

September 16, 2014

BY EMAIL

Ms. Lisa A. Snyder
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Comments on Revised ET Section 91 *Applicability*, and new Interpretation No. 101-20, “Breach of an Independence Interpretation”, under Rule 101, *Independence*

Dear Ms. Snyder:

We are pleased to provide our comments on the American Institute of Certified Public Accountants’ Exposure Draft on Revised ET Section 91, *Applicability*, and new Interpretation No. 101-20, “Breach of an Independence Interpretation”, under Rule 101, *Independence*, issued by the Professional Ethics Executive Committee (“PEEC”).

We broadly support the effort to provide guidance to assist members in evaluating and addressing the consequences of a breach of an independence interpretation and the impact on the attest engagement team’s integrity, objectivity, and professional skepticism. We also support measures to provide specific steps and actions that a member should take when the member becomes aware that a breach of an independence interpretation has occurred.

However, we do not support the interpretation as proposed. We are concerned that the proposed interpretation may have inappropriate and unintended consequences, and thus have the following comments:

The paragraph identifying two situations as subject to a rebuttable presumption could lead a member to conclude that the breach would require resignation from the attest engagement regardless of the significance of the breach.

As described below, we believe PEEC should delete the following paragraph identifying two situations where there would be a rebuttable presumption that the member would have to resign from the attest engagement.

In other situations, where either of the following conditions exist, there is a rebuttable presumption that the breach would not be able to be addressed by the provisions of this interpretation as the threats to the attest engagement team’s integrity, objectivity, and professional skepticism would be considered so significant that no actions could be taken to satisfactorily address the consequences of the breach:

- a. the lead attest engagement partner or an individual in a position to influence the attest engagement, or
- b. when the breach is known to any other partner or partner equivalent who fails to ensure the breach is promptly communicated to an appropriate individual within the firm;

The Code of Professional Conduct today is worded such that any breach results in the member's independence being impaired, and thus presumes that any breach would require the member to resign from the attest engagement. This proposed interpretation posits that this is really a rebuttable presumption and provides guidance to help the member evaluate whether or not resignation is required. By identifying these two specific situations as "rebuttable presumptions," elevating them above all other situations, we believe that a member will presume that any such breach would require resignation from the attest engagement regardless of the significance of the breach. We do not believe that it is appropriate to presume that even a minor incident would rise to a level requiring resignation simply because the lead attest engagement was involved or a partner of the firm was aware of the incident and did not report it appropriately. We believe the intention of the interpretation is to assist the member to use professional judgment to reach a reasonable conclusion as to whether or not the breach can be addressed. This paragraph appears to take away such judgment and is inconsistent with the rest of the interpretation.

The fact that an attest engagement team member was involved in the breach is already included in the factors for a member to consider in evaluating the significance of the breach. We believe that this is sufficient and this situation does not need to be separately called out. If PEEC believes that the second situation needs to be addressed, we believe that it would be more appropriate to include it in the factors to consider in evaluating the significance of the breach.

If PEEC believes that it is necessary to identify these two specific situations as likely requiring resignation, we believe significant clarifications are required. In the case where there is a breach, what does a member need to do differently in these two situations to overcome the rebuttable presumption? Does the first situation include breaches caused by the immediate family members of the lead attest engagement partner or of an individual in a position to influence the attest engagement? In the second situation, if two partners are aware of the breach and only one reports it, does the fact that the other didn't report it, or ensure that it was reported, trigger this "rebuttable presumption?" Does this also cover a situation where a partner knew the facts of the situation, but did not know that it was a breach?

The proposed requirement to report breaches "as soon as practicable" unnecessarily diverges from existing IESBA guidance.

We fully support transparent communications with those charged with governance on all matters that may be viewed to have a bearing on a member's independence. We support the concept that all independence related breaches be communicated to those charged with governance, however, we strongly believe those charged with governance should be the key decision makers with respect to the manner in which such breaches are communicated and the

timing of the communication. This allows the communication to fit into the governance bodies' protocols and pattern of communications.

We also understand that the PEEC believes that the proposed interpretation is substantially consistent with the guidance contained in the IESBA code related to breaches of the IESBA independence provisions. We strongly urge PEEC to provide the flexibility in its guidance that is provided in IESBA Code Section 290.46, which states that “the firm shall discuss the breach and the action as soon as possible, unless those charged with governance have specified an alternative timing for reporting less significant breaches”. We believe that this flexibility in timing appropriately recognizes the importance of bringing all breaches to the attention of those charged with governance while at the same time allowing for the fact that not all breaches will necessarily be of the same severity and therefore call for the same urgency of communication. We do not see any justification to diverge from IESBA on this point.

The exposure draft specifically asks if we believe that a delayed effective date is necessary. If so, please explain why you believe additional time to implement the proposed interpretation and revisions to ET section 91 would be necessary and how much time you believe would be adequate.

Some changes will be required to properly implement the proposed new interpretation. Firms will need to update policies and procedures and educate clients on the proposed interpretations' evaluation and communication requirements. Therefore, we believe that a delayed effective date of January 1, 2016 would be appropriate.

Other Comments:

We offer the following additional comments and drafting suggestions for your consideration:

The interpretation includes a section entitled, “Breaches Relating to Previously Issued Opinions.” This paragraph provides no unique guidance and could easily be absorbed in the paragraphs on addressing the consequences of the breach. This could be done by simply adding “or withdraw previously issued opinions” where the interpretation mentions the potential conclusion to terminate the attest engagement.

We believe that the first paragraph under “Breaches Resulting in Significant Threats” is incorrectly positioned in the proposed interpretation. Although we agree with the content, we believe this paragraph should be positioned after the guidance on how to perform the evaluation of the significance of the breach. The paragraph presents a possible conclusion of the evaluation. Presenting a conclusion prior to the evaluation appears out of place.

Under “Evaluating the Significance of a Breach” in the proposed interpretation, we would propose two additional factors to consider in evaluating the significance of the breach, as follows:

- the significance of the service/relationship and related amounts to the member and the attest client
- whether the service/relationship was directly with the audit client or with an affiliate.

We believe that the PEEC should change the title of “Communicating with Those Charged with Governance” in the proposed interpretation, to “Communicating with Those Charged with Governance at the Attest Client.” This would make it clear to a member that this is an client communication, not a firm communication, and, by including it in the title, would not require repeating the phrase throughout the interpretation.

Thank you for taking the time to consider our comments.

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If you have any questions regarding any of the above comments, please contact Richard Huesken at 216-583-2400.

Sincerely,

Ernst + Young LLP