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Via e-mail: ethics-exposedraft@aicpa-cima.com

Professional Ethics Executive Committee
Professional Ethics Division
American Institute of Certified Public Accountants
220 Leigh Farm Road
Durham, NC 27707

Re: Responding to Noncompliance With Laws and Regulations

Dear Professional Ethics Division and Members of the Professional Ethics Executive Committee:

BDO USA, LLP, appreciates the opportunity to provide comments on the American Institute of Certified Public Accountants (“AICPA”) Professional Ethics Executive Committee’s (“PEEC”) Proposed Interpretations to the Code of Professional Conduct (the Code), each titled, *Responding to Noncompliance With Laws and Regulations* (proposed interpretations). Our comments on the proposed interpretations follow.

We support the PEEC’s endeavor in setting high-quality and robust independence and ethics standards for the accounting profession in the United States. Further, we understand the importance of the PEEC’s efforts to converge with the International Ethics Standards Board for Accountants’ (IESBA) Code of Ethics. Overall, BDO supports the proposed revised interpretation, however, we have provided specific commentary below.

General Comments

Overall, we support the proposed interpretation as revised, which provides specific guidance for members in public practice and members in business who encounter noncompliance with laws and regulations (NOCLAR) or suspected NOCLAR. We believe the proposed revisions align more closely with that of the IESBA Code of Ethics, which promotes consistent expectations among stakeholders worldwide and provides consistent guidance for the profession. Further, we believe the revised interpretation for members in public practice recognizes key differences of relationships between auditors and members who provide non-attest services and how those distinctions dictate realistic expectations of accountants when responding to a NOCLAR. However, we do have some suggestions noted below. Please note that while we support the proposed Interpretation applicable to members in business, our comments are focused and apply to the proposed Interpretation applicable to members in public practice.

Request for Specific Comments

- a. Do you agree with the differentiation in requirements applicable to members in public practice providing services other than financial statement attest services?**



Yes, we agree with the differentiation in requirements applicable to members in public practice providing services other than financial statement attest services. The nature of the relationship between a client and an auditor as well as the level of public interest in a financial statement audit is different from that of a member providing non-financial statement attest services. As such, the expectations of a member's responsibility when encountering a NOCLAR should reflect such differences. For example, an auditor generally has close contact and access to all levels of management, executive leadership and those charged with governance, and as such, may respond to a NOCLAR in a more comprehensive fashion as opposed to a member who performs non-attest services or an agreed-upon procedures engagement for a client.

We also support the proposed definition of *financial statement attest services* that would be added to the *Definitions* section of the Code.

- b. 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.**

Yes, we believe 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. We also believe that certain risk assessment services should also be excluded, especially fraud risk assessment. These services, much like those subject to SSFS No. 1 are intended to search for irregularities which often include illegal activities. Similarly, we believe that certain transaction related services should be excluded that are not covered by paragraph .06b, specifically where we are hired by a prospective seller to identify risk areas that could impact a future transaction structure or pricing.

Further, in terms of tax services, we believe services subject to IRC Section 7525 are too narrow. While we agree with the carve out for tax services pursuant to the protection of Internal Revenue Code (IRC) Section 7525 (client privilege), PEEC has noted that Kovel arrangements are not specifically excluded as these engagements are not defined by AICPA standards or any other professional standard or regulation. We believe Kovel arrangements are defined in case law and in privilege guidance issued by AICPA and therefore, should be viewed through the lens similar to that of IRC Section 7525, attorney-client privilege, and work product protection. We also believe that under current trends in Kovel practice, it may be the law firm that is the client, the ultimate taxpayer that is the client, or both can be clients of the service provider.

We recommend that engagements subject to general attorney-client privilege, Kovel arrangements, or work product protection should be carved out as those under IRC Section 7525, as each of these types of privilege/protection cases can and do arise regularly in tax engagements. We believe that irrespective of the type of privilege or protection involved,



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it should similarly be clarified that the carve out is not limited to forensic accounting engagements.

c. Is a one-year transition period for the effective date appropriate? If not, why?

Yes. We believe a one-year effective date is appropriate.

We would be pleased to discuss our letter with you. If you would like to discuss our comments, please contact, Ms. Lisa A. Snyder, CPA (NJ), National Assurance Managing Partner - Independence at (732) 734-3052 or lsnyder@bdo.com.

Respectfully,

/s/ BDO USA, LLP

BDO USA, LLP