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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 02-120

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]**

#### 2. Form, Style and Placement in Administrative Code

a. The rule paraphrases the American Institute of Certified Public Accountants (AICPA) rules on independence. However, the AICPA rules are generally not drafted in Wisconsin format. Although the rule made some revision in the format of the rules, many discrepancies remain. The entire rule should be reviewed to assure compliance with proper drafting guidelines. In addition, the rule modifies only a portion of ch. Accy 1, leaving many sections in their original form, dating in some cases from 1974. These sections do not reflect current drafting format. The examining board should review the entire chapter at some point, and consider revising and updating the provisions.

b. The rule is inconsistent in its use of tenses. To the extent possible, ideas and concepts should be expressed positively, using present tense and the active voice. [See s. 1.01, Manual.]

c. The terms “should” and “could” are used throughout the rule. [See ss. Accy 1.003 (17) and (19); 1.101 (4) and 1.101 (5) (e) as examples.] Generally, “shall” is used to denote a mandatory or absolute duty or directive; “may” is used to denote an optional or permissive privilege, right or grant of discretionary authority. [See s. 1.01 (2), Manual.] “Should” and “could” as used are not clear in their meaning.

d. The extensive definition section contains a large amount of substantive material that may be more appropriate in other sections of the rule. Definitions are generally drafted as complete sentences, not as a series of descriptions. [See s. 1.01 (7), Manual.]

e. In s. Accy 1.003 (intro.), “Accy” should be inserted after “chs.” Also, the agency might consider referring to chs. Accy 1 to 9 (rather than 1 to 8), since Clearinghouse Rule 02-119 creates a ch. Accy 9.

f. The numbering and arrangement of the sections of the rule should be revised to comply with the Manual. [ss. 1.02, 1.03.]

g. The entire rule needs substantial revision in its use of introductory material. [See s. 1.03 (8), Manual.] The (intro.) should end in a colon and lead into the subunits that follow. It should also use a phrase like “any of the following” or “all of the following.” For example, s. Accy 1.003 (3) (b) (intro.) should end with “is any of the following:”. The word “Is” should then be deleted from subs. 1. to 3. As another example, s. Accy 1.003 (6) (c) (intro.) should end with “the date on which any of the following occur:”. As another example, s. Accy 1.003 (22) (intro.) does not end in a colon. In s. Accy 1.101, subs. (4) to (8) do not follow from the (intro.).

h. The term “CPA” should either be defined or spelled out. [See s. Accy 1.003 (9).]

i. Terms such as “accordingly,” “below,” and “above” should be avoided. [See s. 1.01 (9) (c), Manual.]

j. Titles for subsections are not used consistently in the rule. [See s. 1.05, Manual.] In addition, the format for all of the titles should be reviewed for consistency with s. 1.05 (2), Manual. For example, see s. Accy 1.003 (title).

k. The rule makes excessive use of the word “such.” [See s. 1.01 (9) (c), Manual.] In many instances, “such” can either be replaced by an article or deleted. For example, in s. Accy 1.102 (2) (b) 5. and (c), “such” can be deleted.

l. The material in s. Accy 1.101 (8) would be more appropriately placed in a section “Note.”

m. The drafting used in s. Accy 1.102 (2) is awkward, confusing, and nearly impossible to follow. The section should be redrafted and its provisions clarified. The fact that the drafting style and forms are inappropriate obscures the fact that the provisions are not clear.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. Accy 1.01 (7), an appropriate reference, such as “this section” should be substituted for “this rule.” Also “the effective date of this rule” should follow the format set forth in s. 1.02 (9) (b), Manual.

b. Section Accy 1.102 (2) (a) 2. d. references “Interpretation 101-5.” Whose interpretation is this and where may a person obtain a copy?

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The rule, in most instances, is identical or nearly identical to the AICPA regulations on independence. However, where the rule differs, it is not clear whether the change is for stylistic or for substantive reasons. This aspect of the rule should be clarified, if possible.

b. The definition of “client” is not clear, particularly with regard to “governments or component units” in s. Accy 1.003 (3) (b). In addition, the conditions listed in s. Accy 1.003 (3) (b) 1. to 3. are unclear, especially regarding the effect of not being in compliance with the specific conditions. Does noncompliance mean that the transaction would be considered differently under the rule? For example, how would appointed governmental officials be treated who are confirmed by the Legislature but are not subject to removal by the legislative body?

c. The term “close relative,” as defined in s. Accy 1.003 (4), does not include a dependent child. Is that intended?

d. It is not clear under s. Accy 1.003 (8) whether the term includes “individual partners.” [Compare s. 92.09 provisions in AICPA rules defining “firm.”]

e. The intended meaning of “spousal equivalent” as used in s. Accy 1.003 (10) is not clear.

f. The scope of the phrase “evaluates the performance” in s. Accy 1.003 (11) (a) is quite broad; perhaps so broad as to encompass incidental activities. Is this the intent of the provision?

g. The second phrase of s. Accy 1.003 (11) (b) is not clearly drafted.

h. The difference between “influence” and “significantly influence” is important in the rule, yet the definitions do not adequately differentiate between the two terms. In fact, the definition of “significant influence” in s. Accy 1.003 (22) states essentially that it is influence that is significant, in fact, the definition uses the term that is being defined. Examples that follow do not provide direct interpretive aid, as they are drafted, as “permissive” conditions, not requirements. This aspect of the rule should be carefully reviewed and revised for clarity purposes.

i. Proper placement of commas to set off clauses in the rule would improve the clarity of the rule. (See, for example, s. Accy 1.101 (1) (d), where a comma after “s. Accy 1.102” would clarify the meaning.)

j. Section Accy 1.003 (7) could benefit from a complete redrafting to more clearly define the term. In doing this, it appears that the third sentence should be deleted or moved since it does not appear to be part of the definition.

k. In s. Accy 1.003 (22) (intro.), the last sentence refers to the creation of a “presumption.” It is not clear what type of presumption is created or how it could be rebutted. This should be clarified.

In addition, sub. (22) uses the term “investee.” That word does not appear in *Webster’s Third New International Dictionary*.

1. The term “grandfather” as used in the rule could more appropriately be drafted as “exempt” transactions that are not subject to the rule. Use of the colloquial term is not necessary. As drafted, the definition of “grandfathered loans” is not actually a definition, but a series of statements. This section [s. Accy 1.102] is not drafted or numbered clearly, which makes clarity an issue. Some general comments that may help in redrafting:

1. There are three subsections numbered sub. (2).
2. The definitions should precede the substantive provisions.
3. Determining whether a loan is intended to be “grandfathered” is difficult.
4. Paragraphs (b) and (c) in s. Accy 1.102 (2) are not actually definitions of a grandfathered loan.
5. “Other permitted loans” is not defined. The first sentence of the subsection is not clear, what interpretation is being referred to? The paragraphs, which appear to be “other permitted loans,” do not make that clear, as drafted.
6. The specifics as to each type of loan, such as the “fully collateralized” provision may have the effect of disqualifying some loans that would otherwise be permitted, thus jeopardizing the independence of an unsuspecting certified public accountant.

m. The rule states that the definitions used in s. Accy 1.003 apply to chs. 1 to 8 of the Accounting Examining Board rules. Terms such as “client” and “loan” are specifically defined for the independence provisions, but should be carefully reviewed to assure they are appropriate for other unrelated rules.

n. The board may wish to consider an initial applicability section to clarify which activities will be subject to the revised rules. This could be particularly relevant to complaints and investigations that may have already been made or begun. In this regard, it would be helpful if the analysis prepared by the board were more specific about why the rule is being adopted and the reason for repeal of s. Accy 1.102.