Gallo, Frank A. of Jericho, NY

As a result of an investigation of alleged violations of the AICPA Code of Professional Conduct, Mr. Gallo, with the firm Gallo & Company, CPAs, LLP, entered into a settlement agreement under the Joint Ethics Enforcement Program, effective December 18, 2023.

Information came to the attention of the Ethics Charging Authority (ECA – AICPA Professional Ethics Executive Committee) alleging a potential disciplinary matter with respect to Mr. Gallo's performance of professional services on the audit of the financial statements of an employee benefit plan entity as of and for the year ended December 31, 2016.

The ECA gave Mr. Gallo the opportunity to respond to questions and to explain his position regarding the application of the AICPA Code of Professional Conduct to his performance of professional services.

The ECA charged Mr. Gallo with the following violations of the AICPA Code of Professional Conduct:

Violations

General Standards Rule .01b. Due Professional Care (1.300.001)

1. The auditor has shown a continuing disregard for professional standards as evidenced by the nature of the violations cited in the original case and the nature of the violations cited in this case.

2. The notes to the financial statements incorrectly state that the statement of net assets available for plan benefits has been adjusted for the difference between contract value and fair value.

3. The auditor's report and the notes to the financial statements incorrectly identified State Street Bank and Trust and Nationwide, respectively, as the entities certifying the investment information for purposes of the plan's 2016 limited scope audit. The certifying entity was Reliance Trust Company.

Compliance with Standards Rule (1.310.001)

1. The auditor failed to adequately document inquiries of management regarding the risk of material misstatement due to fraud. Specifically, the auditor did not document with whom and when the fraud risk inquiries were made. (AU-C §240)

2. The auditor failed to adequately document his review of financial information for the plan as part of review of subsequent events. (AU-C §320)

Accounting Principles Rule (1.320.001)

1. The financial statements failed to present participant loans as notes receivable from participants, are improperly included within the total investments line item, and their valuation methodology is not disclosed as required by FASB ASC 962-310-35.

2. Interest on notes receivable from participants is improperly presented as investment income on the statement of changes in net assets available for benefits. (FASB ASC 962-205-45)

3. Net appreciation in fair value of common/collective trusts was improperly presented as gain on sale of assets on the statement of changes in net assets available for benefits. (FASB ASC 962-205-45)

4. The financial statements failed to disclose transactions with related parties and parties-in-interest. (FASB ASC 850-10-50)

5. The financial statements inappropriately present common collective trusts as a level 3 investment. (FASB ASC 820-10-50)

Agreement

In consideration of the ECA forgoing further investigation of Mr. Gallo's conduct as described above, and in consideration of the ECA forgoing any further proceedings in the matter, Mr. Gallo agreed as follows:

a. To waive his rights to further investigation of this matter in accordance with the Joint Ethics Enforcement Program (JEEP) Manual of Procedures

b. To waive his rights to a hearing under AICPA bylaws section 7.4

c. To neither admit nor deny the above specified charges

d. To his suspension of membership in the AICPA for a period of two years from the effective date of this agreement. During the period of suspension, he is prohibited from representing himself as a member of the AICPA and from using any AICPA credentials or certificates.

e. To comply immediately with professional standards applicable to the professional services he performs.

f. To complete the "Annual Update for Accountants and Auditors" 11.5-hour continuing professional education (CPE) course within 6 months of the date he signs this letter and provide evidence of such completion (e.g., attendance sheets, course completion certificates).

g. To hire an outside party, acceptable to the ECA, to perform a pre-issuance review of the reports, financial statements, and working papers on 3 audits performed by him for one year from the date the reviewer has been approved by the ECA. He must submit the names of the chosen reviewers to the ECA for approval no later than 30 days after the date he signs this letter. Also, no later than 30 days after the date he signs this letter, he must submit a list to the ECA of the audits on which he expects to participate and reports will be issued in the upcoming 12 months from which the engagements subject to pre-issuance review will be selected.

He agreed to permit the outside party to report quarterly to the ECA on his progress in complying with this agreement as stated herein to comply with professional standards. The report should include the reviewer's comments in detail for each engagement (a report that omits such detail will be unacceptable); a description of the nature of the entity reviewed; the entity's year end; and the date of the review.

The first report is due 120 days after the reviewer has been approved by the ECA, with subsequent reports due every 90 days thereafter. If none of the engagements selected for pre-issuance review were performed during a reporting period, he agreed to inform the ECA of such. He agreed to have this pre-issuance review performed at his expense. The ECA has the right to extend the period of time and number of engagements subject to pre-issuance review if there are deficiencies.

He agreed to inform the ECA of any changes in the composition of his practice, changes in his role, or if he has not performed any audits during the period he is subject to the pre-issuance reviews. If his practice changes and he is no longer involved with audits, no longer acts in a supervisory capacity on such engagements, or he has not performed such engagements during the above specified period, he must inform the ECA of this change and the ECA may require that he attest every six months for three years as to the nature of his practice. If, during the three-year attestation period he returns to performing such engagements, he must inform the ECA of this change and undergo the required pre-issuance reviews.

h. To submit six months after completion of the pre-issuance reviews, a list of the highest level (audits, reviews, and compilations with note disclosures) of engagements that he performed in the six-month period following the date he completed the pre-issuance reviews.

The ECA will select one of these engagements for review. He will be informed of this selection and will be asked to submit information to include a copy of the auditor's report, the financial statements, and working papers related to that engagement for review by the ECA. The ECA may extend the period to select an engagement to ensure a suitable selection is available. A peer review undergone by his firm would not exempt him from this requirement.

He agreed to inform the ECA of any changes in the composition of his practice, changes in his role, or if he has not performed any audits, reviews, or compilations with note disclosures until a suitable work product is selected for review. If his practice changes and he is no longer involved with audits, reviews, or compilations with note disclosures, no longer acts in a supervisory capacity on such engagements, or he has not performed such engagements during the above specified period, he must inform the ECA of this change, and the ECA may require that he attest every six months for three years as to the nature of his practice. If, during the three-year attestation period he returns to performing such engagements, he must inform the ECA of this change, and the ECA will select a suitable work product for review.

After an initial review of such report, financial statements, and working papers, the ECA may decide he has substantially complied with professional standards and close this matter. Or, the ECA may decide that an ethics investigation of the engagement he submitted is warranted. If, at the conclusion of the investigation, the ECA finds that professional standards have in fact been violated, the ECA may refer the matter to the AICPA joint trial board for a hearing or take such other action as it deems appropriate.

i. To provide an attestation immediately, then every six months for a period of three years that he is no longer performing employee benefit plan audits. If he returns to performing such work, he agreed to the following:

   i. To complete the following 16.5 hours of continuing professional education (CPE) courses prior to commencing such work and provide evidence of such completion (e.g., attendance sheets, course completion certificates).

      Audits of Employee Benefit Plans Subject to ERISA (12.5); and Course on EBP workpaper documentation or review to be selected by the respondent and approved by the ECA (4.0)

   ii. To hire an outside party, acceptable to the ECA, to perform a pre-issuance review of the reports, financial statements, and working papers on all employee benefit plan audits performed by him for one year from the date the reviewer has been approved by the ECA. He must submit the names of the chosen reviewers to the ECA for approval no later than 30 days after the date he accepts such an engagement.

   He agreed to permit the outside party to report quarterly to the ECA on his progress in complying with this agreement as stated herein to comply with professional standards. The report should include the reviewer's comments in detail for each engagement (a report that omits such detail will be unacceptable); a description of the nature of the entity reviewed; the entity's year end; and the date of the review.

The first report is due 120 days after the reviewer has been approved by the ECA, with subsequent reports due every 90 days thereafter. If none of the engagements selected for pre-issuance review were performed during a reporting period, he agreed to inform the ECA of such. He agreed to have this pre-issuance review performed at his expense. The ECA has the right to extend the period of time and number of engagements subject to pre-issuance review if there are deficiencies.

He agreed to inform the ECA of any changes in the composition of his practice, changes in his role, or if he has not performed any employee benefit plan audits during the period he is subject to the pre-issuance reviews. If his practice changes and he is no longer involved with employee benefit plan audits, no longer acts in a supervisory capacity on such engagements, or he has not performed such engagements during the above specified period, he must inform the ECA of this change and the ECA may require that he attest every six months for three years as to the nature of his practice. If, during the three-year attestation period he returns to performing such engagements, he must inform the ECA of this change and undergo the required pre-issuance reviews.

iii. To submit six months after completion of the pre-issuance reviews, a list of the employee benefit plan audits that he performed in the six-month period following the date he completed the pre-issuance reviews.

The ECA will select one of these engagements for review. He will be informed of this selection and will be asked to submit information to include a copy of the auditor's report, the financial statements, and working papers related to that engagement for review by the ECA. The ECA may extend the period to select an engagement to ensure a suitable selection is available. A peer review undergone by his firm would not exempt him from this requirement.

He agreed to inform the ECA of any changes in the composition of his practice, changes in his role, or if he has not performed any employee benefit plan audits until a suitable work product is selected for review. If his practice changes and he is no longer involved with employee benefit plan audits, no longer acts in a supervisory capacity on such engagements, or he has not performed such engagements during the above specified period, he must inform the ECA of this change, and the ECA may require that he attest every six months for three years as to the nature of his practice. If, during the three-year attestation period he returns to performing such engagements, he must inform the ECA of this change, and the ECA will select a suitable work product for review.

After an initial review of such report, financial statements, and working papers, the ECA may decide he has substantially complied with professional standards and close this matter. Or, the ECA may decide that an ethics investigation of the engagement he submitted is warranted. If, at the conclusion of the investigation, the ECA finds that professional standards have in fact been violated, the ECA may refer the matter to the AICPA joint trial board for a hearing or take such other action as it deems appropriate.

iv. To submit, within 30 days after he has accepted an employee benefit plan audit, evidence that his firm has submitted an application to join the Employee Benefit Plan Audit Quality Center. Upon membership in that center, he agreed that his firm will comply with the directives of that center.

j. Provide his most recent peer review documents (report; representation letter; acceptance letter; letter of response and completion letter, as applicable) within 30 days of accepting this agreement.

k. To be prohibited from performing peer reviews in any capacity until he has completed all directives in this letter. This prohibition will be communicated to his firm's peer review administering entity.

l. To be prohibited from serving as a member of any ethics or peer review committee of the AICPA or the state CPA societies of CPAs until he has completed all directives in this letter. This prohibition will be communicated to those responsible for appointments to such committees. In addition, if he applies to join any other committee of the AICPA or the state CPA societies, he must inform those responsible for such appointments of the results of this ethics investigation.

m. To be prohibited from teaching continuing professional education courses approved by the AICPA or the state CPA societies in the area of employee benefit plans until he has completed all directives in this letter. This prohibition will be communicated to those responsible for engaging CPE instructors at the AICPA.

n. That the ECA shall publish his name, the name of his firm, the charges, and the terms of this settlement agreement.

o. That the ECA shall monitor his compliance with the terms of this settlement agreement and initiate an investigation where the ECA finds there has been noncompliance.