



RSM US LLP

August 21, 2023

Professional Ethics Division
American Institute of Certified Public Accountants
1211 Avenue of the Americas, 19th Floor
New York, NY 10036

Via email to ethics-exposedraft@aicpa.org

Re: Exposure Draft, *Proposed new definition of publicly traded entity and revised definition of public interest entity*, AICPA Professional Ethics Division – June 15, 2023

RSM US LLP (RSM) appreciates the opportunity to comment on the American Institute of Certified Public Accountants (AICPA) Professional Ethics Division's June 15, 2023, Exposure Draft, *Proposed new definition of publicly traded entity and revised definition of public interest entity* (the Exposure Draft). RSM is a leading provider of audit, tax and consulting services focused on the middle market.

As requested, we are providing the following responses to the questions on the specific aspects of the proposed interpretations and revisions upon which PEEC is seeking feedback:

- a. *Do you agree with the decision to defer to the relevant regulators for purposes of the specific independence requirements applicable to each PIE category? If not, please explain why.*

We agree with the decision to defer to the relevant regulators for purposes of the specific independence requirements applicable to each PIE category.

- b. *Do you agree with the refinement to the “publicly traded entity” category to include only those entities whose auditors are subject to Regulation S-X, SEC Rule 2-01? If not, please explain why.*

We agree with the stated intention in paragraph 12 of the Exposure Draft to limit the *publicly traded entity* category of *public interest entities* to entities whose auditors are subject to the SEC “issuer” independence rules. However, we are concerned that there may be some *publicly traded entities* whose auditors are subject to Rule 2-01 of SEC Regulation S-X that are not subject to the “issuer” rules within Rule 2-01. See our comment on how category a. of the definition of *public interest entity* could be revised to make it clear that only *publicly traded entities* that are “issuers” are included in this category of PIEs.

- c. *Do you agree with the refinement to the “deposits from the public” category to include only those entities that have consolidated total assets of \$1 billion or more and meet the annual audit requirement imposed by Part 363 of FDIC regulations (12 CFR 363 – “Annual Independent Audits and Reporting Requirements”)? If not, please explain why.*

We agree with this refinement.

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- d. *Do you agree with the refinement to the “insurance to the public” category to include only those entities that are subject to the NAIC Model Audit Rule that meet or exceed \$500 million in annual direct written and assumed premiums? If not, please explain why.*

We agree with this refinement.

- e. *Do you agree with the “investment company” category PEEC proposes to include in the PIE definition? If not, please explain why.*

We agree with the category of Investment companies that PEEC proposes to include in the PIE definition. However, we believe it should be expanded to include investment companies that file or have filed a registration statement that has not yet become effective under the Securities Act of 1940, and that it has not withdrawn. See our comment on how category d. of the definition of *public interest entity* could be revised to incorporate investment companies filing initial registration statements.

- f. *Do you believe other entities, such as credit unions, should be included as PIEs and thus subject to the more restrictive independence requirements consistent with those for IESBA PIEs?*
i. *If so, which entities and why?*
ii. *If so, should the AICPA code incorporate a second set of more restrictive independence standards (that is, consistent with IESBA PIEs), applicable to these other entities? If not, please explain an alternative approach.*

For the reasons set forth in paragraphs 22–23 and 34–50, we agree with PEEC’s conclusion not to include credit unions, pension plans (including those required to file form 11-K with the SEC), other employee benefit plans required to have an annual financial statement audit under the Employee Retirement Income Security Act of 1974, non-issuer broker-dealers, private funds advised by an SEC-registered investment adviser that choose to rely on the audit exception under the custody rule, and not-for-profit and governmental entities within the definition of *public interest entities*. Although not specifically addressed in the Exposure Draft, we also agree with excluding non-issuer futures commission merchants from the definition of *public interest entities*.

- g. *Is the definition of “publicly traded entity” clear? If not, please explain how it should be clarified.*

We believe the definition of *publicly traded entity* is clear.

- h. *If an entity does not otherwise meet the definition of a PIE, are you aware of situations in which a member would treat an entity as a PIE when an engagement is subject to AICPA Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, or Statements on Standards for Attestation Engagements?*
i. *If so, describe such situations and which independence standards are typically applied.*
ii. *Do you believe it would be helpful to have guidance related to such situations? If so, should that guidance be authoritative (that is, included in the AICPA code) or nonauthoritative (for example, a Q&A or practice aid)?*
iii. *Do you believe that in such situations the member should be required to disclose that the independence requirements for PIEs have been applied? If so, how do you believe such disclosure should be achieved when the regulator’s transparency requirement is not applicable?*

We are aware of situations in which, due to regulatory requirements, members perform audit engagements in accordance with both AICPA Statements on Auditing Standards and PCAOB

Auditing Standards (“dual standards engagements”). In those cases, the independence rules of the SEC and the PCAOB must be complied with. We believe auditors who agree to conduct dual-standards engagements understand the independence standards and rules applicable to such engagements and do not need additional guidance to apply them. Further, we believe disclosure of those standards is unnecessary because it is inherent in the disclosure of the auditing standards applied.

- i. *Do you agree that the effective date provides adequate time to implement the proposals? If you disagree, please explain why.*

Because PEEC proposes to defer to the relevant regulators for the specific independence requirements applicable to each PIE category, we agree that the proposed effective date provides adequate time to implement the proposals.

We also offer the following comments on categories a. and d. of the proposed definition of *Public interest entity* (ET Section 400.43):

Category a.

To avoid confusion, we suggest this category be revised to specifically limit the category to publicly traded entities that are “issuers” rather than referencing Rule 2-01 of SEC Regulation S-X which applies to many entities other than issuers, some of which could, potentially, be publicly traded entities. We suggest revising the definition as follows:

“A publicly traded entity that is an ‘issuer’ (as defined in Section 3 of the Securities Exchange Act of 1934), the securities of which are registered under Section 12 of that Act or that is required to file reports under Section 15(d) of that Act (excluding Stock Purchase, Savings and Similar Plans), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn.”

Category d.

Since investment companies file registration statements under the Investment Company Act of 1940, we suggest revising this definition as follows:

“An investment company, other than an insurance company product, that is registered with the SEC pursuant to the Investment Company Act of 1940 or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1940, and that it has not withdrawn.”

We appreciate this opportunity to provide feedback on the Exposure Draft and would be pleased to respond to any questions you may have. Please direct any questions regarding this letter to Claire Blanton, National Director of Independence, Compliance and Ethics, at 704.206.7271.

Sincerely,

RSM US LLP

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