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Via email to janmunro@ethicsboard.org

December 12, 2012

Re: Response to Proposed Exposure Draft
International Ethics Standards Board for Accountants
Responding to a Suspected Illegal Act

Dear Ms. Munro, IESBA Deputy Director:

The California Society of CPA's Committee on Professional Conduct reviewed the above Exposure Draft. We provide the following observations and comments for consideration responding to the IESBA's exposure draft. Our comments reflect our concern if this International standard is imposed on our members.

CONFIDENTIALITY

The principle of confidentiality is fundamental to our code of professional conduct in the U.S. Disclosure of client information cannot be made without their consent. This is a long honored tenet our clients have come to expect. Current standards allow disclosure with the clients consent or pursuant to court order. There is, and should be, a high burden on the accountant who discloses confidential information. The proposed standard does not meet this high burden and should not be adopted.

ILLEGAL ACTS

Identifying illegal acts is central to the proposed standard. The determination of illegal acts in the US is determined by attorneys and courts. While auditors or CPAs serving as expert witnesses provide evidence of the occurrence of an illegal act they do not express an opinion as to the actual legality of a given set of transactions or behaviors. To do so would likely constitute the improper practice of law by the accountant. Accountants would also be required to disclose "suspected" illegal acts. Disclosure of a suspected illegal act which is later determined to be appropriate could expose accountants to lawsuits for slander with damages.

A basic requirement of a criminal (illegal) act is Scienter (intent or knowledge of wrongdoing). That is the purview of attorneys and ultimately the trier of fact. While CPAs may be necessary to develop the evidence to establish Scienter would this standard obligate CPAs to opine on this legal issue? The proposed standard states: "The proposal would require a professional accountant when

encountering a suspected illegal act to **take reasonable steps to confirm or dispel** the suspicion and to discuss the matter with the appropriate level of management." If the accountant is discharged from the engagement then information necessary to confirm or dispel suspicion will not be available. If this becomes habit by companies suspected of illegal acts it may actually produce a result opposite of the intent of the proposed standard.

DISCLOSE TO AN APPROPRIATE AUTHORITY

The proposed standard states "The ultimate determination of whether it is in the public interest to take action against those who committed the act should be made by the appropriate authority and not the professional accountant. It is therefore appropriate to require the accountant to disclose the matter to provide the authority with notification such that it can then investigate the matter further and determine whether action should be taken against those who committed the act." The term "appropriate authority" pervades the proposed standard. The requirement of disclosure by employed accountants disclosing their suspicions to the outside auditors has merit. But disclosure outside the company executives or board of directors should not be required particularly by outside auditors without legislative protection and immunity for the disclosure.

REGULATORY AUTHORITIES IN VARIOUS STATES

If the proposed ruling were imposed on California accountants it is uncertain how the current regulations would affect our CPAs. Federal regulations would no doubt require modification to increase disclosure by accountants while protecting them while they will meet their obligations under the standard.

Respectfully Submitted

Dennis A. Young, CPA

Chair, Committee on Professional Conduct