begin with a statement that explains one of the key goals of auditor independence—to enhance audit quality by ensuring, to the extent possible, that an auditor has the requisite objectivity to make unbiased audit decisions. Paragraph 1 of the ED alludes to this goal, but needs to be identified as such and more prominently presented.
- Replace the definitions in paragraphs 4 and 5 of the PEEC ED with the definition of auditor independence in the Report, but modify the ISB's definition of independence to exclude the word independence (i.e., the word being defined):

Auditor independence is both (a) independence of mind—freedom from the effects of *threats* that would be sufficient to compromise an auditor's objectivity and (b) independence in appearance—absence of activities, relationships, and other circumstances that would lead well-informed investors and other users reasonably to conclude that there is an unacceptably high risk that an auditor's objectivity would be compromised.

- Incorporate paragraphs 6 and 9 from the Report, which frame the two dimensions of the definition around the personal attributes of the auditor and the rules regarding relationships and activities imposed from third parties. TIC believes the following language will clarify the distinction between the two elements of independence::

The definition of auditor independence recognizes that auditor independence has two dimensions—*independence of mind* and *independence in appearance*. *Independence of mind* is a personal attribute of an auditor that cannot be directly assessed by investors and other users. The definition, therefore, also includes *independence in appearance*, which is the absence of those activities, relationships, and other circumstances that would lead well-informed investors and other users reasonably to conclude that there is an unacceptably high risk that an auditor’s objectivity is compromised [Source: paragraph 6 of the Report].

The definition, however, means that auditor independence is more than just compliance with authoritative guidance—not every threat that may be a source of bias or that would lead well-informed investors and other users reasonably to conclude that there is an unacceptably high risk that an auditor lacks objectivity can be identified and covered by a rule. To be independent, an auditor must be able, and a reasonable well-informed investor or other user would expect the auditor to be able, to overcome the effects of threats that would compromise objectivity. Accordingly, even if existing authoritative guidance permits, or does not limit or forbid, a particular activity, relationship, or other circumstance—for example, auditing a company in which the chief financial officer is the auditor’s close friend—an auditor is not independent if his or her objectivity is compromised, or if well-informed investors and other users reasonably would conclude that there is an unacceptably high risk that the auditor’s objectivity is compromised as a result of that activity, relationship, or other circumstance. In other words, compliance with authoritative guidance is a necessary, but may not be a sufficient, condition for independence [Source: paragraph 9 of the Report].

TIC also questions whether the words “*compromise*” and “*impair*” have been used in the appropriate contexts in the PEEC ED. The ISB Staff Report (Paragraph 7, footnote 3), as well as typical dictionary definitions, take a contrary position, indicating:

As used in this conceptual framework, an auditor’s objectivity is “*impaired*” if it is negatively affected to any degree; objectivity is “*compromised*” if the impairment rises to the level of precluding unbiased audit decisions.

Appendix J

TIC suggests paragraphs 6 and 8 of the ED be reexamined to ensure that correct terminology has been used.

Risk-Based Approach

The ED describes the risk-based approach to analyzing independence and states that the concepts in the ED are incorporated into the approach.

TIC believes the risk-based approach should be presented toward the beginning of the Framework before specific threats are listed. The approach is central to the purpose of the ED and should be given more prominence. The definitions of the various threats and safeguards should be listed after all key concepts are discussed. TIC therefore suggests that paragraphs 24-26 be renumbered and moved to follow paragraph 6. The major heading entitled “Definitions” could be eliminated.

Illustrative Examples of Threats

In general, the examples provided for each of the threat categories are more confusing than helpful. In a number of instances, the examples represent threats that have been addressed by specific sections of the Code of Conduct (e.g., paragraphs 10a, 11a, 13a, 13d, 14c, 15a, part of 15b, 15d, 16a, 16c). According to the stated purpose of the ED, these threats would be outside the scope of the Framework and would not be subject to the risk-based approach. To avoid misapplication of the ED, TIC recommends that these examples be removed.

TIC favors an alternative methodology for illustrating the application of the risk-based approach. TIC believes all specific examples should be deleted (or at least kept to a minimum) so that the framework would not have to be updated for specific examples named in the ED today that may be resolved by new standards tomorrow.

TIC is also concerned that some readers may automatically assume that each example cited should be interpreted as an unacceptable risk that would have to be documented. TIC believes this interpretation is likely given the terminology used in the last sentence of paragraph 9 of the ED (“examples of each of these threat categories”), which could imply to some that every instance of the named threat is unacceptable. TIC believes the language of the ED needs to be worded carefully to avoid the impression that the framework is concluding that the named threats would always compromise independence.

Instead, two illustrations should be presented at the end of the Framework that would describe the process of evaluating the threats. One illustration would demonstrate how to decide when a threat is unacceptable and conclude that independence is impaired. The other illustration would show how safeguards can be applied successfully to eliminate or mitigate threats and maintain the auditor’s independence. These illustrations would also serve as convenient documentation models and would help to mitigate TIC’s initial

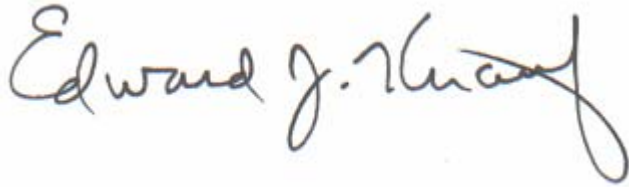
concerns regarding the new requirement to document unacceptable threats and the safeguards applied.

Public Interest Entities

Paragraph 26 of the ED implies that a higher level of assurance from safeguards is required for public interest entities, as defined. If PEEC has concluded that safeguards need to be more effective for public interest entities, the reasons should be discussed in the body of the standard—not just a footnote – and the standard should provide more guidance on how safeguards would differ for these entities. As written, TIC is uncertain whether it is possible to define clear differences in independence for one type of entity v. another. This paragraph could raise special concerns for practitioners who have served as auditors for the same not-for-profit organizations for many years and may need to address the familiarity and financial self-interest threats.

TIC appreciates the opportunity to present these comments on behalf of PCPS member firms. We would be pleased to discuss our comments with you at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Edward J. Knauf". The signature is written in dark ink and is positioned below the word "Sincerely,".

Edward J. Knauf, Chair
PCPS Technical Issues Committee

cc: PCPS Executive and Technical Issues Committees



National State Auditors Association

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www.nasact.org

December 21, 2005

Ms. Lisa A. Snyder
Director, Professional Ethics Division
AICPA
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

Dear Ms. Snyder:

On behalf of the National State Auditors Association, we appreciate the opportunity to respond to the AICPA Professional Ethics Executive Committee's (PEEC) Exposure Draft of the proposed revision to "Other Considerations" in Interpretation 101-1, *Interpretation of Rule 101*, under Rule 101, and proposed *Conceptual Framework for AICPA Independence Standards*.

We generally agree with the proposed provisions contained in the ED and believe this document will be beneficial to members in evaluating independence matters not covered by existing interpretations or rulings. However, we do have the following concerns:

- The proposed *Conceptual Framework* should contain descriptions that make it clear of the intent of the proposed revisions to the "Other Considerations" section of Interpretation 101-1 with respect to when the auditor should document his or her evaluation of independence situations. Taken literally, many of the auditor's normal activities during an attest engagement will fall within the definitions of the seven broad categories of threats detailed in the proposed framework. This could result in situations in which auditors, their supervisors, their reviewers, or their peer reviewers conclude that those threats should be identified and evaluated against independence (step 25.a. in the proposed framework). However, those same people may also expect every one of those situations, and the resulting evaluations, to be documented in the auditor's working papers. However, according to the proposed revisions to the "Other Considerations" section of Interpretation 101-1, only those situations where threats to independence are deemed at an unacceptable level call for such documentation (step 25.b. in the proposed framework). This appears to mean, and we agree, that an auditor who identifies and evaluates threats to independence that do not require safeguards need not add these evaluations to the working papers. Therefore, to avoid improper interpretations of the Framework and unnecessary additional documentation in the working papers, the PEEC should clearly explain in the proposed *Conceptual Framework* when the auditor's identification of situations and resultant evaluation should be documented, and when they need not. In addition, examples of this documentation would be helpful.
- The last sentence in paragraph 18 discusses limiting threats that compromise professional judgment. We interpreted "professional judgment" as a member's "independence of mind" as stated in paragraph 4.a. We suggest the PEEC also consider whether a safeguard can limit a threat to a member's "independence in appearance" as defined in paragraph 4.b. Consequently, we suggest the PEEC consider revising the last sentence to read, "To be effective, safeguards should eliminate the threat or reduce to an acceptable level the threat's potential to impair independence." We believe this wording encompasses both aspects of independence as defined in paragraphs 4.a. and 4.b. This same issue would also apply to the last sentence in paragraph 25.b.

- The proposed *Conceptual Framework* should provide clear explanations of how the safeguards in paragraph 21 mitigate threats to independence. Paragraph 21 lists safeguards created by the profession, legislation, or regulation. However, it is not readily clear how these mitigate circumstances related to threats to independence. Auditors have to meet the requirements listed in paragraph 21 just to be CPAs or members of an audit organization. This is all part of our normal practice as practitioners. It is not clear, then, how something that is part of our base expectations can then later mitigate an identified threat. Certainly, the PEEC views the items in paragraph 21 as more than that. Accordingly, the PEEC should better explain the nature of these safeguards if they are to be effectively used in the auditor's evaluations.
- We do not believe members should consider safeguards implemented by an attest client when evaluating the independence of the member as provided for in paragraph 22. The ED indicates that safeguards should eliminate the threats or reduce to an acceptable level the threat's potential to compromise professional judgment. The member must use professional judgment when performing a service for the client. Therefore, we believe the member's firm or the profession should create the safeguards in order for the member to be independent in appearance.

In addition to the comments above, we have some additional comments attached that we believe the PEEC should consider to improve the clarity and understanding of the final document.

We appreciate the opportunity to respond to such an important document. Should you have any questions or need additional information regarding our response, please contact Sherri Rowland of NSAA at (859) 276-1147 or me at (801) 538-1360.

Sincerely,



Auston G. Johnson
President, NSAA

AICPA Proposed Revision to “Other Considerations” and
Proposed *Conceptual Framework for AICPA Independence Standards*
Attachment

Page/ Paragraph	Other Comments
Page 5	In addition to defining terms such as “independence, impair, threats, and safeguards,” the PEEC should also define or, at a minimum, clarify the term “reasonable person.”
Pages 5 & 14	The PEEC should consider including a flowchart in an appendix to assist practitioners in consistent application of the Code of Professional Conduct. The flowchart would incorporate the seven broad categories of threats and the three broad categories of safeguards.
Pages 5, 8, & 9	The PEEC should clarify that this guidance is addressing personal impairments to independence.
Page 6	The PEEC makes reference to seeking consistency with the IFAC’s and ISB staff’s conceptual frameworks on ethics. However, the PEEC appears to have made no consideration for the Independence Standard (principles-based) established by the Government Accountability Office (GAO). In particular, the GAO issued independence guidance (<i>Governmental Auditing Standards</i> issued by the Comptroller General of the United States) based on two overarching principles and several safeguards. Those principles and safeguards should also be considered and, where appropriate, incorporated into the conceptual framework.
Page 8	In the second sentence, we recommend the term “should” be replaced with “must.” The use of “should” implies a presumptive requirement. This provision appears to be a requirement and using the term “must” would be more appropriate.
Pages 10-12	These pages discuss the seven broad categories of threats and provide examples of each. It seems that many of these examples have already been addressed through separate guidance as being independence conflicts. Because the framework is also intended to provide guidance on areas not otherwise addressed and for which safeguards might be applicable, we would suggest that additional examples be included for which safeguards might be applied. The addition of some examples, including the thought process of applying specific safeguards to mitigate the independence risk, would be quite useful.
Page 11, para. 13	Because the “Familiarity threat” could be very broadly interpreted, especially the concepts of “knowing individuals” and “including by reputation,” we suggest the PEEC provide some additional guidance concerning its intent regarding this threat, including some examples to clarify the point at which the PEEC believes the line is crossed with regard to a member becoming too “familiar” with the attest client.
Page 11, para. 13.d.	We request the PEEC define “officer” of the client. Could this term apply to a “middle manager” within a government unit or was this intended to only encompass “senior executive management?”
	Editorial Comments
Page 8	For grammatical consistency, it would seem the next to last sentence should read as modified in bold/underscore and overstrike: “If the threats to independence are not at an acceptable level, safeguards should be applied to eliminate the threats or reduce them to an acceptable level.”
Page 14, para. 24	The last sentence should contrast with an unacceptable threat as described in paragraph 1 on page 9. Therefore, add to the last sentence the following phrase: “as opposed to an unacceptable threat as described in paragraph 1.”

January 4, 2006

Professional Ethics Executive Committee
% Lisa A. Snyder, Director
Professional Ethics Division
American Institute of Certified Public Accountants
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

Dear Ms. Snyder and Committee Members:

Grant Thornton LLP (“Grant Thornton” or the “Firm”) appreciates the opportunity to comment on the American Institute of Certified Public Accountants (“AICPA”) Professional Ethics Executive Committee (“the PEEC”) exposure draft, *Proposed Revision to Interpretation 101-1, Including Application of the Conceptual Framework for AICPA Independence Standards*, (“Conceptual Framework”). Grant Thornton is in substantial agreement with the proposed revision to Interpretation 101-1. We commend the PEEC for proposing a principles-based interpretation of independence standards to assist an AICPA member determine whether certain relationships, services, or other factors pose an unacceptable threat to his or her independence.

As discussed in our “Five-Point Plan to Restore Public Trust,” the Firm has long supported a principles-based approach that would foster more concern about the substance of transactions rather than their form. We believe that a rulebook approach for independence standards setting fosters a culture of “if the rulebook does not specifically forbid it, it must be okay” mentality. In practice, there are many circumstances that are not covered by independence rules and interpretations. Therefore, an AICPA member must use his or her professional judgment to assess whether independence is impaired either in fact or in appearance. The Conceptual Framework as an authoritative framework provides a reasonable and comprehensive threats and safeguards framework for the member’s analysis. If the member can demonstrate that he or she applied safeguards to eliminate unacceptable independence threats or reduce them to an acceptable level, independence is not considered impaired.

Further, we believe that the threats and safeguards approach also enhances the international alignment and harmonization of the AICPA’s independence rules and interpretations with the International Federation of Accountants ethical requirements.

We are concerned that the Conceptual Framework identifies “public interest entities” in a footnote to the Conceptual Framework. Due to the relative importance of this definition in applying the risk-based approach as well as its importance to other AICPA standard setting bodies, such as the Auditing Standards Board, we suggest that the PEEC defer inclusion of the definition until further deliberation of the term and the use of the term can occur.

We also concur with the PEEC’s proposed requirement that independence threats that are not at an acceptable level and the related safeguards applied to address those threats should be documented. We also concur with the PEEC’s conclusion that a failure to document that he or



she applied safeguards to eliminate unacceptable threats or reduce them to an acceptable level is non-compliance with professional standards rather than an independence impairment.

However, we suggest that PEEC may want to consider a reasonable transition period for the effective date of the requirement to permit changes in independence policies and training programs, including the AICPA's independence and ethics course, to take place.

If the Division of Ethics staff or PEEC task force members have questions regarding our comment letter, please feel free to contact Karin A. French, Partner in Charge of SEC/Regulatory at karin.french@gt.com or 703-847-7533.

Very truly yours,

/s/ Grant Thornton LLP

December 9, 2005



California
Society
Certified
Public
Accountants

Lisa A. Snyder, Director
AICPA Professional Ethics Division
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

RE: Proposed Revision to "Other Considerations" in Interpretation 101-1, Interpretation of Rule 101, and Proposed Conceptual Framework for AICPA Independence Standards September 15, 2005 ("Proposed Revision")

Omnibus Proposal of Professional Ethics Division Interpretations and Rulings September 15, 2005 ("Omnibus Proposal")

Dear Ms. Snyder:

The Professional Conduct Committee of the California Society of Certified Public Accountants has recently reviewed the above referenced Exposure Drafts and submit the following comments for consideration by the AICPA Professional Ethics Executive Committee in their deliberations prior to adopting the Exposure Drafts.

We are in substantial agreement with the Proposed Revision exposure draft. However, we have several suggestions which could improve its understanding and clarity.

We believe that an additional item should be added to Paragraph 23 – *Safeguards within the firm's own systems and procedures*. The addition would state that a company's compensation policy should not be based on the fees of a single attest client or a few attest clients. This would reduce undue pressure on an individual to which a client may be material even though not necessarily material to the firm as a whole.

We also recommend that the final pronouncement include an interpretation section in the form of questions and answers giving examples of how *threats* may be mitigated.

We are also in substantial agreement with the Omnibus Proposal exposure draft. However, we recommend that the final pronouncement for Proposed Interpretation 101-17 also include an interpretation section in the form of a matrix giving examples of the impact on independence of client advocacy services, fact witness testimony, and forensic accounting services.

We appreciate the opportunity to comment on the exposure draft and trust that our comments will be considered by the AICPA Professional Ethics Executive Committee.

If there are any additional questions or there is a need for additional clarification, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Curtis R. Eakin", with a long horizontal flourish extending to the right.

Curtis R. (Curt) Eakin, CPA
Chair, Professional Conduct Committee
California Society of Certified Public Accountants

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Redwood City, CA
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Texas State Board of Public Accountancy

333 Guadalupe, Tower III Suite 900, Austin, Texas 78701-3900

William Treacy, Executive Director

November 14, 2005

Ms. Lisa A. Snyder
Director, AICPA Professional Ethics Division
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

Re: Comments regarding proposed revision to "Other Considerations" in interpretation 101-1, *Interpretation of Rule 101*, under Rule 101, and proposed Conceptual Framework for AICPA Independence Standards.

Dear Ms. Snyder:

The Texas State Board of Public Accountancy ("Texas Board") is quite impressed with the proposed Conceptual Framework for AICPA Independence Standards proposed by the Professional Ethics Executive Committee ("PEEC") of the AICPA and applauds PEEC's effort to emphasize the need for a continuous evaluation of independence throughout the professional relationship with a client. This proposal clearly places the burden on the member to document his independence analysis and to make a reasoned conclusion regarding whether independence may be impaired based on that analysis. The Conceptual Framework provides the tools to make a step by step analysis, not heretofore addressed, and make this reasoned conclusion. It is our belief that the proposed revision and interpretation will become the "audit program" for evaluating independence by firms providing attest services.

The Texas Board understands that the failure to adequately document the independence analysis described in the "Other Considerations" interpretation would be a violation of Rule 202, Compliance with AICPA Standards. However, in this reference independence would not necessarily be impaired if the member "can demonstrate that he or she did apply safeguards to eliminate unacceptable threats or reduce them to an acceptable level". We would propose the interpretation be expanded to clearly communicate to warn the member that proving independence had not been impaired "after-the-fact" may be substantially more difficult than the ongoing assessment throughout an engagement using appropriate documentation and analysis.

Thank you for this opportunity to provide comments on the proposal. As always, the Texas Board appreciates PEEC's hard work and dedication to the continued improvement of professional ethics.

Best regards,

Melanie Thompson, CPA

Presiding Officer

Texas State Board of Public Accountancy

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Appendix N

-----Original Message-----

From: Randy Tongier [mailto:RandyT@lpa.state.ks.us]
Sent: Monday, December 19, 2005 10:29 AM
To: Snyder, Lisa
Subject: Comment on Proposed Revision

Lisa,

I've reviewed the proposed revision to "Other Considerations" in Interpretation 101-1 Under Rule 101, and Proposed Conceptual Framework for AICPA Independence Standards. I strongly support the use of conceptual frameworks, and this one seems to address the relevant issues.

Randy

Randy Tongier
Kansas Legislative Post Audit
(785) 296-3792



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January 18, 2006

Ms. Lisa A. Snyder
Director
Professional Ethics Division
AICPA
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881

By email: lsnyder@aicpa.org

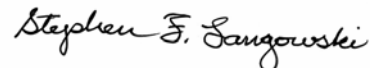
In re: Exposure Draft, Proposed Revision to "Other Considerations" in Interpretation 101-1, Interpretation of Rule 101, Under Rule 101, and Proposed Conceptual Framework for AICPA Independence Standards, dated September 15, 2005

Dear Ms. Snyder:

The New York State Society of Certified Public Accountants, the oldest state accounting association, representing approximately 30,000 CPAs, is pleased to submit the attached comments on the above-referenced exposure draft of the AICPA Professional Ethics Executive Committee.

The NYSSCPA Professional Ethics Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with the committee, please contact Francis T. Nusspickel, chair of the Professional Ethics Committee, at (201) 891-2754, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



Stephen F. Langowski,
President

Attachment

Appendix P



Home of the Trusted Professional

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**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON AICPA EXPOSURE DRAFT

**PROPOSED REVISION TO “OTHER CONSIDERATIONS” IN INTERPRETATION.
101-1, INTERPRETATION OF RULE 101, UNDER RULE 101, AND
PROPOSED CONCEPTUAL FRAMEWORK FOR AICPA INDEPENDENCE
STANDARDS
(September 15, 2005)**

January 18, 2006

Principal Drafters

**Francis T. Nusspickel
Kevin Bandoian
Melvin Crystal
P. Gerard Sokolski
Edward Torres**

Appendix P

NYSSCPA 2005 - 2006 Board of Directors

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Mark Ellis		* <i>Public member advisor</i>

NYSSCPA Staff

Ernest J. Markezin

**The New York State Society of Certified Public Accountants
Professional Ethics Committee**

**Comments on AICPA Exposure Draft - Proposed Revision to "Other Considerations" in
Interpretation 101-1, *Interpretation of Rule 101*, Under Rule 101, and Proposed
Conceptual Framework for AICPA Independence Standards, dated September 15, 2005**

Comments

The Professional Ethics Committee (the "Committee") of the New York State Society of Certified Public Accountants has reviewed the above-referenced AICPA Exposure Draft and offers the following comments for consideration by the Professional Ethics Executive Committee of the American Institute of Certified Public Accountants (AICPA).

Proposed Revision to "Other Considerations" in Interpretation 101-1, *Interpretation of Rule 101*, Under Rule 101

The Committee has no comments on the proposed revision.

Proposed *Conceptual Framework for AICPA Independence Standards*

The Committee believes the guidance provided in the framework is useful and, accordingly, supports the establishment of the Conceptual Framework. It would be helpful, however, if the AICPA clarifies how the Conceptual Framework will fit into the hierarchy of the various independence rules, interpretations and rulings that members are subject to.

We also have the following additional suggested changes and comments:

- (1) The definition of *independence* in paragraph 4 includes the definitions of *independence of mind* and *independences in appearance*. If the definition of *independence* is meant to comprise both *independence of mind* and *independences in appearance*, then we believe the word "and" should be added to conjunctively join paragraphs 4a. and 4b.
- (2) A sentence should be added to the end of paragraph 9 stating that, "The examples are not intended to be all-inclusive." We also suggest that as many examples as possible be included for each of the definitions set forth in paragraphs 10 to 16.
- (3) The word "nonattest" should be struck from the definition of *self-review threat* in paragraph 10 because the same threat exists if members or their firm perform client work during the attest engagement.
- (4) The word "direct" should be added to the definition of *adverse interest threat* in

paragraph 12 so that the definition would read: "Actions or interests that are in direct opposition to an attest client's interests or position."

In addition, the final framework should clarify that an adverse interest threat is not intended to, and does not, result from providing services to another client that may have interests that are adverse to the subject attest client (i.e., an adverse interest threat does not arise because a member provides services to two companies that operate in the same industry and are fierce competitors of each other).

- (5) The examples in paragraph 13 are appropriate and helpful in understanding what is meant by the term *familiarity threat*. However, the definition of *familiarity threat* in paragraph 13 is confusing and inappropriate for several reasons. First, having a close or longstanding relationship with a client has historically been viewed in general as being a good thing that can lead to better, more effective audits. Second, knowing individuals or entities that performed nonattest work for the client also has historically been viewed as a good thing and does not necessarily indicate that something is amiss. Additionally, the words "including by reputation" are confusing. Therefore, the definition of *familiarity threat* should be revised to state that familiarity is a subjective concept that should be evaluated on a case by case basis and that the below examples should serve as guides to situations which could cause a threat to independence.

We also suggest that another example of a *familiarity threat* be listed in paragraph 13, as follows:

"e. A member of the attest engagement team who takes personal vacations with key client personnel."

- (6) The two uses of the word "material" in the example described in paragraph 15d. should be deleted. We also suggest that another example of a *Financial self-interest threat* be listed in paragraph 15, as follows:

"e. Participating in joint marketing activities with the client."

- (7) A sentence should be added to the end of paragraph 20 stating that, "The absence of particular safeguards does not necessarily indicate that a problem exists or that there are not appropriate safeguards in place."
- (8) Examples a. and b. in paragraph 21 should be combined to eliminate any confusion surrounding the applicability of ethics rules to all professionals, both new and old alike.
- (9) The lead-in in paragraph 22 should be shortened to read: "Safeguards implemented by the attest client."

Appendix P

In addition, the words "and demonstrates" should be added to example b. so that it would read: "A tone at the top that emphasizes and demonstrates the attest client's commitment to fair financial reporting." This change would help clarify that senior management's words must be supported by its actions

We also suggest that two additional examples be listed in paragraph 22, as follows:

- "e. Policies that dictate the types and extent of services that may be provided by the audit firm
- f. Policies requiring audit committee approval of attest and nonattest services"

- (10) We suggest the term "ERISA" be added to footnote 4 to paragraph 26 so that it would read either "... (2) employee benefit and health and welfare plans subject to ERISA (Employee Retirement Income Security Act) audit requirements ..." or "... (2) employee benefit and health and welfare plans subject to Employee Retirement Income Security Act (ERISA) audit requirements"

In addition, the word "regulated" should be added as a modifier to financial institutions, so that the paragraph would read, "... (5) regulated financial institutions, credit unions, and insurance companies...." This change is necessary since certain financial institutions are not public interest entities (for example, private hedge funds and finance companies).