Yates, Steven of Arlington Heights, IL

As a result of an investigation of alleged violations of the codes of professional conduct of the AICPA and the Illinois CPA Society, Mr. Yates, with the firm of Cukierski & Cochrane, LLC entered into a settlement agreement under the Joint Ethics Enforcement Program, effective January 23, 2024.

Information came to the attention of the Ethics Charging Authority (ECA – AICPA Professional Ethics Executive Committee and the Illinois CPA Society Professional Ethics Committee) alleging a potential disciplinary matter with respect to Mr. Yates' performance of professional services on the audit of the financial statements of an employee benefit plan as of and for the fiscal year ended June 30, 2018.

The ECA reviewed the findings of the U.S. Department of Labor's Employee Benefits Security Administration, Mr. Yates' responses to the ECA's inquiries, and other relevant documents he submitted to support his response, including certain work papers, financial statements, and relevant correspondence. Based on this information, there appears to be prima facie evidence of violations of the rules of the AICPA and the Illinois CPA Society codes of professional conduct as follows:

Violations

General Standards Rule .01a. Professional Competence (1.300.001)

The auditor undertook an engagement that he could not complete in accordance with professional standards.

Compliance with Standards Rule (1.310.001)

1. The auditor initially failed to obtain sufficient appropriate audit evidence to support the opinion on the financial statements in the following areas (AU-C §500):

    a) Planning, specifically, the auditor failed to obtain updated plan documents, service agreements, and other governing documents reflecting the change in third-party administrators;
    b) Internal controls;
    c) Contributions and related receivables;
    d) Participant data and participant accounts;
    e) Parties in interest and related party transactions;
    f) Plan tax status;
    g) Commitments and contingencies;
    h) Administrative expenses; and
    i) Subsequent events.

2. The auditor failed to prepare audit programs for the following areas (AU-C §300):
    a) Contributions and related receivables;
    b) Benefit payments;
    c) Administrative expenses; and
    d) Subsequent events.

3. The auditor failed to properly date the auditor's report on the original financial statements and failed to properly re-date the report on the reissued financial statements. (AU-C §560)

Accounting Principles Rule (1.320.001)

1. The original financial statements did not disclose if a favorable determination letter had been obtained or maintained (FASB ASC 962-205-50).

2. The revised financial statements did not disclose the date through which subsequent events have been evaluated (FASB ASC 855-10-50).

3. The original financial statements improperly presented the plan's investments in pooled separate accounts as Level 3 assets in the fair value measurements note (FASB ASC 820-10-50).

4. The plan's investment in the Stable Value Account was improperly included in the Fair Value Measurements table and did not include all required disclosures (FASB ASC 962-325-50).

5. The original and revised financial statements failed to disclose the amount of forfeited non-vested accounts per plan year (FASB ASC 962-205-50).

6. The original and revised financial statements both improperly disclose the valuation methodology for mutual funds. The plan does not hold mutual funds, rather they hold pooled separate accounts comprised of mutual funds (FASB ASC 820-10-50).

7. The pooled separate accounts valuation methodology in the revised financial statements improperly states they are Level 3 assets (FASB ASC 820-10-50).

8. The fair value of the investment contract reported in Note 5 was not comparative (FASB ASC 205-10-45).

Governmental Bodies, Commissions, or Other Regulatory Agencies (1.400.050)

The schedule of assets held at end of year improperly included employer contributions receivable (29 CFR 2520.103-10).

Agreement

In consideration of the ECA forgoing further investigation of Mr. Yates's conduct as described above, and in consideration of the ECA forgoing any further proceedings in the matter, Mr. Yates 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 and bylaws sections of the Illinois CPA Society

c. To neither admit nor deny the above specified charges

d. To his admonishment by the AICPA and Illinois CPA Society.

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

f. To complete a 4-hour continuing professional education (CPE) course on Workpaper Documentation or Review to be selected by the Respondent and approved by the ECA 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 2 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 “Audits of Employee Benefit Plans Subject to ERISA” 12.5-hour continuing professional education (CPE) course prior to commencing such work and provide evidence of such completion (e.g., attendance sheets, course completion certificates).

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. 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.

k. To be prohibited from serving as a member of any ethics or peer review committee of the AICPA or the Illinois CPA Society 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

Illinois CPA Society, he must inform those responsible for such appointments of the results of this ethics investigation.

l. To be prohibited from teaching continuing professional education courses approved by the AICPA or the state CPA societies in the areas of accounting, auditing, and 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 and the Illinois CPA Society.

m. Submit written evidence from the partner at his firm responsible for coordinating his firm's peer review and the firm's managing partner that he has provided this letter to them within 30 days of accepting this agreement.

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.