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

Via email: lsnyder@aicpa.org

Re: Exposure Draft Omnibus Proposal AICPA Professional Ethics Division issued November 25, 2015

Dear Ms. Snyder:

We appreciate the opportunity to comment to the Professional Ethics Executive Committee (PEEC) on the Proposed Interpretations related to client records in a merger or acquisition scenario. Our comments are limited to proposed ET 1.400.205, *Transfer of Files and Return of Client Records in Sale, Transfer or Discontinuance of a Member's Practice*.

By way of background, Baker Tilly Virchow Krause, LLP, is a large nationally recognized accounting firm operating primarily in the Mid-West and Northeast sections of the United States. We have approximately 300 partners and employ approximately 2,500 persons. Our practice is diverse, offering accounting and auditing services as well as tax and consulting services across a broad spectrum of industries and geographies. Our firm has grown substantially in the past twenty years and much of that growth was fueled by mergers and acquisitions of other accounting practices. As such the proposed requirements are important to our practice and future merger activity.

In general we agree with the underlying premise of the guidance and the importance of complying with the client confidentiality requirements of ET 1.700.001. However, we do have significant concerns about the timing proposed in the ED. As currently written in 1400.205.01 (a), the proposal states: "...and obtain the client's consent **prior to transferring its files** to the successor firm..."

In a typical transaction, the selling firm's client files are an asset to be transferred to the acquiring firm at closing. Therefore as written, the buyer would need to contact all clients of the target prior to closing and obtain permission. Moreover, the proposal states absent an affirmative response from the client, the passage of 90 days will be sufficient for the buyer to assume approval of the transfer. As such, the clients would need to be notified at least 90 days in advance of the proposed closing.

In today's world, of accounting mergers, a deal is never over until it's over. Moreover, the impact of advance notice on existing client relationships can be very negative. Most target firms are reluctant to notify clients until very near the closing date. We suggest that a better way to approach this would be to require the acquiring firm to notify the clients as soon as reasonably possible after the closing and, absent specific consent to the transfer, refrain from accessing or using the client records for a period of 90 days. We believe this would achieve the goal of maintaining client confidentiality while not impeding commerce related to accounting firm transactions.

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With respect to the second requirement, in 1.400.205.01 (b), we request clarification as to how a client is defined. If the interpretation is meant to apply only to active clients, then it may be manageable (see further comment below), but if this is meant to include inactive clients, it will be extremely burdensome for firms to comply. Accounting clients come and go and it has been standard practice for firms to retain files related to inactive clients, generally in accordance with their document retention policy, unless a request is made for a return of records. In those cases firms would follow the guidance provided in ET 1.400.200 and return records which are required to be returned. Currently there is no requirement for firms to voluntarily return records if the client terminates its relationship with the firm. We do not believe returning records that have not been requested, just because of the merger transaction and a client's decision not to continue with the acquirer firm, is necessary.

As to the concept in ET 1.400.205.03 that an acquirer "...should be satisfied that all clients of the predecessor firm subject to the acquisition have been notified of the acquisition and have consented to the member's continuation of professional services and retention of any client files or records the successor firm retains." We request that the concept of "satisfied" be more clearly articulated or the terminology changed to something like the firm should use best efforts in complying with the requirements in ET 1.400.205.01 (a).

We appreciate the opportunity to provide comments on these interpretations and are available to answer any questions you may have.

Sincerely yours,


Baker Tilly Virchow Krause, LLP