

new york state society of

NYSSCPA

certified public accountants

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May 31, 2003

Lisa A. Snyder
Director, Professional Ethics Division
AICPA
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881
Email: lsnyder@aicpa.org

In re: Exposure Draft: Omnibus Proposal of Professional Ethics Division Interpretations and Rulings, March 19, 2003

Dear Ms. Snyder:

The New York State Society of Certified Public Accountants, the oldest state accounting association, which represents some 30,000 CPAs, thanks the AICPA Professional Ethics Executive Committee for the opportunity to comment on the above-referenced Exposure Draft.

The Society's Professional Ethics Committee deliberated the provisions contained in the Exposure Draft and prepared the attached comments for PEEC's consideration. If PEEC would like to discuss these comments with the Committee, please contact Rona L. Chernoff, the Committee chair, at (212) 874-0348, or Dennis O'Leary, NYSSCPA staff, at (212) 719-8418.

Sincerely,

Jo Ann Golden
President

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

**COMMENTS ON AICPA PROFESSIONAL ETHICS EXECUTIVE
COMMITTEE EXPOSURE DRAFT**

**Omnibus Proposal of Professional Ethics Division Interpretations
and Rulings**

Principal Drafters

**Rona L. Chernob
Richard Isserman
Kevin Bandoian**

May 15, 2003

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

**Exposure Draft: Omnibus Proposal of Professional Ethics Division
Interpretations and Rulings, March 19, 2003**

May 15, 2003

General Comments

The committee appreciates the opportunity to play a part in the standard-setting process by responding to these important proposals regarding professional ethics. The committee would like to offer its comments on revisions of the interpretations in the specific comments below.

Specific Comments

1. Page 4, 101.5. *All loans should be prohibited.* A covered member should not have any loans to a financial institution or any party related to a client. In addition, permitting a loan would be a way to circumvent the requirement that the prior year's audit fee be paid before the next year's report can be issued. We would allow a grandfather clause, but favor the elimination after a reasonable time so as not to produce a hardship. Appearances should not be ignored.
2. Page 5, "Other Permitted Loans" introductory paragraph. The \$10,000 might be material to a party's net worth. Accordingly, consideration could be given to using a statement that the amount must be reduced to \$10,000 or a lesser amount if \$10,000 is material to net worth. To the phrase normal lending practices, add and leasing.
3. Page 8, .183 Answer. Add to this interpretation that the current value at the date the lease is executed must not be material to either the borrower or the lender.
4. Page 11. It is a very good idea to require documentation of the member's arrangement with the client prior to performing the non-attest services engagement.
5. Page 12, "General Requirements". The rule prohibits a member from "all significant decision making". This should be changed to ANY decision making. Historically, the client is responsible to all decisions; the member merely advises. Also, a complete prohibition from decision making would be in harmony with the last sentence in the paragraph that speaks to the need for the practitioner to apply audit procedures solely to transaction that reflect client decisions and not those of the practitioner.

6. Page 13, 2nd full paragraph. The rebuttal presumption reference is unclear. Also, can tax services be performed for a client that has precious little knowledge of taxation and could not possibly oversee the non-attest service? The assessment by the member of the competence of the client individual designated to oversee the non-attest service is unworkable. This requirement should either be dropped or much better guidance should be provided to members.
7. Page 14, Documentation requirement. The subject of the exposure draft is so important to the public's perception of independence of practice that the understanding with the client should be documented in writing and signed by the client. Leaving form of documentation to the discretion of the practitioner is not sufficient to instill the confidence needed to assure that the client agrees with the practitioner's conclusions about the services and the client's responsibilities regarding such services.
8. Page 15, Appraisal, valuation and actuarial services. It is hard to believe that any appraisal or valuation service do not involve a "significant degree of subjectivity". Some committee members recommended that such services be prohibited. Others proposed an exception for litigation services and valuations for tax and estate purposes.
9. Page 16, second full paragraph. Since taxes are generally significantly to an income statement, the statement in the paragraph that "...such services do not directly affect the client's financial statements..." is not credible. Furthermore, while the service may not impact the current year's financials, it may well impact financials prospectively. Appraisal and valuation should not be permitted for an attest client.
10. Page 18. The proposed interpretation requires compliance with the independence regulation of authoritative regulatory bodies where a member performs non-attest service for a client and is required to be independent of the client. The committee engaged in significant discussion on this point. Some wanted the specific rules of others incorporated directly here, while others expressed the need for clear reference to other regulatory bodies, except for the SEC.
11. Page 19. Custody of client assets would impair independence. The AICPA should specify that holding a fee retainer does not constitute having custody of client assets.
12. Pages 20-25, Examples. Footnote 7 on page 21 - Because most audits of employee benefit plans are of plans subject to ERISA, the AICPA should adopt the more restrictive DOL independence rules. Regarding executive and employee search services, add to the list of those service performed without impairment "background checks on prospective candidates (i.e., investigative research of public records) as an acceptable procedure. On the bottom of page 23, the first bullet under this section -recommend a position description or candidate specifications - needs clarification and should be reworded.
13. Pages 32-33, the committee had comments on the following questions:

1. No, the proposed rule should not incorporate by reference the nonattest service rules of certain authoritative bodies. Rather, they should either be adopted by the AICPA as is, or should be listed so members know what they are.
2. See 1.
5. Yes, a member should document in writing the understanding with the client because it reduces the likelihood of misunderstanding with the client.
7. Members should not be required to document their assessment of client management's competence to perform duties associated with the nonattest service because it is unrealistic to believe that the member will be in a position to do so in all cases.
8. The requirement seems onerous and impractical. See the response to 7.
9. Yes, the proposed rule adequately clarifies the rules on internal audit assistance services.
10. The proposed rule could be clearer: the AICPA should clarify the rules with respect to fairness opinions, contribution-in-kind reports and valuations and appraisals performed for purposes of litigation services engagements, which generally are not consider to impair independence.
11. No, actuarial services related to an attest client's pension or postemployment benefit plan also would impair independence.
14. See 10.
17. Yes, transitional provisions should be included for changes that are more restrictive than current rules in order to provide members and clients time to make new arrangements.
18. A one-year transition should apply to all changes.