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# Amendments to PCAOB Interim Independence Standards and PCAOB Rules to Align with Amendments to Rule 2-01 of Regulation S-X

Comparison to Existing  
Standards and Rules (PCAOB  
Release No. 2020-003)

December 2020

On November 19, 2020, the Public Company Accounting Oversight Board adopted amendments to the interim independence standards and rules of the Board, as reflected in “Amendments to PCAOB Interim Independence Standards and PCAOB Rules to Align with Amendments to Rule 2-01 of Regulation S-X,” PCAOB Release No. 2020-003. The amendments are not yet effective, pending approval by the Securities and Exchange Commission.

This comparison document was prepared by staff of the Office of the Chief Auditor as a reference tool for the amendments presented in the PCAOB release. It shows changes from the existing standards and rules, with added text underscored and deleted text ~~stricken through~~.

## TEXT OF THE AMENDMENTS

- I. ET § 101.02 is amended by deleting subparagraph 4 to paragraph A to read as follows:
  - A. During the **period of the professional engagement**<sup>fn\*</sup> a **covered member**
    1. Had or was committed to acquire any direct or material indirect financial interest in the **client**
    2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client and
      - i. The covered member (individually or with others) had the authority to make investment decisions for the trust or estate; or
      - ii. The trust or estate owned or was committed to acquire more than 10 percent of the client’s outstanding equity securities or other ownership interests; or
      - iii. The value of the trust’s or estate’s holdings in the client exceeded 10 percent of the total assets of the trust or estate.
    3. Had a **joint closely held investment** that was material to the covered member.
    4. ~~[Deleted]. Except as specifically permitted in interpretation 101-5 [ET section 101.07], had any **loan** to or from the client, any officer or director of the client, or any individual owning 10 percent or more of the client’s outstanding equity securities or other ownership interests.~~
- II. ET § 101.02 is amended by deleting subparagraph (c) to paragraph 2 under the heading “**Application of the Independence Rules to Covered Members Formerly Employed by a Client or Otherwise Associated With a Client**” to read as follows:
  2. Was otherwise a covered member with respect to the client unless the individual first dissociates from the client by—
    - (a) Terminating any relationships with the client described in interpretation 101-1.C [ET section 101.02];
    - (b) Disposing of any direct or material indirect financial interest in the client;

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<sup>fn\*</sup> Terms shown in **boldface** type upon first usage in this interpretation are defined in ET section 92, *Definitions*. [Footnote added, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

- (c) ~~[Deleted]~~ Collecting or repaying any loans to or from the client, except for loans specifically permitted or grandfathered under interpretation 101-5 [ET section 101.07];
- (d) Ceasing to participate<sup>fn1</sup> in all employee benefit plans sponsored by the client, unless the client is legally required to allow the individual to participate in the plan (for example, COBRA) and the individual pays 100 percent of the cost of participation on a current basis; and
- (e) Liquidating or transferring all vested benefits in the client's defined benefit plans, defined contribution plans, deferred compensation plans, and other similar arrangements at the earliest date permitted under the plan. However, liquidation or transfer is not required if a penalty<sup>fn2</sup> significant to the benefits is imposed upon liquidation or transfer.

III. ET § 101 is amended by deleting paragraph .07, Interpretation 101-5 of the AICPA Code, to read as follows:

**[.07]**

**101-5 – Loans from financial institution clients and related terminology.**

**[Paragraphs deleted.]**

Interpretation 101-1.A.4 [ET section 101.02] provides that, except as permitted in this interpretation, independence shall be considered to be impaired if a **covered member**<sup>fn11</sup> has any **loan** to or from a **client**, any officer or director of the client, or any individual owning ten percent or more of the client's outstanding equity securities or other ownership interests. This interpretation describes the conditions a covered member (or his or her **immediate family**) must meet in order to apply an exception for a "Grandfathered Loan" or "Other Permitted Loan."

## Grandfathered Loans

Unsecured loans that are not material to the covered member's net worth, home mortgages,<sup>fn7</sup> and other secured loans<sup>fn7</sup> are grandfathered if:

- (1) ~~they were obtained from a **financial institution** under that institution's **normal lending procedures, terms, and requirements**,~~
- (2) ~~after becoming a covered member they are kept current as to all terms at all times and those terms do not change in any manner not provided for in the original loan agreement,<sup>fn8</sup> and~~

<sup>fn1</sup> See Ethics Ruling No. 107, "Participation in Health and Welfare Plan of Client" [ET section 191.214–.215], for instances in which participation was the result of permitted employment of the individual's spouse or spousal equivalent.

<sup>fn2</sup> A penalty includes an early withdrawal penalty levied under the tax law but excludes other income taxes that would be owed or market losses that may be incurred as a result of the liquidation or transfer.

<sup>fn11</sup> Terms shown in **boldface** type upon first usage in this interpretation are defined in ET section 92, *Definitions*.

<sup>fn7</sup> The value of the collateral securing a home mortgage or other secured loan should equal or exceed the remaining balance of the grandfathered loan during the term of the loan. If the value of the collateral is less than the remaining balance of the grandfathered loan, the portion of the loan that exceeds the value of the collateral must not be material to the covered member's net worth. [Footnote added, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

<sup>fn8</sup> Changes in the terms of the loan include, but are not limited to, a new or extended maturity date, a new interest rate or formula, revised collateral, or revised or waived covenants. [Footnote added, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

~~(3) they were:~~

- ~~(a) obtained from the financial institution prior to its becoming a client requiring independence;  
or~~
- ~~(b) obtained from a financial institution for which independence was not required and were later sold to a client for which independence is required; or~~
- ~~(c) obtained prior to February 5, 2001 and met the requirements of previous provisions of Interpretation 101-5 [ET section 101.07] covering grandfathered loans; or~~
- ~~(d) obtained between February 5, 2001 and May 31, 2002, and the covered member was in compliance with the applicable independence requirements of the SEC during that period;  
or~~
- ~~(e) obtained after May 31, 2002 from a financial institution client requiring independence by a borrower prior to his or her becoming a covered member with respect to that client~~

~~In determining when a loan was obtained, the date a loan commitment or line of credit is granted must be used, rather than the date a transaction closes or funds are obtained.~~

~~For purposes of applying the grandfathered loans provision when the covered member is a partner in a partnership:~~

- ~~• a loan to a limited partnership (or similar type of entity) or a general partnership would be ascribed to each covered member who is a partner in the partnership on the basis of their legal liability as a limited or general partner if:
  - ~~o the covered member's interest in the limited partnership, either individually or combined with the interest of one or more covered members, exceeds 50 percent of the total limited partnership interest; or~~
  - ~~o the covered member, either individually or together with one or more covered members, can control the general partnership.~~~~
- ~~• even if no amount of a partnership loan is ascribed to the covered member(s) identified above, independence is considered to be impaired if the partnership renegotiates the loan or enters into a new loan that is not one of the permitted loans described below.~~

## ~~Other Permitted Loans~~

~~This interpretation permits only the following new loans to be obtained from a financial institution client for which independence is required. These loans must be obtained under the institution's normal lending procedures, terms, and requirements and must, at all times, be kept current as to all terms:~~

- ~~1. Automobile loans and leases collateralized by the automobile.~~
- ~~2. Loans fully collateralized by the cash surrender value of an insurance policy.~~
- ~~3. Loans fully collateralized by cash deposits at the same financial institution (e.g., "passbook loans").~~
- ~~4. Credit cards and cash advances where the aggregate outstanding balance on the current statement is reduced to \$5,000 or less by the payment due date.~~

Related prohibitions that may be more restrictive are prescribed by certain state and federal agencies having regulatory authority over such financial institutions. Broker-dealers, for example, are subject to regulation by the Securities and Exchange Commission.

[Revised, November 30, 1987, by the Professional Ethics Executive Committee. Formerly paragraph .06, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. References revised to reflect issuance of AICPA Code of Professional Conduct on January 12, 1988. Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, November 1991, effective January 1, 1992 with earlier application encouraged, by the Professional Ethics Executive Committee. Revised, effective February 28, 1998 by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Revised, November 2002, by the Professional Ethics Executive Committee.]

IV. ET § 191 is amended by deleting paragraph 75 to read as follows:

**[75.] Membership in Client Credit Union**

**[Paragraphs .150-.151 deleted.]**

**.150**

*Question*—Does membership in a client credit union impair independence?

**.151**

*Answer*—A covered member's association with a client credit union would not impair independence provided all of the following criteria are met:

- 1.—The covered member individually qualifies to join the credit union (other than by virtue of the professional services provided to the client).
- 2.—Any loans from the credit union to the covered member meet the conditions specified in interpretation 101-1.A.4 [ET section 101.02] and are made under normal lending procedures, terms, and requirements (see interpretation 101-5 [ET section 101.07]).
- 3.—Any deposits with the credit union meet the conditions specified in ruling No. 70 [ET section 191.140-.141] under rule 101 [ET section 101.01].

Partners and professional employees may be subject to additional restrictions as described in interpretation 101-1.B [ET section 101.02].

[Effective February 28, 1992, earlier application is encouraged. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

V. ET § 191 is amended by deleting paragraph 91 to read as follows:

**[91.] Member Leasing Property to or From a Client**

**[Paragraphs .182-.183 deleted.]**

**.182**

*Question*—Would independence be considered to be impaired if a member leased property to or from a client?

**.183**

*Answer*—Independence would not be considered to be impaired if the lease meets the criteria of an operating lease (as described in Generally Accepted Accounting Principles), the terms and conditions set forth in the lease agreement are comparable with other leases of a similar nature, and all amounts are paid in accordance with the terms of the lease.

Independence would be considered to be impaired if a covered member had a lease that meets the criteria of a capital lease (as described in Generally Accepted Accounting Principles) unless the lease is in compliance with interpretations 101-1.A.4 [ET section 101.02] and 101-5 [ET section 101.07], because the lease would be considered to be a loan to or from the client.

[Revised, effective May 31, 1998, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

- VI. ET § 191 is amended by deleting paragraph 98 to read as follows:

**[98.] Member’s Loan From a Nonclient Subsidiary or Parent of an Attest Client**

**[Paragraphs .196-.197 deleted.]**

**.196**

*Question*—A member has obtained a loan from a nonclient. The member’s firm performs an attest engagement for the parent or a subsidiary of the nonclient. Does the loan from the nonclient subsidiary or parent impair independence?

**.197**

*Answer*—A covered member’s loan that is not a “grandfathered” or “permitted” loan under interpretation 101-5 [ET section 101.07] from a nonclient subsidiary would impair independence with respect to the client parent. However, a loan from a nonclient parent would not impair independence with respect to the client subsidiary as long as the subsidiary is not material to its parent.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

- VII. ET § 191 is amended by deleting paragraph 110 to read as follows:

**[110.] Member is Connected With an Entity That Has a Loan to or From a Client**

**[Paragraphs .220-.221 deleted.]**

**.220**

*Question*—A member is associated with an entity as an officer, director, or a shareholder who is able to exercise significant influence over an entity. That entity has a loan to or from a client of the member’s firm. Would independence be considered to be impaired with respect to the client?

**.221**

*Answer*—If a covered member has control over the entity (as defined in Generally Accepted Accounting Principles) the existence of a loan to or from the client would impair independence unless the loan from the client is specifically permitted under interpretation 101-5 [ET section 101.07].

If any partner or professional employee of the firm is connected with the entity as an officer, director, or shareholder who is able to exercise significant influence over the entity, but is unable to control the entity, he or she should consider interpretation 102-2 [ET section 102.03]. Interpretation 102-2 provides that a conflict of interest may occur if a member performs a professional service for a client and the member or his or her firm has a relationship with another entity that could, in the member's professional judgment, be viewed by the client or other appropriate parties as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client and other appropriate parties, the rule shall not operate to prohibit the performance of the professional service.

When making the decision as to whether to perform a professional service and in making disclosure to the appropriate parties, the member should consider Rule 301, *Confidential Client Information* [ET section 301.01].

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

VIII. Rule 3501 is amended by revising paragraph (a)(ii) to read as follows:

**(a)(ii) Affiliate of the Audit Client.**

The term "affiliate of the audit client" has the same meaning as that term is defined in Rule 2.01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(4). ~~means—~~

- ~~(1) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;~~
- ~~(2) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;~~
- ~~(3) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and~~
- ~~(4) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.~~

IX. Rule 3501 is amended by revising paragraph (a)(iii)(3) to read as follows:

- ~~(3) For audits of the financial statements of foreign private issuers, the The "audit and professional engagement period" does not include periods ended prior to the first day of the last fiscal year before the foreign private issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with applicable home-country independence standards in all prior periods covered by any registration statement or report filed with the Commission.~~

X. Rule 3501 is amended by revising paragraph (i)(ii) to read as follows:

**(i)(ii) Investment Company Complex.**

~~(1) The term "investment company complex" has the same meaning as that term is defined in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(14). ~~includes—~~~~

- ~~(i) An investment company and its investment adviser or sponsor;~~

- ~~(ii) — Any entity controlled by or controlling an investment adviser or sponsor in paragraph (i) of this definition, or any entity under common control with an investment adviser or sponsor in paragraph (i) of this definition if the entity —
  - ~~(A) — Is an investment adviser or sponsor; or~~
  - ~~(B) — Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and~~~~
- ~~(iii) — Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act (15 U.S.C. § 80a-3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.~~
- ~~(2) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.~~
- ~~(3) A sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.~~



