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RSM US LLP

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File Reference: Responding to Non-Compliance With Laws and Regulations

Dear Ms. Snyder,

We appreciate the opportunity to comment on the Professional Ethics Division's proposed interpretation, *Responding to Non-Compliance With Laws and Regulations*, dated March 10, 2017. We support the inclusion of guidance related to how a member should respond when encountering non-compliance with laws and regulations (NOCLAR) in the Code of Professional Conduct. Following are our responses to the Professional Ethics Executive Committee's (PEEC) requests for specific comments, as well as our additional comments and suggestions for PEEC's consideration.

### Our Responses to Requests for Specific Comments

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 the documentation requirement should be consistently applied regardless of the nature of the services provided, and therefore we support the interpretation as proposed, which requires documentation required even when only non-attest services are provided.

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

We believe a one-year transition period is appropriate. Firms will need time to train personnel and put in place procedures to comply with the new requirements included in the proposed interpretation, and one year should be adequate time for firms to do so.

### Additional Comments and Suggestions for PEEC's Consideration

#### Application of NOCLAR Interpretation to Members Providing Non-Attest Services

We have concerns regarding certain provisions in the proposed NOCLAR interpretation and the application to nonattest engagements. Our concerns and proposed modifications are as follows:

1. Nonattest engagements are often nonrecurring and shorter in duration than attest engagements. Requiring the member to follow up and assess management's response after the nonattest engagement is completed has no purpose since at that point withdrawal is not possible. Therefore, the requirement for the member to follow up with the client to assess the response of management should only apply to those engagements that are still in process at the time that management's investigation into the matter is completed.
2. With certain nonattest engagements, such as tax controversy, litigation consulting and forensic services, actual or suspected NOCAR is central to the matter at hand, known by the parties, and would have been considered at the time the member is engaged to provide the services. The interpretation should include an exception stating it does not apply to these types of services.
3. Tax services occasionally are performed under a Kovel agreement in which a taxpayer engages an attorney to provide legal representation, and the attorney engages a member to provide tax or accounting services. These engagements are specifically structured to preserve the taxpayer's claim of attorney-client privilege. The interpretation should make clear that in those Kovel engagements the member has no duty to communicate findings directly to the taxpayer for two reasons: (a) the attorney is in fact the member's client and (b) a disclosure in that situation could waive the taxpayer's privilege in certain circumstances. This rule should apply even if the member has provided services directly to the taxpayer in the past.

Reference to SSTS 6

AICPA Statement on Standards for Tax Services (SSTS) No. 6, *Knowledge of Error: Return Preparation and Administrative Proceedings*, addresses the obligations of members in tax practice who become aware of (a) an error in a client's previously filed tax return, (b) an error in a return that is the subject of an examination by a taxing authority or an appeals conference; or (c) a taxpayer's failure to file a required tax return. Under SSTS 6, the member is obligated to notify the client of the existence and the potential consequences of the error or omission, and must recommend that the client take steps to address the error or omission. If a client refuses to remedy an error or omission, SSTS 6 requires the member to reconsider whether to continue with the representation or to withdraw. We believe it would be useful for members providing tax services if the proposed interpretation included a cross reference to SSTS 6.

We appreciate the opportunity to provide these comments and would be pleased to respond to questions the Committee or its staff may have about them. Please direct any questions to Shelly Van Dyne (612-455-9935).

Sincerely,

*RSM US LLP*

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