



December 9, 2009

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Ms. Lisa Snyder, Director
Professional Ethics Division
AICPA
1211 Avenue of the Americas
New York, NY 10036

Sent via email: lsnyder@aicpa.org

Re: Exposure Draft: Proposed Revision to Ethics Ruling No.2, "Distribution of Client Information to Third Parties"

Dear Ms. Snyder:

The Center for Audit Quality (CAQ) is an autonomous public policy organization dedicated to enhancing investor confidence and public trust in the global capital markets. The CAQ fosters high quality performance by public company auditors, convenes and collaborates with other stakeholders to advance the discussion of critical issues requiring action and intervention, and advocates policies and standards that promote public company auditors' objectivity, effectiveness and responsiveness to dynamic market conditions. The CAQ appreciates the opportunity to respond to the proposed revision to ethics ruling No. 2, "Distribution of Client Information to Third Parties" of ET Section 391, "Ethics Rulings on Responsibilities to Clients" and the new definition of "client confidential information" ("proposed revisions" or "proposal"). This letter, which addresses the proposal from the perspective of the auditing profession, represents the observations of the CAQ, but not necessarily the views of any specific firm, individual or CAQ Governing Board member.

The CAQ recognizes the desirability and necessity of maintaining the confidential nature of the client-auditor relationship, and that the conduct of an audit requires unfettered auditor access to client information. A mutual trust between a company and its independent auditor must exist for the auditor to obtain unconditional access to information necessary to conduct an audit.

The CAQ also understands that the information collected by auditors in their work papers, if provided to research scholars may result in studies that advance the audit profession and improve audit quality. The CAQ believes that the proposed revisions, as drafted, will impede the performance of such research by further restricting available information.

CAQ Initiatives to Support the Sustainability of the Auditing Profession

The auditing profession depends on a steady supply of young college graduates to fill its ranks. For example, from 2006-2008, the six largest accounting firms in the United States hired an average of approximately 13,000 new graduates each year. The quality of the education and development of these college students, in turn, depends on a continuing supply of academically qualified auditing professors. A very real concern exists that the current pipeline of auditing faculty will not keep pace with the projected rate of retirement of existing faculty.

One reason given by some for the dwindling supply of doctoral auditing faculty is the lack of available data related to the practice of auditing. It is expected that 91 percent of the demand for doctoral faculty in financial accounting will be met, whereas that same number is only 22 percent for audit faculty.¹ This disparity is commonly attributed to the abundance of capital market data available to conduct scholarly accounting and financial reporting research, and the relative dearth of information available to conduct auditing research. Data supporting auditing research often is limited to currently available information from public sources, effectively narrowing research to topics related to restatements, SEC Accounting and Auditing Enforcement Releases, public reports from PCAOB inspections, and audit fees. Visibility into the practice of auditing allows for scholarly research possibilities directed at advancing the audit profession and improving audit quality.

The CAQ, through its Research Advisory Board (RAB), is committed to support the development of auditing faculty by sponsoring research in auditing. In 2009, the CAQ awarded funding to five academic research project teams, and will seek proposals for award in 2010. The CAQ also is supporting efforts to identify ways to promote archival research on auditing practices. The goal of these efforts is to develop a mechanism to provide researchers with greater insights into the execution of audits, with the ultimate goal of contributing to the enhancement of audit quality.

The CAQ respects the AICPA's efforts to clarify the auditor's responsibility to maintain client information as confidential. We are concerned, however, that the proposed revisions may have the unintended consequence of unnecessarily restricting the body of information available for meaningful scholarly research intended to advance the auditing profession and enhance audit quality.

Comments and Observations on the Proposed Revisions

We appreciate the opportunity to provide the Professional Ethics Executive Committee (PEEC) with some observations and comments on the proposed revisions.

First, and most fundamentally, we are not aware of any evidence that ethics ruling number 2 of ET section 391 is in need of refining or clarification. The proposal itself does not provide any insights as to PEEC's reasons for addressing whether the sharing of information on a "no-name" basis for research or benchmarking purposes is permissible or, more broadly, for proposing a new definition of "client confidential information" that would apply to the entire ethics code. In particular, we are not aware of circumstances where sharing information on a "no-name" basis has resulted in situations where an accountant or auditor had breached client confidentiality. Without context around the decision to amend the existing interpretation, it is

¹ R. David Plumlee, Steven J. Kachelmeir, Siliva A. Madeo, Jamie H. Pratt, and George Krull, *Assessing the Shortage of Accounting Faculty*, 21 Issues in Accounting Education, No. 2, 119 (May 2006).



difficult to understand how, or whether, PEEC intends to change current practice. To the extent there is not a clear issue regarding the application of the existing interpretation, we would respectfully request PEEC to reconsider whether any revisions are necessary. Should PEEC choose to proceed with revisions to the ethics interpretations relative to confidentiality, we have significant concerns related to the proposed definition of “confidential client information,” as well as suggestions for PEEC to consider when developing its interpretations. We provide further detail of these concerns and suggestions below.

Definition of “Confidential Client Information”

We do not believe that proposing a new definition of “confidential client information” is necessary or prudent. We believe that there is substantial legal precedent regarding what constitutes “confidential information” or “confidential data.” Moreover, we are not aware of evidence that the lack of a definition in the ethics code has caused insufficient protection of client confidential data in the context of academic research or in other instances (e.g., benchmarking analyses). Under these circumstances, to proceed with a new definition may simply cause confusion.

However, if PEEC chooses to proceed with a definition of “client confidential data,” we urge PEEC to revise its current approach. The proposal defines “confidential client information” according to what it is **not** rather than what it is. We believe that such a definition is difficult, if not impossible to interpret and apply. In addition, because the definition includes a list of items that are deemed to be in the “public domain,” the continuing evolution of technology and ways to distribute information will require PEEC to regularly review and update the definition. Given these concerns, we believe that, as currently drafted, the proposed definition will likely result in unnecessarily limiting access to information by academic researchers, which may further restrict the sharing of information necessary to support academic research directed toward advancing the auditing profession and enhancing audit quality.

Consider Defining Client Information

If PEEC determines, after considering the issues described above, that it is appropriate to proceed with revisions to the ethics interpretation, we submit that PEEC should consider whether a definition of what constitutes “client information” for purposes of maintaining confidentiality, if properly framed, may be more helpful to the practice and academia. Part of that exercise might include clarification as to what does and does not constitute client information in particular circumstances or scenarios. For example, does information obtained from audit files that is not publicly available and has been aggregated, or has been made anonymous, constitute client information? In addition, should information which is stripped of data or modified or aggregated in such a way that users cannot reasonably identify the company be considered client information? Information that is not considered “client information” in certain circumstances would thus not be subject to confidentiality protections. PEEC should consider whether information, if stripped of data or modified or aggregated in such a way that users cannot reasonably identify the company, should be considered client information.

We ask that PEEC consider the points noted above in its further deliberations of the proposed revisions. We believe that the potential negative impact to relevant academic research likely to result if the proposed revisions are finalized as drafted requires serious consideration. If PEEC decides to move forward with rule making in this area, we strongly believe that PEEC should re-expose the proposed revisions, taking into account the concerns and questions raised above. The re-exposure should more clearly outline the matters underlying the need to address the existing ethics ruling. In our opinion PEEC also should develop a definition for client information subject to confidentiality protections. Inclusion of information regarding the

basis for modifying the existing ruling, as well as further insights into the rationale for PEEC's changes will help provide the necessary context for interested parties to provide better informed comments on any proposed changes.

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We appreciate the opportunity to comment on the proposed revisions to the ethics ruling and would welcome the opportunity to respond to any questions you may have regarding any of our comments and observations.

Sincerely,

A handwritten signature in black ink that reads "Cynthia M. Fornelli". The signature is written in a cursive, flowing style.

Cynthia M. Fornelli
Executive Director
Center for Audit Quality



CENTER FOR AUDIT QUALITY