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Professional Ethics Executive Committee
Professional Ethics Division
American Institute of Certified Public Accountants
Attention: Lisa A. Snyder, Senior Director
1211 Avenue of the Americas, 19th Floor
New York, NY 10036

Via e-mail: lisa.snyder@aicpa-cima.com

Re: Comments on Exposure Draft, *Responding to Non-Compliance with Laws and Regulations*, AICPA Professional Ethics Division dated March 10, 2017

Dear Ms. Snyder:

Crowe Horwath LLP appreciates the opportunity to comment on the American Institute of Certified Public Accountants ("AICPA") Professional Ethics Executive Committee's ("PEEC") March 2017 Exposure Draft, *Responding to Non-Compliance with Laws and Regulations* (Exposure Draft) which provides new interpretations to all members in regards to non-compliance with laws and regulations.

We agree the public interest is served by providing robust guidance for members when providing attest services; however, we believe there are profession-wide implications of applying this guidance to members within a CPA firm who only provide nonattest services and requires a thorough and careful analysis of practice issues this could create. Our concerns are described below.

The proposed requirements align with the audit standards so we anticipate members providing attest services will be able to comply with these standards with little difficulty. Members within a CPA firm who only provide nonattest services (referred to as nonattest members) are not subject to similar professional requirements when providing those nonattest services and they may not be accustomed to considering activities outside of their designated professional service area. For example, a nonattest member is likely not familiar nor trained in how to address non-compliance or suspected non-compliance with laws and regulations. As a result, nonattest members may not be equipped to comply with the requirements to evaluate, document and communicate non-compliance with laws and regulations. Further, there are no current professional standards regarding documentation and communication requirements for the performance of nonattest service engagements compared to the requirements contained in the audit standards. Application of these proposed requirements to nonattest services will require firms to adopt new methodologies, and perhaps systems, to comply with these standards.

In addition, nonattest members are often not CPAs, and as such, are likely not familiar with a framework of robust rules and requirements that are both explicitly and implicitly considered in performing professional services. The requirements outlined in the Exposure Draft, while inherent to CPAs, are likely not inherent to non-CPAs. Non-CPAs likely do not have the mindset and attitude towards addressing the requirements of this Exposure Draft when performing professional services. While education and training will obviously be necessary to communicate the information required in the Exposure Draft, addressing concepts that CPAs are accustomed to will be much more challenging for nonattest members that may have never had to consider these types of requirements during their careers.

We believe there are other significant practical aspects which would make these requirements difficult to apply to nonattest services, such as determining whether a matter has a material impact on the financial statements. Members providing only nonattest services often have limited knowledge about the client and likely would not have all of the information necessary to evaluate the impact of non-compliance or suspected non-compliance with laws and regulations. Some, for example, may have never had to consider, assess or evaluate materiality during their careers, especially given the vast array of non-audit services some CPA firms perform. We believe the requirements related to materiality and clearly inconsequential for nonattest members could be very challenging to incorporate into nonattest service practice areas.

We are also concerned with how these requirements position CPA firms within the nonattest industries they serve. Nonattest members provide a variety of nonattest services that are not unique to CPA firms. Non-CPA firms, such as boutique consulting firms, offering a similar service would not be required to abide by these new requirements. Since CPA firms would likely incorporate provisions in engagement letters describing the requirements for communication, documentation and management's response to any items identified relating to the Exposure Draft, this may place a CPA firm at a competitive disadvantage to a non-CPA firm that is not subject to these requirements.

Related to the above, it is unclear if a firm's structure impacts the proposed requirements. For example, if a firm uses an alternative practice structure, such as having separate entities for their consulting and other nonattest practices, would that structure alleviate the requirements of these proposed standards. While our initial reaction is that an alternative practice structure would not change the requirements for these types of nonattest services, if that was the intention of the proposed interpretations, we believe that fact should be clarified.

Other Observations

Notwithstanding our comments above, we provide the following observations (as it relates to Nonattest Members) on the new interpretations for PEEC's consideration.

If the member has concluded the non-compliance does not impact the nonattest service being provided, it is unclear whether service deliverables may be provided even though the response from management is not yet complete. While it may be beneficial for the nonattest member to fully evaluate the non-compliance or suspected non-compliance prior to issuing deliverables, this would appear to cause undue hardship if the non-compliance has no bearing on the non-attest service. For example, when performing system integration services, a member may become aware of an environmental matter that could raise the question of whether the client was complying with laws and regulations related to this matter. It is unclear how this impacts the ongoing services being performed by the member, given it could take significant time for the client to investigate, evaluate and provide a response to the member which may substantially delay the issuance of deliverables. If service deliverables may be provided, we would suggest clarifying in paragraph .35 what level of documentation should be completed prior to completing the service. If service deliverables may not be provided, we suggest consideration of the practical issues this can create, including when the nonattest member is evaluating "suspected noncompliance".

As previously mentioned, CPAs are accustomed to these requirements, including when evaluating suspected noncompliance, which is typically more challenging than actual noncompliance. Consistent with our observations previously raised, we suggest PEEC's further consideration whether nonattest members will be even more challenged to address suspected noncompliance and whether any changes to the requirements are necessary.

The proposed interpretation addresses that a member may become aware of non-compliance or suspected non-compliance through information provided by other parties (paragraph .13). We believe the reference to information provided by other parties may be too broad. Given the availability of social media and its visibility to many, it is unclear whether the proposed interpretation includes information obtained indirectly through the internet, social media, etc. We recommend clarifying the guidance to limit the information within the scope of the Exposure Draft. For example, the requirement could be described as "information provided directly to the member by other parties" to alleviate concerns related to information obtained from social media, the internet, or other casual sources.

The Exposure Draft indicates a member may identify a situation where non-compliance has occurred or may occur (paragraph .15). We believe the requirement to identify situations where non-compliance may occur would cause an unreasonable burden for the member to comply with this requirement. In addition, there is no time limit specified regarding how far in the future the member must consider in evaluating whether non-compliance may occur. As previously noted, CPAs and specifically auditors have been trained to consider these requirements in the context of an audit, however, it is not clear how nonattest members would apply this requirement in the context of their services.

We provide the following specific comments on the text of the proposed new interpretations for PEEC's consideration.

Proposed Interpretation [1.170.010]: "Responding to Non-Compliance with Laws and Regulations":

- We believe the reference to "substantial harm" in paragraph .08 is a new term which requires further clarification, as well as should be defined. In addition, examples of such would be helpful including both attest and nonattest situations.
- We suggest the terms "material" in paragraph .08 and "clearly inconsequential" in paragraph .09 be defined since these requirements also apply to nonattest engagements where materiality is usually not assessed.
- Paragraph .15 indicates a member should discuss matters with those charged with governance if they have access to them. The term "access" is not clear, as it would seem in most situations a member could simply request access. As a result, it is unclear what type of situations the member would not have access to those charged with governance. Perhaps this paragraph is referring to situations where the member has not been engaged by those charged with governance. We recommend more clarity related to what is meant by access.
- Paragraph .31 requires the member to communicate non-compliance and suspected non-compliance within the firm when the member is performing a financial statement audit or review. We are unclear why this requirement only applies to those attest services, and we believe this requirement should be expanded to include all attest services.
- Since the proposed guidance in paragraph .33 would not permit a member to communicate to the client's external auditor about identified or suspected non-compliance with laws and regulations when the member is not the auditor, we believe this creates a gap in the transfer of knowledge. As a result, we recommend modifying the audit standards to specifically require an auditor to inquire with the client about whether matters of non-compliance or suspected non-compliance have been communicated by third parties providing nonattest services. We recognize this would require action by the Auditing Standards Board (ASB) and encourage PEEC to initiate discussions with the ASB, related to this matter.
- Since the member is restricted from communicating the non-compliance or suspected non-compliance to the client's external auditor, which would include indirect communication through workpaper documentation, we believe paragraph .35 should include a reference back to paragraph .33 to clarify the member's restriction.

Responses to Request for Specific Comment

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?

While the attestation standards include guidance on documentation requirements, as noted previously there is not similar guidance for nonattest engagements. Given the lack of guidance, we believe documentation should be encouraged rather than required. If the documentation is required, then we believe standards should be drafted to provide guidance.

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

We do not believe a one-year transition period is sufficient if the Proposal is implemented as broadly as currently drafted, and recommend two years to provide adequate time for training and updating of firm processes and methodologies. If it is determined that alternative firm structures

would eliminate the requirement to apply these standards to nonattest practice entities, then additional time may be necessary to allow time for restructuring.

We believe members would benefit from additional guidance on these requirements and as such we suggest PEEC consider developing and publishing a FAQ document to provide examples to assist members in applying these requirements.

Crowe Horwath LLP appreciates the PEEC's efforts in providing these new interpretations. We would be pleased to respond to any questions regarding our comments. Should you have any questions please contact Jennifer C. Kary at (574) 239-7886 or James A. Dolinar at (630) 574-1649.

Cordially,

Crowe Horwath LLP

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