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Lisa A. Snyder  
Senior Director  
AICPA Professional Ethics Division  
American Institute of Certified Public Accountants  
1211 Avenue of the Americas, 19<sup>th</sup> Floor  
New York, NY 10036-8775

*Re: Exposure Draft, Proposed Interpretations, Responding to Non-Compliance with Laws and Regulations*

Dear Ms. Snyder:

Deloitte LLP ("Deloitte," "our," or "we") appreciates the opportunity to provide comments on the exposure draft "Responding to Non-Compliance with Laws and Regulations" (the "Exposure Draft") issued March 10, 2017 by the AICPA Professional Ethics Executive Committee ("PEEC").

#### **General Comments**

We are supportive of the PEEC's objective to align the two proposed interpretations, each entitled Responding to Non-Compliance with Laws and Regulations, with the new ethics sections in the International Ethics Standards Board for Accountants' Code of Ethics for Professional Accountants (the "IESBA Code") (refer sections 225 and 360), while also making them relevant to AICPA members in the United States, in light of state laws and regulations on client and employer confidentiality. After taking into account the two significant concerns we have pertaining to the Exposure Draft that are addressed below, we believe the PEEC should continue to work towards issuing a document that balances the expectations of those that are in public practice with those who are in management and/or those charged with governance of the employing organization, as applicable, when an individual suspects or observes instances of non-compliance with laws and regulations ("NOCLAR").

One of our concerns relates to the lack of separation in guidance between those professionals in public practice who are performing an audit of financial statements and those who are not performing an audit of financial statements (e.g., professionals providing only advisory, management consulting, or tax related services). The IESBA new ethics standard section 225 has a separate section (paragraphs 225.39 through 225.56) addressing professional services other than audits of financial statements that clearly defines and differentiates the expectations and responsibilities.

Our other significant concern is that this Exposure Draft references the applicability of this interpretation to group attest engagements. The AICPA definition of an attest engagement covers not only the Statements on Auditing Standards (SASs), the Statements on Standards for Accounting and Review Services, but also the Statements on Standards for Attestation Engagements (SSAEs also currently referred to as the "clarified attestation standards" – examination, review and agree-upon procedures engagements). The concept of a "group" is not contemplated in the SSAEs and, as such, we do not believe it is appropriate at this time to provide guidance on group attest engagements when the underlying concept of a "group" has not yet been developed in the clarified attestation standards.

Our comments to the questions raised in the Exposure Draft, and some additional comments, are provided below:

### **Comments in response to question 1**

#### **1. Should members in public practice who provide only nonattest services to a client be required to document certain aspects of the NOCLAR? Or, rather, should they be encouraged to document certain aspects of the NOCLAR?**

We believe that the interpretation should include a separate section for professional services other than audits of financial statements, similar to paragraphs 225.39 through 225.56 of the IESBA Code. In that separate section (i.e., non-audit services), we also recommend that the scope of the applicability of this interpretation be revised to reflect the following:

*This interpretation sets out the approach to be taken by a member who is not performing an audit of financial statements and encounters or is made aware of non-compliance or suspected non-compliance with such laws and regulations of which the member is expected to have a level of understanding in order to provide the services for which the member was engaged.*

We believe the guidance in paragraph 225.56 of the IESBA Code is appropriate and should be included within the AICPA interpretation.

We also believe that the PEEC should separate the guidance between professionals providing audit and non-audit services, consistent with the approach in the IESBA Code. We agree that a professional providing non-audit services should not be able to turn a blind eye if he/she comes across identified or suspected NOCLAR during the performance of a non-audit engagement, especially if there is a potential for substantial harm to the public. In the Exposure Draft's introductory explanation of the new interpretations, the PEEC states that it "believe[s] it was unnecessary to bifurcate the guidance since it did not incorporate the IESBA provisions relevant to disclosure to an appropriate authority, and the other provisions were deemed appropriate for auditors and non-auditors alike." We believe, however, that a professional that is not performing an audit of financial statements is in a significantly different position than that of an auditor – even in the absence of a disclosure requirement - and therefore the expectations and responsibilities of professional providing non-audit services should be different from those of a professional providing audit services. Unlike paragraphs 225.39 through 225.56 of the IESBA Code, this Exposure Draft does not clearly make that distinction.

### **Comments on Section 1.170**

As noted above, we believe there are significant distinctions between the roles of professionals providing audit and non-audit services that merit distinguishing the responsibilities of each group with respect to NOCLARs. While sections 225 and 360 of the IESBA Code on NOCLARs refer to "professional accountants," this Exposure Draft refers to "members"; however, individuals may not always be accountants (e.g., consultants).

Under the SASs, auditors are already required to have a broader understanding of a client's business for purposes of performing an audit; are required to consider a client's compliance with laws and regulations; and are required to consider potential illegal acts by clients. As such, auditors already have an understanding of these concepts, and a framework for performing procedures relating to these concepts. On the other hand, those who are not performing an audit of a client's financial statements may not have an appreciation of what might have a direct effect on the determination of material amounts and disclosures in the financial statements. Some of these services might be short-term, and limited to certain operations or activities within the client. Professionals performing non-audit services may not have an appreciation of what is fundamental to the operating aspects of the client's business, its

ability to continue its business, or its ability to avoid material penalties. It is also possible that a professional performing non-audit services may not have access to the information necessary to make a determination on whether the NOCLAR will have a direct effect on a determination of material amounts and disclosures in the financial statements.

Additionally, we note that the proposed new interpretation could be read to create a new basis for legal liability for professionals providing non-audit services. Professionals providing audit services are already subject to such potential legal liability, with relevant auditing standards often cited in civil lawsuits as the applicable standard of care. The U.S. legal system is substantially different from that of other international jurisdictions, however, with a greater ability for plaintiffs to bring civil suits against professional service providers. Unless a clear distinction is made in these new interpretations between professionals providing audit and non-audit services, and between the different levels of responsibility among those groups for responding to NOCLARs, professionals providing non-audit services could be unintentionally subject to significant additional legal liability beyond that which such a professional agrees to in its contract with its client.

To address these concerns, we recommend that the interpretation include a separate section with respect to NOCLARs for professional services other than audits of financial statements that is at least as narrow and non-prescriptive as those set forth in paragraphs 225.39 through 225.56 of the IESBA Code (see additional commentary under question 1).

#### **Comments on Section 2.170**

The heading for section 2.170 states "(Applicable to Members in Public Practice)." We believe the PEEC intended this to state "(Applicable to Members in Business)."

#### **Comments in response to question 2**

##### **2. Is a one year transition period for the effective date appropriate? If not, what is an appropriate time period and why?**

Our recommendation is that the Exposure Draft be revised to have a separate section dealing with services other than audits of financial statements, similar to the IESBA Code, and re-exposed for comment. After that re-exposure period and consideration of any comments, a one year transition period after the issuance of the approved interpretation would be appropriate.

We would be pleased to discuss our comments with you at your convenience. If you wish to do so, please contact Glenn Stastny, Chief Ethics and Compliance Officer, via email (gstastny@deloitte.com) or at +1 203 423 4689.

Sincerely,



Deloitte LLP