

Transborder Challenges To Accountant-Client Confidentiality

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- More Than One In 10 Adults Are Victims Of Fraud (FTC 2004)
- In 2007 there were 27.3 million victims of identity theft in the U.S. resulting in 49.3 billion dollars in losses (FTC 2008)

Transparency pressures

- Access to client's confidential information critical to the auditor's function
- Investor appetite for transparency
- Public records & Freedom Of Information Acts
- Reporting/disclosure obligations per applicable standards
- Whistle blower statutes

Counter pressures

- International standards
- AICPA Code of Conduct
- NASBA/AICPA Uniform Accountancy Act
- State statutes
- State board rules
- Federal privacy laws
- State privacy laws
- Confidential data is worth a lot

International Federation of Accountants Code of Ethics for Professional Accountants: "A

professional accountant should respect the confidentiality of information acquired during the course of performing professional services and should not use or disclose any such information without proper and specific authority or unless there is a legal or professional right or duty to disclose."

■ **SECTION 140 Confidentiality**

- 140.1 The principle of confidentiality imposes an obligation on professional accountants to refrain from:
 - (a) Disclosing outside the firm or employing organization confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
 - (b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.
- 140.2 A professional accountant should maintain confidentiality even in a social environment. The professional accountant should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a close or immediate family member [as defined in code].
- 140.3 A professional accountant should also maintain confidentiality of information disclosed by a prospective client or employer.
- 140.4 A professional accountant should also consider the need to maintain confidentiality of information within the firm or employing organization.
- 140.5 A professional accountant should take all reasonable steps to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.
- 140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant changes employment or acquires a new client, the professional accountant is entitled to use prior experience. The professional accountant should not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.
- 140.7 The following are circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:
 - (a) Disclosure is permitted by law and is authorized by the client or the employer;
 - (b) Disclosure is required by law, for example:
 - (i) Production of documents or other provision of evidence in the course of legal proceedings; or
 - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
 - (c) There is a professional duty or right to disclose, when not prohibited by law:
 - (i) To comply with the quality review of a member body or professional body;
 - (ii) To respond to an inquiry or investigation by a member body or regulatory body;
 - (iii) To protect the professional interests of a professional accountant in legal proceedings; or
 - (iv) To comply with technical standards and ethics requirements.
- 140.8 In deciding whether to disclose confidential information, professional accountants should consider the following points:
 - (a) Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant;
 - (b) Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any; and
 - (c) The type of communication that is expected and to whom it is addressed; in particular, professional accountants should be satisfied that the parties to whom the communication is addressed are appropriate recipients.

AICPA Code of Conduct

■ **Section 301 – Confidential Client Information**

- A member in public practice shall not disclose any confidential client information without the specific consent of the client.
- This rule shall not be construed (1) to relieve a member of his or her professional obligations under rules 202 [ET section 202.01] and 203 [ET section 203.01], (2) to affect in any way the member's obligation to comply with a validly issued and enforceable subpoena or summons, or to prohibit a member's compliance with applicable laws and government regulations, (3) to prohibit review of a member's professional practice under AICPA or state CPA society or Board of Accountancy authorization, or (4) to preclude a member from initiating a complaint with, or responding to any inquiry made by, the professional ethics division or trial board of the Institute or a duly constituted investigative or disciplinary body of a state CPA society or Board of Accountancy.
- Members of any of the bodies identified in (4) above and members involved with professional practice reviews identified in (3) above shall not use to their own advantage or disclose any member's confidential client information that comes to their attention in carrying out those activities. This prohibition shall not restrict members' exchange of information in connection with the investigative or disciplinary proceedings described in (4) above or the professional practice reviews described in (3) above.

AICPA's PEEC: Proposed Addition to ET Section 92,

Definitions: "Confidential Client Information"

- **Confidential client information.** Confidential client information is any client information that is not known to be in the public domain or available to the public. Information in the public domain or available to the public includes, but is not limited to:
 - information in a book, periodical, newspaper, or similar publication;
 - information obtained from commercially available databases;
 - information in a client document that has been released by the client to the public or that has otherwise become a matter of public knowledge;
 - information on client Web sites that is available to persons accessing that Web site without restrictions imposed by the client concerning use or access;
 - information maintained by or filed with regulatory or governmental bodies that is available to the public without restriction; or
 - information maintained by or filed with regulatory or governmental bodies that is made available through freedom of information or similar requests filed with and approved by such bodies in accordance with their rules or regulations
- Unless it is known that the particular client information is in the public domain or available to the public, such information should be considered confidential client information.

NASBA/AICPA Uniform Accountancy Act

- **Section 18 - Confidential Communications**
- Except by permission of the client for whom a licensee performs services or the heirs, successors, or personal representatives of such client, a licensee under this Act, shall not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee. Such information shall be deemed confidential, provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting compliance with applicable laws, government regulations or PCAOB requirements, disclosures in court proceedings, in investigations or proceedings under Sections 11 or 12 of this Act, in ethical investigations conducted by private professional organizations, or in the course of peer reviews, or to other persons active in the organization performing services for that client on a need to know basis or to persons in the entity who need this information for the sole purpose of assuring quality control.

State varieties

- **Connecticut:** *“a licensee or any partner, officer, shareholder or employee of a licensee”*
- **Guam:** *“or to other persons active in the organization performing services for that client on a need to know basis”*
- **Maine:** *“licensee in the practice of public accountancy”*

- Mississippi: “engaging a certified public accountant ”
- Missouri: “to other persons active in the organization performing services for that client on a need-to-know basis ”
- Montana: “The information derived from or as a result of professional services is considered confidential and privileged ”
- New Hampshire: “licensee or any partner, officer, member, manager, shareholder, or employee of a licensee”

Non-UAA State Examples

- California: "In the event that confidential client information may be disclosed to persons or entities outside the United States in connection with the services provided, the licensee shall so inform the client in writing and obtain the client's written permission for the disclosure."
- North Carolina: exception for good faith disclosure to federal or state officials if the CPA judges that a crime is being or is likely to be committed.

Other complications

- PCAOB Inspections vs. Peer Reviews
- Alternative Practice Structures
- Network and quasi network
- Defining “confidential information”
- Accounting firm mergers
- Accounting firm breakups
- Departing firm staff

Other complications

- Complying with subpoenas
- Blanket consents to disclosure
- Federal Rule of Evidence 502
- Disposing of Old Client Records
- Computer security violations: 75,000 in one day in 196 countries; 1,095,000 in China in last 6 months of 2009

Thank you!