

WILLKIE FARR & GALLAGHER LLP

KELLY M. HNATT
212 728 8672
khnatt@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

April 2, 2010

VIA ELECTRONIC AND FIRST CLASS MAIL

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: AICPA PEEC Network Firm Independence Rule
Request for Staff Opinion Letter

Dear Mr. Clark:

We submit this letter on behalf of the American Institute of Certified Public Accountants (AICPA) regarding a proposed Network Firm Independence Rule (the Rule) by the AICPA's Professional Ethics Executive Committee (PEEC). PEEC has developed a new rule that will continue to safeguard an auditor's independence when rendering audit or review services. Specifically, the Rule would require that firms that are members of a network be independent of financial statement audit and review clients of the other firms in the network. To that end, network firms would be restricted from having certain interests and relationships, described below, with such clients, thus enabling the firm providing the audit or review to make judgments in an unbiased manner, without regard to how its judgments will affect the other network firms.¹ The AICPA seeks an opinion from FTC staff as to whether the application of the independence rule to networks raises significant antitrust concerns or would result in a staff recommendation to the Commission that the application of the rule in such a manner be challenged.

¹ For all other clients for which a network firm issues an attest report (i.e., an examination, review, or agreed-upon procedures report on a subject matter that is the responsibility of another party, or an assertion about the subject matter), the Rule would impose no additional restrictions on the network firms. The Rule, however, generally requires the firm providing the service to consider and mitigate threats to its independence that the firm knows or has reason to believe may exist as a result of interests or relationships that other network firms have with the attest client.

I. BACKGROUND

The AICPA is a national, professional organization for certified public accountants (CPAs) in the United States with approximately 350,000 members. The AICPA believes that nearly 40% of its members perform audit services. Membership in the AICPA is voluntary.

The AICPA, along with various entities such as the Securities and Exchange Commission (SEC), Public Company Accounting Oversight Board (PCAOB), Government Accountability Office (GAO), and state boards of accountancy, is a leader in the development of U.S. standards pertaining to, among other things, CPA ethics. The AICPA has developed a Code of Professional Conduct (the Code) that governs all AICPA members. The guidance provided by the Code is especially important for AICPA members auditing private company financial statements. While public company audits generally are regulated by the SEC and PCAOB, the AICPA Code requires its members to conduct audits of private companies, a highly important aspect of the global economy, in accordance with prescribed professional standards.²

The Code sets forth various ethics principles relevant to the accounting profession, such as:

- independence, integrity, and objectivity, including avoidance of conflicts of interest;
- compliance with professional standards;
- responsibilities to clients (e.g., confidentiality);
- the accountant's obligation "to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism"; and
- other matters affecting the reputation of the profession.

The AICPA Code is interpreted and enforced by PEEC, which is part of the Institute's Professional Ethics Division. An AICPA member's violation of the Code may result in suspension or revocation of membership rights.

A. Overview of Independence Rules

Rule 101 of the AICPA's Code of Professional Conduct, attached hereto as **Exhibit A**, provides that "[a] member in public practice [e.g., providing audit or attest services] shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council." The ability to be independent and objective when rendering such services is a key attribute of the accounting profession, as discussed more fully below.

² With respect to audits of public company financial statements, AICPA members must also comply with the AICPA Code where it is more restrictive than SEC or PCAOB rules.

The output of an audit is an auditor's report. An auditor's report is a statement as to whether "the financial statements present fairly, in all material respects, an entity's financial position, results of operations, and cash flows in conformity with generally accepted accounting principles [(GAAP)]. This conclusion may be expressed only when the auditor has formed such an opinion on the basis of an audit performed in accordance with generally accepted auditing standards [(GAAS)]." AICPA, Professional Standards, AU § 508.07 (2008), attached hereto as **Exhibit B** (with example of report).

The audit report specifically represents that it has been prepared by an "independent auditor." Independence is a critical aspect of the accounting profession and forms the cornerstone upon which the public's trust of the profession is based. Both Congress and the SEC, among others, have made clear that independence is fundamental to the reliability of auditors' reports. Indeed, one of the key components of the Securities Act of 1933 was the requirement that financial statements be "independently audited," reflecting Congress's perception of the importance of integrity and independence to the effectiveness of the U.S. securities markets. Auditor independence requirements were further heightened when Congress passed the Sarbanes-Oxley Act. See Pub. L. No. 107-204, §§ 101, 201, 206, 207, 116 Stat. 745, 750, 771, 774-75 (2002).

Under the AICPA Code, independence has two components: independence in fact, and independence in appearance. Independence in fact and appearance are equally important. "It is . . . not enough that financial statements be accurate; the public must also perceive them as being accurate." See Revision of the [SEC]'s Auditor Independence Requirements, 65 Fed. Reg. 76,008, 76012 (Dec. 5, 2000) (quoting United States v. Arthur Young and Co., 465 U.S. 805, 819 n.15 (1984)). Because the purpose of the independence standard is to assure that a CPA performing an audit or other attest service acts with objectivity and professional skepticism when performing that service, and because the public may not have access to sufficient information to determine whether an auditor is independent in fact, an auditor's appearance of independence is critical. See id. at 76009. Independence rules that cover appearance are generally based on the notions that auditors should not function as part of client management; should not audit their own work; should not serve in an advocacy role; and should not be subjected to material financial interests in or relationships with the client.

Auditor independence is important for both public and private companies. It has been noted that "private capital can help fill the potentially disastrous gap that is being created in the capital markets by the on-going liquidity crisis." See Lack of Bank Liquidity Threatens Economic Disaster for Commercial Real Estate Industry, PR Newswire, Dec. 21, 2009, <http://www.prnewswire.com/news-releases/lack-of-bank-liquidity-threatens-economic-disaster-for-commercial-real-estate-industry-79886102.html>. There are at least 441 private companies with annual revenues in excess of \$1 billion. See Andrea D. Murphy and John J. Ray, America's Largest Private Companies, Forbes.com, Oct. 28, 2009. One would expect that lenders and investors in private companies on this list, such as Cargill, Chrysler, Hilton, and Fidelity Investments, rely on audit reports in the same manner as those associated with public companies. Indeed, it is arguable that an audit report is even more important to a less-regulated company's investors and creditors.³

³ As an example of the importance of independence in the private company context, the National Association of Insurance Commissioners recently amended its model regulation governing the submission of audited statutory financial statements

In short, whether the audit client is a public or private business enterprise, “[i]t is the auditor’s opinion that furnishes investors with critical assurance that the financial statements have been subjected to a rigorous examination by an objective, impartial, and skilled professional, and that investors, therefore, can rely on them.” Revision of the [SEC]’s Auditor Independence Requirements, 65 Fed. Reg. 76,008 (Dec. 5, 2000).

AICPA members also perform non-audit services (also referred to as non-attest services) from time to time. Non-audit services may include, among other things, bookkeeping; payroll and tax services, benefit plan administration; investment-advisory management; corporate finance consulting or advising; appraisal, valuation, or actuarial services; executive or employee search; business consulting; information systems design, installation or integration; performing management functions; maintaining custody of client assets; serving as a director or officer of the client; being a lender to the client; and supervising client employees.

B. Overview of Networks

The AICPA understands that many firms within the accounting and auditing profession have created various forms of collaborative enterprises, often referred to as “networks.” The primary basis for the formation of such networks is to enable AICPA members to compete more effectively by enhancing their marketing efforts and allowing them to gain access to new markets; improving the quality and efficiency of services by leveraging the professional skills of other firms; and providing a referral network for clients that need non-attest services that their auditors cannot provide. Networks provide firms with the ability to provide services across broader geographic regions; the ability to provide a greater range of services than a single firm may be able to offer; and reduced costs of “back office” functions through sharing of resources. Network firms also often subject themselves to internal quality reviews and share common audit methodologies, training facilities, and professional resources. The formation of networks thus permits smaller and medium-sized firms to compete for the business of larger companies. Such business is currently dominated by the “Big Four” accounting firms.

Networks exist in a variety of forms, and it is believed that the extent of economic integration across networks can vary significantly. A directory of CPA Firm Associations and Networks is attached hereto as **Exhibit C**.

CPA firm networks have been widely recognized as beneficial to the profession and its constituents—mainly the clients of the firms that are members of such networks. See Dep’t of the Treasury, Advisory Committee on the Auditing Profession, Final Report at V:10-V:16 (Oct. 6, 2008) (available at www.treas.gov/offices/domestic-financial/acap/index.shtml). The Treasury Report, for example, notes that networks date back to the early 20th century and that the top fifteen networks today generate over \$100 billion in revenue. The U.S. GAO Report on Audits of Public Companies (Jan. 2008) discusses in detail the challenges that affect the ability of midsize and smaller accounting firms to obtain clients, including lack of capacity and geographic reach, technical capability, ability to recruit and retain qualified staff, and name recognition. Id. (available at www.gao.gov/products/GAO-08-163)

by insurance companies (public and private) with premiums of over \$1 million annually to prohibit the outside auditor from providing a host of non-audit services to any audit client. NAIC Model Audit Rule § 7(G).

(Full Report).) Networks have assisted some firms in overcoming these barriers, thereby allowing such firms to increase their competitiveness with larger firms, and to extend national and international capacity. GAO Report at 49-50.

The AICPA is not asking for an opinion on the viability or propriety of the “networks” themselves to which the Rule will apply.

II. OPERATION OF THE RULE

The AICPA intends to amend its Code so as to apply the independence rule to member networks. As amended, the independence rule is intended to address an ethical issue arising from the increasing prevalence of accounting networks, ensuring the public that a firm providing an audit or review of a client’s financial statements will make required judgments in an objective manner without regard to how its judgments will affect the other network members. Accordingly, the Code would require that each member of a network be independent of financial statement audit and review clients of the other firms in the network. Thus, a network firm may provide audit or review services for a client only insofar as other network members are not providing, and did not provide prohibited non-audit services for that client; and may provide prohibited non-audit services for a client only insofar as no other network member is then providing audit or review services. The Rule is intended to address an ethical issue arising from the increasing prevalence of accounting networks, ensuring the public that a firm providing an audit or review of a client’s financial statements will make the required judgments without regard to how those judgments will affect the other network members.

As described more fully in Interpretation 101-17, attached hereto as **Exhibit D**, the Rule will apply only to networks whose members have one or more of the characteristics described below.

- Common brand name: Members of the network share the use of a brand name or common initials and, thus, hold themselves out as one firm.
- Common control (as defined by GAAP): Members are under common control with other firms in the network through management, ownership, or by contract. Note, compliance with association requirements as a condition of membership does not necessarily mean that members are under common control for purposes of the Rule.
- Sharing profits or costs: Members share profits or costs of their professional services, exclusive of immaterial costs or those costs related to operation of the association itself.
- Common business strategy: Members share common business strategy by engaging in ongoing collaboration, whereby the member firms are responsible for implementing the network’s strategy and are held accountable for performance pursuant to that strategy. Cooperation solely for marketing purposes, however, does not constitute common business strategy under the Rule.
- Sharing significant professional resources: Member firms share, to a significant extent, professional resources, such as: information-sharing systems, including client data, billing,

and time records; partners and staff; and technical departments. The determination of whether the professional resources shared are significant is based on both qualitative and quantitative factors.

- Common quality control policies and procedures: Members are required to follow common quality control policies and procedures that are monitored by the network.

It should be noted that the mere referral of work from one firm to another will not trigger application of the Rule.

Under application of the Rule, when one firm in a network is performing for a client a financial statement audit or review, that firm and other firms in the network must be “independent” of the client during the relevant time period. For purposes of the Rule, there are two potentially relevant time periods: the period of the professional engagement, and the period covered by the financial statements. “The period of the professional engagement begins when a member either signs an initial engagement letter or other agreement to perform attest services or begins to perform an attest engagement for a client, whichever is earlier. The period lasts for the entire duration of the professional relationship (which could cover many periods) and ends with the formal or informal notification, either by the member or the client, of the termination of the professional relationship or by the issuance of a report, whichever is later.” AICPA, Professional Standards, ET § 92.24 (2008). The AICPA’s definition of a “financial statement” is the “presentation of financial data, including accompanying notes, if any, intended to communicate an entity’s economic resources and/or obligations at a point in time or the changes therein for a period of time, in accordance with [GAAP] or a comprehensive basis of accounting other than [GAAP]. Id. § 92.06.

Under the Rule, independence would be impaired, and a firm⁴ would be prohibited from performing a financial statement audit or review, if any of the circumstances listed below occur.⁵

- During the period of the professional engagement, a network firm:
 - has a direct or material indirect financial interest in the client;
 - is the trustee, executor, or administrator for a trust or estate with an interest in the client exceeding 10%;
 - has a joint closely held investment with the client that was material to the firm; or
 - has a loan to or from a non-financial institution client, an officer or director of the client, or an owner of the client.

⁴ These prohibitions also apply to certain partners and professional employees of the firm.

⁵ The AICPA’s independence framework, standards, interpretations and rulings are set forth in ET Section 100.01 – ET Section 191. 228 The circumstances listed above provide a general summary of the principal impairments of independence.

- During the period of the professional engagement, a partner or professional employee of a network firm, his or her immediate family, or any group of such persons acting together has more than a 5% interest in the client.
- During the period of the professional engagement or during the period covered by the financial statements, a network firm or a partner or professional employee of the firm is or was simultaneously associated with the firm as a:
 - director, officer, or other member of the management;
 - promoter, underwriter, or voting trustee; or
 - trustee for any pension or profit-sharing trust of the client.
- During the period of the professional engagement, a network firm had a cooperative arrangement with the client that was material to the network firm or the client.
- During the period of the professional engagement or during the period covered by the financial statements, a network firm provides or has provided any prohibited non-audit services to that client. Non-audit services are only prohibited when the network firm has assumed control over the management and strategic decision-making processes of the client. Examples of such prohibited nonattest services include:
 - authorizing, executing, or consummating a transaction, or otherwise exercising authority on behalf of a client or having the authority to do so;
 - preparing source documents (the documents upon which evidence of an accounting transaction are initially recorded, e.g., purchase orders and payroll time cards) or originating data evidencing the occurrence of a transaction;
 - maintaining custody of client assets;
 - supervising client employees in the performance of their normal recurring activities;
 - determining which of the firm's recommendations should be implemented;
 - reporting to the board of directors on behalf of management; and
 - serving as a client's stock transfer or escrow agent, registrar, or general counsel or its equivalent.

The provision of many non-audit services will not impair independence, provided that the client agrees to observe the general requirements of Interpretation 101-3, attached hereto as **Exhibit E**, before the engagement begins. To the extent that the network firm is not assuming ultimate responsibility for decision-making, such permissible nonattest services include: bookkeeping; payroll and tax services;

benefit plan administration; investment-advisory management; corporate finance-consulting or advisory services; certain appraisal, valuation, or actuarial services; executive or employee search; business consulting; and information systems installation or integration.

In general, an impairment of independence due to a firm furnishing prohibited non-audit services to a client during the period covered by the audit or review cannot be purged. If, however, an impairment of independence would result solely from a prospective auditor having a financial interest in a client (e.g., where the prospective auditor is an investor in or creditor of the client), the independence rule would be satisfied if the prospective auditor severed all financial interests in the client prior to commencement of the audit.

Before taking on an audit or review engagement, a network member would have to learn from the prospective client, or other network firms, whether any other network member has a prohibited relationship with the prospective client. Thus, prior to providing audit or review services to a new client, a network member would have to determine that no other network member was providing, or had recently provided related, prohibited non-audit services to, or had an otherwise prohibited relationship with, that client; and prior to providing non-audit services to a new client, a network member would have to determine whether any other member was then providing audit or review services to that client.

To ensure that the other firms in the network do not have prohibited interests or relationships with, or provide prohibited non-audit services to, a prospective client, the network firm can ask the prospective client. Specifically, the firm could inquire of the potential client whether any of the network firms are its professional service providers, investors, lenders, directors, or otherwise have relationships covered by the Rule. If any prohibited interests or relationships exist, the inquiring firm would then evaluate the interest or relationship, determine its impact on the firm's ability to comply with the independence rules, and determine the course of action necessary for the firm to accept or reject appointment as the auditor. Because a client may not be aware of all such relationships, particularly those of a financial nature, communication with the other network firms may be necessary. The AICPA intends to issue guidance in substantially the form attached hereto as **Exhibit F** (and which will be referenced in Interpretation 101-17) to suggest that network members obtain from prospective clients as much of the information as is reasonably possible to determine whether the independence rule would preclude taking on an engagement and comply with applicable antitrust laws. The Rule would not require the exchange among potentially competing firms of any information regarding a network member's business capacity or plans.

III. THE PROCOMPETITIVE BENEFITS OF THE PEEC NETWORK FIRM INDEPENDENCE RULE STRONGLY OUTWEIGH ANY POSSIBLE ANTICOMPETITIVE EFFECTS.

The antitrust laws do not forbid legitimate self-regulation that benefits consumers. As the Commission has stated, “[s]uch self-regulatory activity serves legitimate purposes, and in most cases can be expected to benefit, rather to injure, competition and consumer welfare.” American Academy of Ophthalmology, 101 F.T.C. 1018 (1983) (advisory opinion); see also American Medical Association, 117 F.T.C. 1091 (1994) (advisory opinion); American Medical Association, 94 F.T.C. 701, 1029

(1979), aff'd as modified, 638 F.2d 443 (2d Cir. 1980), aff'd by an equally divided Court, 455 U.S. 676 (1982). The Commission also has observed that “voluntary private standards have the potential to promote competition” by providing useful information to consumers, making it easier for consumers to select among providers of a product or service, and increasing consumer confidence in the quality of the product, thereby increasing demand. See American Down & Feather, FTC Staff Opinion Letter, File No. P002501, at 4 (Oct. 2, 2003).

The AICPA’s Rule is a self-regulatory effort to protect a key aspect of an audit and review engagement and benefit those who use and rely upon audit and review reports. The procompetitive benefits of the Rule greatly outweigh any potential anticompetitive effects.

A. The AICPA’s Network Independence Rule Is Procompetitive.

Protecting independence is procompetitive. In the absence of an unbiased audit or review function, capital providers (e.g., investors, banks, private equity firms) may withhold capital or demand higher returns to compensate for potentially unreliable financial information. “Investors are more likely to invest, and pricing is likely to be efficient, the greater the assurance that the financial information disclosed by issuers is reliable.” Final Auditor Independence Rule, at III. A. The AICPA Rule will further fulfill this expectation and the needs of the capital markets.

The AICPA Rule is also procompetitive because it ensures that the representation made in the audit or review report that the auditor is independent is, in fact, true. In this sense, the AICPA’s Rule can be analogized to standards regarding truthful, non-deceptive advertising. As the Commission has concluded, because “truthful, non-deceptive advertising promotes competition by providing consumers with important information . . . agreements among competitors on standards that are aimed at restricting deceptive advertising present less antitrust concern [than agreements that restrict truthful, non-deceptive advertising]; indeed, restricting deceptive advertising may help avoid anticompetitive effects.” See Electronic Retailing Association (ERA), FTC Staff Opinion Letter, at 5-6 (Jan. 29, 2004) (citing Calif. Dental Assn. v. FTC, 526 U.S. 756, 773 n.9 (1999) (“That false or misleading advertising has an anticompetitive effect, as that term is customarily used, has been long established.”)).

Protecting against misleading representations in the context of an audit report is even more appropriate in circumstances like those here, as audits can fairly be said to be “a market characterized by striking disparities between the information available to the professionals and [user].” Calif. Dental, 526 U.S. at 771-72.

In sum, the AICPA’s Rule is procompetitive. It enhances the efficient functioning of the capital markets and insures the truthfulness of the “independent auditor’s report.”

B. The Potential Limits The Rule Imposes On Competition Are Minimal.

There is a theoretical possibility that the Rule might limit competition for certain services. This might occur if, for example, all the audit firms in a particular geographic locale were part of a single network, sharing a common brand name, and one had performed prohibited non-audit services for the prospective audit client during the period covered by the financial statements. In that circumstance, the other firms in the network would not be permitted to perform the company’s audit. We have no

knowledge that such circumstances exist. It appears unlikely that all, or nearly all, of the firms within a particular geographic region would be members of the same network, as we understand that one objective of CPA firm networks has been to create geographic diversity.⁶

In any event, we believe that this theoretical possibility is outweighed by the benefits the company, as well as its potential investors, lenders and the capital markets, will receive from having the audit performed by a network firm that is completely independent of the client. The SEC specifically has stated that restrictions on the provision of non-audit services to attest clients, as well as limitations on financial and employment relationships between auditors and attest clients, are fundamental to auditor independence and investor perceptions. See, e.g., Auditor Independence Requirements, 65 Fed. Reg. at 76,008; see also AICPA, FTC Consent Order, 113 F.T.C. 698, at I.B. (July 26, 1990) (acknowledging that CPA independence is embedded within the meaning of “attest service”).⁷ Users of financial statements have an embedded notion about the independence of auditors that issue audit reports. As the Supreme Court has emphasized, “It is therefore not enough that financial statements be accurate; the public must also perceive them as being accurate. Public faith in the reliability of a corporation’s financial statements depends upon the public perception of the outside auditor as an independent professional. If investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost.” United States v. Arthur Young & Co., 465 U.S. 805, 819 n.15 (1984) (emphasis in original).

C. Implementation Of The Rule Should Not Facilitate Anticompetitive Practices.

Application of the Rule may result in some information-sharing among potentially competing firms, because firms will need to ascertain whether other firms in the network have a prohibited relationship with the prospective client. We believe, however, that the risk that firms will share competitively sensitive information is minimal. Some, and perhaps all, of the information a firm will need to assess its eligibility to conduct an audit or review engagement under the Rule may be available from the potential client.

Any communications among network firms should be limited to identifying the service to be performed. Bid information (*i.e.*, price/terms of services) is completely irrelevant to the inquiry and should not be provided, as the AICPA’s guidance will explain. The Rule certainly does not require or permit network firms to share information that would otherwise be prohibited by applicable antitrust law.

In any event, the type of information exchanges that might occur under the Rule are afforded rule of reason analysis. See, e.g., United States v. United States Gypsum Co., 438 U.S. 422 441 n. 16 (1978). Exchanges of information, even of past prices (which are irrelevant under the Rule) and among competitors, have frequently been upheld as unlikely to have an anticompetitive effect, particularly

⁶ It is also possible that if one of the network firms had provided an audit to the company, the other network firms would not be able to provide prohibited non-attest services. We do not believe this concern is significant, as virtually all non-attest services can be provided by persons and entities that are not CPAs .

⁷ Indeed, the SEC has even more restrictive independence rules than the AICPA.

when, as here, they are intended to prevent deceptive conduct (i.e., ensuring the independence of an audit report). See, e.g., Cement Manufacturer's Assn. v. United States, 268 U.S. 588, 604 (1925) (exchange of information designed to prevent perpetration of fraud not an unlawful restraint of trade in absence of evidence of agreement or intent to stabilize price or supply).

In any event, the information to be exchanged to comply with the Rule is not the type of pricing or competitive information that the courts or agencies have generally identified as indicative of competitive concerns. As described above, the required communications will be limited in scope and not entail the exchange of rates to be charged, capacity, or terms of service. Compare Dept. of Justice Business Review Letter to Electrical Power Research Institute, Inc., dated October 2, 2000 (permitting exchange of and collaborative reporting on certain cyber-security matters among energy industry participants because information exchanged would not include price, capacity or future plans, or serve as conduit among providers, and could result in more efficient means of reducing cyber-security costs).

Although we believe it is unlikely here, the AICPA recognizes that any time competitors communicate, the possibility exists that those communications may spill over to topics that are inappropriate. As far as we are aware, the possibility of such spill-over communications has not been a reason for the Commission to decline to issue an advisory opinion (or for the Department of Justice to decline to issue a business review letter). See, e.g., Dept. of Justice Business Review Letter to Joint Owners of the Keystone and Conemaugh Electric Power Plants, dated January 30, 1998 (permitting joint ventures' electrical power pricing methodology notwithstanding risk that joint ventures might be used as conduits for collusion in light of, among other things, limitations on information to be shared and code of conduct that expressly prohibited improper exchanges).

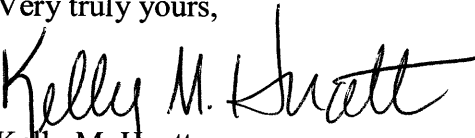
In sum, the information that must be shared to comply with the Rule does not create more than an incremental risk (if any) of anticompetitive harm beyond that which may already exist in CPA networks. The exchange of information more direct and sensitive than the information that potentially could be exchanged here has been upheld in the face of a merely theoretical risk of competitive harm: "Gathering information about pricing and competition in the industry is standard fare for trade associations. If we allowed conspiracy to be inferred from such activities alone, we would have to allow an inference of conspiracy whenever a trade association took almost any action." In re Citric Acid Litigation, 191 F. 3d 1090 (9th Cir. 1999) (rejecting argument that participation in trade association effort to collect and audit production and sales figures was evidence of conspiratorial behavior).

* * *

Donald S. Clark
April 2, 2010
Page 12

In sum, the well-recognized benefits of the PEEC's Network Firm Independence Rule—promoting efficient capital markets and avoiding user misconceptions regarding a fundamental component of audit and review engagements—is far greater than any potential risk of anticompetitive market effects or otherwise illegal collusion that may occur from the limited information exchange that the Rule might necessitate. These risks are further mitigated by numerous other rules and regulations with which CPAs must comply, including the AICPA's Code of Conduct as well as those issued and enforced by the SEC, PCAOB, and CPA licensing authorities, namely, the state boards of accountancy, as well as federal and state antitrust laws. Agency and judicial precedent strongly support an opinion from the Staff that the Staff will not challenge the Rule.

Very truly yours,


Kelly M. Hnatt