

# KerberRose

Certified Public Accountants

May 15, 2016

Ms. Lisa A. Snyder, Director  
AICPA Professional Ethics Division  
1211 Avenue of the Americas, 19th Floor New  
York, NY 10036-8775

Re: November 25, 2015 PEEC Exposure Draft of an *Omnibus Proposal* of:

- Proposed Interpretation: *Transfer of Files and Return of Client Records in Sale, Transfer or Discontinuance of Member's Practice;*
- Proposed Revised Interpretation: *Disclosing Client Information in Connection With a Review or Acquisition of the Member's Practice;*
- Proposed Interpretation: *Disclosure of a Commission and Referral Fee*

Dear Ms. Snyder:

KerberRose is a CPA firm located in Wisconsin. The firm has approximately 90 staff and has been involved in eighteen acquisitions over the past thirty years. In some cases, the partners of the firm we acquired became partners in our firm, and in other cases, they became managers. There were also cases where the owner did not continue with KerberRose in any capacity and may have left the area. In all cases, the owners of the firms that we acquired provided notification to the client base of their decision to sell or merge. Our firm also sent a letter to the clients welcoming them to our firm.

We have reviewed the Exposure Draft (ED) and are providing the following comments for your consideration.

## GENERAL COMMENTS

KerberRose feels the ED is not practical based on our experience. The confidential nature of the sale or a merger does not allow a ninety-day period to be practical. There is concern surrounding client and staff reactions. The reality for our firm has been that the notification is provided, at the outside, within thirty days prior to the effective date of the sale.

A ninety-day period is too restrictive because it will not allow the transfer of files to occur in a timely manner. Many of the sales or mergers happened close to the end of the year. The ninety-day period will hinder the conversion of files when necessary, for example from one tax software to another tax software. It is critical the files be converted prior to January 1 or the "busy" season starting. It is not practical to backup and send numerous files to the software company at different points in time for conversion. If this becomes necessary, the cost to the buyer and seller will increase.

The ninety-day period also has the potential to negatively impact the service a client receives. Normally, there is a need for computer systems and servers to be replaced. In a firm such as ours, when there is a wide area network, the files need to be transferred to our data storage servers. This is especially critical when we are acquiring or merging a firm in a new location. Normally, the access to the old servers is limited and the data is placed on our servers. If the staff cannot access the data needed to service the client, the client experience will be negatively impacted and the client will be frustrated.

In addition, we sign confidentiality and nondisclosure agreements as part of the merger or acquisition process. In all cases, due diligence includes reviewing selected files to determine the quality of the work being performed. It is not possible to obtain permission from the client prior to the performance of due diligence. We believe this is outside the scope of the ED as we are not retaining client files at that time. We are simply reviewing the files at the other firm's location.

### **SPECIFIC COMMENTS**

#### **Disclosing client information regarding a transfer of practice**

KerberRose believes it is reasonable to presume client consent to transfer records when the predecessor member does not receive a client response within 30 days.

We anticipate an issue for sole practitioners and their clients when practice continuation events are triggered by death or disability. In these cases, the member may be incapable of providing written notice to his/her clients. In this case, the acquiring member may need to be the person to contact the acquired firm's clients, or a surviving representative (such as a non-CPA spouse or attorney) or agent of the disabled or deceased member may have to provide such notice. The proposed guidance currently requires the member to provide the notice and does not allow for an agent of the member to do so in extenuating circumstances. We suggest guidance be added to address this situation.

#### **Disclosing client information in connection with a review or acquisition of the member's practice**

KerberRose believes it is reasonable to expand the existing confidentiality of client information interpretation to require members who obtain client files as a result of acquiring all or part of a member's practice to not disclose any confidential client information contained in those files. This is already common practice in our firm.

#### **Disclosure of commissions and referral fees**

We believe it is reasonable to require permitted commissions and referral fees in writing, as it is already required in many states.

***Exposure Draft Question for Respondents: Do you believe that a delayed effective date is necessary for the final interpretation on the disclosure of commissions and referrals fees?***

Yes, we believe a delayed effective date may be necessary, so members have an opportunity to learn about the new requirements within a typical CPE cycle

We appreciate the opportunity to present these comments. We would be pleased to discuss our comments with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Kerber". The signature is fluid and cursive, with a large initial "K" and "K" for "Kerber".

Karen Kerber, CPA  
KerberRose Quality Control Chair