

EXTRACT FROM EXPOSURE DRAFT (ED) – PROPOSED CHANGES TO OTHER SECTIONS OF THE CODE

The relevant sections have been extracted below from the extant Code. We have used “.....” to indicate places where text has been omitted from these sections. To access the full text of the extant code, see [2012 Handbook of the Code of Ethics for Professional Accountants](http://www.ethicsboard.org) from www.ethicsboard.org.

SECTION 100

[Paragraphs 100.17-18 are from the newly released Conflicts standard:

Conflicts of Interest

100.17 A professional accountant may be faced with a conflict of interest when undertaking a professional activity.¹ A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The professional accountant undertakes a professional activity related to a particular matter for two or more parties whose interests with respect to that matter are in conflict; or
- The interests of the professional accountant with respect to a particular matter and the interests of a party for whom the professional accountant undertakes a professional activity related to that matter are in conflict.

100.18 Parts B and C of this Code discuss conflicts of interest for professional accountants in public practice and professional accountants in business, respectively.]

Ethical Conflict Resolution

100.19 A professional accountant may be required to resolve a conflict in complying with the fundamental principles.

100.20 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process:

- (a) Relevant facts;
- (b) Ethical issues involved;
- (c) Fundamental principles related to the matter in question;
- (d) Established internal procedures; and
- (e) Alternative courses of action.

Having considered the relevant factors, a professional accountant shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the professional accountant may wish to consult with other appropriate persons within the firm or employing organization for help in obtaining resolution.

¹ **New Definition:** Professional Activity: An activity requiring accountancy or related skills undertaken by a professional accountant, including accounting, auditing, taxation, management consulting, and financial management.

- 100.21 Where a matter involves a conflict with, or within, an organization, a professional accountant shall determine whether to consult with those charged with governance of the organization, such as the board of directors or the audit committee.
- 100.22 It may be in the best interests of the professional accountant to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.
- 100.23 If a significant conflict cannot be resolved, a professional accountant may consider obtaining professional advice from the relevant professional body or from legal advisors. The professional accountant generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege. Instances in which the professional accountant may consider obtaining legal advice vary. ~~For example, a professional accountant may have encountered a fraud, the reporting of which could breach the professional accountant's responsibility to respect confidentiality. The professional accountant may consider obtaining legal advice in that instance to determine whether there is a requirement to report.~~
- 100.24 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant shall, ~~where possible unless prohibited by law~~, refuse to remain associated with the matter creating the conflict. The professional accountant shall determine whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

ED Comments

- CICA:² We also note that it is proposed that the final sentence of 100.21 *[now renumbered 100.23]* be deleted. We suggest that it might be more helpful to retain the reference to fraud as an example, but refer to the provisions that address suspected illegal acts for further guidance and retain the reference to seeking legal advice.
- IDW: The text in paragraph 100.21 *[now renumbered 100.23]* that IESBA proposes deleting reflects ISA 250.19, but as far as we are aware has no equivalent for accountants not performing an audit. We do not appreciate why this should be deleted, as the accountant remains free to consider taking legal advice, irrespective of whether any specific reporting requirements or expectations exist.

Matter for IESBA Consideration

The Task Force believes that given the proposed new Sections 225 and 360 that will address matters broader than fraud, it would no longer be appropriate to single out fraud as an example in paragraph 100.23. As a result, the Task Force also believes that the sentence immediately preceding the example

² For the full name of respondents, refer to Appendix 1 of Agenda Item 2-A of the March 2013 IESBA meeting: <http://www.ifac.org/sites/default/files/meetings/files/Agenda%20Item%202-A%20-%20Suspected%20Illegal%20Acts%20-%20Issues%20Paper.pdf>

should also be deleted as it would no longer convey substantive meaning. Accordingly, the Task Force proposes that the paragraph be further amended as follows:

100.23 If a significant conflict cannot be resolved, a professional accountant may consider obtaining professional advice from the relevant professional body or from legal advisors. The professional accountant generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege. ~~Instances in which the professional accountant may consider obtaining legal advice vary.~~

Action Requested

Do IESBA members agree with the Task Force's proposal above?

SECTION 140

Confidentiality

- 140.1 The principle of confidentiality imposes an obligation on all professional accountants to refrain from:
- (a) Disclosing outside the firm, employing organization or the auditor 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 shall maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.
- 140.3 A professional accountant shall maintain confidentiality of information disclosed by a prospective client or employer.
- 140.4 A professional accountant shall maintain confidentiality of information within the firm or employing organization.
- 140.5 A professional accountant shall take 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 shall 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;
- (v) To comply with and ethics requirements contained in Sections 225 and 360 in this Code.

140.8 Sections 225 and 360 describe the circumstances where a professional accountant shall or has a right to override the fundamental principle of confidentiality and disclose a suspected illegal act to an appropriate authority. In other situations, where the professional accountant has discretion in deciding whether to disclose confidential information, relevant factors to consider include:

- 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;
- 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 shall be used in determining the type of disclosure to be made, if any;
- The type of communication that is expected and to whom it is addressed; and
- Whether the parties to whom the communication is addressed are appropriate recipients.

ED Comments

IDW: We do not support the conforming amendments in sections 140.7, 140.8.

Matter for IESBA Consideration

The changes proposed to Section 140 in the ED have now been superseded by the new changes being proposed in the straw man. Do IESBA members agree that no further action is required with respect to that section?

SECTION 150

Professional Behavior

- 150.1 The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession, [for example if a professional accountant is associated with a client or employing organization that acts unethically.](#)
- 150.2 In marketing and promoting themselves and their work, professional accountants shall not bring the profession into disrepute. Professional accountants shall be honest and truthful and not:
- (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
 - (b) Make disparaging references or unsubstantiated comparisons to the work of others.

ED Comments

CICA: We note that several of the “consequential changes” refer to “unethical” behaviour/acts (for example, 150.1, 210.5) as opposed to “suspected illegal” acts. In addition, there appear to be references to a requirement to resign/terminate (for example, 100.22, 210.5, 300.15,) as opposed to a need to consider whether resignation/termination is necessary (225.3, 225.14, 225.19, 225.20, 225.23, 360.3, 360.10, 360.15). These references appear, at least on the surface, to create some uncertainty as to which provisions apply in what circumstances and we suggest reviewing them for consistency and clarity.

FEE: We point out that without a definition of what is “ethical”, “unethical”, it is difficult to fully understand and properly apply some of the proposed changes to the Code. This is evident with the proposed addition on page 25 of the ED in paragraph 150.1. This example and reference to “unethically” is not clarifying but making it more complicated to understand.

ICAEW: ‘association’ is potentially very broad in application. It could be interpreted as preventing professional accountants being employed by any organisation who has ever undertaken a questionable act. Preventing accountants associating with those who act unethically may prevent them being able to eliminate or minimise the act. That would not be in the public interest.

ICAEW: ‘unethical acts’ is also unclear. Would ethical behaviour be measured in line with a corporate/professional code, or against personal values?

IDW: Paragraph 150.1 ought to clarify that unethical behavior referred to in the last sentence is significant and not an isolated matter of a minor nature.

IRBA: Completely disagree – “suspected illegal acts” are completely different from “unethical acts” and should not be used interchangeably.

KPMG: In paragraph 150.1, we are not sure why the example which has been added is needed. Inclusion of a single example of a matter which would affect the good reputation of the profession

may discourage the accountant from considering other instances where the same might apply.

Mazars: We do not support the proposed addition to paragraph 150.1 of the Code. Whether an organisation has acted unethically is not something that a professional accountant is capable of ascertaining without there being a framework to assist in determining what unethical behaviour is.

PKF: In respect of proposed changes that are unrelated to our comments above, we note that the term “unethical behaviour” (and related terms such as “ethics-based culture”) is used and it appears that this term relates to the honesty and decency of the employing organisation or client, rather than its compliance with any rules or standards for conduct or practice. The use of the term “unethical behaviour”, where it relates to honesty and decency, should be defined in the Code as it has different meanings and may be interpreted differently in different jurisdictions.

Matter for IESBA Consideration

An alternative change to paragraph 150.1 has been proposed in the straw man. Given the ED comments above, do IESBA members agree that the change proposed in the ED should be dropped?

SECTION 210

Professional Appointment

Client Acceptance and Continuance

210.1 Before accepting a new client relationship, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behavior may be created from, for example, questionable issues associated with the client (its owners, management or activities).

210.2 ~~Client-Questionable~~ issues associated with the client that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty, ~~or~~ questionable financial reporting practices or other unethical behavior.

210.3 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level.

Examples of such safeguards include:

- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or
- Securing the client's commitment to address the questionable issues, for example through improve corporate governance practices or internal controls.

210.4 Where it is not possible to reduce the threats to an acceptable level, the professional accountant in public practice shall decline to enter into the client relationship.

~~210.5 A professional accountant in public practice shall periodically review whether to continue with a recurring client engagement. Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the professional accountant to decline the engagement had that information been available earlier. A professional accountant in public practice shall, therefore, periodically review whether to continue with a recurring client engagement. For example, a threat to compliance with the fundamental principles may be created by a client's unethical behavior such as improper earnings management or balance sheet valuations. If a professional accountant in public practice identifies a threat to compliance with the fundamental principles, the accountant shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not possible to reduce the threat to an acceptable level, the professional accountant in public practice shall terminate the client relationship.~~

Engagement Acceptance

210.6 The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice to provide only those services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does

not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

210.7 A professional accountant in public practice shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:

- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
- Acquiring knowledge of relevant industries or subject matters.
- Possessing or obtaining experience with relevant regulatory or reporting requirements.
- Assigning sufficient staff with the necessary competencies.
- Using experts where necessary.
- Agreeing on a realistic time frame for the performance of the engagement.
- Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

210.8 When a professional accountant in public practice intends to rely on the advice or work of an expert, the professional accountant in public practice shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

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ED Comments

APESB: Apart from the objections described in this paper and the use of an undefined term "questionable issues" in paragraphs 210.2 and 210.3, APESB agrees with the proposed changes to the existing sections of the Code. Instead of "questionable issues" we propose the use of "matters with the potential to develop into suspected illegal acts".

CICA: Paragraphs 210.9 through 210.13 of the Code address changes in professional appointments and refer the predecessor accountant to the client confidentiality provisions (section 140) of the Code. The client confidentiality provisions include proposed amendments which refer to the proposed suspected illegal acts disclosure provisions. However, it is not clear whether the predecessor accountant has a responsibility to disclose suspected illegal acts to a possible successor accountant in addition to disclosure to an appropriate authority. We suggest that any such obligation should be clarified, preferably within paragraphs 210.9 to 210.13.

EFAA: It appears that the changes proposed to section 210.5 go further than simply to conform to the revisions under this ED. This newly worded paragraph goes further than a conforming amendment and we are concerned about the introduction of this paragraph as it requires the

Professional Accountant to consider unethical behavior such as improper earnings management or balance sheet valuations but does not clarify matters in this regard. Instead it has the effect of making such required determinations even more complicated to understand and therefore less likely to be implemented in the manner that IESBA intended.

GT: We believe the change to paragraph 210.2 referring to “questionable issues associated with the client” would be difficult to put into practice. What is considered “unethical” is greatly influenced by factors such as culture and business practice in a given region. For example, certain activities are viewed as being unethical in one culture/region while acceptable in others. Therefore we believe the Board should consider providing additional guidance or examples as to what constitutes “questionable issues” beyond an illegal act.

IDW: The last sentence of paragraph 210.5 ought to include “unless prohibited by law” in relation to terminating a specific engagement as some appointments may be subject to legal stipulations.

IRBA: Section 210.2 and 210.5: disagree with the proposed changes - “suspected illegal acts” are completely different from “unethical acts” and should not be used interchangeably.

PwC: We believe that the last paragraph of Section 210.5 should be amended by adding the bolded language as follows: “Where it is not possible to reduce the threat to an acceptable level, the professional accountant in public practice shall **consider termination** of the client relationship.” Termination of current contractual obligations involve serious considerations of potential legal, regulatory and reputational risks and harm both to the professional accountant, the company and its shareholders, and therefore we do not believe that it is appropriate for the code to mandate termination of the contractual relationship.

Matters for IESBA Consideration

Given the ED comments above, the Task Force proposes the following changes to the ED wording:

210.1 Before accepting a new client relationship, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behavior may be created from, for example, ~~questionable~~ issues associated with the client (its owners, management or activities)- ~~210.2 Questionable issues associated with the client~~ that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, or questionable financial reporting practices ~~or other unethical behavior~~.

210.5 Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the professional accountant to decline the engagement had that information been available earlier. A professional accountant in public practice shall, therefore, periodically review whether to continue with a recurring client engagement. For example, a threat to compliance with the fundamental principles may be created by a client’s unethical behavior such as improper earnings management or balance sheet valuations. If a professional accountant in public practice identifies a threat to compliance with the fundamental principles, the accountant shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not

possible to reduce the threat to an acceptable level, the professional accountant in public practice shall consider terminating the client relationship where termination is not prohibited by law or regulation.

Action Requested

IESBA members are asked whether they agree with the Task Force's proposals above.

SECTION 300

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300.5 A professional accountant in business may hold a senior position within an organization. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A professional accountant in business is expected, therefore, to encourage an ethics-based culture in an employing organization that emphasizes the importance that senior management places on ethical behavior. Established ethics policies and whistle-blowing procedures that have been communicated to all employees may be useful to achieve the objective of establishing and maintaining an ethics-based culture. Such procedures help to encourage ethical behavior and increase the likelihood of senior management being alerted to a problem in time to prevent serious damage.

300.6 A professional accountant in business shall not knowingly engage in any business, occupation, or activity that-:

- Would be incompatible with the professional accountant's responsibility to act in the public interest.
- A reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, impairs or might impair integrity, objectivity or the good reputation of the profession, ~~and as a result would be incompatible with the fundamental principles.~~

Examples include improper earnings management or balance sheet valuations.

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300.15 ~~In circumstances where a~~ professional accountant in business believes that unethical behavior ~~or actions by others will continue to have~~ occurred within the employing organization, the professional accountant shall discuss the matter with the appropriate level of management. If the response to the matter is not appropriate, the professional accountant shall escalate the matter to higher levels of management to the extent possible. If the response is still not appropriate, the professional accountant shall discuss the matter with those charged with governance, if possible. If, in the professional accountant's judgment, the response to the matter is not appropriate, the professional accountant in business may consider consulting with a relevant professional body on an anonymous basis or obtaining legal advice. ~~In those extreme situations where all available safeguards have been exhausted and it is not possible to reduce the threat to an acceptable level, a professional accountant in business and~~ may conclude that it is appropriate to resign from the employing organization.

ED Comments

AAA: In sections discussing professional accountants employed in business, there appears to be a conflict in the message. For example, section 300.5 states "Established ethics policies and whistle-blowing procedures that have been communicated to all employees may be useful to achieve the objective of establishing and maintaining an ethics-based culture. Such procedures help to encourage ethical behavior and increase the likelihood of senior management being alerted to a problem in time to prevent serious damage." This appears to authorize professional

accountants to use anonymous hotlines to communicate the existence of illegal activities. However, section 300.15 requires “professional accountant shall discuss the matter with the appropriate level of management. If the response to the matter is not appropriate, the professional accountant shall escalate the matter to higher levels of management to the extent possible.” This precludes anonymous reporting by these professionals.

IDW: Paragraph 300.6 introduces the notion that a professional accountant in business (PAIB) has a duty to act in the public interest. The current Part C of the Code relating to PAIBs does not specify this. Indeed Section 300 discusses the various facets of responsibility from external parties to the employing organization and to the profession as a whole. The proposed changes may lead to confusion; we suggest in place of the phrase “public interest” this text be aligned to the rest of Section 300.

IDW: Paragraph 300.15 essentially lowers the threshold above which accountants in business might need to resign from their employment from one of continual unethical behavior to a one-off occurrence. This whole issue needs to be handled more sensitively by IESBA. Resignation may be impossible for personal reasons. Threats to the accountant’s person or to others also need to be addressed, as do issues such as whether escalating the matter may mean “tipping-off” the perpetrator.

IDW: In our opinion, stating that unethical behavior constituted improper earnings management or balance sheet valuations (paragraphs 210.5 and 300.6) is highly problematical. These are issues that need to be addressed by accounting standard setters. The audit implications are already covered appropriately by ISA 240. Generalization in the manner proposed is not helpful as regards public perception, since in every case the individual circumstances need to be taken into account by the auditor.

KPMG: In paragraph 300.6, we believe the requirement for the accountant to act in the public interest has already been adequately set out in paragraphs 100.1 and 100.6 of the IESBA Code, and the reference here is not needed. Further, we do not agree with the inclusion of improper earnings management or balance sheet valuations as examples of matters that would lead the professional accountant to not engage in a business, occupation or activity. This is not consistent with the ISAs which consider these matters as indicators of management bias that need to be further investigated and addressed by the auditor.

PwC: We do not understand the additional language “Examples include improper earnings management or balance sheet valuations” in Section 300.6 and strongly suggest it be deleted. These random examples are neither informative nor necessary to make or amplify this requirement.

PwC: With respect to Section 300.15, we do not believe that it is appropriate to suggest that professional accountants consult with professional bodies on an “anonymous basis”. Anonymity cannot relieve the accountant of confidentiality obligations. We suggest that the provision be limited to obtaining legal advice, where confidentiality would be maintained.

Matter for TF Consideration

Suggested changes to the ED wording in light of the ED comments above:

300.6 A professional accountant in business shall not knowingly engage in any business, occupation, or activity that:

- ~~Would be incompatible with the professional accountant's responsibility to act in the public interest.~~
- A a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, impairs or might impair the professional accountant's integrity or, objectivity, or the good reputation of the profession.

~~Examples include improper earnings management or balance sheet valuations.—~~

300.15 If a professional accountant in business believes that unethical behavior or actions by others will continue to has occurred within the employing organization, the professional accountant ~~shall discuss the matter with the appropriate level of management. If the response to the matter is not appropriate, the professional accountant shall escalate the matter to higher levels of management to the extent possible. If the response is still not appropriate, the professional accountant shall discuss the matter with those charged with governance, if possible. If, in the professional accountant's judgment, the response to the matter is not appropriate, the professional accountant may consider consulting with a relevant professional body on an anonymous basis or obtaining legal advice. In those extreme situations where all available safeguards have been exhausted and it is not possible to reduce the threat to an acceptable level, a professional accountant ~~and~~~~ may conclude that it is appropriate to resign from the employing organization.

Action Requested

IESBA members are asked whether they agree with the Task Force's proposals.