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# **EXPOSURE DRAFT**

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## **OMNIBUS PROPOSAL**

### **AICPA PROFESSIONAL ETHICS DIVISION**

#### **INTERPRETATIONS AND RULINGS**

**FEBRUARY 28, 2011**

**COMMENTS REQUESTED BY MAY 31, 2011**

**Prepared by the AICPA Professional Ethics Executive Committee for comments from persons  
interested in independence, behavioral, and technical standards matters.**

**Comments should be addressed to Lisa A. Snyder, Director, Professional Ethics, at  
[lsnyder@aicpa.org](mailto:lsnyder@aicpa.org).**



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February 28, 2011

This exposure draft contains important proposals for review and comment by the AICPA's membership and other interested parties regarding pronouncements for possible adoption by the Professional Ethics Executive Committee (PEEC). The text and an explanation of the proposed pronouncements are included in this exposure draft.

After the exposure period is concluded and the PEEC has evaluated the comments, the PEEC may decide to publish one or more of the proposed pronouncements. Once published, the pronouncements become effective on the last day of the month in which they are published in the *Journal of Accountancy*, except if otherwise stated in the pronouncements.

Your comments are an important part of the standard setting process. Please take this opportunity to comment. Responses must be received at the AICPA by May 31, 2011. All written replies to this exposure draft will become part of the public record of the AICPA.

All comments received will be considered by the PEEC at its next open meeting.

Please send comments to Lisa A. Snyder, Director, Professional Ethics Division, via e-mail to [lsnyder@aicpa.org](mailto:lsnyder@aicpa.org).

Sincerely,

Wes Williams, Chair  
AICPA Professional Ethics Executive Committee

Lisa A. Snyder, Director  
AICPA Professional Ethics Division

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**Ethics Division Task Force Staff:**

Lisa A. Snyder, CPA–NJ, *Director*

Ellen T. Gorla, CPA–NY, *Senior Manager Independence & Special Projects*

April Sherman, CPA–NC, *Technical Manager*

Michele Craig, *Technical Manager*

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## **Proposed New Interpretation No. 101-18, “Application of the Independence Rules to Affiliates,” Under Rule 101, *Independence***

### **Explanation**

The Professional Ethics Executive Committee (PEEC) is exposing for comment a proposed new interpretation under Rule 101, *Independence* (AICPA, *Professional Standards*, ET sec. 101 par. .01), of the AICPA Code of Professional Conduct (AICPA code). The proposed new interpretation provides guidance on when and how the independence requirements should be applied to interests and relationships a member and a firm have with entities that are affiliated with an attest client. Current guidance concerning application of the independence requirements to entities that are affiliated with an attest client is limited, and the division receives a significant number of inquiries on this topic. Accordingly, the PEEC undertook a project to study this issue and developed the proposed interpretation. Following are some key aspects of the proposed new interpretation.

### **Proposed Scope**

The PEEC believes that a bright-line approach should only be used in certain circumstances to determine when to extend the independence requirements to entities that are affiliated with an attest client. Specifically, the PEEC proposes that the independence requirements should be applied to interests and relationships a member and a firm have with affiliates of a *financial statement attest client*, a term defined in this interpretation. For all other attest clients, the PEEC believes a threats and safeguards approach is appropriate to determine when a relationship with an entity affiliated with such attest client poses an independence threat.

The interpretation includes a definition of *financial statement attest client*. A *financial statement attest client* is limited to an entity whose financial statements are audited, reviewed, or compiled when the member’s compilation report does not disclose a lack of independence. For all other entities, such as an entity that engages a member to perform a financial statement audit of another entity, a member would utilize the threats and safeguards approach to determine if a relationship with such entity poses an independence threat.

The PEEC believes this scope is consistent with the scope of Interpretation No. 101-8, “Effect on independence of financial interests in nonclients having investor or investee relationships with a covered member’s client,” under Rule 101, *Independence* (AICPA, *Professional Standards*, ET sec. 101 par. .10), in that this interpretation is only applicable to “. . . the person or entity with whose financial statements a covered member is associated.”

### **International Convergence**

One of the PEEC’s ongoing initiatives is to achieve international convergence, when appropriate. At the outset of this project, the PEEC noted that the International Ethics Standards Board for Accountant’s (IESBA’s) related entity requirements for private entities only extend to entities over which an audit or review client has direct or indirect control. However, because of the

diverse and sometimes complex organizational structures that exist in the United States, the PEEC believed it was appropriate to provide guidance beyond that provided by the IESBA. Accordingly, the affiliate interpretation provides members with guidance on several different types of private entities, such as unregistered investment companies, investment advisers, and employee benefit plans and sponsors of these plans, as well as trusts and trustees.

The proposed interpretation also extends the independence requirements for clients whose financial statements are compiled by a member when the member's compilation report does not disclose a lack of independence. The IESBA's Code of Ethics for Professional Accountants (IESBA code) does not address independence for compilation engagements. It requires, however, that the professional accountant meet the fundamental principle of objectivity and indicates that “. . . a professional accountant shall not perform a professional service if a circumstance or relationship biases or unduly influences the accountant's professional judgment with respect to that service.” Accordingly, it would seem that under the IESBA code if an accountant was aware of an interest or relationship between his or her firm and an affiliate of the compilation client that could bear on the accountant's ability to be objective, the accountant would need to evaluate that interest or relationship and, if necessary, apply safeguards to eliminate any threat to objectivity or reduce it to an acceptable level or refuse to perform the engagement.

#### **Measurement Criterion—Control and Significant Influence**

The diverse and sometimes complex organizational structures that exist in the United States call for the use of a broad measurement criterion to determine which entities should be considered affiliates of a financial statement attest client. Specifically, the PEEC noted that, in some cases, relationships other than financial interests in an entity could create the appearance that entities are closely aligned. Accordingly, the PEEC concluded that the appropriate measurement criterion for the proposed interpretation is the definition of *control* found in Financial Accounting Standards Board (FASB) *Accounting Standards Codification* (ASC) 810, *Consolidation*, and the definition of *significant influence* found in FASB ASC 323-10-15. These definitions are sufficiently broad in scope to include entities, such as trustees and investment advisers, that have contractual control over an entity, as well as those entities whose control results from an ownership interest.

The PEEC decided to reference FASB ASC 810 and FASB ASC 323-10-15 instead of incorporating a definition of control and significant influence in the proposed interpretation for a number of reasons. First, because the interpretation only applies to financial statement attest clients, the PEEC believes the members using this interpretation will be knowledgeable of the accounting standards found in FASB ASC 810 and FASB ASC 323-10-15. Secondly, if a definition was incorporated into the proposed interpretation and FASB later updated or clarified its standards, the PEEC would have to revise its definition. Finally, FASB's definitions of control and significant influence are used elsewhere throughout the AICPA code and, therefore, using them in this proposal allows for consistent application of the term by users of the AICPA code.

## Entities Considered Affiliates and Exceptions

The proposed interpretation identifies 10 types of entities (affiliate definitions [a–j]) that should be considered affiliates of a financial statement attest client. These affiliates can be broken up into two main groups, traditional entities and nontraditional entities, as follows:

- Entities defined as (a), (b), (c), (d), and (e) affiliates, as included in the proposed interpretation, cover, among other things, those entities traditionally viewed as related entities (such as subsidiaries, parents, brother or sister entities, partnerships, and limited liability companies) because the relationship arises as a result of a financial interest. To facilitate understanding of the application of the affiliate guidance, see illustration A, [“Traditional Flow Chart—Affiliates A, B, C, D, and E,”](#) in the section titled “Visual Aids” in this proposal.
- Entities defined as (f), (g), (h), (i), and (j) affiliates, as included in the proposed interpretation, cover nontraditional entities (such as trustees, unions, benefit plan sponsors, and unregistered investment companies) when there is an appearance that the entities are closely aligned that arises from something aside from a financial interest.

The interpretation requires that when a client is a financial statement attest client, members should apply the independence provisions of the AICPA code applicable to the financial statement attest client to its affiliates. However the proposal contains four exceptions to this requirement.

The first exception involves loans and applies to all affiliates. The AICPA code currently prohibits a covered member from making a loan to, or having a loan from, an individual who is an officer, director, or 10 percent or more owner of an attest client. If this provision were applied to affiliates any time a member had a loan to or from an individual, especially one that is only an investor and not in a position of governance, he or she would need to take steps to ensure the individual was not in one of these positions at an affiliate. The PEEC concluded that only when the covered member has knowledge that the individual is in such a position with an affiliate of a financial statement attest client the covered member should be required to consult *Conceptual Framework for AICPA Independence Standards* (AICPA, *Professional Standards*, ET sec. 100-1) because without knowledge, the familiarity, undue influence, and financial self-interest threats would be at an acceptable level.

The second, third, and fourth exceptions described subsequently may not be applied by those described as an affiliate under definition (a) or (b); rather, they may only be applied to those described as an affiliate under definitions (c–j).

The second exception involves the provision of prohibited nonattest services. Specifically, the PEEC believes that when it is reasonable to conclude that the prohibited nonattest services do not create a self-review threat because the results of the nonattest services will not be subject to financial statement attest procedures, and any other threats that are created by the provision of the nonattest service (for example, management participation threats) that are not at an acceptable level are eliminated or reduced to an acceptable level by the application of

safeguards, members should not be prohibited from providing these services to affiliates other than those described as an affiliate under definition (a) or (b).

The third exception involves subsequent employment at an affiliate. The AICPA code (that is, Interpretation No. 101-2, “Employment or association with attest clients,” under Rule 101, *Independence* [AICPA, *Professional Standards*, ET sec. 101 par. .04]) currently requires the application of six specific safeguards when a former partner or employee becomes employed at an attest client in a key position. Under the proposed interpretation, if no exception were provided, these six safeguards would need to be applied when a former partner or employee becomes employed or associated with an affiliate in a key position. The PEEC believes it is not necessary to apply these safeguards to affiliates other than those described as an affiliate under definitions (a) and (b), if the individual’s position does not allow the individual to be in a key position with respect to the financial statement attest client.

The fourth exception involves the employment of immediate family members and close relatives at affiliates that are employed at those described as an affiliate under definitions (c–j). Similar to the third exception described previously, the PEEC believes that covered members need only be concerned with employment positions that their immediate family members and close relatives have with such affiliates when these positions put them in a key position with respect to the financial statement attest client at those defined as an affiliate under definitions (a) and (b).

As noted previously, entities defined as (f), (g), (h), (i), and (j) affiliates cover nontraditional entities when there is an appearance that the entities are closely aligned that arises from something aside from a financial interest. The PEEC’s conclusions regarding these entities are discussed subsequently and, in some cases, visual aids are also provided.

## **Trusts**

The PEEC believes that given the trustee’s significant involvement with and power over a trust, the trustee should be considered an affiliate of a trust that is a financial statement attest client. Accordingly, when the trust is a financial statement attest client, the trustee would be considered an affiliate of the trust.

The PEEC however, does not believe that the trust should always be considered an affiliate of a trustee that is a financial statement attest client. Accordingly, the PEEC concluded that when a trustee of a trust is a financial statement attest client, the member should evaluate, using the *Conceptual Framework for AICPA Independence Standards*, any relationships or interests the member has with the trust only when the trustee has control or significant influence over the trust. When the trustee does not have control or significant influence over the trust, it is unlikely that any relationship or interest the member has with the trust will give rise to threats to independence that are at an unacceptable level.

## **Private Equity Partnerships or Funds**

The PEEC believes that definitions (a), (b), (c), (d), and (e) of affiliate, as described in the proposed interpretation for traditional entities, would likely provide adequate guidance to

members in determining which entities should be considered affiliates of a private equity (PE) partnership or fund.

### **PE Fund Is Financial Statement Attest Client**

When a PE fund is a financial statement attest client, the PEEC believes that its investees should be considered affiliates of the PE fund under affiliate definition (a) if the investee is controlled by the PE fund or under affiliate definition (b) when the investee is material to the PE fund and the PE fund is able to exercise significant influence over the investee.

Often there will also be an investment adviser for the PE fund that contractually agrees to manage the investments of the PE fund or a general partner or trustee that operationally controls (that is, doesn't control by virtue of its investment in the PE fund rather by virtue of its ability to make the day-to-day operational decisions for the fund [FASB ASC 810]) the PE fund. When the PE fund is a financial statement attest client, its investment adviser, general partner, or trustee would be considered an affiliate of the PE fund when fees received from the PE fund are material to the investment adviser, general partner, or trustee, and the investment adviser, general partner, or trustee either controls or has significant influence over the PE fund. See illustration B, "[Financial Statement Attest Client Is a Private Equity Fund](#)," in the section titled "Visual Aids" in this proposal.

When a PE fund is a financial statement attest client, other PE funds that are controlled by the same general partner or trustee would be considered sister entities under affiliate definition (e) when both the PE fund and other PE funds are material to the general partner or trustee. In addition, any portfolio company that the other PE funds can control that are material to the general partner or trustee would also be considered sister entities. See illustration C, "[Financial Statement Attest Client Is a Private Equity Fund—Sister Entities](#)," in the section titled "Visual Aids" in this proposal.

Finally, limited partners of a PE fund that is a financial statement attest client would generally not be considered affiliates of the PE fund because they would generally not have any influence over the management of the PE fund. However, the PE fund's governing documents should be evaluated to determine whether limited partners can exercise control or significant influence over the PE fund. See illustration J, "[Financial Statement Attest Client Is DEF](#)," illustration K, "[Financial Statement Attest Client Is GHI](#)," and illustration L, "[Financial Statement Attest Client Is JKL](#)," in the section titled "Visual Aids" in this proposal.

### **Financial Statement Attest Client Is Entity Other Than the PE Fund**

When the general partner or trustee of a PE fund is a financial statement attest client and it controls or has significant influence over a PE fund and the fees received from the PE fund are material to the general partner or trustee, the PE fund would be considered an affiliate of the general partner or trustee. See illustration D, "[Financial Statement Attest Client Is a Trustee or General Partner](#)," in the section titled "Visual Aids" in this proposal.

If the investee is the financial statement attest client and it is material to the PE fund, and the PE fund has either significant influence or control over the investee, then the PE fund would be considered an affiliate of the investee under affiliate definition (c) or (d), respectively. See illustration G, "[Financial Statement Attest Client Is Portfolio Company 1](#)," illustration H, "[Financial Statement Attest Client Is Portfolio Company 2](#)," and illustration I, "[Financial Statement Attest Client Is Portfolio Company 3](#)," in the section titled "Visual Aids" in this proposal.

In a PE fund environment, a holding company may exist that controls the general partner or trustee as well as the investment adviser. When the holding company is a financial statement attest client, using affiliate definition (a), all entities the holding company controls would be considered affiliates of the holding company. In addition, "downstream entities," over which the holding company has significant influence and that are material to the holding company, would also be considered affiliates of the holding company under affiliate definition (b). See illustration F, "[Financial Statement Attest Client Is a Holding Company](#)," in the section titled "Visual Aids" in this proposal.

When the investment adviser of a PE fund is a financial statement attest client, the PE fund would only be considered an affiliate of the investment adviser if after reviewing the contract, the member determines the investment adviser has control over the PE fund or has significant influence over the PE fund and the fees from such PE fund are material to the investment adviser. See illustration E, "[Financial Statement Attest Client Is an Investment Adviser](#)," in the section titled "Visual Aids" in this proposal.

## **Benefit Plans**

### ***Single Employer Plans***

The PEEC believes that when the sponsor of a single employer plan is a financial statement attest client, the employee benefit plans it sponsors should always be considered an affiliate of the sponsor, without regard to materiality, under affiliate definition (i) because the sponsor is the fiduciary of the plan. As the plan's fiduciary, the sponsor is ultimately responsible for preparing financial statements, hiring the auditor, and appointing the trustee or custodian of the plan assets. In addition, the sponsor can determine who participates in the plan, determine the vesting policies, and make all the business decisions related to the plan, such as when to terminate the plan.

When a single employer plan is a financial statement attest client, the PEEC believes that the sponsor of the plan should be considered an affiliate of the plan under affiliate definition (g) because of the operational control it has over the plan.

### ***Multiple Employer Plans***

The PEEC concluded that when a participating employer of a multiple employer (that is, trade association) plan is a financial statement attest client, the plan should be considered its affiliate under affiliate definition (i). However, the PEEC believes a bright-line test is not necessary for

all participating employers when providing financial statement attest services to just the plan. Rather, the PEEC concluded that when the multiple employer plan is the financial statement attest client, only the employer that serves as the plan administrator should be considered an affiliate under affiliate definition (h). Accordingly, members should apply the threats and safeguards approach found in the *Conceptual Framework for AICPA Independence Standards* to determine when relationships or interests with other sponsors would create threats that could impair independence.

### ***Multiemployer Plans***

The PEEC concluded that when a participating employer of a multiemployer (that is, unions or collective bargaining) plan is a financial statement attest client, the plan should be considered its affiliate under affiliate definition (i). However, the PEEC believes that when the multiemployer plan is the financial statement attest client, any entity that can exercise significant influence over the plan should be considered an affiliate of the plan. If a union, for example, would be able to appoint 50 percent of a board of trustees (the plan's legal administrator and responsible for the day to day operations of the plan), the union would be considered to have significant influence over the plan and, as such, be considered an affiliate under affiliate definition (h). Because of the differing facts and circumstances (for example, number of employers and appointment percentages), a member would need to use his or her professional judgment to determine if any participating employers would have significant influence over the multiemployer plan and thus be considered an affiliate of the plan that is a financial statement attest client.

### **Requests for Specific Comments**

Although the PEEC welcomes comments on all aspects of this proposal, it specifically requests feedback on the following issues:

1. The proposed interpretation creates a definition of *financial statement attest client* which is limited to an entity whose financial statements are audited, reviewed, or compiled when the member's compilation report does not disclose a lack of independence. For all other entities, such as an entity that engages a member to perform a financial statement audit of another entity, the proposed interpretation directs the member to utilize the threats and safeguards approach to determine if a relationship with such entity poses an independence threat. The PEEC believes this scope is consistent with the scope of Interpretation No. 101-8 in that this interpretation is only applicable to “. . . the person or entity with whose financial statements a covered member is associated.”
  - Do you believe this scope is appropriate? If not, please explain what scope you believe would be appropriate and why.
2. As currently proposed, the definition of an *affiliate* goes beyond the scope of the related entity definition as applied to private company (that is, *nonlisted*) audit and review clients in the IESBA code. Specifically, the proposal is more consistent with the IESBA code's related entity definition that applies to *listed* entities, rather than the less expansive application that IESBA employs with respect to nonlisted entities (see IESBA Code

290.27 and Definitions—Related Entity). For those entities related to a nonlisted audit or review client, the IESBA code only includes those entities directly or indirectly controlled by the client, applying a “knows or has reason to believe” test to other related entities (for example, with respect to a client’s material equity investee). In contrast, for those entities related to listed entity audit or review clients, the IESBA encompasses a broader population of entities, for example, extending to entities that have control or significant influence over the audit client, subject to materiality considerations.

- Do you believe the proposed affiliate definition is appropriate given the U.S. practice environment? If not, please explain what components of the definition are not appropriate and why you believe they are not appropriate.
3. The proposal takes into account the fact that some relationships other than financial interests in an entity can create the appearance that entities are closely aligned by referencing FASB ASC 810. The PEEC believes that FASB ASC 810 is sufficiently broad in scope to include entities such as trustees and investment advisers that have contractual control over an entity, as well as those entities whose control results from an ownership interest.
- Do you believe it is appropriate to address relationships other than financial interests in the interpretation? If not, please explain what relationships you believe should be addressed and why.
  - Do you believe FASB ASC 810 is a sufficiently broad enough measurement criterion for the proposed interpretation? If not, please explain what measurement criterion would be appropriate and why.
  - Do you believe the proposed interpretation should contain a definition of control or is a cross-reference to FASB ASC 810 sufficient? If you believe the definition of control should reside in the interpretation, please explain why you believe it is necessary.
4. The PEEC is proposing a delayed effective date so that members may implement the necessary processes to identify affiliates. Do you believe the proposed delayed effective date is appropriate? If not, please explain what date would be more appropriate and why.

## **Visual Aids**

*Illustration A.* Traditional Flow Chart—Affiliates A, B, C, D, and E

*Illustration B.* Financial Statement Attest Client Is a Private Equity Fund

*Illustration C.* Financial Statement Attest Client Is a Private Equity Fund—Sister Entities

*Illustration D.* Financial Statement Attest Client Is a Trustee or General Partner

*Illustration E.* Financial Statement Attest Client Is an Investment Adviser

*Illustration F.* Financial Statement Attest Client Is a Holding Company

*Illustration G.* Financial Statement Attest Client Is Portfolio Company 1

*Illustration H.* Financial Statement Attest Client Is Portfolio Company 2

*Illustration I.* Financial Statement Attest Client Is Portfolio Company 3

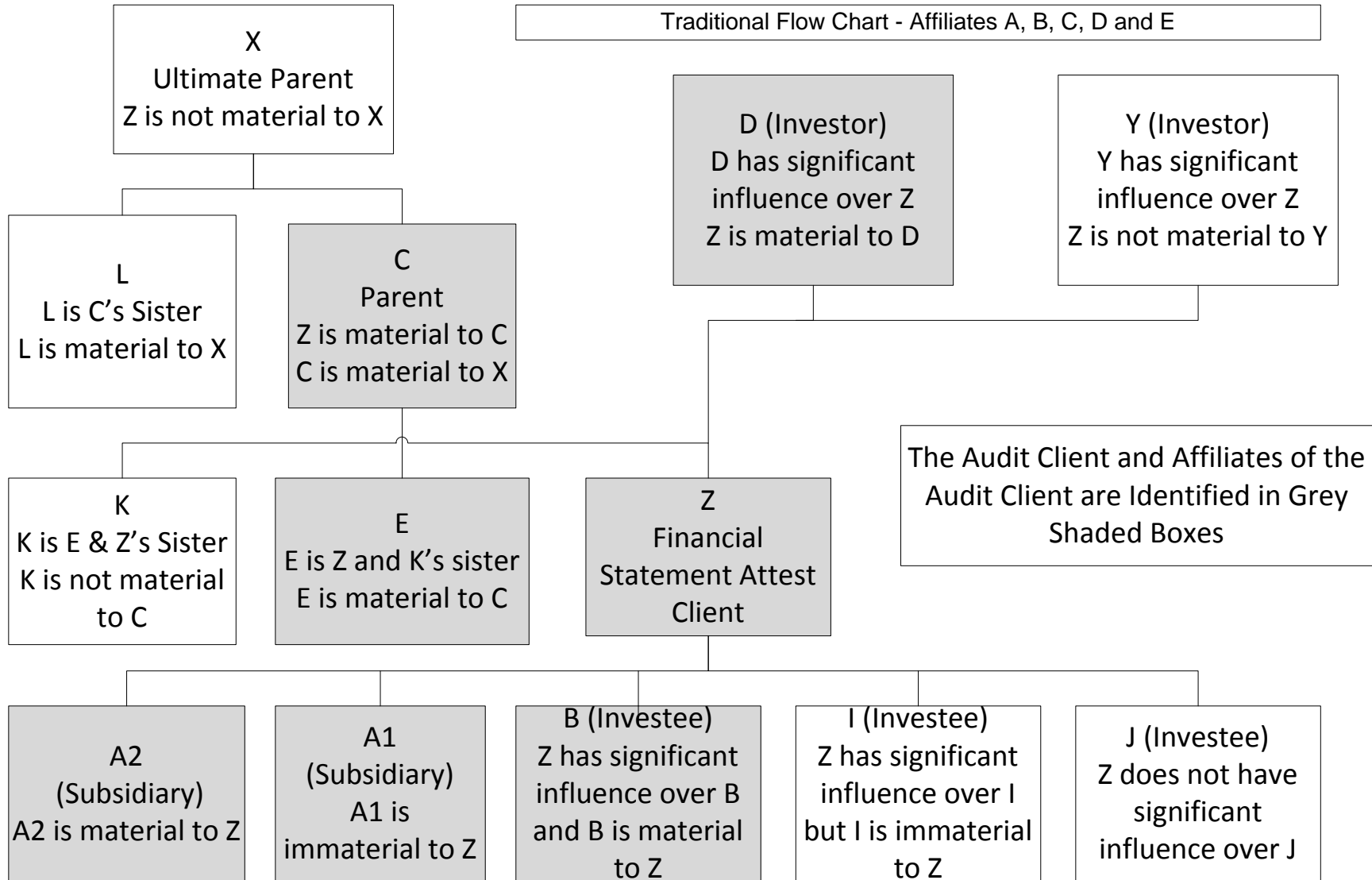
*Illustration J.* Financial Statement Attest Client Is DEF

*Illustration K.* Financial Statement Attest Client Is GHI

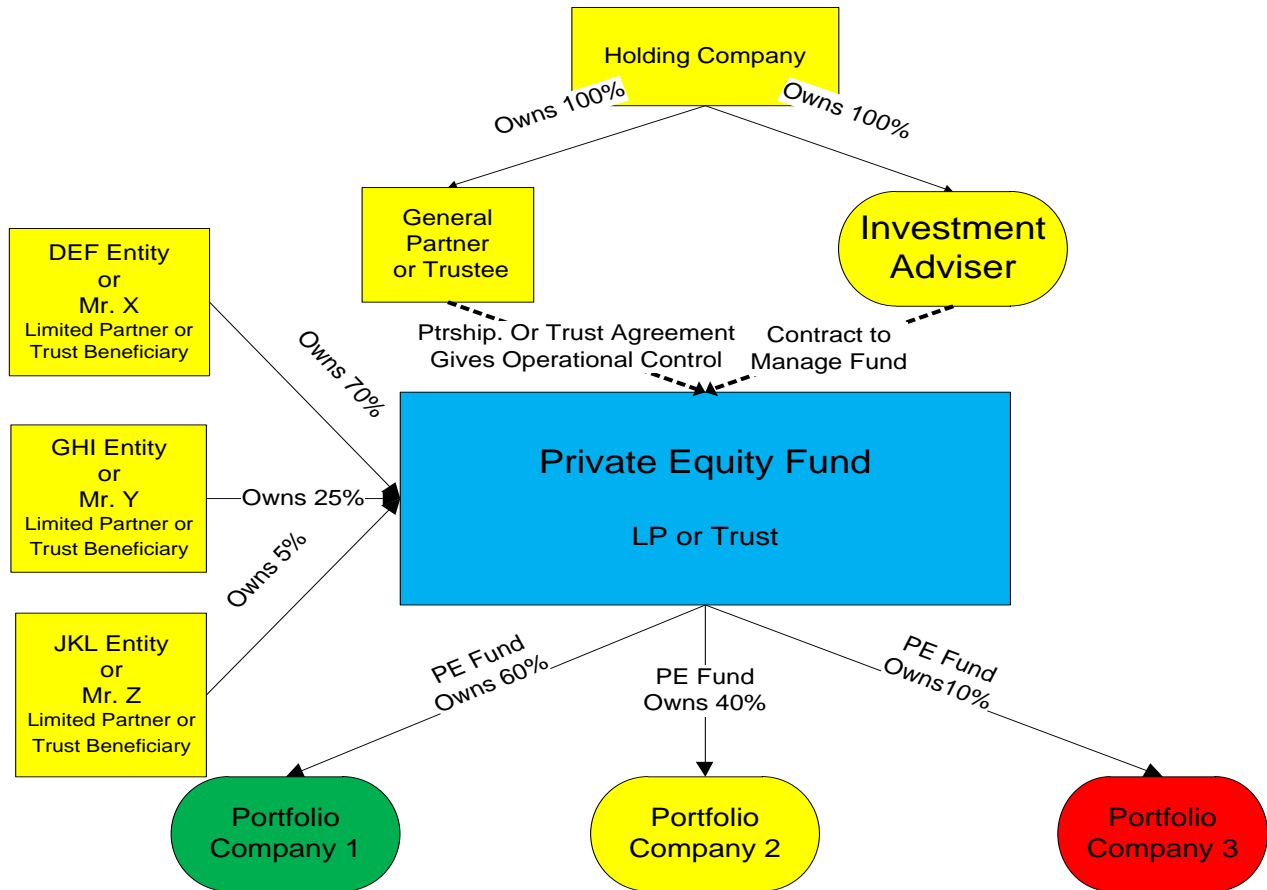
*Illustration L.* Financial Statement Attest Client Is JKL

*Illustration M.* Which Code Provisions Should Be Extended to Affiliates

**Illustration A. Traditional Flow Chart—Affiliates A, B, C, D, and E**



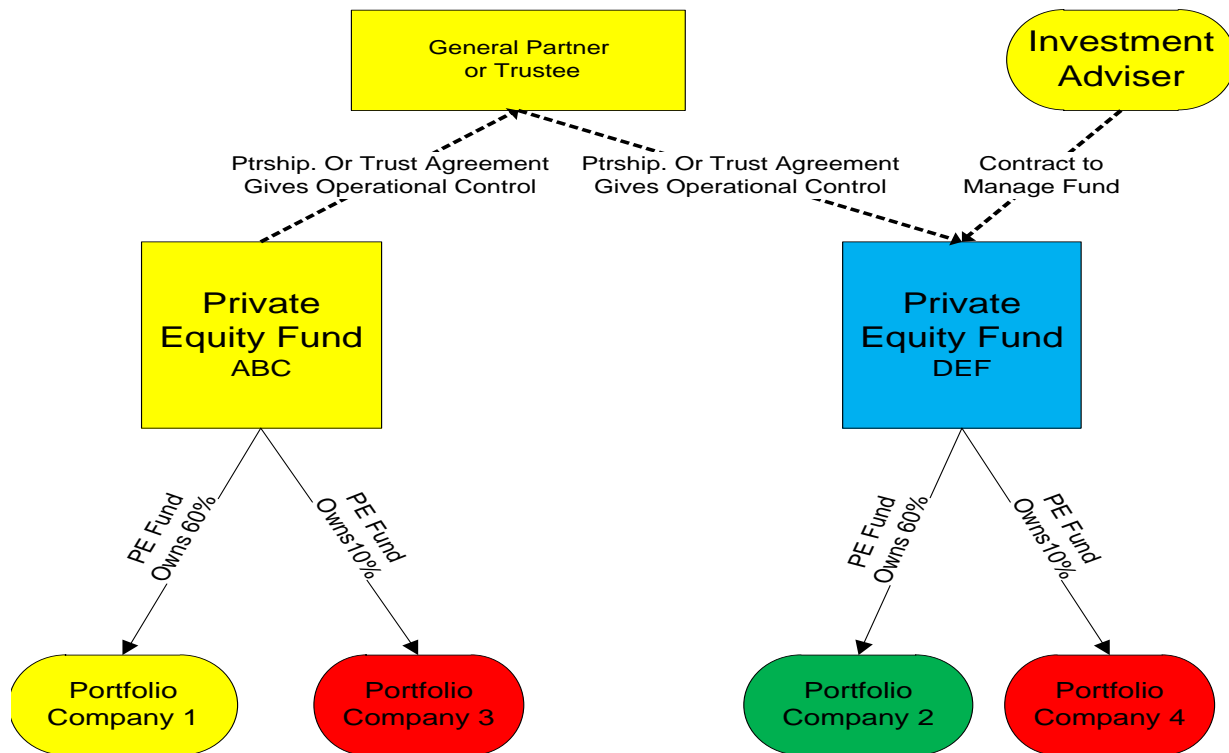
## Illustration B. Financial Statement Attest Client Is a Private Equity Fund



### Conclusions

- Portfolio Company 1 will be an affiliate of the Private Equity (PE) Fund under affiliate definition (a).
- Portfolio Company 2 will be an affiliate of the PE Fund under affiliate definition (b) if it is material to the PE Fund.
- Portfolio Company 3 does not meet any of the affiliate definitions.
- The Investment Adviser, General Partner (GP), or Trustee will be an affiliate of the PE Fund under affiliate definition (j) if the fees received from the PE Fund are material to the Investment Adviser, GP, or Trustee and they are deemed to have either control or significant influence over the PE Fund.
- The Holding Company will be an affiliate of the PE Fund under affiliate definition (c) if the fees from the PE Fund are material to the Holding Company.
- Entities DEF, GHI, and JKL will not likely meet any of the affiliate definitions; however, consider reviewing the partnership or trust agreement to verify that DEF, GHI, and JKL do not have control or significant influence over the PE Fund.

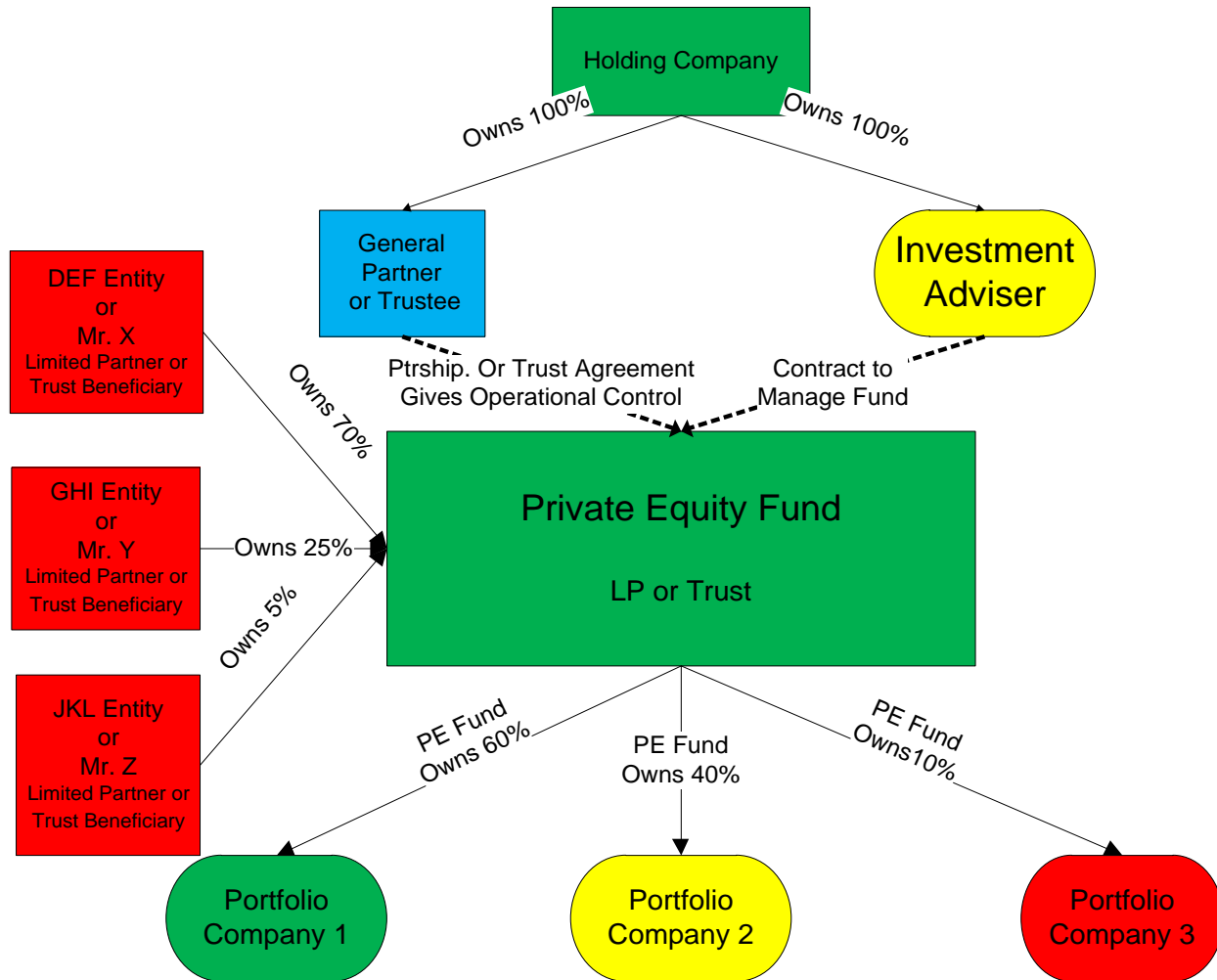
## Illustration C. Financial Statement Attest Client Is a Private Equity Fund—Sister Entities



### Conclusion

When multiple private equity (PE) funds are controlled by the same general partner or trustee, they will be considered sister entities under affiliate definition (e) when the PE funds are material to the general partner or trustee. In illustration B, "[Financial Statement Attest Client Is a Private Equity Fund](#)," PE Fund ABC would be a sister entity to PE Fund DEF, the financial statement attest client, if both ABC and DEF were material to the General Partner or Trustee. If such was the case, then Portfolio Company 1 would be a sister entity of PE Fund DEF if Portfolio Company 1 was material to the general partner or trustee. Finally, Portfolio Company 2 would be an affiliate of PE Fund DEF under affiliate definition (a) because PE Fund DEF can control Portfolio Company 2.

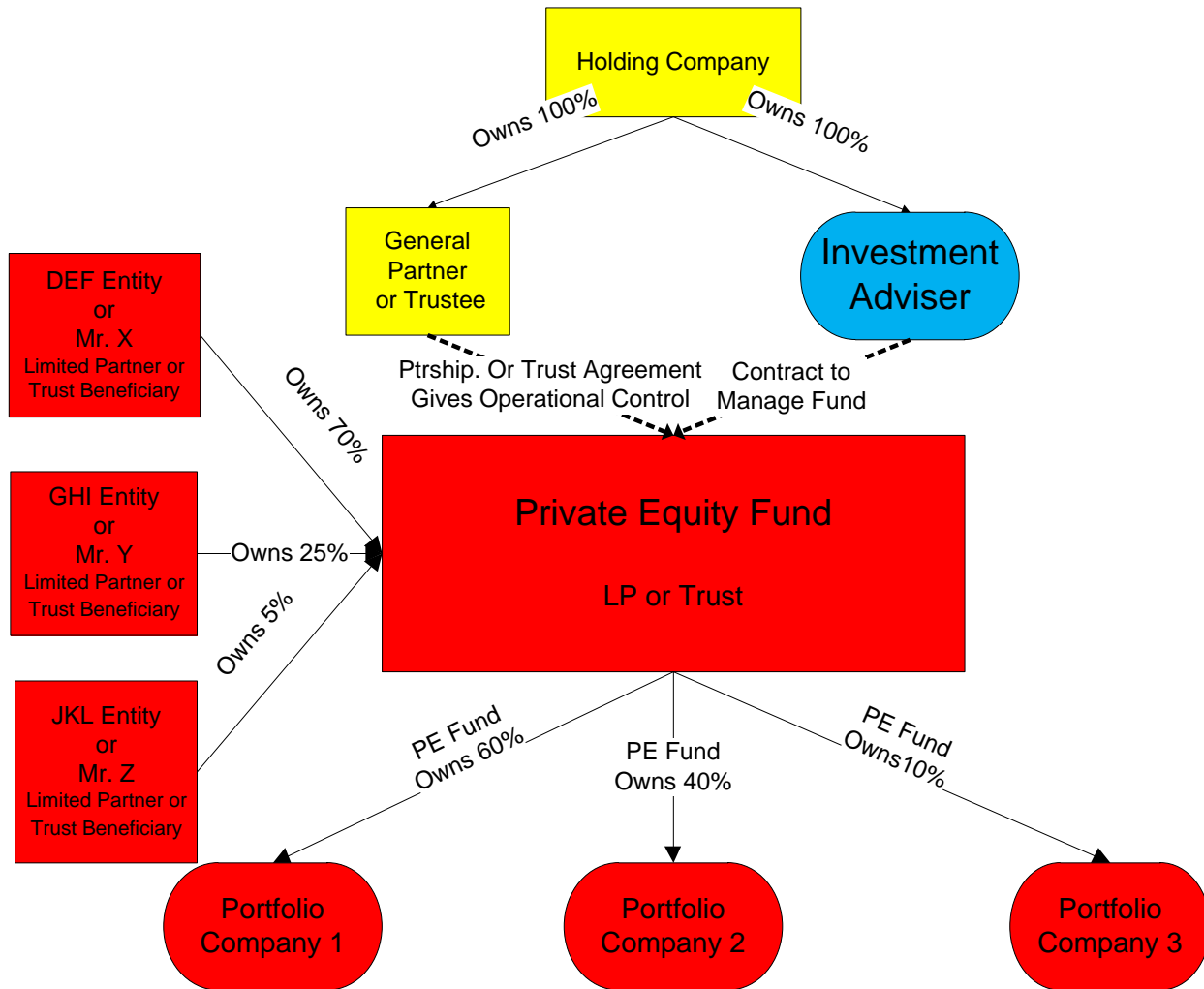
**Illustration D. Financial Statement Attest Client Is a Trustee or General Partner**



**Conclusions**

- Private equity (PE) Fund will be an affiliate of the General Partner (GP) or Trustee under affiliate definition (a).
- Portfolio Company 1 will be an affiliate of the GP or Trustee under affiliate definition (a).
- Because the PE Fund has significant influence over Portfolio Company 2, it will be an affiliate of the GP or Trustee under affiliate definition (b) if Portfolio Company 2 is material to the GP or Trustee.
- Portfolio Company 3 will not meet the definition of an affiliate because the PE Fund does not have control or significant influence over Portfolio Company 3.
- The Investment Adviser will be an affiliate of the GP or Trustee under affiliate definition (e) if the Investment Adviser and GP or Trustee are material to the Holding Company.
- The Holding Company will be an affiliate of the GP or Trustee under affiliate definition (c) if the GP or Trustee is material to the Holding Company.
- Entities DEF, GHI, and JKL would not meet the definition of an affiliate.

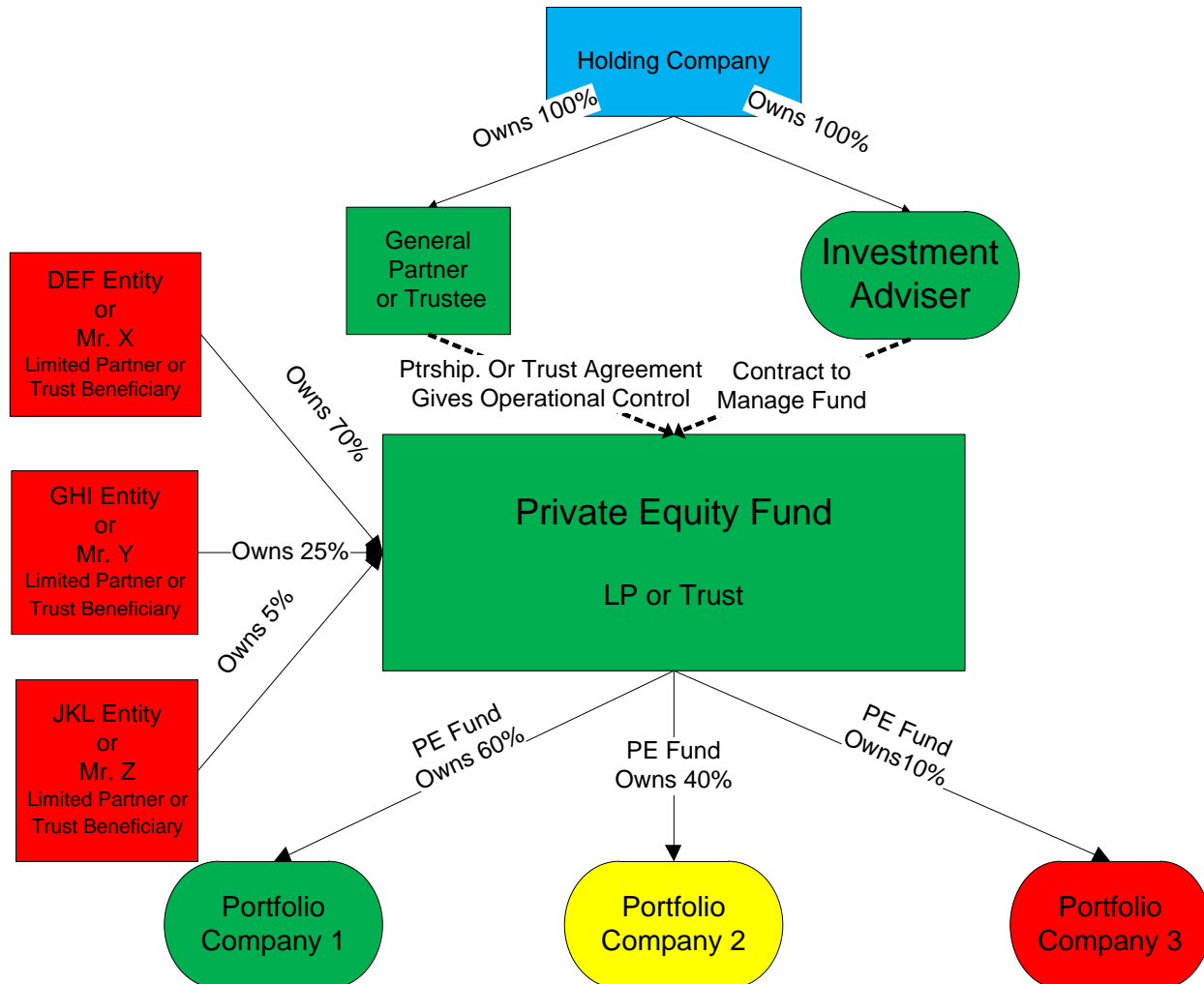
**Illustration E. Financial Statement Attest Client Is an Investment Adviser**



**Conclusions**

- Private equity (PE) Fund will not be an affiliate of the Investment Adviser because the General Partner (GP) or Trustee has control of the PE Fund.
- The GP or Trustee will be an affiliate of the Investment Adviser under affiliate definition (e) if the Investment Adviser and GP or Trustee are material to the Holding Company.
- The Holding Company will be an affiliate of the Investment Adviser under affiliate definition (c) if the Investment Adviser is material to the Holding Company.
- None of the other entities will meet the definition of an affiliate. Accordingly, the member would need to use the threats and safeguards approach to determine if any relationships exist that would create threats that cannot be eliminated or reduced to an acceptable level.

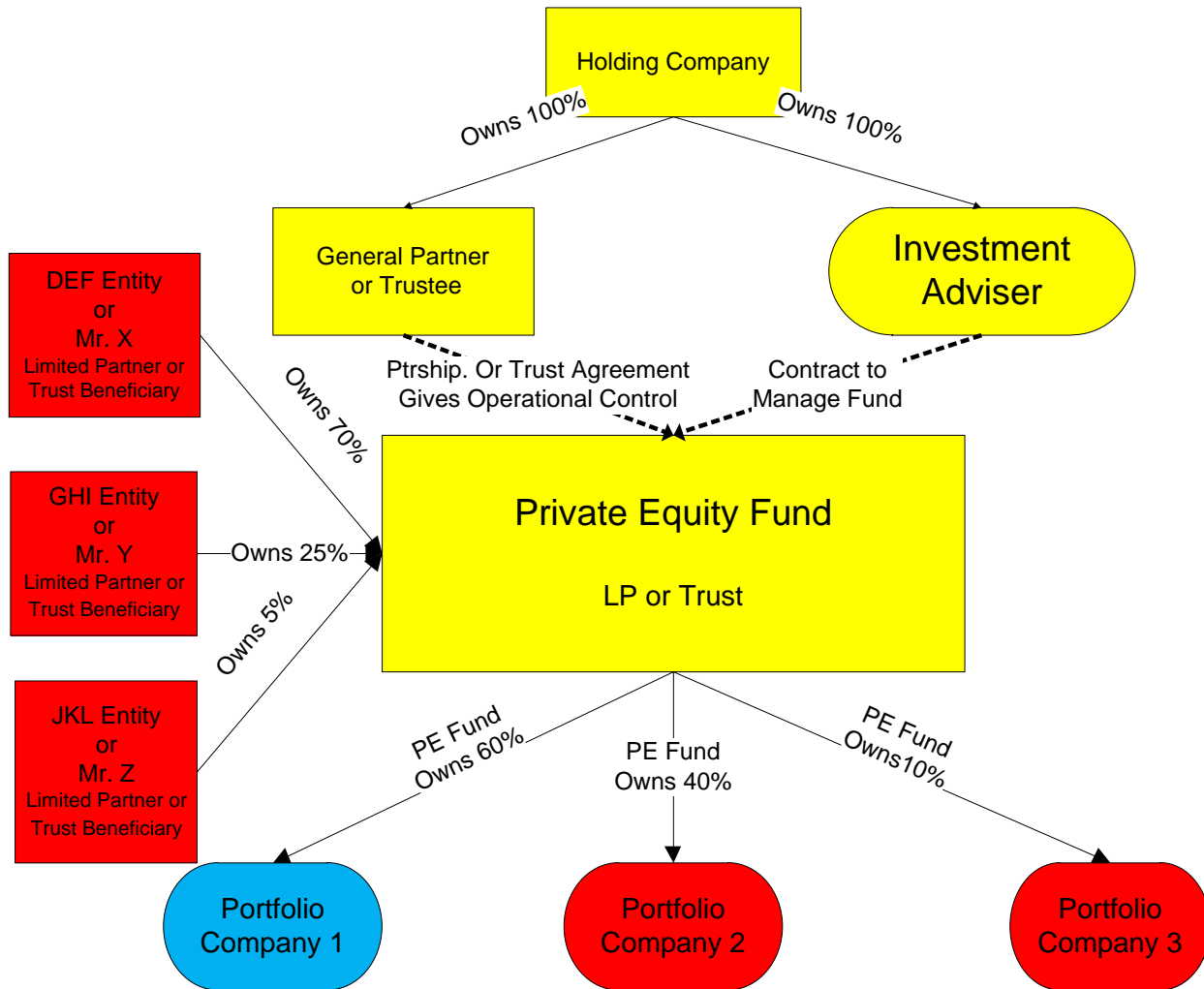
## Illustration F. Financial Statement Attest Client Is a Holding Company



### Conclusions

- The General Partner (GP) or Trustee would be an affiliate of the Holding Company under affiliate definition (a).
- The Investment Adviser would be an affiliate of the Holding Company under affiliate definition (a).
- Because the GP or Trustee (or Investment Adviser) will control the PE Fund, PE Fund will be an affiliate of the Holding Company under affiliate definition (a).
- Portfolio Company 1 will be an affiliate of the Holding Company under affiliate definition (a).
- Because the Holding Company has a controlling direct financial interest in the GP or Trustee and the GP or Trustee has significant influence (see the previous example, illustration E, "[Financial Statement Attest Client Is an Investment Adviser](#)") over the PE Fund, Portfolio Company 2 will be an affiliate of the Holding Company under affiliate definition (b) if Portfolio Company 2 is material to the Holding Company and the PE Fund's 40 percent interest gives it significant influence over Portfolio Company 2.

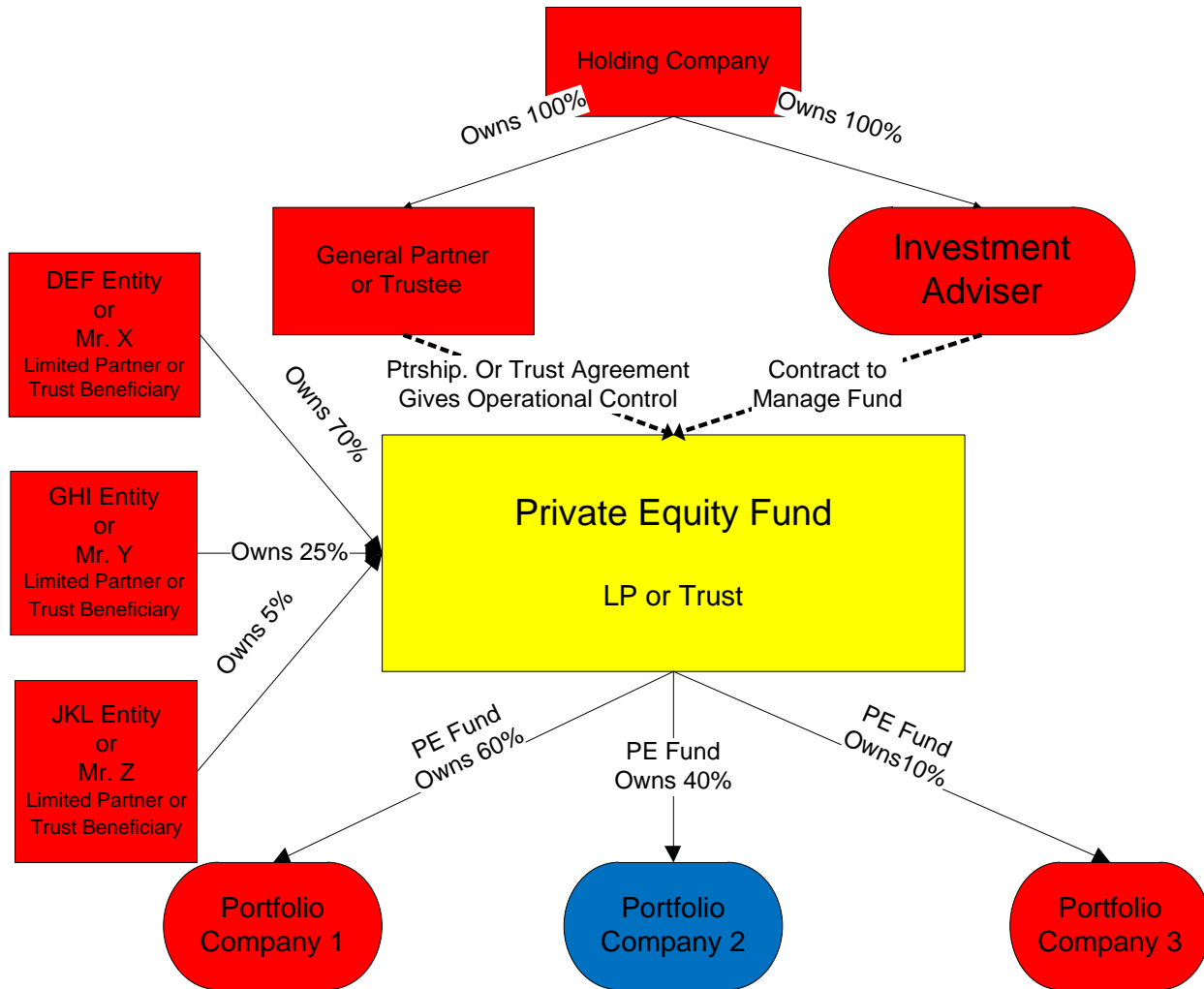
**Illustration G. Financial Statement Attest Client Is Portfolio Company 1**



**Conclusions**

- Private Equity (PE) Fund will be an affiliate of Portfolio Company 1 under affiliate definition (c) if Portfolio Company 1 is material to the PE Fund.
- The General Partner (GP) or Trustee, or the Investment Adviser, would be an affiliate of Portfolio Company 1 under affiliate definition (c) if Portfolio Company 1 is material to the GP or Trustee, or to the Investment Adviser, and if the GP or Trustee, or the Investment Adviser, have control over the PE Fund.
- The Holding Company would be an affiliate of Portfolio Company 1 under affiliate definition (c) if Portfolio Company 1 is material to the Holding Company because the Holding Company has control over the PE Fund.
- None of the remaining entities would meet the definitions of an affiliate.

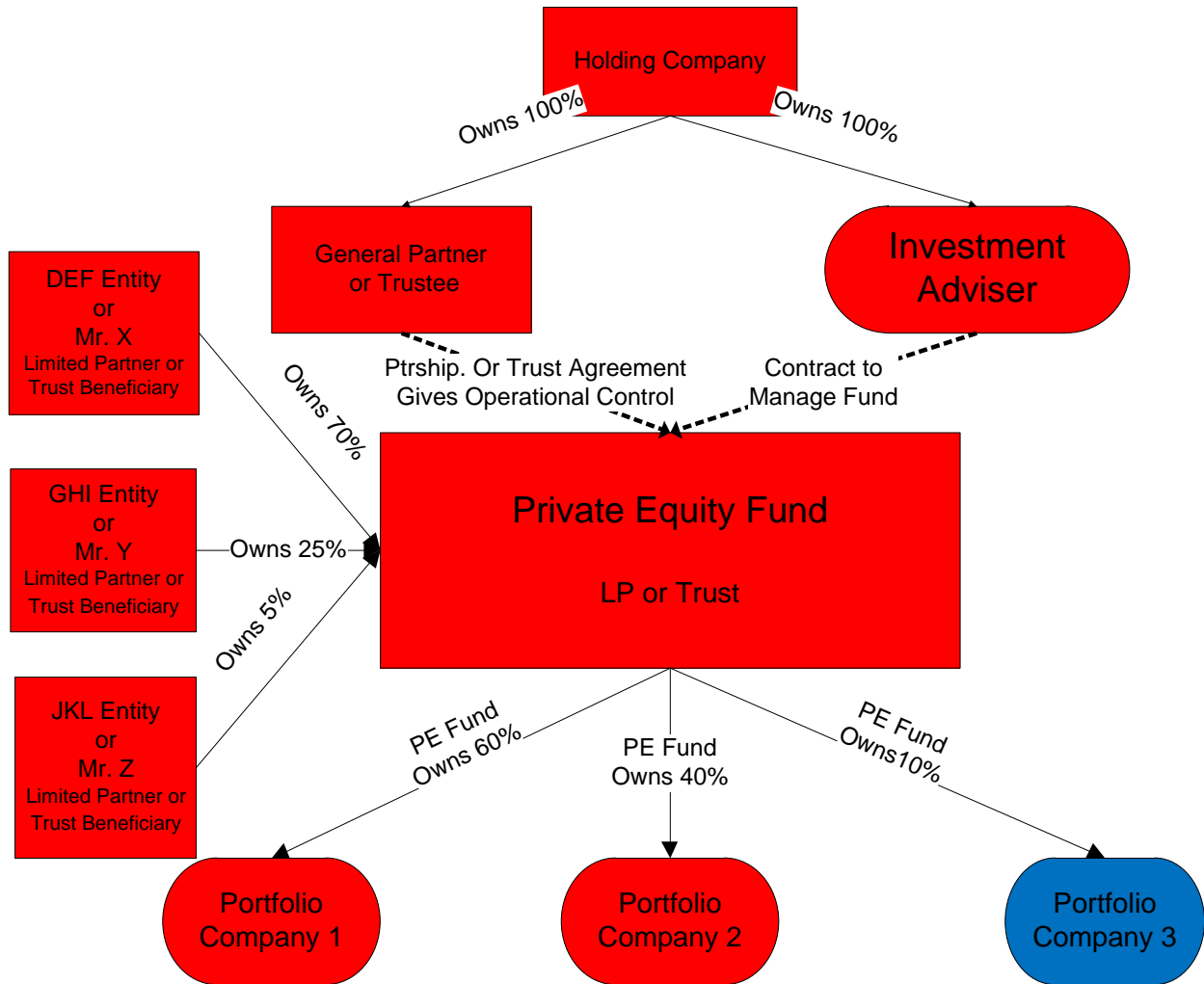
**Illustration H. Financial Statement Attest Client Is Portfolio Company 2**



**Conclusions**

- Private Equity (PE) Fund will be an affiliate of Portfolio Company 2 under affiliate definition (d) if Portfolio Company 2 is material to the PE Fund and the PE Fund has significant influence over Portfolio Company 2.
- None of the remaining entities would meet the definitions of an affiliate.

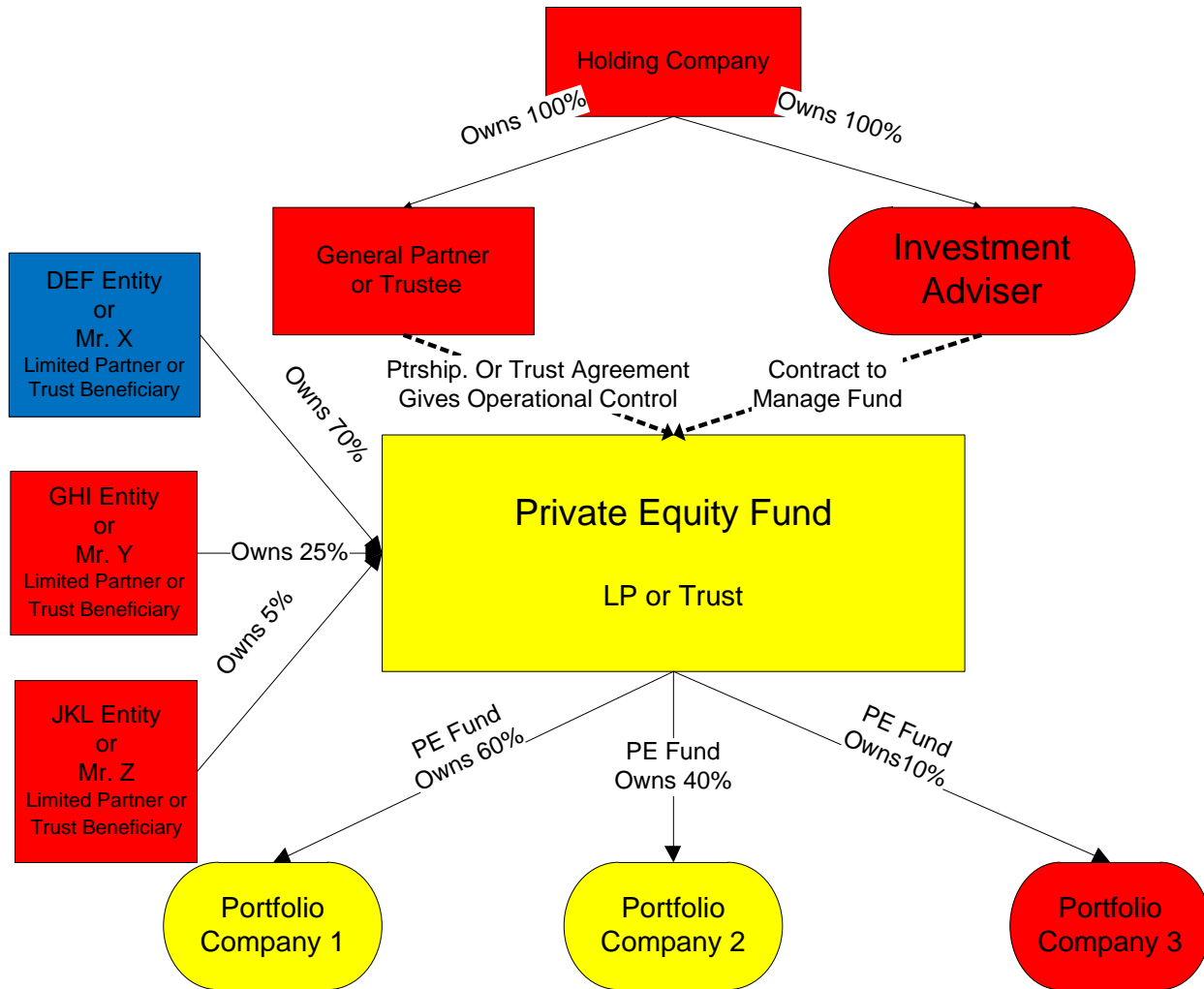
**Illustration I. Financial Statement Attest Client Is Portfolio Company 3**



**Conclusion**

When providing attest services to Portfolio Company 3, none of the entities would meet the definition of an affiliate. Accordingly, the member would need to use the threats and safeguards approach to determine if any relationships exist that would create threats that cannot be eliminated or reduced to an acceptable level.

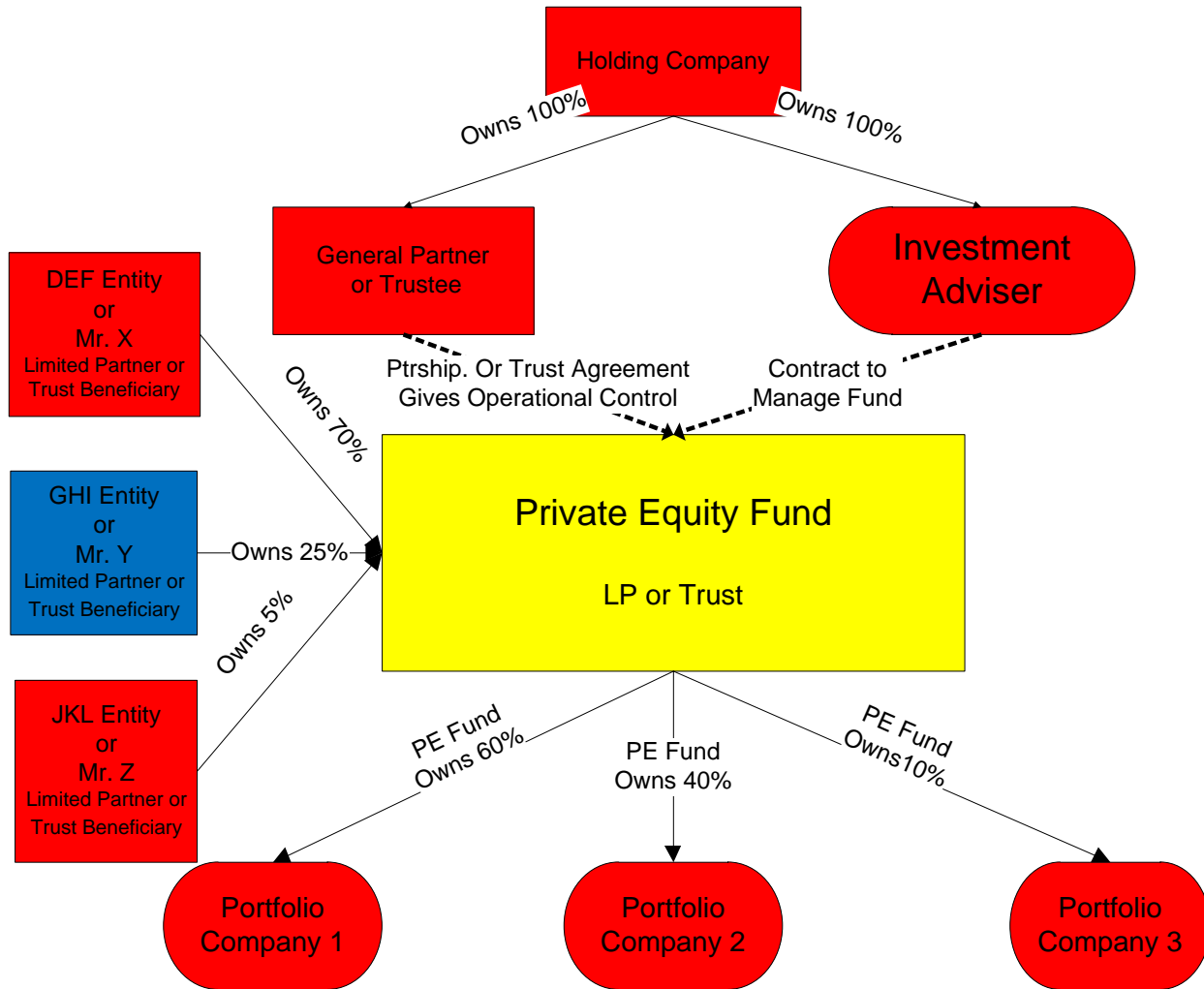
**Illustration J: Financial Statement Attest Client Is DEF**



**Conclusions**

- Private Equity (PE) Fund will be an affiliate of Entity DEF under affiliate definition (a) if after reading the partnership or trust agreement, the member determines DEF has control over the PE Fund or if under affiliate definition (b), DEF has significant influence over the PE Fund and the PE Fund is material to DEF.
- If the member determines that DEF has control over the PE Fund, Portfolio Company 1 will also be an affiliate of DEF under affiliate definition (a). In addition, if the member determines that DEF has control over the PE Fund, Portfolio Company 2 would also be an affiliate under affiliate definition (b) if Portfolio Company 2 was material to DEF.
- Portfolio Company 3 will not meet any definition of an affiliate.
- None of the remaining entities will meet the definition of an affiliate.

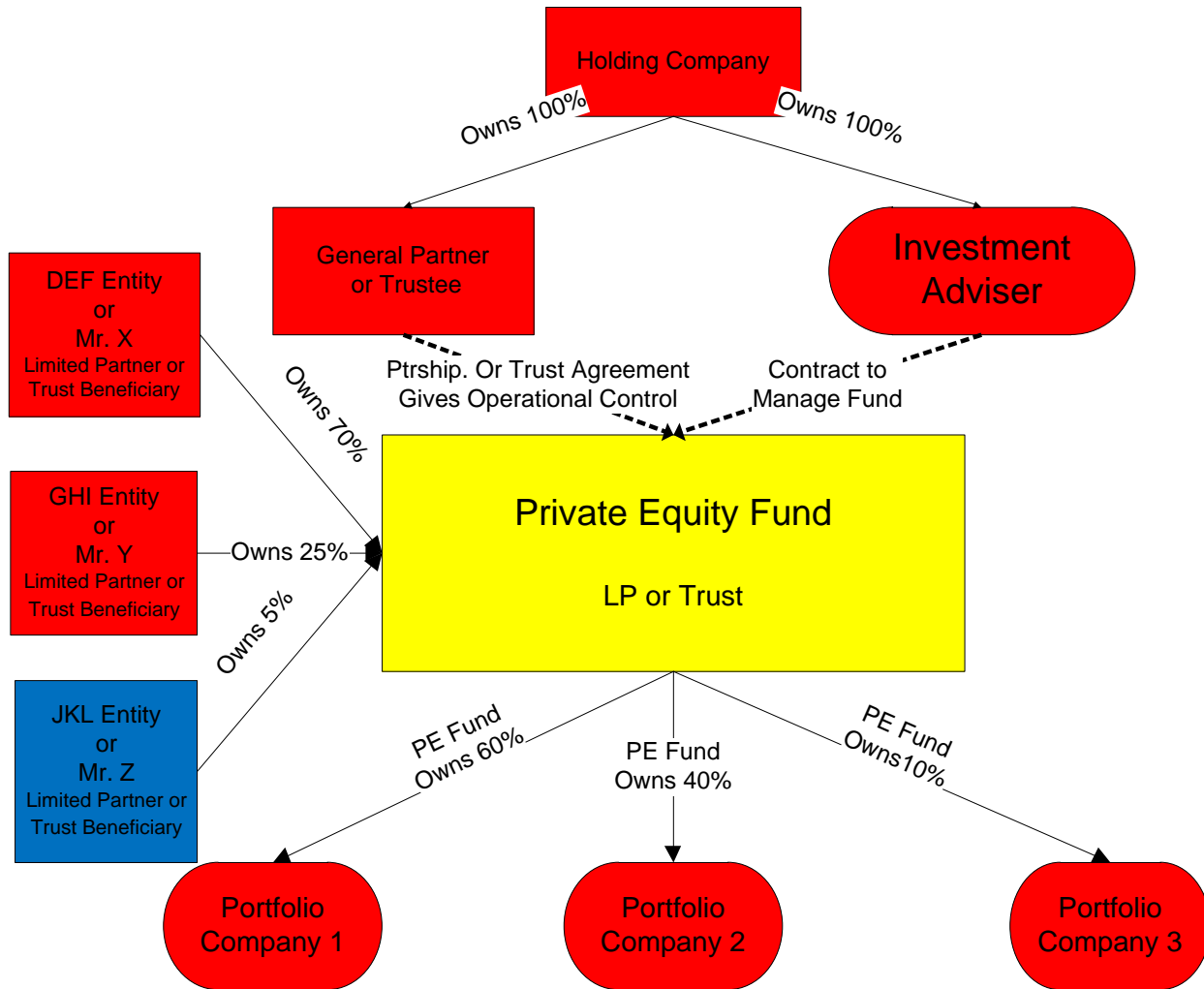
**Illustration K. Financial Statement Attest Client Is GHI**



**Conclusions**

- Private Equity (PE) Fund will be an affiliate of Entity GHI under affiliate definition (b) if after reading the partnership or trust agreement the member determines GHI has significant influence over the PE Fund and the PE Fund is material to GHI.
- None of the remaining entities will meet the definition of an affiliate.

**Illustration L: Financial Statement Attest Client Is JKL**



**Conclusion**

When providing attest services to Entity JKL, none of the other listed entities would meet the definition of an affiliate. Accordingly, the member would need to use the threats and safeguards approach to determine if any relationships exist that would create threats that cannot be eliminated or reduced to an acceptable level.

## Illustration M. Which Code Provisions Should Be Extended to Affiliates

Type of Relationship	Affiliate A	Affiliate B	Affiliate C	Affiliate D	Affiliate E	Affiliate F	Affiliate G	Affiliate H	Affiliate I	Affiliate J
Financial Interest In	P	P	P	P	P	P	P	P	NA	P
Loan To or From	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS
Nonattest Services Provided To	P	P	NSA	NSA	NSA	NSA	NSA	NSA	NSA	NSA
Member's Employment or Association With	P	P	A	A	A	A	A	A	A	A
Former Employment or Association With	P	P	P	P	P	P	P	P	P	P
Immediate Family Employment or Interest In	P	P	R	R	R	R	R	R	R	R
Close Relative Employment or Interest In	P	P	R	R	R	R	R	R	R	R

### Tick Mark Key

P	The restrictions in the AICPA Code of Professional Conduct should be applied to this affiliate.
PS	A member may have a loan to or from an individual who is an officer, director, or 10 percent owner of an affiliate, however, if the covered member has knowledge of the individual's relationship with the affiliate, they should consult the <i>Conceptual Framework for AICPA Independence Standards</i> (AICPA, <i>Professional Standards</i> , ET sec. 100-1).
A	Firm will have to apply conditions 1–6 in Interpretation No. 101-2, "Employment or association with attest clients," under Rule 101, <i>Independence</i> (AICPA, <i>Professional Standards</i> , ET sec. 101 par. .04), if the former employee is in a key position at the affiliate. Even if position is a nonkey position, when considering employment, individual must report consideration to appropriate person in the firm and be removed from engagement.
R	Immediate family members and close relatives of a covered member may be employed at affiliate as long as their position does not put them in a key position with respect to the financial statement attest client.
NSA	Services are permitted if not subject to audit; see exception 2 for details.
NA	The relationship is not applicable.

### Definitions of Affiliates

Affiliate A	Entities that a financial statement attest client can control.
Affiliate B	An entity in which a financial statement attest client, or an entity controlled by the financial statement attest client, has a direct financial interest that gives the financial statement attest client significant influence over such entity and that is material to the financial statement attest client.
Affiliate C	An entity that controls a financial statement attest client when the financial statement attest client is material to entity.
Affiliate D	An entity with a direct financial interest in the financial statement attest client when that entity has significant influence over the financial statement attest client and the interest in the financial statement attest client is material to such entity.
Affiliate E	Sister entity of a financial statement attest client if the financial statement attest client and sister are material to the entity that controls both.
Affiliate F	Trustee of a trust financial statement attest client.
Affiliate G	Sponsor of a single employer employee benefit plan financial statement attest client.
Affiliate H	Union or participating employer having significant influence over a multiple or multiemployer employee benefit plan financial statement attest client.
Affiliate I	Employee benefit plan sponsored by either a financial statement attest client or an entity controlled by the financial statement attest client.
Affiliate J	Investment adviser, general partner, and trustee of an unregistered investment company financial statement attest client (the fund), if the fees received from the fund are material to the investment adviser, general partner, or trustee and they are deemed to have either control or significant influence over the fund.

## Text of Proposed New Interpretation

### 101-18—Application of the independence rules to affiliates

#### Introduction

Financial interests in, and other relationships with, entities that are related in various ways to a financial statement attest client may impair independence. This interpretation provides guidance on determining when an entity should be considered an affiliate of a financial statement attest client and subject to the independence provisions of the AICPA Code of Professional Conduct.

#### Definitions

The following specifically identified terms are used in this interpretation as indicated:

**Affiliate.** The following entities should be considered affiliates of a financial statement attest client:

- a. An entity (for example, subsidiary, partnership, or limited liability company [LLC]) that a financial statement attest client can control;
- b. An entity in which a financial statement attest client, or an entity controlled by the financial statement attest client, has a direct financial interest that gives the financial statement attest client significant influence over such entity and that is material to the financial statement attest client;
- c. An entity (for example, parent, partnership, or LLC) that controls a financial statement attest client when the financial statement attest client is material to such entity;
- d. An entity with a direct financial interest in the financial statement attest client when that entity has significant influence over the financial statement attest client and the interest in the financial statement attest client is material to such entity;
- e. A sister entity of a financial statement attest client if the financial statement attest client and sister entity are each material to the entity that controls both;
- f. The trustee of a trust financial statement attest client;
- g. The sponsor of a single employer employee benefit plan financial statement attest client;
- h. Any union or participating employer that has significant influence over a multiple or multiemployer employee benefit plan financial statement attest client;
- i. An employee benefit plan sponsored by either a financial statement attest client or an entity controlled by the financial statement attest client. A financial statement attest client that sponsors an employee benefit plan includes, but is not limited to, a union whose members participate in the plan and participating employers of a multiple or multiemployer plan; and

- j. An investment adviser, general partner, or trustee of an unregistered investment company financial statement attest client (fund), if the fees received from the fund are material to the investment adviser, general partner, or trustee and they are deemed to have either control or significant influence over the fund.

**Control(s) (led).** The term control(s) (led) is as defined in Financial Accounting Standards Board (FASB) *Accounting Standards Codification* (ASC) 810, *Consolidation*.

**Financial statement attest client.** An entity whose financial statements are audited, reviewed, or compiled when the member's compilation report does not disclose a lack of independence.

**Significant influence.** The term significant influence is as defined in FASB ASC 323-10-15.

### **Application of the Independence Rules to Affiliates**

When a client is a financial statement attest client, members should apply the independence provisions of the AICPA Code of Professional Conduct applicable to the client to its affiliates, except in the following situations:

1. A covered member may have a loan to or from an individual who is an officer, director, or 10 percent or more owner of an affiliate when the covered member has no knowledge of this individual's relationship with the affiliate. However, if the covered member has knowledge that the individual is an officer, director, or 10 percent or more owner of an affiliate, the covered member should evaluate the effect the relationship would have on the member's independence by applying the threats and safeguards approach found in the *Conceptual Framework for AICPA Independence Standards* (AICPA, *Professional Standards*, ET sec. 100-1).
2. A member, or his or her firm, may provide prohibited nonattest services to entities described under affiliate definition (c), (d), (e), (f), (g), (h), (i), and (j), as defined in the previous section titled "Definitions," provided it is reasonable to conclude that the services do not create a self-review threat with respect to the financial statement attest client because the results of the nonattest services will not be subject to financial statement attest procedures. For any other threats that are created by the provision of the nonattest services that are not at an acceptable level, in particular, those relating to management participation, such threats should be eliminated or reduced to an acceptable level by the application of safeguards.
3. A firm will only have to apply conditions 1–6 in Interpretation No. 101-2, "Employment or association with attest clients," under Rule 101, *Independence* (AICPA, *Professional Standards*, ET sec. 101 par. .04), if the former employee, by virtue of his or her employment at an entity described under affiliate definition (c), (d), (e), (f), (g), (h), (i), or (j) would put the employee in a key position with respect to the financial statement attest client. Individuals who are considering employment with an affiliate will still need to report consideration of employment to an appropriate person in the firm and remove themselves from the financial statement attest engagement even if the position with the affiliate is not a key position.
4. Immediate family members and close relatives of a covered member may be employed at an entity described under affiliate definition (c), (d), (e), (f), (g), (h), (i), or (j) in a key position, provided the position does not put them in a key position with respect to the financial statement attest client.

## **Other Considerations**

When a member becomes aware of an entity not identified in the previous section (such as, a trust for which a financial statement attest client is trustee) that either can control or exercise significant influence over a financial statement attest client or that the financial statement attest client can control or exercise significant influence over, the member should evaluate, using the *Conceptual Framework for AICPA Independence Standards*, any relationships or interests the member has with such entity.

In addition, when the member performs a service that requires independence other than a financial statement audit, review, or compilation (when the member's compilation report does not disclose a lack of independence), an evaluation of any relationships or interests the member has with the client's affiliated entities should be made using the *Conceptual Framework for AICPA Independence Standards*.

## **Effective Date**

This interpretation will be effective for engagements covering periods beginning on or after January 1, 2013.

## **Proposed New Interpretation No. 101-19, “Permitted Employment With Client Educational Institution,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment a proposed new interpretation under Rule 101 of the AICPA Code of Professional Conduct. The proposed new interpretation provides for a limited exception to the independence requirements when a partner or professional employee of the firm is simultaneously associated with a client as an employee (see criteria C.1. of Interpretation No. 101-1, “Interpretation of Rule 101,” under Rule 101, *Independence* [AICPA, *Professional Standards*, ET sec. 101 par. .02]). Specifically, the PEEC believes that the public interest would be best served if partners or professional employees of firms are permitted to offer their expertise by serving as adjunct faculty members at client educational institutions provided certain stipulations are met.

### **Request for Specific Comment**

Although the PEEC welcomes comments on all aspects of this proposal, it specifically requests feedback on the following. The proposed interpretation provides for a limited exception to the independence requirement that a partner or professional employee of a firm not be simultaneously associated with a client as an employee. Do you believe it is appropriate to make an exception to this requirement? If not, please explain what your concerns would be.

### **Text of Proposed New Interpretation**

#### **101-19—Permitted employment with client educational institution**

Partners or professional employees of a firm may seek employment as an adjunct faculty member of an educational institution. Partners or professional employees of a firm who provide these types of services to an educational institution that is a client of the firm would not be considered to impair independence with respect to the educational institution provided that the partner or professional employee

- a.* does not hold a key position at the educational institution,
- b.* does not participate on the attest engagement team,
- c.* is not an individual in a position to influence the attest engagement,
- d.* is employed by the educational institution on a part-time and nontenure basis, and
- e.* does not assume any management responsibilities or set policies for the educational institution.

## **Proposed New Definition, “Confidential Client Information,” Under ET Section 92, *Definitions***

### **Explanation**

The explanation for this proposed new definition is found on pages [50 through 52](#).

### **Text of Proposed New Definition**

**Confidential client information.** Confidential client information is any information obtained from the client that is not known to be in the public domain or available to the public. Information in the public domain or available to the public includes, but is not limited to information

- in a book, periodical, newspaper, or similar publication;
- obtained from commercially available databases;
- in a client document that has been released by the client to the public or that has otherwise become a matter of public knowledge;
- on client websites that is available to persons accessing that website without restrictions imposed by the client concerning use or access;
- maintained by or filed with regulatory or governmental bodies that is available to the public without restriction; or
- maintained by or filed with regulatory or governmental bodies that was obtained through freedom of information or similar requests filed with and approved by such bodies in accordance with their rules or regulations.

Unless it is known that the particular client information is in the public domain or available to the public, such information should be considered confidential client information.

## Proposed Revision to ET Section 91, *Applicability*

### Explanation

At the PEEC's August 2010 meeting, it adopted a nonenforcement policy whereby it agreed to not take enforcement action against a member who is (a) a member of a group engagement team (see the clarified SAS, *Special Considerations—Audits of Group Financial Statements [Including the Work of Component Auditors]*) in cases when a foreign component auditor is not in compliance with the AICPA code, provided the foreign component auditor at a minimum is in compliance with the IESBA code and the members of the group engagement team are in compliance with the AICPA code, and (b) a member of a network firm in cases when another firm within that network that is located outside the United States is not in compliance with the AICPA code provided the foreign network firm at a minimum is in compliance with the IESBA code. The PEEC believed it would be appropriate to recognize the IESBA code under such circumstances as a “minimum standard” based on the fact that it believes the IESBA code is a robust set of ethics standards and recognition would facilitate convergence and compliance with ethics requirements by foreign network firms and on group audits involving foreign auditors.

The PEEC further agreed that this policy should be made authoritative and part of the AICPA code. Accordingly, the PEEC is exposing for comment a proposed revision to ET section 91, *Applicability* (AICPA, *Professional Standards*), that would specify that a member would not be subject to discipline in cases in the following situations:

- A member is a member of a group engagement team and a foreign component auditor is not in compliance with the AICPA code, provided the foreign component auditor at a minimum is in compliance with the IESBA code. The members of the group engagement team, however, would still need to comply with the AICPA code.
- A member is a member of a network firm and another firm within that network that is located outside of the United States is not in compliance with the AICPA code, provided the foreign network firm at a minimum is in compliance with the IESBA code.

### Text of Proposed Revision

(Additions appear in ***boldface italic*** and deletions are stricken.)

**.01** The bylaws of the American Institute of Certified Public Accountants require that members adhere to the Rules of the Code of Professional Conduct. Members must be prepared to justify departures from these Rules.

**.02** *Interpretation Addressing the Applicability of the AICPA Code of Professional Conduct.* For purposes of the applicability section of the Code, a “member” is a member, associated member, or international associate of the American Institute of CPAs [ET section 92.20].

1. The Rules of Conduct that follow apply to all professional services performed except (a) where the wording of the rule indicates otherwise ~~and~~; (b) that a member who is practicing outside the United States will not be subject to discipline for departing from any of the rules stated herein as long as the member's conduct is in accord with the rules of the organized accounting profession in the country in which he or she is practicing. However, where a member's name is associated with financial statements under circumstances that would entitle the reader to assume that United States practices were followed,

the member must comply with the requirements of rules 202 [ET section 202.01] and 203 [ET section 203.01]; ~~and~~ *(c) a member who is a member of a group engagement team (see the clarified SAS Special Considerations—Audits of Group Financial Statements [Including the Work of Component Auditors]) will not be subject to discipline if a foreign component auditor departed from any of the ethics requirements stated herein with respect to the group audit as long as the foreign component auditor’s conduct at a minimum is in accord with the ethics and independence requirements set forth in the International Federation for Accountants (IFAC) International Ethics Standards Board for Accountants’ Code of Ethics for Professional Accountants and the members of the group engagement team are in compliance with the rules stated herein; and (d) a member who is a member of a network firm (see Rule 92, Definitions [AICPA, Professional Standards, ET sec. 92 par. .28]) will not be subject to discipline if a firm within the network (see Rule 92, Definitions [AICPA, Professional Standards, ET sec. 92 par. .29]) that is located outside the United States (“foreign network firm”) departed from any of the ethics requirements stated herein as long as the foreign network firm’s conduct at a minimum is in accord with the ethics and independence requirements set forth in the IFAC International Ethics Standards Board for Accountants’ Code of Ethics for Professional Accountants.*

## Proposed Revision to *Conceptual Framework for AICPA Independence Standards*

### Explanation

The PEEC is exposing for comment a proposed revision to the *Conceptual Framework for AICPA Independence Standards* (hereinafter *Conceptual Framework*). Specifically, the PEEC proposes to clarify which entities should be considered public interest entities (PIEs) for purposes of determining the nature and extent of safeguards to be applied. Specifically, the PEEC is proposing a less comprehensive definition that would no longer refer to employee benefit and health and welfare plans, governmental retirement plans, entities or programs subject to Single Audit Act requirements from the OMB Circular A-133, “Audits of States, Local Governments and Non-Profit Organizations,” and so forth. Rather, the proposed definition would be more consistent with the IESBA definition of PIEs, which includes listed entities and those entities subject to the same independence requirements as listed entities. As with the IESBA definition, the PEEC’s proposed definition would encompass all listed entities and any entity for which an audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities (for example, Securities and Exchange Commission or the Public Company Accounting Oversight Board). This would include entities located outside of the United States whose shares, stock, or debt are quoted or listed on a recognized stock exchange or marketed under the regulations of a recognized stock exchange or equivalent body. The PEEC also proposes to expand the *Conceptual Framework* to have members consider whether any other entities exist, aside from those identified in the *Conceptual Framework*, which should be considered PIEs.

### Text of Proposed Revision

(Additions appear in **boldface italic** and deletions are stricken.)

#### *Conceptual Framework for AICPA Independence Standards* (in part):

**.20 Safeguards**—Controls that ~~mitigate or~~ eliminate **or reduce** threats to independence. Safeguards range from partial to complete prohibitions of the threatening circumstance to procedures that counteract the potential influence of a threat. The nature and extent of the safeguards to be applied depend on many factors, including the size of the firm and whether the client is a public interest entity.<sup>5</sup> To be effective, safeguards should eliminate **or reduce** the threat ~~or reduce~~ to an acceptable level ~~the threat’s potential to impair independence~~.

<sup>5</sup>Solely for the purpose of this conceptual framework, the following entities are considered to be public interest entities: (1) ~~entities subject to Securities and Exchange Commission reporting requirements; **all listed entities,**~~<sup>fn5</sup> and (2) ~~employee benefit and health and welfare plans subject to Employee Retirement Income Security Act audit requirements~~ **any entity for which an audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to an audit of listed entities (for example, the Securities and Exchange Commission, the Public Company Accounting Oversight Board, and other similar regulators or standard setters).**<sup>fn6</sup> ~~;(3) governmental retirement plans; (4) entities or programs (including for profit entities) subject to Single Audit Act OMB Circular A 133 requirements and entities or programs subject to similar program oversight; and (5) financial institutions, credit unions, and insurance companies. These entities are public interest entities because their audited financial statements are directly relied upon by significant numbers of stakeholders to make investment, credit, or similar decisions (for example, in the case of a publicly held company) or indirectly relied upon through regulatory oversight (for example, in the case of pension plans, banks, and insurance companies) and, therefore, the potential extent of harm to the public from an audit failure involving one of these entities would generally be significant.~~

*<sup>fn5</sup> Including entities that are outside of the United States whose shares, stock, or debt are quoted or listed on a recognized stock exchange or are marketed under the regulations of a recognized stock exchange or other equivalent body.*

*<sup>fn6</sup> Members may wish to consider whether additional entities should also be treated as public interest entities because they have a large number and wide range of stakeholders. Factors to be considered may include (a) the nature of the business, such as the holding of assets in a fiduciary capacity for a large number of stakeholders; (b) size; and (c) number of employees.*

## **Proposed Revision to Interpretation No. 101-3, “Performance of Nonattest Services,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment proposed revisions to Interpretation No. 101-3, “Performance of nonattest services,” under Rule 101, *Independence* (AICPA, *Professional Standards*, ET sec. 101 par. .05). The initial reason for undertaking this project was because the PEEC was informed that some members believed there was an inconsistency within Interpretation No. 101-3 as it relates to the general activity (that is, prohibition) of establishing or maintaining internal controls, including performing ongoing monitoring activities for a client. Specifically, the PEEC was informed that some believed certain bookkeeping services and other nonattest services permitted under Interpretation No. 101-3 could be viewed as “maintaining internal controls” for the client and as such, prohibited by the general activity noted previously. To clarify its intent, the PEEC proposes to revise this general activity to state, “Accepting responsibility for designing, implementing or maintaining internal control.” The PEEC believes the phrase “designing and implementing” is not only clearer than “establishing” but is more reflective of the language used in the professional standards (for example, auditing standards). The addition of the phrase “accepting responsibility for,” is intended to clarify that members are able to perform services to design, implement, or maintain aspects of internal control when management accepts responsibility for such services and the other general requirements of the interpretation are met.

During the course of its discussions, the PEEC decided several other clarifications would enhance the guidance in this interpretation. One such clarification is that the PEEC believes the term “management responsibilities” was clearer than “management functions” and, therefore, proposes revisions to reflect this change. To further facilitate understanding, the PEEC incorporated an explanation of what management responsibilities would include as well as additional examples of management responsibilities. The examples previously referred to as “General Activities” have also been merged into the examples of “management responsibilities” because they are more appropriately classified as such. The proposed language is consistent with the IESBA code, and, therefore, it aligns the AICPA code closer with international standards. The PEEC does not view these revisions as being more restrictive than the current independence requirements, and, therefore, such changes are not intended to change current practice.

One of the proposed revisions in this area, however, may be viewed as more restrictive. Specifically, the PEEC proposes to include a requirement that members evaluate the significance of the management participation threat created by performing separate evaluations on the effectiveness of the client’s internal control system. The PEEC believes that an inconsistency in the current interpretation exists by prohibiting a member from performing ongoing monitoring procedures for a client while permitting separate evaluations because, depending on the nature and frequency of the separate evaluations, the member may be performing services equivalent to ongoing monitoring procedures. Accordingly, the PEEC believes the significance of the threat created by performing separate evaluations should be evaluated and safeguards applied when necessary.

The PEEC is also proposing some revisions to the interpretation based upon guidance contained in the Ethics Division’s nonauthoritative answers to frequently asked questions (available at [www.aicpa.org/InterestAreas/ProfessionalEthics/Resources/Tools/DownloadableDocuments/NonattestServicesFAQs.doc](http://www.aicpa.org/InterestAreas/ProfessionalEthics/Resources/Tools/DownloadableDocuments/NonattestServicesFAQs.doc)) regarding performance of nonattest services. One such revision relates to clarifying the difference between performing bookkeeping services and performing activities that are considered part of the attest engagement (for example, proposing audit adjustments). Another revision relates to situations when the member’s independence would be impaired as a result of the performance of a prohibited nonattest service to an entity prior to being engaged to provide attest services but during the period of the professional engagement. When

such occurs, the PEEC believes that as long as the prohibited nonattest services would not constitute management responsibilities, relate solely to the financial statements of a prior period, and were audited (or reviewed or audited if a review was performed) by another firm, the member's independence would not be impaired. The last two revisions were to incorporate two additional examples into the matrix of services that would not impair independence (for example, preparation of bank reconciliations and network maintenance).

## **Text of Proposed Revision**

*(Additions appear in boldface italic and deletions are stricken. Note that only portions of the interpretation are included.)*

### **101-3—Performance of ~~n~~ Nonattest services (in part)**

Before a member or his or her firm ("member") performs nonattest services (for example, tax or consulting services) for an attest client,<sup>fn14</sup> the member should determine that the requirements described in this interpretation have been met. In cases where the requirements *of this interpretation* have not been met during the period of the professional engagement or the period covered by the financial statements, the member's independence would be impaired, *except as noted in the following paragraph*.

*A member's independence would not be impaired when a member performed nonattest services prior to the period of the professional engagement that would have impaired independence because the nonattest services were performed during the period covered by the financial statements, provided*

- a. the services do not constitute a management responsibility,*
- b. the services relate solely to financial statements of the prior period, and*
- c. those financial statements were audited by another firm (or in the case of a review engagement, reviewed or audited by another firm).*

### **Activities Related to Attest Services**

*Performing attest services often involves discussions between the member and client management which may involve (a) the client's selection and application of accounting standards or policies and financial statement disclosure requirements; (b) the appropriateness of the client's methods used in determining the accounting and financial reporting; (c) proposing adjusting journal entries for client management consideration; and (d) making suggestions about the form or content of the financial statements. These discussions are considered a normal part of the attest engagement and would not constitute performing a nonattest service subject to this interpretation. However the member should exercise judgment to determine whether the member's involvement has become so extensive as to constitute nonattest services (for example, bookkeeping) subject to this interpretation.*

### **Engagements Subject to Independence Rules of Certain Regulatory Bodies**

This interpretation requires compliance with independence regulations of authoritative regulatory bodies (such as the Securities and Exchange Commission [SEC], the General Accounting Office [GAO], the Department of Labor [DOL], and state boards of accountancy) where a member performs nonattest services for an attest client and is required to be independent of the client under the regulations of the applicable regulatory body. Accordingly, failure to comply with the nonattest services provisions contained in the independence rules of the applicable regulatory body that are more restrictive than the provisions of this interpretation would constitute a violation of this interpretation.

### **General Requirements for Performing Nonattest Services**

1. The member should not *assume management responsibilities* ~~perform management functions or make management decisions for the attest client. However, the member may provide advice, research materials, and recommendations to assist the client's management in performing functions and making decisions.~~
2. *In connection with an engagement to perform nonattest services, ~~the member should determine that the client must agree to perform the following functions in connection with the engagement to perform nonattest services:~~*
  - a. ~~Make Assume~~ all management *responsibilities* decisions and perform all management functions.
  - b. ~~Designate~~ *Oversee the service, by designating* an individual, *preferably within senior management*, who possesses suitable skill, knowledge, and/or experience ~~preferably within senior management, to oversee the services. The member should be satisfied that such individual understands the services to be performed sufficiently to oversee them. However, the individual is not required to possess the expertise to perform or reperform the services.~~
  - c. Evaluate the adequacy and results of the services performed., and
  - d. Accept responsibility for the results of the services.

*To avoid assuming management responsibilities when providing nonattest services to the client, ~~the member should be satisfied that the client management will be able to meet all of these criteria, and make an informed judgment on the results of the member's nonattest services, and be responsible for making the significant judgments and decisions that are the proper responsibility of management. In assessing whether the designated individual possesses suitable skill, knowledge, and/or experience, the member should be satisfied that such individual understands the services to be performed sufficiently to oversee them. However, the individual is not required to possess the expertise to perform or re-perform the services. In cases in which the client is unable or unwilling to assume these responsibilities (for example, the client does not have an individual with suitable skill, knowledge, and/or experience to cannot oversee the nonattest services provided, or is unwilling to perform such functions carry out such responsibilities due to lack of time or desire), the member's provision of these services would impair independence.~~*

3. Before performing nonattest services, the member should establish and document in writing<sup>fn15</sup> his or her understanding with the client (board of directors, audit committee, or management, as appropriate in the circumstances) regarding the following:
  - a. Objectives of the engagement
  - b. Services to be performed
  - c. Client's acceptance of its responsibilities
  - d. Member's responsibilities
  - e. Any limitations of the engagement

The documentation requirement does not apply to:

- a. ~~Nonattest services performed prior to January 1, 2005.~~
- b. ~~Nonattest services performed prior to the client becoming an attest client.~~<sup>fn16</sup>

General requirements 2 and 3 above, do not apply to certain routine activities performed by the member such as providing advice and responding to the client's questions as part of the normal client-member relationship.

### **General Activities**

~~The following are some general activities that would impair a member's independence:~~

## ***Management Responsibilities***

***If a member were to assume a management responsibility for an attest client, the management participation threat created would be so significant that no safeguards could reduce the threat to an acceptable level. It is not possible to specify every activity that is a management responsibility. However, management responsibilities involve leading and directing an entity, including making significant decisions regarding the acquisition, deployment, and control of human, financial, physical, and intangible resources.***

***Whether an activity is a management responsibility depends on the circumstances and requires the exercise of judgment. Examples of activities that would be considered a management responsibility and, therefore, impair independence if performed for attest clients include:***

- ***Setting policies or strategic direction for the client***
- ***Directing or accepting responsibility for the actions of the client's employees in the performance of their normal recurring activities***
- Authorizing, executing or consummating a transactions, or otherwise exercising authority on behalf of a client or having the authority to do so
- Preparing source documents,<sup>fn17</sup> in electronic or other form, evidencing the occurrence of a transaction
- Having custody of client assets
- ~~Supervising client employees in the performance of their normal recurring activities~~
- ~~Determining~~ ***Deciding*** which recommendations of the member ***or other third parties*** to ~~should be implemented or prioritize~~
- Reporting to ~~the board of directors~~ ***those in charge of governance*** on behalf of management
- Serving as a client's stock transfer or escrow agent, registrar, general counsel or its equivalent
- ***Accepting responsibility for the management of a client's project***
- ***Accepting responsibility for the preparation and fair presentation of the client's financial statements in accordance with the applicable financial reporting framework***
- ***Accepting responsibility for designing, implementing, Establishing or maintaining internal controls including performing ongoing monitoring activities***<sup>fn18</sup> for a client.

***Accepting responsibility for designing, implementing, or maintaining internal control includes accepting responsibility for designing, implementing, or maintaining monitoring procedures.***<sup>fn18</sup> ***Monitoring involves the use of ongoing monitoring procedures or separate evaluations to gather and analyze persuasive information supporting conclusions about the effectiveness of the internal control system. Ongoing monitoring procedures are built into the routine, recurring operating activities of an organization. Therefore, the management participation threat created by a member performing ongoing monitoring procedures is so significant that no safeguards could reduce the threat to an acceptable level.***

***However, separate evaluations often are performed by individuals who are not directly involved in the operation of the controls being monitored. As such, it is possible for a member to provide an objective analysis of control effectiveness by performing separate evaluations without creating a significant management participation threat that would impair independence. In all such cases, the significance of the threat created by performing separate evaluations should be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. The member should consider the frequency of the separate evaluations, as well as the scope or extent of the controls (in relation to the overall financial statements of the client) being tested, in evaluating the significance of the threat.***

*Activities that are routine and administrative are deemed not to be a management responsibility. For example, monitoring the dates for filing statutory returns and advising clients of those dates is deemed not to be a management responsibility. Further, providing advice, research materials, and recommendations to assist management in discharging its responsibilities is not assuming a management responsibility.*

### Specific Examples of Nonattest Services

The examples in the following table identify the effect that performance of certain nonattest services for an attest client can have on a member's independence. These examples presume that the general requirements in the previous section "General Requirements for Performing Nonattest Services" have been met and are not intended to be all-inclusive of the types of nonattest services performed by members.

#### Impact on Independence of Performance of Nonattest Services

<i>Type of Nonattest Service</i>	<i>Independence Would Not Be Impaired</i>	<i>Independence Would Be Impaired</i>
Bookkeeping	<ul style="list-style-type: none"> <li>Record transactions for which management has determined or approved the appropriate account classification, or post coded transactions to a client's general ledger.</li> <li>Prepare financial statements based on information in the trial balance.</li> <li>Post client-approved entries to a client's trial balance.</li> <li><b><i>Prepare a reconciliation (for example, bank, accounts receivable, and so forth) that identifies reconciling items for the client's evaluation.</i></b></li> <li>Propose standard, adjusting, or correcting journal entries or other changes affecting the financial statements to the client provided the client reviews the entries and the member is satisfied that management understands the nature of the proposed entries and the impact the entries have on the financial statements.</li> </ul>	<ul style="list-style-type: none"> <li>Determine or change journal entries, account codings or classification for transactions, or other accounting records without obtaining client approval.</li> <li>Authorize or approve transactions.</li> <li>Prepare source documents.</li> <li>Make changes to source documents without client approval.</li> </ul>
Information systems—design, installation or integration	<ul style="list-style-type: none"> <li>Install or integrate a client's financial information system that was not designed or developed by the member (e.g., an off-the-shelf accounting package).</li> <li>Assist in setting up the client's chart of accounts and financial statement format with respect to the client's financial information system.</li> </ul>	<ul style="list-style-type: none"> <li>Design or develop a client's financial information system.</li> <li>Make other than insignificant modifications to source code underlying a client's existing</li> </ul>

- Design, develop, install, or integrate a client's information system that is unrelated to the client's financial statements or accounting records.
  - Provide training and instruction to client employees on an information and control system.
  - ***Perform network maintenance, such as updating virus protection, applying routine updates and patches, or configuring user settings consistent with management's request.***
- financial information system.
  - Supervise client personnel in the daily operation of a client's information system.
  - Operate a client's local area network (LAN) system.

<sup>fn14</sup> A member who performs a compilation engagement for a client should modify the compilation report to indicate a lack of independence if the member does not meet all of the conditions set out in this interpretation when providing a nonattest service to that client (see Statement on Standards for Accounting and Review Services No. 19, *Compilation and Review of Financial Statements Engagements* [AR section 100.19 **80.21**]). [Footnote added, effective December 31, 2003, by the Professional Ethics Executive Committee. Footnote renumbered by the revision of interpretation 101-1, April 2006. Footnote subsequently renumbered by the revision of interpretation 101-1, March 2010.]

<sup>fn15</sup> A failure to prepare the required documentation would not impair independence, but would be considered a violation of Rule 202, *Compliance With Standards* [Rule 202.01], provided that the member did establish the understanding with the client. [Footnote added, effective December 31, 2003, by the Professional Ethics Executive Committee. Footnote revised, January 2005, by the Professional Ethics Executive Committee. Footnote renumbered by the revision of interpretation 101-1, April 2006. Footnote subsequently renumbered by the revision of interpretation 101-1, March 2010.]

<sup>fn16</sup> However, upon the acceptance of an attest engagement, the member should prepare written documentation demonstrating his or her compliance with the other general requirements during the period covered by the financial statements, including the requirement to establish an understanding with the client. [Footnote added, effective October 31, 2004, by the Professional Ethics Executive Committee. Footnote renumbered by the revision of interpretation 101-1, April 2006. Footnote subsequently renumbered by the revision of interpretation 101-1, March 2010.]

<sup>fn17</sup> Source documents are the documents upon which evidence of an accounting transaction are initially recorded. Source documents are often followed by the creation of many additional records and reports, which do not, however, qualify as initial recordings. Examples of source documents are purchase orders, payroll time cards, and customer orders. [Footnote renumbered by the revision of interpretation 101-2, April 2003. Footnote subsequently renumbered and revised, September 2003, by the Professional Ethics Executive Committee. Footnote subsequently renumbered by the Professional Ethics Executive Committee, July 2004. Footnote subsequently renumbered by the revision of interpretation 101-1, April 2006. Footnote subsequently renumbered by the revision of interpretation 101-1, March 2010.]

<sup>fn18</sup> ~~Monitoring can be accomplished through ongoing activities, separate evaluations, or a combination of both. Ongoing monitoring activities are the procedures designed to assess the quality of internal control performance over time, and is built into the normal recurring activities of an entity; these activities include regular management and supervisory activities. Separate evaluations focus on the continued effectiveness of a client's internal control. A member's independence would not be impaired by the performance of separate evaluations of the effectiveness of a client's internal control, including separate evaluations of the client's~~

ongoing monitoring activities. [Footnote added, effective July 31, 2007, by the Professional Ethics Executive Committee.]

<sup>fn18</sup> *In 1992, the Committee of Sponsoring Organizations of the Treadway Commission developed the Internal Control—Integrated Framework consisting of five interrelated and equally important components. Four components relate to the design and operation of the system of internal control; the fifth component monitoring is designed to ensure that internal control continues to operate effectively.*

## **Proposed Revision to Interpretation No. 101-11, “Modified Application of Rule 101 for Certain Engagements to Issue Restricted-Use Reports Under the Statements on Standards for Attestation Engagements,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment two proposed revisions to Interpretation No. 101-11, “Modified application of rule 101 for certain engagements to issue restricted-use reports under the Statements on Standards for Attestation Engagements,” under Rule 101, *Independence* (AICPA, *Professional Standards*, ET sec. 101 par. .13). Specifically, the PEEC is proposing that when performing an engagement under the Statements on Standards for Attestation Engagements (SSAEs) (that is, a SSAE-only engagement) independence need only be maintained with respect to the responsible party and not the entity that engages the member in cases when the entity that engages the member is not the responsible party. In such circumstances, consideration should be given to the requirements of Interpretation No. 102-2, “Conflicts of interest,” under Rule 102, *Integrity and Objectivity* (AICPA, *Professional Standards*, ET sec. 102 par. .03), with regard to any relationships that may exist with the individual or entity that engages the member to perform these services.

In addition, the PEEC believes that when performing a SSAE engagement, it is appropriate to apply Interpretation No. 101-3 in the context of the SSAE engagement. Specifically, the PEEC believes that as long as the general requirements of Interpretation No. 101-3 are met and any prohibited nonattest services provided to the responsible party do not relate to the specific subject matter of the SSAE engagement, independence would not be impaired. This conclusion is based on the premise that Interpretation No. 101-3 addresses independence considerations related to nonattest services principally from the perspective of financial statement audit and review engagements (for example, the design and implementation of an IT system is considered from the perspective of that system’s effect on the client’s financial information system). To better align the guidance with the *Conceptual Framework for AICPA Independence Standards*, the PEEC proposes that the self-review threats for SSAE engagements be evaluated on the basis of their effect on the assertions that are the subject of the attest engagement.

### **Text of Proposed Revision**

*(Additions appear in boldface italic and deletions are stricken.)*

**101-11—Modified application of rule 101 for ~~certain engagements to issue restricted-use reports under performed in accordance with the~~ Statements on Standards for Attestation Engagements.**

Rule 101: *Independence* [ET section 101.01], and its interpretations and rulings apply to all attest engagements. *However, the following exceptions apply when performing engagements to issue reports in accordance with the Statements on Standards for Attestation Engagements (SSAEs) when independence is required or when the member’s compilation report does not disclose a lack of independence.*

- 1. Covered members need to be independent with respect to the responsible party(ies).<sup>fn43</sup> See the following section for specific guidance for agreed-upon procedures (AUP) engagements performed under the SSAEs.*
- 2. In circumstances in which the individual or entity that engages the member is not the responsible party, covered members need not be independent of that individual or entity. However, consideration*

*should be given to the requirements of Interpretation No. 102-2, “Conflicts of interest,” under Rule 102, Integrity and Objectivity (AICPA, Professional Standards, ET sec. 102 par. .03), with regard to any relationships that may exist with the individual or entity that engages them to perform these services.*

- 3. Nonattest services that are otherwise prohibited by Interpretation No. 101-3, “Performance of nonattest services,” under Rule 101, Independence (AICPA, Professional Standards, ET sec. 101 par. .05), may be provided to the responsible party(ies) when such services do not relate to the specific subject matter<sup>fn44</sup> of the SSAE engagement, provided the general requirements of Interpretation No. 101-3 are met.*

### ***Agreed-Upon Procedure Engagements***

~~However, for purposes of~~*When performing an AUP engagements to issue reports under the Statements on Standards for Attestation Engagements (SSAEs) that are restricted to identified parties, only the following covered members, and their immediate families, are required to be independent with respect to the responsible party(ies)<sup>fn43</sup> in accordance with rule 101 [ET section 101.01]:*

- Individuals participating on the AUP engagement team;
- Individuals who directly supervise or manage the AUP engagement partner; and
- Individuals who consult with the attest engagement team regarding technical or industry-related issues specific to the AUP engagement.

~~In addition, independence would be considered to be impaired if the firm had a financial relationship covered by interpretation 101-1.A [ET section 101.02] with the responsible party(ies) that was material to the firm.~~

~~In cases where the firm provides non-attest services to the responsible party that are proscribed under interpretation 101-3 [ET section 101.05] and that do not directly relate to the subject matter of the attest engagement, independence would not be considered to be impaired~~

~~In circumstances where the individual or entity that engages the firm is not the responsible party or associated with the responsible party, individuals on the attest engagement team need not be independent of the individual or entity, but should consider their responsibilities under interpretation 102-2 [ET section 102.03] with regard to any relationships that may exist with the individual or entity that engages them to perform these services.~~

~~This interpretation does not apply to an engagement performed under the Statements on Auditing Standards or Statements on Standards for Accounting and Review Services or to an examination or review engagement performed under the Statements on Standards for Attestation Engagements.~~

<sup>fn 43</sup> *For purposes of this interpretation, the term responsible party is aAs defined in the SSAEs.*  
[Footnote renumbered, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote subsequently renumbered by the revision of interpretation 101-2, April 2003. Footnote subsequently renumbered by the revision of interpretation 101-3, September 2003. Footnote subsequently renumbered by the revision of interpretation 101-3, July 2004. Footnote subsequently renumbered by the revision of interpretation 101-1, April 2006.]

<sup>fn 44</sup> *For purposes of this interpretation, the term subject matter is as defined in the SSAEs.*

## **Proposed Revision to Ethics Ruling No. 2, “Distribution of Client Information to Trade Associations,” Under Rule 301, *Confidential Client Information***

### **Explanation**

In May 2008, the PEEC appointed a task force to determine whether a member would be in violation of Rule 301, *Confidential Client Information* (AICPA, *Professional Standards*, ET sec. 301), if client information was shared with a third party on a “no-name” basis for research or benchmarking purposes without the client’s specific consent. After studying this issue, the PEEC issued an omnibus exposure draft in September 2009 that included proposed revisions to Ethics Ruling No. 2, “Distribution of Client Information to Trade Associations,” of ET section 391, *Ethics Rulings on Responsibilities to Clients* (AICPA, *Professional Standards*), to reflect the broader types of requests for, and possible uses of, such information by either third parties or the member conducting his or her own business. The exposure draft also included a proposed definition of *confidential client information* to be added to ET section 92, *Definitions* (AICPA, *Professional Standards*). The PEEC’s position, as reflected in the September 2009 proposals, was that disclosure of client information that is not known to be in the public domain or is not available to the public would be considered a breach of client confidentiality (that is, a violation of Rule 301) unless the member received the client’s consent to disclose such information.

A number of comment letters received on the proposed ethics ruling from the academic community expressed concern that as drafted, the proposal could severely limit scholarly research that would enhance audit effectiveness and efficiency. In addition, they questioned whether certain types of information produced by the member should be distinguished from confidential client information and therefore not be subject to the same client consent requirements. The PEEC believed that some of the concerns raised in these comment letters were compelling and, therefore, agreed to further study and deliberate these issues.

### **Definition of Confidential Client Information**

The proposed definition of *confidential client information* is substantially the same as that exposed in the September 2009 exposure draft. The proposed definition explains that confidential client information is information that is not known to be in the public domain or available to the public. The definition provides examples of information that would not be considered confidential because it would be considered to be in the public domain or available to the public (for example, information obtained from commercially available databases). The PEEC continues to believe that this definition is appropriate and would be helpful to members and users of the AICPA code when interpreting the requirements of Rule 301 and its related interpretations and rulings.

### **Categories of Information—Nonauthoritative Table**

The committee concluded that generally three categories of information exist that should be considered for purposes of the proposal:

1. *Client information that is in the public domain.* Consistent with the September 2009 proposal, the PEEC concluded that client information that is in the public domain would not be considered confidential and, therefore, client consent would not be needed when disclosing such information to third parties.
2. *Client information not in the public domain.* Also consistent with the September 2009 proposal, the PEEC concluded that client information not in the public domain would be considered confidential client information and, therefore, client consent would be required prior to disclosing such information

to third parties. The PEEC believes that client consent should be required even if the client's information is deidentified (that is, the information is not identifiable to the client) prior to disclosing it to the third party. In addition, the PEEC believes that once client consent is obtained to disclose the information to a third party, the member should be held responsible for determining that any such information is sufficiently deidentified unless the client has provided its written consent to have such information disclosed without deidentification.

3. *Other information in the member's possession.* The committee agreed that there may be certain information in the member's possession that should not require client consent prior to disclosure to a third party. This new category, "other information in the member's possession," is defined as any information relating to the member's judgments, decisions, and actions. Examples of such information include actual and budgeted audit hours by class of audit team member, risk assessments, and materiality levels. However, to the extent this information contains client information, the PEEC concluded that the client information must be sufficiently deidentified before disclosing it to a third party unless the client has provided its written consent to have such information disclosed without deidentification.

To facilitate members' and other users' of the AICPA code understanding of the revised proposals, the PEEC has developed a table that summarizes and provides examples of the three categories of information. Although this table is not authoritative guidance (that is, not an enforceable standard), it has been included in the exposure draft and would be posted on the division's website with other nonauthoritative guidance issued by the division.

### **Client's Written Consent**

The revised Ethics Ruling No. 2 requires that a member obtain the client's consent before disclosing confidential client information to a third party, or using such information for the member's own purposes, when such information results in disclosure to others. This would include requests from trade associations, professors conducting research, and benchmarking organizations who request client information that is not in the public domain from members with the intent to publish or disclose the information to other parties. It would also include confidential client information that the member intends to use for his or her own purposes (for example, benchmarking studies) that will be disclosed or published to others outside the firm. Under such situations, the member must first obtain the client's written consent as to the nature of the information that may be disclosed, the type of third party to which the information may be disclosed, and the intended use of the information (for example, publication in a research or benchmarking study).

### **Confidentiality Agreements**

Under the proposed ethics ruling, a member disclosing confidential client information to a third party should consider whether a confidentiality agreement with the third party is necessary. For example, it may be appropriate for the member to enter into a confidentiality agreement with a third-party researcher that specifies what information the client has agreed to have published and what information must remain confidential. The member should use his or her professional judgment in determining whether a confidentiality agreement may be prudent given the specific circumstances.

### **Third Parties Used to Assist Members in Providing Professional Services to Clients That Will Not Result in Disclosure to Others**

In cases in which a third party, such as an academic or benchmarking organization, is contracted by the member to assist in providing professional services to clients (for example, analyze confidential client data that would be used by the firm internally for serving clients) and confidential client information will not be published or disclosed by the third party or member to other parties, client consent would not be required. Rather, the proposed ethics ruling requires that members comply with the guidance applicable to third-party service providers contained in Ethics Ruling No. 112, “Applicability of General and Technical Standards When Using a Third-Party Service Provider,” under ET section 102, *Integrity and Objectivity* (AICPA, *Professional Standards*), and Ethics Ruling No. 1, “Use of a Third-Party Service Provider to Provide Professional Services to Clients or Administrative Support Services to the Member,” of ET section 301, *Confidential Client Information* (AICPA, *Professional Standards*).

## Categories of Information

This nonauthoritative table supplements the proposed revision to Ethics Ruling No. 2 and the proposed definition of *confidential client information*.

Client Information in the Public Domain	Client Information Not in the Public Domain <sup>1</sup>	Other Information in the Member's Possession <sup>1,2</sup>
Does not require client consent	Would require client consent even if sufficiently deidentified	Does not require client consent if sufficiently deidentified
<ul style="list-style-type: none"> <li>• Information in a book, periodical, newspaper, or similar publication; information obtained from commercially available databases</li> <li>• Information in a client document that has been released by the client to the public or that has otherwise become a matter of public knowledge</li> <li>• Information on client websites that is available to persons accessing that website without restrictions imposed by the client concerning use or access</li> <li>• Information maintained by or filed with regulatory or governmental bodies available to the public without restriction</li> <li>• Information maintained by or filed with regulatory or governmental bodies that is made available through freedom of information or similar requests filed with and approved by such bodies in accordance with their rules or regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Client data or balances (for example, total revenues, assets, cash, equity, or net income) or financial ratios</li> <li>• Size of board of directors, audit committee, number of independent members</li> <li>• Footnote disclosures</li> <li>• Client best practices (for example, specific control activity)</li> <li>• Characteristics that give rise to fraud or illegal acts discussed with management or audit committee</li> <li>• Audit adjustments booked and waived by client</li> </ul>	<ul style="list-style-type: none"> <li>• Actual and budgeted audit hours by class of audit team member</li> <li>• Extent (number of hours) of audit procedures or testing by type (for example, control tests or confirmation of balances and receivables)</li> <li>• Risk assessment, overall and disaggregated (inherent risk, control risk, fraud risk, and so forth)</li> <li>• Nature of audit report—if qualified, reason.</li> <li>• Materiality levels (overall and disaggregated, qualitative issues considered)</li> <li>• Fees (audit or nonaudit)</li> </ul>

<sup>1</sup> The member is responsible for determining that any client information disclosed to a third party is sufficiently deidentified unless the client has provided its written consent to have such information disclosed without deidentification.

<sup>2</sup> Other information in the member's possession is any information relating to the member's judgments, decisions, and actions. To the extent such information contains client information, the client information should be sufficiently deidentified (that is, the information is not identifiable to the client).

## Text of Proposed Revision

*(Additions appear in boldface italic and deletions are stricken.)*

### 2. ~~Distribution~~ *Disclosure of Client Information to Trade Associations Third Parties*

*.003 Question—A member’s firm is requested by a trade association to supply profit and loss percentages taken from the reports of the accountant’s clients. The association would distribute them to its members. **has received a request from a third party (for example, a trade association, professor, or surveying or benchmarking organization) to disclose client information or intends to use such information for the member’s own purposes (for example, publication of benchmarking studies) in a manner that results in the client’s information being disclosed to others, without the client being specifically identified.** May the firm member comply with ~~the~~ **such a request or use client information for such purposes without violating Rule 301, Confidential Client Information (AICPA, Professional Standards, ET sec. 301)?***

*.004 Answer—A member would be in violation of Rule 301 ~~[ET section 301.01]~~ would not be violated if the firm **information is considered to be confidential client information unless the member has the clients’ permission to for the disclosure distribute the figures or use of such information. The disclosure or use of information already in the public domain, or that is available to the public, is not subject to Rule 301. However, unless the member knows that the particular client information to be disclosed or used is in the public domain or available to the public, such information should be treated as confidential. The member should be cautious in the disclosure or use of the information so as not to disclose client information that may go beyond what is expressly included in the public domain or available to the public, or that the client has agreed may be disclosed.***

*Accordingly, before disclosing confidential client information to a third party or using such information for the member’s own purposes resulting in disclosure to others, the member should obtain the client’s specific written consent about the nature of the information that may be disclosed, the type of third party to whom it may be disclosed, and its intended use.*

*Prior to disclosing confidential client information to a third party, the member should consider whether a contractual agreement with the third party to maintain the confidentiality, or limit the use, of the information is necessary.*

*See Ethics Ruling No. 112, “Applicability of General and Technical Standards When Using a Third-Party Service Provider,” under ET section 102, Integrity and Objectivity (AICPA, Professional Standards), and Ethics Ruling No. 1, “Use of a Third-Party Service Provider to Provide Professional Services to Clients or Administrative Support Services to the Member,” of ET section 301, Confidential Client Information (AICPA, Professional Standards), for guidance when disclosing confidential client information to a third party used to assist the member in providing professional services to clients that will not result in disclosure to others.*

## **Proposed Revision to Ethics Ruling No. 106, “Member Has Significant Influence Over an Entity That Has Significant Influence Over a Client,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment a proposed updated cross-reference in Ethics Ruling No. 106, “Member Has Significant Influence Over an Entity That Has Significant Influence Over a Client,” of ET section 101, *Independence* (AICPA, *Professional Standards*). At the time of this exposure, this ethics ruling refers members to Interpretation No. 101-8 for further guidance. Because Interpretation No. 101-8 is proposed for deletion in [page 56](#) of this document, the PEEC proposes to update the cross-reference to the proposed new affiliate interpretation.

### **Text of Proposed Revision**

*(Additions appear in boldface italic and deletions are stricken.)*

**.212 Question**—Would independence be considered to be impaired if a member or his or her firm had significant influence, as defined in ET section 92.27, over an entity that has significant influence over a client?

**.213 Answer**—Independence would be considered to be impaired if *any* partner or professional of the firm had significant influence over an entity that has significant influence over a client. By having such influence over the nonclient entity, the partner or professional employee would also be considered to have significant influence over the client.

See interpretation 101-18 for further guidance.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

## **Proposed Deletion of Interpretation No. 101-8, “Effect on independence of financial interests in nonclients having investor or investee relationships with a covered member’s client,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this interpretation because the proposed affiliate interpretation will address these relationships and, therefore, would replace this interpretation.

### **Text of Proposed Deletion**

#### **101-8 Effect on independence of financial interests in nonclients having investor or investee relationships with a covered member’s client**

##### **Introduction**

Financial interests in nonclients that are related in various ways to a client may impair independence. Situations in which the nonclient investor is a partnership are covered in other rulings [ET section 191.138–.139 and .162–.163].

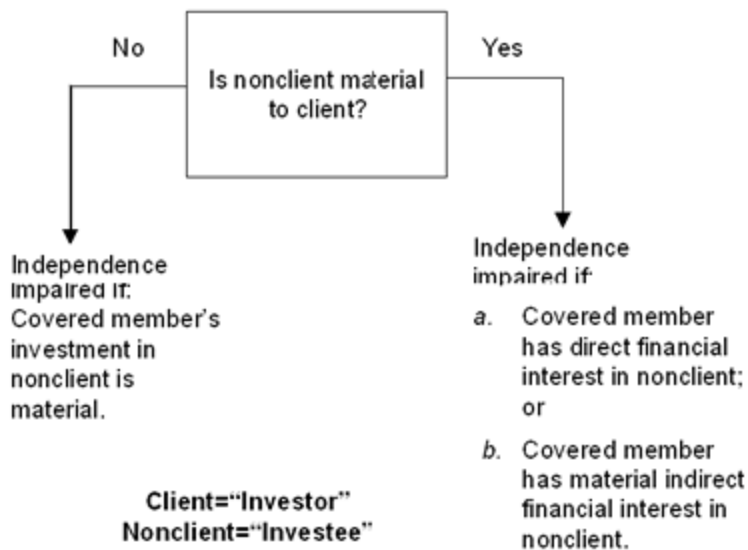
##### **Terminology**

The following specifically identified terms are used in this interpretation as indicated:

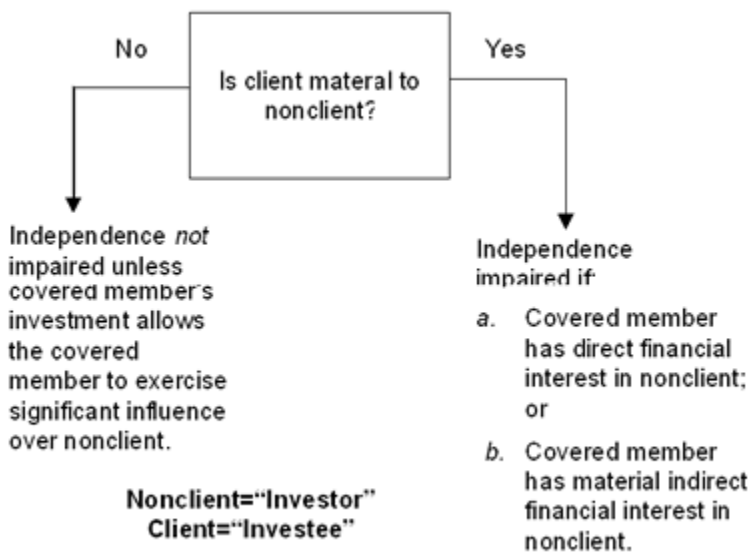
1. Client. The term client means the person or entity with whose financial statements a covered member is associated.
2. Significant Influence. The term significant influence is as defined in Financial Accounting Standards Board *Accounting Standards Codification* 323–10–15.
3. Investor. The term investor means (a) a parent, (b) a general partner, or (c) a natural person or corporation that has the ability to exercise significant influence.
4. Investee. The term investee means (a) a subsidiary or (b) an entity over which an investor has the ability to exercise significant influence.

##### **Interpretation**

Where a nonclient investee is material to a client investor, any direct or material indirect financial interest of a covered member in the nonclient investee would be considered to impair independence with respect to the client investor. If the nonclient investee is immaterial to the client investor, a covered member's material investment in the nonclient investee would cause an impairment of independence.



Where a client investee is material to nonclient investor, any direct or material indirect financial interest of a covered member in the nonclient investor would be considered to impair independence with respect to the client investee. If the client investee is immaterial to the nonclient investor, and if a covered member's financial interest in the nonclient investor allows the covered member to exercise significant influence over the actions of the nonclient investor, independence would be considered to be impaired.



Other relationships, such as those involving brother-sister common control or client-nonclient joint ventures, may affect the appearance of independence. The covered member should make a reasonable inquiry to determine whether such relationships exist, and if they do, careful consideration should be given to whether the financial interests in question would lead a reasonable observer to conclude that the specified relationships pose an unacceptable threat to independence.

In general, in brother-sister common control situations, an immaterial financial interest of a covered member in the nonclient investee would not impair independence with respect to the client investee, provided the covered member could not exercise significant influence over the nonclient investor. However, if a covered member's financial interest in a nonclient investee is material, the covered member could be influenced by the nonclient investor, thereby impairing independence with respect to the client investee. In like manner, in a joint venture situation, an immaterial financial interest of a covered member in the nonclient investor would not impair the independence of the covered member with respect to the client investor, provided that the covered member could not exercise significant influence over the nonclient investor.

If a covered member does not and could not reasonably be expected to have knowledge of the financial interests or relationship described in this interpretation, independence would not be considered to be impaired under this interpretation.

## **Proposed Deletion of Ethics Ruling No. 9, “Member as Representative of Creditor’s Committee,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance is provided in the proposed “Management Responsibilities” section of the proposed revised Interpretation No. 101-3, “~~Performance of Nonattest services.~~”

### **Text of Proposed Deletion**

#### **9. Member as Representative of Creditor's Committee**

**.017 Question**—A member performs the following functions for a creditors' committee in control of a debtor corporation which will continue to operate under its existing management subject to extension agreements:

- Signs or co-signs checks issued by the debtor corporation.
- Signs or co-signs purchase orders in excess of established minimum amounts.
- Exercises general supervision to insure compliance with budgetary controls and pricing formulas established by management, with the consent of the creditors, as part of an overall program aimed at the liquidation of deferred indebtedness.

Would independence be considered to be impaired with respect to the debtor corporation?

**.018 Answer**—Independence would be considered to be impaired if *any* partner or professional employee of the firm performed any of the functions described, since these are considered to be management functions.

## **Proposed Deletion of Ethics Ruling No. 10, “Member as Legislator,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance is provided in Interpretation No. 101-10, “The effect on independence of relationships with entities included in the governmental financial statements,” under Rule 101, *Independence* (AICPA, *Professional Standards*, ET sec. 101 par. .12).

### **Text of Proposed Deletion**

#### **10. Member as Legislator**

**.019 Question**—A member is an elected legislator in a local government (a city). The city manager, who is responsible for all administrative functions, is also an elected official. Would independence be considered to be impaired with respect to the city?

**.020 Answer**—Independence would be considered to be impaired if *any* partner or professional employee of the firm served as an elected legislator for a city at the same time his or her firm was engaged to perform the city's attest engagement, even though the city manager is an elected official rather than an appointee of the legislature.

## **Proposed Deletion of Ethics Ruling No. 12, “Member as Trustee of Charitable Foundation,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance is provided in sections A.2. and C. of Interpretation No. 101-1.

### **Text of Proposed Deletion**

#### **12. Member as Trustee of Charitable Foundation**

**.025 Question**—A charitable foundation is the sole beneficiary of the estate of the foundation's deceased organizer. If a member becomes a trustee of the foundation, would independence be considered to be impaired with respect to (1) the foundation or (2) the estate?

**.024 Answer**—If a *covered* member served as trustee of the foundation, independence would be considered to be impaired with respect to both the foundation and the estate.

## **Proposed Deletion of Ethics Ruling No. 16, “Member on Board of Directors of Nonprofit Social Club,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance is provided in section C. of Interpretation No. 101-1.

### **Text of Proposed Deletion**

#### **16. Member on Board of Directors of Nonprofit Social Club**

**.031 *Question***—Would independence be considered to be impaired if a member served on the board of directors of a nonprofit social club?

**.032 *Answer***—Independence would be considered to be impaired if *any* partner or professional employee of the firm served on the board of directors since the board has ultimate responsibility for the club's affairs.

## **Proposed Deletion of Ethics Ruling No. 19, “Member on Deferred Compensation Committee,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance is provided in section C. of Interpretation No. 101-1.

### **Text of Proposed Deletion**

#### **19. Member on Deferred Compensation Committee**

**.037 *Question***—Would independence be considered to be impaired if a member served on a committee that administers a client's deferred compensation program?

**.038 *Answer***—Independence would be considered to be impaired if *any* partner or professional employee of the firm served on the committee since such service constitutes participation in the client's management functions. The partner or professional employee could however render consulting assistance without joining the committee.

## **Proposed Deletion of Ethics Ruling No. 21, “Member as Director and Auditor of an Entity’s Profit Sharing and Retirement Trust,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance will be provided in definition (g) of affiliate as provided in the proposed new Interpretation No. 101-18, “Application of the independence rules to affiliates.”

### **Text of Proposed Deletion**

#### **21. Member as Director and Auditor of an Entity's Profit Sharing and Retirement Trust**

**.041 *Question***—A member serves in the dual capacity of director of an entity and auditor of the financial statements of that entity's profit sharing and retirement trust (the trust). Would independence be considered to be impaired with respect to the trust?

**.042 *Answer***—Service as director of an entity constitutes participation in management functions that affect the entity's trust. Accordingly, independence would be considered to be impaired if *any* partner or professional of the firm served in such capacity.

## **Proposed Deletion of Ethics Ruling No. 29, “Member as Bondholder,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance will be provided in the definition of *financial interest* as contained in Interpretation No. 101-15, “Financial relationships,” under Rule 101, *Independence* (AICPA, *Professional Standards*, ET sec. 101 par. .17).

### **Text of Proposed Deletion**

#### **29. Member as Bondholder**

**.059 Question**—Would independence be considered to be impaired if a member owned an immaterial amount of a municipal authority's outstanding bonds?

**.058 Answer**—Ownership of a client's bonds constitute a loan to that client. Accordingly, if a *covered* member owned such bonds, independence would be considered to be impaired.

## **Proposed Deletion of Ethics Ruling No. 38, “Member as Co-Fiduciary With Client Bank,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance will be provided in the section titled “Other Considerations” in proposed new Interpretation No. 101-18, “Application of the independence rules to affiliates.”

### **Text of Proposed Deletion**

#### **38. Member as Co-Fiduciary With Client Bank**

**.075 Question**—A member serves with a client bank in a co-fiduciary capacity with respect to an estate or trust. Would independence be considered to be impaired with respect to the bank or the bank's trust department?

**.076 Answer**—Independence would not be considered to be impaired provided the assets in the estate or trust were not material to the total assets of the bank and/or the bank's trust department.

## **Proposed Deletion of Ethics Ruling No. 48, “Faculty Member as Auditor of a Student Fund,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance is provided in section C. of Interpretation No. 101-1.

### **Text of Proposed Deletion**

#### **48. Faculty Member as Auditor of a Student Fund**

**.095 Question**—A full or part-time faculty member employed by a university is asked to audit the financial statements of the Student Senate Fund. The university:

1. Acts as a collection agent for student fees and remits them to the Student Senate.
2. Requires that a university administrator approve and sign Student Senate checks.

Would independence be considered to be impaired under these circumstances?

**.096 Answer**—Independence would be considered to be impaired with respect to the Student Senate Fund if *any* partner or professional employee (individual) performed the functions described since the individual would be auditing several of the management functions performed by the university, the individual's employer.

## **Proposed Deletion of Ethics Ruling No. 60, “Employee Benefit Plans—Member’s Relationships With Participating Employers,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the proposed affiliate interpretation will provide members with guidance on when the sponsor, union, or participating employer should be considered an affiliate of a plan and, therefore, would replace this ethics ruling.

### **Text of Proposed Deletion**

#### **60. Employee Benefit Plans—Member's Relationships With Participating Employer**

**.119 Question**—A member has been asked to audit the financial statements of an employee benefit plan (“the plan”) that may have one or more participating employer(s). Would independence be considered to be impaired with respect to the plan if the member had financial or other relationships with a participating employer(s)?

**.120 Answer**—Independence would be considered to be impaired with respect to the plan if *any* partner or professional employee of the firm had significant influence over such employer, was in a key position with the employer, or was associated with the employer as a promoter, underwriter, or voting trustee.

When auditing plans subject to the Employee Retirement Income Security Act of 1974 (ERISA), Department of Labor (DOL) regulations must be followed.<sup>fn 1</sup>

<sup>fn 1</sup> Currently, DOL regulations are more restrictive than the position taken in this ruling.

## **Proposed Deletion of Ethics Ruling No. 69, “Investment With a General Partner,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance will be provided in the proposed new Interpretation No. 101-18, “Application of the independence rules to affiliates.”

### **Text of Proposed Deletion**

#### **69. Investment With a General Partner**

**.138 Question**—A private, closely held entity is the general partner and controls (as defined in Generally Accepted Accounting Principles) limited partnership A. The member has a material financial interest in limited partnership A. The member's firm has been asked to perform an attest engagement for a new limited partnership (B), which has the same general partner as limited partnership A. Would independence be considered to be impaired with respect to limited partnership B?

**.139 Answer**—Because the general partner has control over limited partnership A, the *covered* member would be considered to have a joint closely held investment with the general partner, who has significant influence over limited partnership B, the proposed client. Accordingly, independence would be considered to be impaired with respect to limited partnership B if the covered member had a material investment in limited partnership A.

## **Proposed Deletion of Ethics Ruling No. 81, “Member’s Investment in a Limited Partnership,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance will be provided in the proposed new Interpretation No. 101-18, “Application of the independence rules to affiliates.”

### **Text of Proposed Deletion**

#### **81. Member's Investment in a Limited Partnership**

**.162 Question**—A member is a limited partner in a limited partnership (LP), including a master limited partnership. A client is a general partner in the same LP. Is independence considered to be impaired with respect to (1) the LP, (2) the client, and (3) any subsidiaries of the LP?

**.163 Answer**—

1. A *covered* member's limited partnership interest in the LP is a direct financial interest in the LP that would impair independence under interpretation 101-1.A.1 [ET section 101.02].
2. The LP is an investee of the client because the client is a general partner in the LP. Therefore, under interpretation 101-8 [ET section 101.10], if the investment in the LP were material to the client, a *covered* member's financial interest in the LP would impair independence. However, if the client's financial interest in the LP were not material to the client, a *covered* member's immaterial financial interest in the LP would not impair independence.
3. If the *covered* member is a limited partner in the LP, the covered member is considered to have an indirect financial interest in all subsidiaries of the LP. If the indirect financial interest in the subsidiaries were material to the covered member, independence would be considered to be impaired with respect to those subsidiaries under interpretation 101-1.A.1 [ET section 101.02].

If the covered member or client general partner, individually or together can control the LP, the LP would be considered a joint closely held investment under ET section 92.16.

## **Proposed Deletion of Ethics Ruling No. 98, “Member’s Loan From a Nonclient Subsidiary or Parent of an Attest Client,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the proposed affiliate interpretation will provide members with guidance on when having a loan from an entity that is related to an attest client would impair independence.

### **Text of Proposed Deletion**

#### **98. Member's Loan From a Nonclient Subsidiary or Parent of an Attest Client**

**.196 Question**—A member has obtained a loan from a nonclient. The member's firm performs an attest engagement for the parent or a subsidiary of the nonclient. Does the loan from the nonclient subsidiary or parent impair independence?

**.197 Answer**—A *covered* member's loan that is not a "grandfathered" or "permitted" loan under interpretation 101-5 [ET section 101.07] from a nonclient subsidiary would impair independence with respect to the client parent. However, a loan from a nonclient parent would not impair independence with respect to the client subsidiary as long as the subsidiary is not material to its parent.

## **Proposed Deletion of Ethics Ruling No. 103, “Attest Report on Internal Controls,” Under Rule 101, *Independence***

### ***Explanation***

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance is provided in the section titled “Management Responsibilities” in proposed revised Interpretation No. 101-3, “~~Performance of Nonattest services.~~”

### **Text of Proposed Deletion**

#### **103. Attest Report on Internal Controls**

**.206 Question**—If a member or his or her firm provides extended audit services for a client in compliance with interpretation 101-3 [ET section 101.05], would the firm be considered to be independent in the performance of an attestation engagement to report on the client's assertion regarding the effectiveness of its internal control over financial reporting?

**.207 Answer**—Independence would not be considered to be impaired with respect to the issuance of such a report if both of the following conditions are met:

1. Management has assumed responsibility to establish and maintain internal control.
2. Management does not rely on the firm's work as the primary basis for its assertion and accordingly has (a) evaluated the results of its ongoing monitoring procedures built into the normal recurring activities of the entity (including regular management and supervisory activities) and (b) evaluated the findings and results of the firm's work and other separate evaluations of controls, if any.

## **Proposed Deletion of Ethics Ruling No. 111, “Employee Benefit Plan Sponsored by Client,” Under Rule 101, *Independence***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the proposed affiliate interpretation explains when certain prohibited nonattest services may be provided to an affiliate of an attest client and, therefore, would replace this ethics ruling.

### **Text of Proposed Deletion**

#### **111. Employee Benefit Plan Sponsored by Client**

**.222 Question**—A member or his or her firm provides asset management or investment services that may include having custody of assets, performing management functions, or making management decisions for an employee benefit plan (the plan) sponsored by a client. Would independence be considered to be impaired with respect to the plan and the client sponsor?

**.223 Answer**—The performance of investment management or custodial services for a plan would be considered to impair independence with respect to the plan. Independence would also be considered to be impaired with respect to the client sponsor of a defined benefit plan if the assets under management or in the custody of the member are material to the plan or the client sponsor.

Independence would not be considered to be impaired with respect to the client sponsor of a defined contribution plan provided the member does not make any management decisions or perform management functions on behalf of the client sponsor or have custody of the sponsor's assets.

**Proposed Deletion of Ethics Ruling No. 11, “Applicability of Rule 203 to Members Performing Litigation Support Services,” Under Rule 203, *Accounting Principles***

**Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the committee believes it is clear that Rule 203, *Accounting Principles* (AICPA, *Professional Standards*, ET sec. 203 par. .01), needs to be complied with when providing litigation support services.

**Text of Proposed Deletion**

**11. Applicability of Rule 203 to Members Performing Litigation Support Services**

**.021 Question**—Does Rule 203, *Accounting Principles* [ET section 203.01], apply to members performing litigation support services?

**.022 Answer**—Yes.

## **Proposed Deletion of Ethics Ruling No. 2, “Fees: Collection of Notes Issued in Payment,” Under Rule 501, *Acts Discreditable***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the committee believes it is clear this would not violate any provision of the AICPA code.

### **Text of Proposed Deletion**

#### **2. Fees: Collection of Notes Issued in Payment**

**.003 *Question***—A member's firm made arrangements with a bank to collect notes issued by a client in payment of fees due, and so advised the delinquent client. Is this procedure ethical?

**.004 *Answer***—The procedure followed does not violate any provision of the Code.

## **Proposed Deletion of Ethics Ruling No. 33, “Course Instructor,” Under Rule 502, *Advertising and Other Forms of Solicitation***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the committee believes Rule 502, *Advertising and Other Forms of Solicitation* (AICPA, *Professional Standards*, ET sec. 502 par. .01), adequately addresses this topic.

### **Text of Proposed Deletion**

#### **33. Course Instructor**

**.065 Question**—What responsibility does a member have for the information included in advertising material used to promote a course which he or she has been asked to conduct?

**.066 Answer**—It is of value to prospective students to know the instructor's background—such as degrees he or she holds, professional society affiliations, and the name of his or her firm. The member has the responsibility to ascertain that all promotional efforts are within the bounds of rule 502 [ET section 502.01].

## **Proposed Deletion of Ethics Ruling No. 108, “Member Interviewed by the Press,” Under Rule 502, *Advertising and Other Forms of Solicitation***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the committee believes Rule 301 and Rule 502 adequately address this topic.

### **Text of Proposed Deletion**

#### **108. Member Interviewed by the Press**

**.215 Question**—What ethical standards should a member observe when he or she is interviewed by the press?

**.216 Answer**—When interviewed by a writer or reporter, the member should observe the limitations imposed on him or her by the Rules of Conduct. The member may not provide the press with any information for publication that he or she could not publish him or herself.

## **Proposed Deletion of Ethics Ruling No. 117, “Consumer Credit Company Director,” Under Rule 501, *Acts Discreditable***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance is provided in section C. of Interpretation No. 101-1 and Interpretation No. 102-2.

### **Text of Proposed Deletion**

#### **117. Consumer Credit Company Director**

**.233 Question**—A consumer credit company purchases installment sales contracts from retailers and receives payments from consumers. May a practicing CPA serve as a director or officer of such a corporation?

**.234 Answer**—Yes, as long as he or she does not audit the corporation and does not participate in matters which might involve a conflict of interest.

## **Proposed Deletion of Ethics Ruling No. 140, “Political Election,” Under Rule 505, *Form of Organization and Name***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because it believes adequate guidance is provided in Rule 505, *Form of Organization and Name* (AICPA, *Professional Standards*, ET sec. 505 par. .01), and Ethics Ruling No. 145, “Firm Name of Merged Partnerships,” of ET section 591, *Ethics Rulings on Other Responsibilities and Practices* (AICPA, *Professional Standards*, ET sec. 591 par. 145).

### **Text of Proposed Deletion**

#### **140. Political Election**

**.279 Question**—A member's firm, consisting of four members, practices under the name of the managing partner who is presently seeking election to high public office. If he or she is elected and withdraws from the partnership, may the three remaining partners continue to use the present firm name?

**.280 Answer**—It would not be a violation for the three remaining partners to continue to practice under the name of the managing partner followed by the designation "and Company."

**Proposed Deletion of Ethics Ruling No. 144, “Title: Partnership Roster,”  
Under Rule 505, *Form of Organization and Name***

**Explanation**

The PEEC is exposing for comment deletion of this ethics ruling primarily because a member’s state board of accountancy has jurisdiction over the use and appropriateness of a firm name, and, therefore, the ethics ruling may lead a member to be in violation of his or her state board rules.

**Text of Proposed Deletion**

**144. Title: Partnership Roster**

**.287 Question**—Is there any prohibition in the Code to the use of an established firm name in a different state where there is some difference in the roster of partners?

**.288 Answer**—It would be proper for the firm to use the established name in different states even though the roster of partners differed as long as the firm otherwise complies with rule 505 [ET section 505.01].

**Proposed Deletion of Ethics Ruling No. 176, “Member’s Association With Newsletters and Publications,” Under Rule 502, *Advertising and Other Forms of Solicitation***

**Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the committee believes Rule 502 adequately addresses this topic.

**Text of Proposed Deletion**

**176. Member's Association With Newsletters and Publications**

**.351 Question**—May a newsletter, tax booklet, or similar publication be attributed to a member or a member's firm (member) if it has not been prepared by the member?

**.352 Answer**—Yes, provided that the member has a reasonable basis to conclude that the information contained therein that is attributed to the member is not false, misleading, or deceptive.

## **Proposed Deletion of Ethics Ruling No. 177, “Data Processing: Billing Services,” Under Rule 505, *Form of Organization and Name***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the committee believes Rule 505 and Interpretation No. 505-2, “Application of rules of conduct to members who own a separate business,” under Rule 505, *Form of Organization and Name* (AICPA, *Professional Standards*, ET sec. 505 par. .03), adequately address this topic.

### **Text of Proposed Deletion**

#### **177. Data Processing: Billing Services**

**.353 Question**—A member in public practice plans to form a separate business to perform centralized billing services for local doctors. The member maintains that this service, which is similar to one currently offered and advertised by a local bank, does not constitute the practice of public accounting and that rules 502 [ET section 502.01] and 505 [ET section 505.01] do not apply. Is the member correct in this conclusion?

**.354 Answer**—No, the service in question does in fact constitute service of a type performed by public accountants and consequently the member could proceed with this plan only if the operation were conducted in accordance with the Institute's rules of conduct.

## **Proposed Deletion of Ethics Ruling No. 179, “Practice of Public Accounting Under Name of Association or Group,” Under Rule 505, *Form of Organization and Name***

### **Explanation**

The PEEC is exposing for comment deletion of this ethics ruling because the committee believes that this guidance would be inconsistent with Interpretation No. 101-17, “Networks and network firms,” under Rule 101, *Independence* (AICPA, *Professional Standards*, ET sec. 101 par. .17), and the white paper on CPA firm names issued by the PEEC and National Association of State Boards of Accountancy in August 2009.

### **Text of Proposed Deletion**

#### **179. Practice of Public Accounting Under Name of Association or Group**

**.357 Question**—Several CPA firms wish to form an association or group whereby certain joint advertising, training, professional development and management assistance will take place. The firms will otherwise remain separate and distinct. Would it be proper for such firms to practice public accounting under the name of an association or group in the United States?

**.358 Answer**—The practice of public accounting under such a name in the United States is not permitted since it would be likely to confuse the public as to the nature of the actual relationship which exists among the firms. Instead, each firm should practice only in its own firm name and may indicate the association or group name elsewhere on the firm stationery. Each firm may also list on its stationery the names of the other firms in the association or group.