

September 16, 2014

Ms. Lisa A. Snyder, CPA
Director of the Professional Ethics Division
American Institute of Certified Public Accountants
1211 Avenue of the Americas
New York, NY 10036-8775

Via e-mail: lsnyder@aicpa.org

Re: Breach of an Independence Interpretation – Proposed Interpretation of the AICPA Professional Ethics Division

Dear Ms. Snyder:

Moss Adams LLP appreciates the opportunity to share our views on the AICPA Professional Ethics Executive Committee's (PEEC) proposed Breach of an Independence Interpretation (the Proposal).

Moss Adams LLP is one of the 15 largest accounting and consulting firms in the United States. Our staff of more than 2,000 includes approximately 260 partners. Founded in 1913, Moss Adams LLP provides accounting, tax, and consulting services to public and private middle-market enterprises in many different industries.

We appreciate the PEEC's efforts to review and strengthen, where necessary, guidance related to breaches of independence and of other provisions of the AICPA Code of Professional Conduct (the Code). We agree with the PEEC's assertion that more robust guidance in this area is necessary and beneficial in best serving the public interest, allowing an attest engagement to continue even when certain breaches of independence have occurred.

We support many aspects of the Proposal, including the "rebuttal presumption" that threats to the attest engagement team's integrity, objectivity, and professional skepticism would be considered so significant that no action taken could satisfactorily address the consequences of a breach when the breach is committed by the lead attest engagement partner or an individual in a position to influence the attest engagement. We are also supportive of the requirements to document key matters and conclusions reached when a breach is identified.

However, we have the following specific comments and suggestions with respect to the proposed Interpretation No. 101-20, *Breach of an Independence Interpretation* (the Interpretation) and the proposed revisions to ET Section 91, *Applicability*, that we believe merit further consideration by the PEEC.

Breaches Resulting in Significant Threats

The second paragraph in this section of the Interpretation provides two situations in which a rebuttable presumption exists that 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. One of these situations occurs 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 as described in this interpretation". We believe it is inappropriate for the rebuttable presumption to pertain to this situation. A failure to ensure timely communication of a breach in and of itself would not affect the attest engagement team's integrity, objectivity, and professional skepticism, let alone enough to presume that such effect would be so significant that no actions could be taken to satisfactorily address the consequences of the breach.

The Interpretation is predicated on a firm having established policies and procedures designed to provide it with reasonable assurance that it is notified of breaches of independence requirements and to enable it to take appropriate action to resolve such situations. The lack of timely notification of a breach by a partner or partner equivalent outside of the attest engagement team may be an indicator regarding the strength of a firm's policies and procedures, but it does not necessarily compromise the firm's independence. When an actual independence violation is not considered to be significant and could otherwise be overcome by applying the provisions of this Interpretation, applying the "rebuttable presumption" in place of the professional judgment of the "appropriate individual" could result in an insignificant violation causing the termination of an attest engagement or withdrawal of an attest report. Whether a breach was communicated timely should not alter the ability to apply the Interpretation. We urge the PEEC to remove this situation from the "rebuttable presumption" conditions.

In addition, the term *promptly* is undefined and could be interpreted in a variety of manners. For example, *promptly* could be interpreted to mean as soon as "immediately" or as late as "prior to issuance of the attestation report". If the second "rebuttable presumption" condition remains in the Interpretation, we recommend that the PEEC more clearly define the term *promptly* to clarify the PEEC's expectations. Alternatively, if *prompt* is to be defined in each firm's policies and procedures (as implied in the section "Identifying and Communicating a Breach"), we suggest the PEEC insert the phrase "in accordance with his or her firm's policies and procedures" following "who fails to ensure the breach is promptly communicated..."

Identifying and Communicating a Breach

This section succinctly describes the activities for identifying and communicating a breach within a firm that should be undertaken in this early phase of applying the Interpretation. However, the final two sentences of the second paragraph contain guidance related to addressing the consequences of a breach, which have little to do with the initial identification and communication of the breach. In addition, the last sentence duplicates content that already appears in the "Addressing the Consequences of a Breach" section. To correct this, we specifically recommend the PEEC:

1. End the second to last sentence in the section "Identifying and Communicating a Breach" after the word "eliminated" and delete the last sentence in the section.

2. Move the guidance related to addressing consequences to the section “Addressing the Consequences of a Breach” by inserting the sentence “The responsible individual should address the consequences of the breach” at the beginning of that section.

Addressing the Consequences of a Breach

This section provides that in making the determination of whether satisfactory action can be taken to address the consequences of the breach, “the responsible individual should exercise professional judgment and take into account whether *a reasonable and informed third party* [emphasis added]... would be likely to conclude that the attest engagement team's integrity, objectivity, and professional skepticism would be compromised and therefore whether independence is impaired.” Given that the Proposal requires the member obtain the concurrence of those charged with governance with his or her final determination, we believe the member should consider the views of those charged with governance in making this determination. This would mitigate the potential impasse if those charged with governance do not concur with the member's determination. Therefore we suggest the PEEC add the words “and the views of those charged with governance” after “informed third party” in the sentence quoted above.

Communicating With Those Charged With Governance

Concurrence of Those Charged With Governance (Documentation)—The Proposal requires the responsible individual to obtain the concurrence of those charged with governance that action can be or has been taken to satisfactorily address the consequences of the breach. The Proposal is silent on whether the concurrence must or should be obtained in writing, or whether verbal concurrence is sufficient. In addition, the “Documentation” section does not specifically require the responsible individual to document that he or she obtained such concurrence. It is our view that this should be documented, and the responsible party should be encouraged to obtain such concurrence in writing. We recommend the PEEC add this documentation requirement to the Interpretation.

Scope and Timing of Communicating Breaches—The Proposal requires the responsible individual to communicate the consequences of any breach, without limitation as to significance, with those charged with governance *as soon as practicable*. With respect to this provision:

- We request the PEEC reconsider the scope of the breaches required to be communicated to those charged with governance. There is a continuum of significance of potential breaches of independence, from the clearly trivial to those so significant that no actions could be taken to satisfactorily address the consequences of the breach. In some cases those charged with governance express a desire to not be subject to communications regarding clearly inconsequential or trivial matters.
- We also request that the PEEC clarify its intentions and expectations regarding the timing of these communications. The term *as soon as practicable* is undefined and could be interpreted in a variety of manners, and the term is not clearly distinguishable from the term “promptly” (see comment above). Those charged with governance may not consider it important to receive immediate communication about every breach. In addition, some breaches may be better discussed in person, with the entire governing body, which may not be practical on an immediate basis.

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Engagement teams and governing bodies are generally accustomed to establishing agreement on the expected scope and timing of required communications. We recommend that the Interpretation allow the responsible individual, in concert with the expressed wishes of those charged with governance, to exercise professional judgment in determining what to communicate and the timing of such communications.

Revision to ET Section 91, Applicability

While the guidance contained in proposed Interpretation No. 101-20 is robust in regard to breaches of an independence interpretation, the additions in paragraph .03 of ET Section 91 contain only minimal guidance on how a member is to evaluate and address a breach of any other provision of the Code. In our view, the additions to ET Section 91 do not provide enough of an evaluation and documentation framework to result in consistent, sufficient consideration of non-independence related breaches. We are concerned the proposed wording implies such a breach can be easily overcome. We recommend that the PEEC consider strengthening its requirements in ET Section 91 for evaluating the significance of a breach, the type of documentation to include, and the type of reporting to those who may have been affected by the breach, a professional body, relevant regulator or oversight authority. Alternatively, paragraph .03 of ET Section 91 could more directly refer members to the requirements of Interpretation No. 101-20 for guidance on the factors to consider.

Effective Date

We agree with the PEEC's stance that a delayed effective date for transition purposes is not necessary, based on our view that the Proposal allows greater ability to address and resolve certain breaches of independence that currently would prohibit a practitioner from continuing an attest engagement.

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We hope that you find our comments and suggestions meaningful and we appreciate the opportunity to provide feedback. If you would like to discuss our comments further, please contact Erica Forhan in our Professional Practice Group at (206) 302-6826.

Very truly yours,

Mass Adams LLP