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January 27, 2006

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

By email: lsnyder@aicpa.org

In re: Exposure Draft - Omnibus Proposal: Proposed Interpretations on Indemnification/ Limitation of Liability Provisions and Forensic Accounting Services, dated September 15, 2005

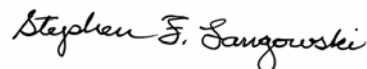
Dear Ms. Snyder:

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

This letter only addresses proposed Interpretation 101-16 and the proposed deletion of Ethics Rulings Nos. 94 and 95. The Society is considering a later submission of comments on proposed Interpretation 101-17 dealing with forensic accounting services in a separate letter.

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

Sincerely,



Stephen F. Langowski,
President

Attachment



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

COMMENTS ON AICPA EXPOSURE DRAFT

**PROPOSED INTERPRETATIONS ON INDEMNIFICATION/LIMITATION OF
LIABILITY PROVISIONS AND FORENSIC ACCOUNTING SERVICES
(September 15, 2005)**

Omnibus Proposal:

**Proposed Interpretation 101-16, *Indemnification, Limitation of Liability, and ADR Clauses
in Engagement Letters*, Under Rule 101, Independence; and**

Proposed Deletion of Ethics Rulings No. 94 and No. 95 Under Rule 101, Independence

January 27, 2006

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

**Comments on AICPA Exposure Draft - Proposed Interpretation 101-16,
*Indemnification, Limitation of Liability, and ADR Clauses in Engagement Letters, Under
Rule 101; Proposed Deletion of Ethics Rulings No. 94 and No. 95 Under Rule 101; and
Proposed Interpretation 101-17, Performance of Client Advocacy Services, Fact Witness
Testimony, and Forensic Accounting Services, Under Rule 101, dated September 15, 2005***

Comments

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

**Proposed Interpretation 101-16, Indemnification, Limitation of Liability, and ADR
Clauses in Engagement Letters, Under Rule 101, Independence**

The Committee believes the guidance provided in this new proposed interpretation is useful and, accordingly, supports its adoption. We do, however, have the following suggested changes and comments:

- (1) The definition of *Actual Damages* in the Terminology section of the proposed interpretation (page 8) is considered inappropriate for several reasons. First, the definition is confusing. Second, including audit fees in the definition is considered inappropriate. Recovery of audit fees should be considered as a "refund for services not provided or inadequately provided" and not as "damages." We would suggest a clear and concise legal definition of damages be used.

In addition, the definition of actual damages used in the proposed interpretation includes incidental or consequential damages (e.g., economic losses). As such, under the proposed interpretation, an auditor may not obtain an indemnification or limitation of liability provision for such damages without impairing his or her independence. Auditors should be able to protect themselves against damage claims that are unreasonable and disproportionate to the auditors' failings. As such, an auditor should be permitted to obtain indemnification or limitation of liability provisions for lost profits, incidental and consequential, indirect, exemplary and special damages. In fact, we have serious doubts about whether obtaining any indemnification or limitation of liability provisions impairs independence.

- (2) The words "or contracts for services" should be added to the first paragraph in the Interpretation section of the proposed interpretation (page 8) so that the first sentence would read: "This interpretation provides guidance ... when included in engagement letters or other agreements or contracts for services entered into with a client." This change is necessary because engagement contracts are frequently used in lieu of

engagement letters.

- (3) The word "applicable" should be added as a modifier to the term professional standards in the second paragraph in the Interpretation section (page 9), so that the second paragraph would read either "... the requirement to exercise due professional care and comply with all applicable professional standards ..." or "... the requirement to exercise due professional care and comply with all professional standards applicable to the services provided...." This change is necessary because not all professional standards apply to all services provided by accountants.
- (4) The first sentence in the other limitations section (page 10) should be shortened to read: "A limitation of the time period during which the client would be otherwise legally entitled to file a claim would impair independence." It is not necessary to address actual damages in the sentence because the rule governing actual damages was addressed earlier in the proposed interpretation.
- (5) The second sentence in the ADR and waiver of jury trial section (page 10) is confusing because it refers to "preceding guidance." Therefore, the sentence should be rewritten to read: "However, if an applicable ADR clause incorporates a provision, procedure, or rule that limits the member's liability for actual damages, the ADR clause would impair independence."
- (6) The word "attest" should be added as a modifier to the word client in the Nonattest services engagements section (page 10), so that the sentence would read "An indemnification or limitation of liability provision related to nonattest services performed for an attest client would not impair independence with respect to that client." This addition will help clarify that obtaining such provisions will not impair independence with respect to attest clients. The guidance in the Nonattest services engagements section (page 10) should be expanded to address time limitation provisions (i.e., limitation of the time period to file a claim) and right to assign provisions (i.e., right to assign or transfer a claim to successors or assigns) to make it clear that these clauses will not impair independence if they are included in engagement terms for nonattest services engagements.
- (7) The proposed interpretation should address the following related topics: hold harmless clauses; releases; gross negligence; indemnification for death or bodily injury of client or audit firm personnel; indemnification for the damage to, or loss or destruction of, any real or tangible personal property of the client or audit firm; and exclusion of liability arising from or relating to any third-party hardware, software, information or materials (either selected or supplied by the client or audit firm). Additionally, it makes sense to consider whether different levels of negligence should be treated differently.

**Proposed Deletion of Ethics Ruling No. 94 Under Rule 101, Independence:
Indemnification Clause in Engagement Letters**

The Committee has no comments on the proposed deletion.

**Proposed Deletion of Ethics Ruling No. 95 Under Rule 101, Independence: Agreement
With Attest Client to Use ADR Techniques**

The Committee has no comments on the proposed deletion.