May 12, 2017

American Institute of Certified Public Accountants
Lisa A. Snyder
Senior Director of the Professional Ethics Division

Email: Lisa.Snyder@aicpa-cima.com

Re: Proposed Interpretations – Responding to Non-Compliance with Laws and Regulations – March 10, 2017 ("Proposed Interpretations")

Dear Ms. Snyder:

I am writing on behalf of Berkeley Research Group, LLC ("BRG"), a consulting firm with approximately 100 Certified Public Accountant employees. The areas of our practice can be found on our website at www.thinkbrg.com. As you will see, BRG is not, and does not hold itself out to be, a public accounting firm and we do not provide any attestation services. Our services include providing litigation consulting and expert witness services in a number of financial areas, including matters that involve accounting issues as well as services to our clients regarding financial analysis to be used in their business. Our work is often performed at the request of, or through engagement by, legal counsel on behalf of the ultimate client. This type of client relationship and retention is also applicable to CPA firms that provide similar services to clients that are involved in legal matters requiring a CPA's expertise. Many of our CPAs were formerly partners at the large international accounting firms. We believe that the Proposed Interpretations will have a significant negative effect on the work provided by our and other CPAs not working at a registered accounting firm, as well as by accounting firms that provide similar services. For reasons that will be described below, the Proposed Interpretations are not appropriate for consulting services provided by CPAs in the non-attestation practice. Simply put, the Proposed Interpretations for non-attestation work are unworkable in the United States' legal environment, business and system.

As we understand the Proposed Interpretations, all CPAs working on *any type of engagement* would be required to evaluate, and then investigate, whether any conduct by their client which they come across during their work on an engagement, even if unrelated to that work, would be a Non-Compliance with Laws and Regulations ("NOCLAR"). If the CPA makes such a determination that a NOCLAR is present, he/she is required to advise senior management (or those charged with governance) of the client, as well as any relevant regulatory body such as the Securities Exchange Commission ("SEC") if management does not properly respond to the NOCLAR. The Proposed Interpretations would require that the CPA investigate any "red flags" (apparently at his/her own expense) that they might come across during their work regarding accounting irregularities or, for that matter, any legal or regulatory non-compliance. To the extent that the management of the client does not take action which in the view of the CPA is appropriate, the CPA is directed to potentially withdraw from the engagement. In addition, the CPA is required to *document* any NOCLAR and the steps taken by the CPA and the management of the client to deal with the NOCLAR. Even if the CPA decides it is not necessary to report to management, the CPA is required to document the consideration as to why it was not reported.

We would initially note that an impetus for the Proposed Interpretations is the International Ethics Standard Board of Accountants' ("IESBA") new ethics standards, sections 225 and 360. However, the Proposed Interpretations go beyond the IESBA standards and they do not recognize the significant differences in attestation services and services such as forensic accounting investigations, expert witness services and litigation consulting. We recognize that, unlike the IESBA standards, the Proposed Interpretations do not require reporting to authorities due to client confidentiality, and we applaud the distinction. However, the Proposed Interpretations expand the applicability with respect to non-attestation services, which is problematic. The requirements of the Proposed Interpretations would apply to all CPAs not working in CPA firms including, for example, lawyers who are CPAs. **In this regard, before a final determination is made as to the adoption of the Proposed Interpretations, we believe it is important for the AICPA to reach out to organizations such as the American Bar Association (and potentially state bars that govern attorneys' licenses) to ensure that such organizations are aware of the Proposed Interpretations and the effects they will have on those of its members who are also CPAs.** As a lawyer myself, I can see that the Proposed Interpretations would be inconsistent with the role of the lawyer as an advocate and a trusted advisor to his/her clients and would create serious issues regarding the attorney-client and work product privileges.

In addressing the Proposed Interpretations, we will present our views in two categories. First, the applicability of the Proposed Interpretations to CPAs not performing attestation functions, and second, the procedures mandated by the Proposed Interpretation and their reasonableness and effectiveness.[1]

APPLICABILITY

1. Initially, as a practical matter, we believe that the imposition of the Proposed Interpretations on CPAs working on non-attestation matters will have a negative effect on the hiring of CPAs by clients on such matters. In particular, we are concerned that in connection with, for example, expert witness services, attorneys would be hesitant to hire an expert who is a CPA if that expert is required to investigate any NOCLAR she/he may come across during their work and report them to the client or, if necessary, to a regulatory body. Such a requirement could impinge on the work product privilege between an attorney and an expert. Likewise, in connection with forensic accounting matters and investigations, there will be a disincentive to hire a CPA who must investigate and report a NOCLAR and who might be required to withdraw from the engagement if the CPA does not believe the client or lawyer retaining her/him has acted appropriately in dealing with the NOCLAR. Regardless, we are sure that the AICPA does not intend to negatively impact the growth of non-attestation matters on which CPAs may work in the future. **Accordingly, we believe and request that before the Proposed Interpretations are adopted that, if it has not already done so, the AICPA perform a market study to determine the effect of the Proposed Interpretations on the business opportunities for CPAs in non-attestation matters, both when hired by attorneys under attorney work product privilege and directly by a client when work product privileges may not be applicable.**

[1] We understand that the AICPA has framed the request for responses to the Proposed Interpretations to be directed at two questions. We intend that our discussion above address those questions in a manner we believe best covers our concerns.

2. It should also be pointed out that CPAs do not have a uniform understanding of all of the rules and regulations that could affect a client's business. CPA lawyers would appear to have greater responsibilities since it is likely that lawyers will have more of an understanding of legal requirements and what would constitute a NOCLAR. It might be suggested that if CPAs are required to investigate and report a NOCLAR, it could be in the CPAs' interest *not* to be familiar with regulations and rules applicable to a client's business, which is a result that does not seem to further the AICPA's overall mission. In addition, how is the CPA to determine whether a client's or lawyer's action after being advised of a NOCLAR is appropriate? This is not something usually within the expertise of a CPA and would require the CPA, in effect, to make legal determinations. To comply with the Proposed Interpretations' reporting and withdrawal policies and avoid potential liability, would the CPA be required to hire (and pay for) her/his own counsel for advise on whether the CPA needs to report a NOCLAR to a regulatory body?

3. In many situations, a CPA might be part of a team that is providing services to a client. Given the Proposed Interpretations, would the CPA be required to advise a non-CPA team leader of a potential NOCLAR who will then be obligated to advise the client? It is easy to see that if this were the case, non-CPA consultants would not want to staff their non-attestation matters with CPAs, again having a negative impact on the business of the CPAs.

PROCEDURES

1. In many, if not most, non-attestation services, particularly when the CPA is hired by an attorney representing a client, it is not realistic to require the CPA to discuss any "red flags" with management or others at the client charged with governance. In these situations, the CPA might have had no contact with the client and merely advising the attorney retaining the CPA would not meet the Proposed Interpretation requirements. In addition, in many circumstances, the CPA will be under confidentiality restrictions imposed by his/her engagement agreements or court-imposed confidentiality and protective orders. In some litigation matters, CPA experts are allowed to view "Attorneys Eyes Only" documents. In these cases, the CPA is precluded by court order from discussing the content of those documents with the underlying client. In fact, a CPA expert's report can sometimes be marked as "Attorneys Eyes Only" and the underlying client is not allowed to read the CPA expert's report. The Proposed Interpretations would require the CPA to violate these confidentiality obligations in order to meet the requirements of the Proposed Interpretations. Such a requirement could create significant potential liability for the CPA.

2. One of the serious concerns we have with the Proposed Interpretations is that it requires the CPA on non-attestation matters to make judgments about conduct without complete information. For example, many illegal actions have an element of intent and the CPA expert is in no position to make a judgment on such an issue. If the CPA is required to make disclosure of what he/she believes may be unlawful conduct, there could be significant liability exposure to the CPA if it turns out that the conduct was not unlawful.

3. In connection with expert witness services, the withdrawal obligation is not realistic and, in fact, it is in all likelihood contrary to established legal requirements. Expert witnesses are disclosed in litigation and once they are disclosed, they simply cannot withdraw from a case. In some cases, a withdrawal would require a court order, but of equal concern is that a withdrawal could put the client's case in jeopardy. If a CPA expert witness determines that he/she must withdraw, the client may not be able to retain a new expert to provide the testimony needed in the case to present the client's claims or defenses. As mentioned above, the withdrawal requirement, and the documentation requirement discussed below, could have a significant negative impact on the decision of an attorney to hire a CPA expert if the attorney and the client run the risk of having the CPA withdraw from the case because of the discovery of a NOCLAR not relevant to the expert's retention, and create liability risks for the CPA. In addition, to the extent that a CPA is hired as an expert in a criminal or regulatory matter, a requirement mandating disclosure to the regulatory body would be inconsistent with the CPA's confidentiality obligations to its client and a court.

4. The documentation requirement (which the IESBA merely recommends) would be problematic in many situations particularly in litigation discovery where a CPA expert would have to disclose non-case relevant matters to the adversary of the client that retained the CPA. This could create an advantage for an adversary party which can use such information in connection with the private litigation.

5. Finally, a CPA attorney would have an ethical dilemma since under the attorney's ethical obligations, such as maintaining the attorney client privilege, the attorney cannot disclose matters to regulatory agencies. CPA attorneys would thus face contradictory ethical obligations and they may have to give up their CPA licenses to continue their law practice.

We believe that the implementation of the Proposed Interpretations could have a number of unintended consequences that will be harmful to the members of the AICPA. As you know, CPAs provide services in many different areas in many different industries. In addition to the points we have made above, there are a number of other examples that could be included in this letter to address the applicability and practical problems of adopting the Proposed Interpretations. Imposing a "one size fits all" requirement for investigation, documentation and disclosure of NOCLARs does not address these differences in the services provided in non-attestation as opposed to attestation services. We know that maintaining the highest degree of integrity is vital to the accounting practice whether in attestation or non-attestation engagements. We are sure that the AICPA will give very careful consideration to the adoption of the Proposed Interpretations, and it is our recommendation that they not be adopted in their current form. We would be happy to discuss further these issues with you at your request and convenience.

Sincerely,

Marvin A. Tenenbaum, Esq.
Senior Vice President & Senior Counsel