



National Association of State Boards of Accountancy

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Professional Ethics Executive Committee
American Institute of Certified Public Accountants
1345 Avenue of the Americas
New York, NY 10105

Via e-mail: ethics-exposedraft@aicpa.org

Re: Exposure Draft: Proposed revisions related to alternative practice structures

Dear Members and Staff of the AICPA Professional Ethics Executive Committee (PEEC):

The National Association of State Boards of Accountancy (NASBA) appreciates the opportunity to comment on the above-referenced Exposure Draft, *Proposed revisions related to alternative practice structures* (the Exposure Draft). NASBA's mission is to enhance the effectiveness and advance the common interests of State Boards of Accountancy (State Boards) that regulate all Certified Public Accountants (CPAs) and their firms in the United States and its territories, which includes all audit, attest and other services provided by CPAs. State Boards are charged by law with protecting the public.

In furtherance of that objective, NASBA offers the following comments.

General Comments

Independence in Appearance and Regulatory Oversight:

The AICPA Code of Professional Conduct (Code) requires CPAs in public practice to maintain independence in both fact and appearance when performing assurance/attestation services. Independence in fact in the Code refers to a CPA's actual state of mind of being objective, unbiased and free from conflicts of interest. It ensures the ability to make impartial judgments without being influenced by external pressures or relationships. Independence in appearance is how a reasonable and informed third party perceives a CPA's (or firm's) independence.

Preserving independence is critically important to protecting the public with the assurances provided by CPAs. The public relies on independent CPAs to provide assurance on a variety of metrics ranging from financial statements to sustainability, to compliance, to system and organization controls. That independence is one of the cornerstones of the trust placed in CPAs by the financial markets and the public that State Boards are charged with protecting.

When private equity investors become closely aligned with CPA firms through alternative practice structures (APS), complex relationships emerge that may threaten both actual and perceived independence. These APS structures may involve shared ownership, common investors, affiliated entities, or financial relationships that are not obvious to clients, the public or regulators due to lack of visibility into the underlying APS agreements. The public's ability to make informed decisions about professional services depends on clear, accessible information about firm ownership, service boundaries, and regulatory oversight.

The "principles-based" approach to the proposed revisions to the APS interpretation of the Independence Rule leaves the CPA/firm to apply judgement in critical areas and frames independence considerations for APSs around structural permissibility. The Exposure Draft is complex and challenging to understand, demonstrated by the encouragement by PEEC in the Exposure Draft for members to consult an attorney or other specialist in navigating applicable laws and regulations.

NASBA acknowledges that there are other areas in the Code in which the CPA or firm must make judgements in determining independence; however, there is concern that the Exposure Draft is so complex that it will require many charts, diagrams, nonauthoritative examples and a plain-English guide in order for even the most experienced CPAs to understand and apply the proposed revisions. As proposed, the revisions could be applied by members in varying and even contradictory ways, leading to diversity in practice, which is not in the public interest.

In representing the interests of State Boards, NASBA is concerned that the complexity of the proposed revisions will not allow State Boards to effectively regulate and provide appropriate oversight to licensed CPA firms that participate in APSs (Attest Firms). Even if State Boards required submission of APS agreements, management/shared services agreements and any side letters for Attest Firm licensure purposes, most State Boards would need to contract additional resources and expertise to analyze and evaluate the APS for compliance with applicable state laws and regulations. This would result in the State Boards being overly reliant on peer review and Public Company Accounting Oversight Board (PCAOB) inspections to identify independence concerns/violations. Further, as it relates to CPA/firms and their ability to implement the proposed revisions, there are scalability concerns involving the size and sophistication of any given firm as to whether the appropriate processes and resources are in place to not only track and report independence matters but also ensure that audit quality is maintained. Regulators and CPAs/firms need a practical standard that can be evaluated timely, applied consistently, and result in specific, observable evidence to support independence conclusions.

The proposed revisions in the Exposure Draft rely in great measure on the distinction between "control" and "significant influence." Control is defined in the Code based on the FASB Accounting Standards Codification (ASC) 810, *Consolidation*, as the direct or indirect ability to determine the direction of management and policies through ownership, contract, or otherwise, including qualitative factors. Significant influence is defined by FASB ASC 323-10-15, *Investments – Equity Method and Joint Ventures*, which presumes significant influence at ownership of twenty percent

or more of the investee's voting stock. Those concepts may satisfy legal or organizational analysis but are largely irrelevant to the reasonable financial statement user. With the significant influence threshold typically spanning 20% to 50%, there is little practical difference in the ability to influence decision making between those with something less than 50% and something just over 50%. Significant influence can still exist with less than 20% ownership if other indicators are present, such as board representation, policy-making participation, material intra-entity transactions, interchange of managerial personnel, or technology dependency. From the public's perspective, outside investors with economic stakes in firm performance compromise independence regardless of the ownership percentage or formal governance rights.

NASBA believes the guidance should include a bright-line financial interest percentage over which an investor is presumed to have influence over the Attest Firm, and thus the investor and entities within the investor structure would not be acceptable assurance clients of the Attest Firm. NASBA recommends the use of the U.S. Securities and Exchange Commission's (SEC) greater than 5% beneficial ownership threshold requirement for disclosure (Rule 240.13d) as the bright line. This also aligns with the SEC's auditor independence rules in Rule 2-01(c)(1)(i)(B) of Regulation S-X, which states that a CPA is not independent if firm personnel, any immediate family members, any close family member of a covered person in the firm, or any group of the above has filed a Schedule 13D with the SEC indicating beneficial ownership of more than 5% of an audit client's equity securities. Additionally, in certain contexts, an investment equal to or greater than 5% of a private equity group's total assets in an investee is generally considered material. This recommended bright-line threshold would simplify the independence determination using a familiar, well-established threshold that aligns with other U.S. regulators and standard setters.

The exclusion of certain entities within the investor structure for independence purposes (in determining whether assurance work can be performed) could cause confusion and impact public perception (independence in appearance). For example, Large Investor announces inclusion of APS firm (which hereby refers to the combined non-attest entity and the Attest Firm) as a new Large Investor portfolio company. Based on the Exposure Draft, the Attest Firm could perform an audit of another Large Investor portfolio company so long as the APS firm is in a separate fund, has separate fund advisor(s) and does not have the same board members as the Large Investor's portfolio company auditee. Similarly, since the Exposure Draft draws a distinction between financial statement attest work and other assurance services, the Attest Firm could also perform, for example, System and Organization Controls (SOC) assessments for the Large Investor's other portfolio companies. NASBA believes the 5% bright-line threshold coupled with required disclosures of the relationships between the APS firms would add clarity and protect the public in these circumstances.

The threats to independence are not addressed in the Exposure Draft for when a Large Investor acquires an interest in more than one APS firm. The Exposure Draft allows the Large Investor's portfolio company APS firms to undertake work that a single firm would not be permitted to perform so long as these firms do not cooperate to render services. The concept of "cooperation" to render services does not impact common parent entities with separately managed portfolio companies rendering services. In such a case, a portfolio Attest Firm could undertake assurance services while

the other portfolio non-attest (advisory) entity could undertake internal audit outsourcing or outsourced CFO services for the same company. NASBA believes that the final interpretation should address APS firms with common ownership in such a way that these APS firms cannot perform services for the same company that would otherwise be prohibited if these entities were a single firm. The proposed “network firm” definition would allow this arrangement so long as the firms do not “cooperate”. Does the proposed interpretation allow for the APS firms under common ownership to refer work to one another? Would that then trigger the concept of “cooperation”? NASBA believes that if these examples and scenarios were diagrammed and presented to investor or banking/lending stakeholder groups for feedback that there would be concern regarding the independence in appearance of the APS firms because in the situation of common parent entities, undue influence would manifest in financial motivation to refer work between APS firms.

NASBA supports the inclusion of both debt and equity in the definition of a financial interest and believes that the final version of the interpretation should make it clear that both debt and equity in an APS firm can impair independence with respect to the ultimate benefactor of the financial interest, which may include an Employee Stock Ownership Plan (ESOP).

Threshold of Significant Influence And the Investment is Material:

In situations where the Exposure Draft addresses an independence issue based on when an investor has either (a) control or (b) significant influence **“and”** the investment is material to the investor, it effectively allows any Large Investor to utilize the APS firm to undertake assurance work for many portfolio companies. The word “and” introduces the question of which portfolio companies are material to which fund. So, a Large Investor may own 49%, lacking control and, since very few individual investments are material to Large Investors, it escapes restrictions that the Exposure Draft defines for lacking independence. NASBA recommends using the simple bright-line 5% financial interest threshold which would eliminate the judgement and inconsistent application that comes with determining materiality and serves the public interest. At a minimum, NASBA recommends that the word “and” in these contexts be replaced with the word “or” so that a significant influence **or** material investment would disqualify the Attest Firm from undertaking assurance work for other investees of the Large Investor with an interest in the APS firm.

Non-attest Entity Permitted to Determine Compensation of Attest Partners:

The Exposure Draft makes a specific distinction between board members with authority to approve individual compensation of attest partners as opposed to anyone with the ability to influence compensation pools and other employees. The ability to influence compensation for attest partners, whether individually or in pools, presents an undue influence threat that cannot be overcome with safeguards and results in that individual becoming a “covered member”.

NASBA remains concerned that the terms of the administrative/shared services agreement may put undue pressure on the Attest Firm in ways that can impair independence, objectivity, and/or quality management. It is not clear how having an Attest Firm that has no employees or resources but

“leases” partners, employees and resources from the non-attest entity allows the firm to operate independently. This concern is elevated when one considers that those personnel are compensated based on the non-attest entity’s determination of compensation levels. In these APS arrangements, when strategy and other decision-making is occurring at the non-attest entity with influence by the investor in some way, it becomes unclear how reliance can be placed on the assertion in the proposed interpretation (paragraph .05) that the Attest Firm partners remain responsible for decisions regarding attest clients, attest engagements, quality management, risk management and Attest Firm personnel.

The Exposure Draft should address structural ownership of the Attest Firm and the evolution of non-CPA ownership. If Attest Firm partners compensation may be influenced by non-CPA ownership, without regard to the formalities of percentage ownership, then the Attest Firm CPA partner would not be independent of the non-CPA ownership and its related equity and debt providers.

Different Standard for Financial Statement and Review Services Versus Other Attest Services:

The Exposure Draft draws a distinction between financial statement audits and reviews and other forms of assurance. NASBA believes that assurance provided by a CPA does not have varying levels of independence. One set of rules for audit and review services and the conceptual framework for other assurance services effectively sets different standards for independence. The Exposure Draft should address all assurance services in the same way – a single standard for all assurance services is in the public interest.

No Requirement to Monitor Relationships and Circumstances that Create Threats to Independence:

NASBA believes that the statement in paragraph 59 of the explanatory material to the Exposure Draft that APS firms are not required to monitor relationships and circumstances that create threats to independence is misguided and contradicts the Statement on Quality Management Standards No.1, *A Firm’s System of Quality Management*, which requires real-time monitoring. Firms should know their clients and the threats to loss of independence outweigh the additional burden of monitoring for investment relationships that may impair independence. Further, the phrase “knows or has reason to believe” should be followed with “after reasonable inquiry.”

Ensuring the Public Has Clear, Accessible Information for Decisions About Professional Services

To ensure that the public and public investors are adequately informed and protected, NASBA believes additional guidance is needed for the disclosure of APS ownership percentages as well as the disclosure of affiliated APS entities (common ownership). Full transparency regarding the parties involved in an APS arrangement is critical not only to financial statement users but also to other stakeholders with responsibilities for understanding the closeness of the relationship between the auditor and the auditee/client, such as audit committees. Consideration should be given as to whether other standards should be amended or enhanced regarding the ownership and network

relationship information with respect to a firm's independence like the required communications with audit committees. Acknowledging that the disclosure requirements may not be solely within the purview of PEEC, NASBA believes further outreach, involvement and collaboration with other U.S. standard-setting bodies is necessary to arrive at a solution that will provide clear, accessible information about firm ownership and service boundaries in order for the public to make informed decisions about professional services.

Comments on Specific Questions from the Exposure Draft

Subject to the concerns expressed above, NASBA provides the following responses to the specific questions included in the Exposure Draft:

a. Do you agree that “investor” is defined appropriately (.04c)? If not, please explain.

The definition of “investor” in the Exposure Draft focuses on the financial interest of the entity or individual with financial interest defined in the Code (ET sec. 0.400.17) as an ownership interest in an equity or debt security issued by an entity. NASBA believes the definition should also address the beneficial interest of an investor. For example, an entity with a loan in excess of five percent of the amount borrowed by an ESOP used to fund the purchase of an APS firm should come under definition of an investor with a financial interest.

b. Do you agree that the definition of “key stakeholders of the investor” is clear in terms of which individuals are included?

The Exposure Draft defines key stakeholders as individuals who represent or act on behalf of the investor; however, NASBA believes that the term should also include anyone with the ability to influence the investee APS firm (non-attest entity) such as those creditors with an interest, officers, directors or other key personnel of the investor.

c. Do you agree the three models should be included in the interpretation (.06-.07)? If not, please explain, including whether you believe one or more should be included in nonauthoritative guidance or if there are other models that should be included in nonauthoritative guidance.

NASBA agrees that the three models should be included in the interpretation (.06-.07). NASBA believes that the diagrams are helpful in understanding the basic construct of each of the three APS models. However, the key issue of when an assurance engagement can, and cannot, be undertaken is not addressed in these diagrams. The diagrams could lead the user to conclude that any entities without a thick border are acceptable assurance clients. NASBA recommends making it clearer that the diagrams are only illustrating a particular step in the process of determining independence in an APS and not intended as a comprehensive example.

d. Do you agree that the definition of “network firm” should be amended to add the requirement that the cooperation characteristic (as described in paragraph 29 of the explanatory material) in

the definition of “network” be met before a controlling investor of a network firm is considered a network firm? If not, please explain.

NASBA does not agree that the definition of “network firm” should be amended to add the requirement that the cooperation characteristic in the definition of “network” be met before a controlling investor of a network firm is considered a network firm. The concept of cooperation needs additional clarity – the explanatory memorandum includes examples of factors to consider when determining whether an entity meets the cooperation characteristic but those factors are not included in the proposed interpretation. The distinction that cooperation is required to be in a network allows a Large Investor to acquire multiple APS firms as portfolio companies then allows the Large Investor to benefit from non-attest services rendered to an attest client, which is a longstanding prohibition to preserve the appearance of independence.

i. Do you agree that if the controlling investor is a network firm based on the definition of “network firm,” then other entities it controls should also be network firms? If not, please explain.

NASBA agrees that if the controlling investor is a network firm, then the other entities it controls should also be network firms.

e. Do you agree that in an APS, the nonattest entity should be subject to the same independence requirements as the attest firm, including the requirements under the “Independence Standards for Engagements Performed in Accordance with Statements on Standards for Attestation Engagements” subtopic (ET sec. 1.297) (.14)?

NASBA agrees that, in an APS, the non-attest entity should be subject to the same independence requirements as the attest firm, including the requirements under the “Independence Standards for Engagements Performed in Accordance with Statements on Standards for Attestation Engagements.” Independence is not different for financial statement audits versus other assurance/attest services.

i. If you do not agree, do you believe the “Conceptual Framework for Independence” interpretation should be applied to evaluate the significance of threats created by the nonattest entity’s and its controlled entities’ relationships with attest clients subject to the SSAEs?

1. If so, what factors should be considered in evaluating the significance of threats and whether potential safeguards could be implemented?

See response above.

f. Do you agree that when an investor does not provide professional services and the investor’s activities are limited to investing in the nonattest entity and advising on the budgetary or strategic

direction of the attest firm (described in paragraph 32 of the explanatory material), then the investor is generally not a network firm? If not, please explain.

NASBA does not believe that the investor's service offerings are relevant. NASBA believes that the entire set of parties "upstream" or otherwise with a debt or equity investment from the investor should be assessed at the bright-line 5% threshold. The definition should encompass all entities within the investor's portfolio as network firms.

i. If you agree, state whether you believe these factors should be in authoritative or nonauthoritative guidance.

See response above.

g. Do you agree with the factors for determining whether cooperation exists for the purpose of enhancing capabilities to provide professional services as described in paragraph 33 of the explanatory material?

As previously noted herein, NASBA believes that the notion of cooperation needs additional clarity. The factors for determining whether cooperation exists are described in the explanatory material but not included in the proposed interpretation. In order to improve consistency in application, NASBA recommends providing more specific examples and scenarios that indicate cooperation among entities such as portfolio companies utilizing centralized IT systems, HR functions or finance department; or sharing client leads or referring work among portfolio companies.

i. If you agree, state whether you believe these factors should be in authoritative or nonauthoritative guidance.

ii. Do you believe any additional factors should be included for determining whether cooperation exists? If so, please provide the additional factors.

See response above.

h. Do you agree that the covered member section (.15-.16) should remain in the interpretation?

NASBA agrees that the covered member section (.15-.16) should remain in the interpretation; however, the definitions should be expanded as noted above. Anyone, board member or not, that can influence compensation whether in a pool or individually, of anyone involved in providing assurance services should be a covered member.

i. If not, should this section be presented as application material on how to apply the "covered member" definition in an APS in nonauthoritative guidance?

See response above.

i. Do you agree that the chief executive of the nonattest entity (and other individuals in an attest partner's chain of command in the nonattest entity) should be evaluated under the "covered member" definition rather than be automatically considered covered members (.16)? If not, please explain.

NASBA believes that the chief executive of the non-attest entity along with anyone in the C-Suite, board members, and anyone who has actual or perceived influence over any member of an assurance providing entity should automatically be covered members. As a matter of public perception, it would be very difficult to convince the public that the chief executive of the non-attest entity is not involved to the level that the chief executive becomes anything other than a covered member.

j. Do you agree that when the investor has significant influence or control over the nonattest entity, the attest firm should not provide a financial statement attest service to an investee of the investor if an upstream entity of the nonattest entity is an affiliate of the investee (.18b)? If not, please explain.

As previously noted, NASBA believes that when an investor has a greater than five percent beneficial interest in the non-attest (non-assurance) entity then there should be no attest work done for any entity in which the investor has a beneficial interest in that entity's debt or equity. Additionally, the Attest (assurance) Firm should be required to monitor for these conditions.

k. Do you agree that when an attest client has a financial interest in the nonattest entity, independence is impaired, regardless of whether the attest client has significant influence over the nonattest entity (.18c)? If not, please explain.

NASBA agrees that when an attest client has a financial interest in the non-attest entity, independence is impaired.

l. Do you agree that, in an APS with PE when the PE investor controls the nonattest entity, the attest firm should not provide attest services to another portfolio company in any fund when the PE investor either a) has significant influence over the portfolio company and the investment is material to the fund, or b) controls the portfolio company (.18d)? If not, please explain.

See previous comments on NASBA's recommendation for a bright-line threshold. However, if PEEC proceeds with the significant influence/control concepts, then NASBA agrees that in an APS with PE when the PE investor controls the non-attest entity, the Attest Firm should not provide attest services to another portfolio company in any fund. In addition, NASBA believes that the word "and" should be replaced with the word "or" so that the materiality is not required when there is significant influence.

m. Do you agree that the prohibitions described in paragraph .18b.-d. of the interpretation regarding the provision of attest services to investees and other entities of the investor (that is not a network firm), along with the use of the conceptual framework for independence for

circumstances when the prohibitions would not apply (.20) are sufficient to address threats to independence in the circumstances described in the respective paragraphs? If not, please explain.

See previous comments on NASBA's recommendation for a bright-line threshold. However, if PEEC proceeds with the significant influence/control concepts, then the word "and" should be replaced with the word "or" so as to make it clear that either influence or materiality is required. Without this change, the challenge is that for some Large Investors, nothing is material and the control issue can be addressed by owning 49% with another "invited" investor controlling two percent or more.

i. For example, when the investor has significant influence over the nonattest entity, the attest firm would apply the conceptual framework for independence when evaluating whether a controlled portfolio company in the same fund as the nonattest entity could be a financial statement attest client if the controlled portfolio company is not material to the fund (that is, the fund is not an affiliate).

NASBA believes that the analysis should never get to this point. The concept of two entities (portfolio companies) in the same fund having any sort of assurance relationship presents conflicts that NASBA believes no safeguards could mitigate. The public appearance of two companies with common ownership being auditor and auditee is a clear conflict of interest.

n. Do you agree with the "Relationships with individuals and entities that generally do not create threats to independence" section (.21-.22)?

NASBA believes that paragraph c. of paragraph .21 does create threats to independence. If immediate family members are not covered then spouses and children can be used to circumvent the prohibitions. Practically speaking, does the threat to independence appear any different to the public when a board member's immediate family member makes an investment?

i. If you agree, should paragraphs .21-.22 remain in the interpretation? If not, do you believe the material should be presented in nonauthoritative guidance?

NASBA agrees that paragraphs .21-.22 should remain in the interpretation.

o. Do you agree that the new paragraph .03 of the revised "Alternative Practice Structures" interpretation of the "Form of Organization and Name Rule" should be in the interpretation? If not, do you believe this is a practice issue as described in paragraph 66 of the explanatory material and, if so, is there another approach that should be considered (for example, in nonauthoritative guidance)?

NASBA agrees that the new paragraph .03 of the revised "Alternative Practice Structures" interpretation of the "Form of Organization and Name Rule" should be included in the

interpretation. However, NASBA believes that additional clarity is warranted. The paragraph does not include whether the disclosure is written and how the disclosures should be made.

p. Do you agree that the proposed guidance is operational? If not, please identify specific sections you do not agree are operational.

NASBA has significant concerns as to whether the proposed guidance is operational in a consistent and meaningful manner. In addition to the comments included herein, the following comments are representative of the concerns:

- The distinction between all assurance and financial statement attest services, with financial statement attest being subject to specific rules and other assurance services left to the conceptual framework, sends the message that there is more than one kind of independence. This multi-tiered concept of independence could set a precedent of differing rules of independence directed towards an ownership structure and not resulting from the relationship with the attest client. It appears that independence is being driven by the practice form of the professional and not being driven by the service being provided such that the firm under traditional firm ownership has unitary independence rules for all attest services but firms with APSs get a pass.
- The complexity of the proposed guidance raises serious concerns about the ability of firms and regulators to consistently analyze the structure of an APS and interpret and apply the standards, which increases the risk of not only treating similar APS structures differently, but also eroding uniformity across jurisdictions. As previously noted, an acknowledgement of the complexity is demonstrated by the encouragement by PEEC in the Exposure Draft for members to consult an attorney or other specialist who might be able to assist members in navigating applicable laws and regulations. State Boards will require additional resources and potential expertise to analyze structures and documentation to ensure compliance, which adds to the burden faced by many State Boards with time, resources and budgetary constraints.
- The diagrams can lead to a conclusion that an Attest Firm may complete assurance work for an entity in the same fund. As previously noted in response to question c., the key issue of when an assurance engagement can, and cannot, be undertaken are not addressed in the diagrams. NASBA recommends making it clearer that the diagrams are only illustrating a particular step or scenario in the process of determining independence in an APS and not intended as a comprehensive example.
- The proposed guidance focuses on the distinction between control, significant influence and the materiality of investment levels relative to the attest entity. The proposal uses thresholds and the concept of cooperation to indicate where influence creates threats to independence. There is concern that these thresholds may not adequately address situations where influence exists even if the investment level falls below materiality. Influence in these complex APSs

can manifest in other ways such as contractual arrangements and governance rights and not solely through ownership percentages. As previously noted, there is not enough guidance or clarity on what factors lead to cooperation among entities for consistent application. If portfolio companies utilize centralized IT systems, HR functions or finance department, is that cooperation? If portfolio companies share client leads, propose on the same services to the same clients, or refer work among portfolio companies, does that constitute cooperation?

- The proposed guidance focuses primarily on investments in the APS firm through equity securities/ownership. It is common for debt financing to be associated with these transactions. While debt financing may not raise the same undue influence concerns as equity investments, there are other influence concerns present with debt financing. Restrictive debt covenants, the size of the debt, debt service requirements and high interest rates can all lead to undue pressure over an APS firm and are not fully addressed in the proposed guidance.

In representing the interests of State Boards, NASBA has identified several challenges the proposed revisions present for regulatory oversight. State Boards operate under statutory frameworks that were not designed for these complex ownership structures. As APS models continue to evolve, it is critical that independence standards remain clear and practical to allow State Boards to determine compliance within their statutory authority. For the proposed guidance to be operational for a State Board, the guidance needs to satisfy protecting the public.

q. Are there any other independence threats related to practicing in an APS, as well as in traditional networks, that we haven't addressed? If so, please explain.

As noted previously in the General Comments section, NASBA believes that the ability of a Large Investor to acquire interests in multiple APS firms (within the Exposure Draft's structures), keeping these APS firms in separate funds with separate advisors and separate board members, then allowing these APS firms, influenced by the Large Investor, to undertake both attest (assurance) and non-attest work for the same client presents threats that cannot be overcome with safeguards.

r. For what areas do you believe nonauthoritative guidance is needed (other than those already identified)?

In NASBA's response letter, dated June 13, 2025, to the PEEC's Discussion Memorandum regarding potential revisions to the Code and guidance related to independence in APSs, NASBA noted that a State Board can most readily enforce clearly defined authoritative rules. While potentially enforceable, guidance labeled as nonauthoritative presents greater challenges for regulators in their enforcement efforts. Also noted in that response, NASBA identified two areas of significant concern that may go beyond the independence principle of the Code.

The first area of concern is firm name and branding of the Attest Firm and non-attest entity. For example, when the name of the Attest Firm and the non-attest entity are essentially the same,

branding and advertising is similar and/or the same website is used for both attest and non-attest services, there can be confusion for the public as well as the regulators in understanding how services are being delivered and by whom.

The second area of concern relates to data privacy. PE owned firms have access to sensitive attest firm client financial data. This data must be appropriately protected and managed carefully particularly in the event of the PE firm's exit.

While it appears that these two areas were identified in the Exposure Draft for nonauthoritative guidance, NASBA recommends consideration as to whether authoritative guidance could be provided to ensure consistency in application. If appropriate guidance is not provided to protect the public, State Boards may determine that pursuing action within their statutory authority is needed.

Conclusion

NASBA appreciates the fact that a significant amount of effort and thought has gone into the development of both the Discussion Memorandum and the Exposure Draft. Nevertheless, NASBA has a lingering concern as to whether all relevant stakeholders were involved in the process. More specifically, it is not clear that representatives from the investor, regulatory, financial statement user, and financial service communities have been engaged for their views and concerns as part of this process. Given the complexity and evolving nature of APS arrangements, NASBA encourages continued study and collaboration before finalizing guidance that may significantly affect both professional practice and regulatory oversight. Clear, practical, and enforceable standards are essential to maintaining public trust in the profession.

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We appreciate the opportunity to comment on the Exposure Draft.

Very truly yours,

Nicola Neilon

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