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June 23, 2021

Professional Ethics Executive Committee  
American Institute of Certified Public Accountants  
220 Leigh Farm Road  
Durham, NC 27707-8110

**Re: Exposure Draft, Proposed interpretations and definition – Responding to Noncompliance With Laws and Regulations**

RSM US LLP appreciates the opportunity to offer our comments in response to the Exposure Draft, *Proposed interpretations and definition – Responding to Noncompliance With Laws and Regulations*.

RSM US LLP is a leading provider of audit, tax and consulting services focused on the middle market. We have over 12,000 people located in 87 cities in the United States and four locations in Canada.

We support the Professional Ethics Executive Committee's (PEEC) comprehensive efforts to better define an AICPA member's responsibilities when encountering noncompliance with laws or regulations (NOCLAR) and suspected NOCLAR at a client or within an employing organization. We agree that the general objective for members who encounter NOCLAR should be to alert the appropriate parties to enable a client's or employing organization's management and those charged with governance to rectify the NOCLAR, mitigate the effects of the NOCLAR, or deter the commission of the NOCLAR.

In this letter, we offer comments on matters related to the Exposure Draft that we believe should be addressed, including those for which feedback was specifically requested by PEEC.

**Request for 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 that it is appropriate to bifurcate the guidance for members in public practice to provide separate requirements for members providing financial statement attest services and members providing services other than financial statement attest services.

- 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 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. Such services require a standard of confidentiality in order to be effective and to ensure trust between a member and its client.

We are not aware of other nonattest services that should be excluded from the proposed interpretation.

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We suggest that, to make the interpretation more evergreen, consideration be given to a more principled-based framework that could be used to help members know which services would be excluded from the interpretation. Such a framework could provide general guidance, which would be helpful for engagement types that may develop in the future.

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

Yes. We believe a one-year transition period for the effective date is appropriate. However, we believe the effective date of this Exposure Draft should more closely align with the effective date of the Auditing Standards Board's proposed Statement on Auditing Standards (SAS), *Inquiries of the Predecessor Auditor Regarding Fraud and Noncompliance With Laws and Regulations*. For example, if the proposed SAS is effective for years ending on or after December 15, 2023, we believe it would be appropriate for the PEEC Exposure Draft to be effective as of January 1, 2023.

We also believe it would be more clear if the effective date was stated as a specific date, rather than as "one year after notice is published in the *Journal of Accountancy*."

### Additional Comments

We believe it would be more clear if the verbiage in paragraph .25.f. of proposed interpretation 1.170.010, "Responding to Noncompliance With Laws and Regulations," was more congruent with the verbiage in paragraph .19.c. of that interpretation. We therefore suggest paragraph .25 be reworded to read as follows (proposed deletions are struck-through, and proposed additions are in bold font):

- .25 Relevant factors to consider when evaluating the appropriateness of the response of management, and, where applicable, those charged with governance, include whether:
- a. The response is timely.
  - b. The noncompliance or suspected noncompliance has been adequately investigated.
  - c. Action has been, or is being, taken to rectify, remediate, or mitigate the consequences of any noncompliance.
  - d. Action has been or is being taken to deter the commission of any noncompliance if it has not yet occurred.
  - e. Appropriate steps have been, or are being, taken to reduce the risk of recurrence; for example, additional controls or training.
  - f. The noncompliance or suspected noncompliance has been disclosed to an appropriate authority ~~when appropriate~~ **where required by law or regulation or when considered necessary in the public interest** and, if so, whether the disclosure appears adequate.

We believe it would be more appropriate if both paragraphs .28 and .42 of proposed interpretation 1.170.010 were revised to read as follows (proposed additions are in bold font):

Examples of circumstances that may cause the member no longer to have confidence in the integrity of management, and, where applicable, those charged with governance, include situations such as the following:

- a. The member suspects or has evidence of management's involvement or intended involvement in any noncompliance.

- b. The member is aware that management, **and where applicable, those charged with governance**, has knowledge of such noncompliance and, contrary to legal or regulatory requirements, has not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.

### **Closing**

We appreciate this opportunity to provide feedback on the Exposure Draft and would be pleased to respond to any questions PEEC or AICPA staff may have about our comments. Please direct any questions regarding this letter to Claire Blanton, National Director of Independence, Compliance and Ethics, at 704.206.7271 or Jen Noble, Senior Manager – National Office of Independence, Compliance and Ethics, at 904.224.8146.

Sincerely,

*RSM US LLP*

RSM US LLP