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June 30, 2021

Professional Ethics Executive Committee
Attention: Toni Lee-Andrews, Director
American Institute of Certified Public Accountants
1211 Avenue of the Americas, 19th Floor
New York, NY 10036

Via Email to Ethics-ExposureDraft@aicpa.org

Re: Comments on Exposure Draft, *Responding to Non-Compliance with Laws and Regulations: Proposed Interpretation of the AICPA Professional Ethics Division Dated February 25, 2021*

Dear Ms. Lee-Andrews and Committee Members:

Grant Thornton LLP ("Grant Thornton" or the "Firm") appreciates the opportunity to comment on the American Institute of Certified Public Accountants ("AICPA") Professional Ethics Executive Committee's ("PEEC") recently issued Exposure Draft ("ED"), which re-exposes two new interpretations each entitled "*Responding to Non-compliance with Laws and Regulations ("NOCLAR")*" ET sec. 1.170.010 and 2.170.010 of the *AICPA Code of Professional Conduct* ("Code") applicable to members in public practice and in business, respectively. Our focus when reviewing the ED was on the "members in public practice" and our comments below reflect this.

We strongly support the PEEC's commitment to provide robust guidance to assist AICPA members to converge on the IESBA standards for evaluating the impact and consequences of an instance of non-compliance with Laws and Regulations. We also support the review that PEEC completed on the comments it received from the 2017 NOCLAR Exposure Draft ("2017 NOCLAR ED"). However, our Firm has provided additional comments below for PEEC's consideration based on the recently issued ED.

Specific comments

Grant Thornton understands that there is the necessity for the AICPA to converge on the regulations established by IESBA. In addition, we understand the NOCLAR

requirements under the Code need to be at least as restrictive as IESBA. We agree that some regulators have provisions governing how members should address non-compliance or suspected non-compliance which may differ from or go beyond the proposed NOCLAR interpretation. A framework should be established by firms which would allow them to evaluate and address instances of NOCLAR in order to comply with local regulations and/or professional standards as well as IESBA. Below we have identified the following specific comments for PEEC's consideration:

- **Clarification on disclosure requirements to regulators** – Additional language within the interpretation may be necessary to limit when an accounting firm that performs financial statement attest services would be required to report an instance of a NOCLAR or suspected NOCLAR to a regulator. The proposed interpretation may expand the auditor's requirement to monitor existing and new laws and regulations passed at the state and federal level to determine if an instance of NOCLAR would require communication to a regulator, in some instances even before disclosing the matter to the client. This requirement may result in a significant cost to members in public practice (e.g., costs associated with obtaining outside legal advice on state and federal laws and regulations) and may expand an auditor's litigation risk if it does not remain adequately apprised of ever changing laws and regulations across numerous jurisdictions. We would suggest a modification to require the auditor to communicate to those charged with governance ("TCWG") if an instance of NOCLAR is identified, unless the instance of NOCLAR is clearly inconsequential. If TCWG is informed of an instance of NOCLAR and fails to cause the attest client to take remedial action, only then would an auditor evaluate if the un-remediated NOCLAR has a material effect on the financial statements that may require notification to a regulator pursuant to applicable law or regulation.
- **Limitation of instances of NOCLAR that will affect the audited financial statements** – In the proposed interpretation, it is noted that auditors need to consider instances of NOCLAR that may be operational in nature or have non-financial consequences. While it may have been intended that auditors only consider instances of NOCLAR that could have an impact on the audited financial statements, this is not clearly stated in the proposal. Clarification should be provided in the proposed interpretation that auditors are required to consider only those instances of NOCLAR (or suspected NOCLAR) that could have a direct or indirect material impact on the attest client's financial statements.

- **Consideration for disclosure and documentation requirements** –We agree that the proposed guidance is separate from any audit or other applicable standards. Refer to our firm's response letter to the ASB's Proposed Statement on Auditing Standards, *Inquiries of the Predecessor Auditor Regarding Fraud and Noncompliance with Laws and Regulations*.

Recommendation for development of a practice aid or frequently asked questions (FAQs) document

As shared previously, Grant Thornton believes that PEEC should consider developing non-authoritative guidance in the format of a practice aid or FAQs to provide more clarity in assisting members in better understanding the application of the proposed interpretation, including the framework for identifying, evaluating, documenting, and communicating an instance of NOCLAR. For example, the following can be covered in the guidance:

- Other examples of quality control related policies and procedures (or best practices) that will assist firms in fulfilling their responsibilities to have established sufficient policies to address instances of NOCLAR, including notification to management (or TCWG).
- Illustrative examples, scenarios and/or action steps that firms should consider when addressing a potential instance of NOCLAR including documentation or communication format (or templates).
- Illustrative examples or scenarios to assist members providing financial statement attest services and members providing services other than financial statement attest services in identifying, considering, and addressing instances of NOCLAR.

We respectfully submit our responses to the requests for comment listed in the exposure draft for PEEC's consideration.

Responses to requests for comment

Question 1: Do you agree with the differentiation in requirements applicable to members in public practice providing services other than financial statement attest services?

We agree with the differentiation in requirements applicable to members in public practice providing services other than financial statement attest services.

As noted in our comment letter dated May 19, 2017 to the Exposure Draft, Responding to Non-Compliance with Laws and Regulations: Proposed Interpretation on the AICPA Professional Ethics Division dated March 10, 2017 ("GT 2017 NOCLAR

Comment Letter"), the period and the nature of the nonattest service may present a challenge for identifying an instance of NOCLAR and disclosing to management.

We recommend providing non-authoritative guidance on communication requirements when an instance of a NOCLAR is identified for an engagement other than financial statement attest services where the same firm or network of firms is the financial statement auditor.

Question 2: Do you agree that a litigation or investigation engagement as defined in, and subject to, SSFS No. 1, and an engagement to which the protections set forth in IRC Section 7525 apply, should be excluded from the proposed interpretation for members in public practice? If not, why? Are there other nonattest services that should be excluded from the proposed interpretation? If yes, please identify which services and explain why.

We agree that a litigation or investigation engagement as defined in, and subject to, SSFS No. 1, and an engagement to which the protections set forth in IRC Section 7525 apply, should be excluded from the proposed interpretation for members in public practice. As noted in GT 2017 NOCLAR Comment Letter, certain nonattest services do not permit disclosure due to privilege or other confidentiality requirements. We would recommend considering whether there are any other nonattest services that are not covered in FSS No1. or IRC 7525, that should be excluded from the proposed interpretation for members in public practice based on the confidential nature of the service, such as a diligence engagement, or the provisions of the contractual arrangement, like a governmental engagement.

Question 3: Is a one-year transition period for the effective date appropriate? If not, why?

We believe an eighteen-month adoption period may be necessary. Members in the public practice may need time to update guidance. We encourage PEEC to consider if the one-year transition period would provide enough time for the development of nonauthoritative guidance, including updating or establishing of new policies and/or internal training by members.

We would be pleased to discuss our comments with you. If you have any questions, please contact Anna Dourdourekas, National Partner in Charge, Ethical Standards at anna.dourdourekas@us.gt.com or (630) 873-2633.

Sincerely,

/s/ Grant Thornton LLP