

December 14, 2012

International Ethics Standards Board for Accountants
545 Fifth Avenue, 14th Floor
New York, New York 10017

Re: *Exposure Draft: Responding to a Suspected Illegal Act*

Dear Members of the International Ethics Standards Board for Accountants:

We appreciate the opportunity to provide comments on the proposed changes to the *Code of Ethics for Professional Accountants* (“Code”) as described in the Exposure Draft (“ED”) issued August, 2012 by the International Ethics Standards Board for Accountants (“IESBA” or “Board”). The proposed revision of the Code addresses circumstances where the fundamental principle of confidentiality may be, or is required to be, overridden when the professional accountant suspects an illegal act.

We strongly believe the Board should not proceed with the adoption of any final standard where a professional accountant is required to disclose a suspected illegal act to an “appropriate authority” or the external auditor. The imposition of such reporting requirements is a matter to be considered by legislators and regulators who have the authority to establish mandatory whistleblowing requirements and importantly, the ability to provide the necessary legal protections to accompany such requirements.

General Comments

We support the IESBA’s initiative to consider the Code’s provisions regarding the fundamental principle of confidentiality and the actions the professional accountant should take when suspecting an illegal act. We believe that additional practical guidance beyond what is currently contained in Section 140 of the Code would be beneficial to professional accountants and in the public interest. However, the standard as proposed in this ED goes far beyond providing practical guidance.

We believe the standard as proposed is fundamentally flawed in mandating circumstances when suspected illegal acts must be reported by the professional accountant to an “appropriate authority” or to the entity’s external auditor. The proposal also provides that in certain circumstances, the professional accountant has a right to disclose a suspected illegal act to an

appropriate authority.¹ However, as explained more fully below, because the proposed revisions to the Code expressly provide that the professional accountant is expected to exercise that right, a de facto requirement is created. Consequently, references in our response to the mandatory requirement to disclose includes the de facto requirement created where the professional accountant has a right to disclose the matter to the appropriate authority and is expected to exercise that right. We do not believe any mandatory reporting requirements – whether express or de facto – are appropriate for the reasons stated below.

We support an approach whereby the Code would provide practical guidance on the steps the professional accountant should consider when encountering a suspected illegal act, which may include communicating the matter to the client’s management or the professional accountant’s employer, including when appropriate, to those charged with governance. Such guidance would not include any requirement for the professional accountant to report a suspected illegal act to an appropriate authority. We strongly believe the obligation to disclose a suspected illegal act to an appropriate authority lies with management and those charged with governance, not with the professional accountant.

The IESBA should not include in the Code mandatory requirements to disclose suspected illegal acts to an appropriate authority or the external auditor.

We are strongly supportive of the efforts in many countries to reduce fraud and other illegal behavior by adopting what are commonly referred to as “whistleblowing” provisions. We believe such enforcement efforts by governments to improve compliance with laws and regulations are prudent. However, in our view, the imposition of requirements on professional accountants to disclose suspected illegal acts best rests with national legislators and regulators who are in a better position to consider such requirements in the context of their legal systems and regulatory regimes. To the extent legislators and regulators deem it necessary to impose whistleblowing requirements on auditors, or even more broadly on all professional accountants, they should adopt laws and regulations containing such requirements, along with appropriate protections. The IESBA should not be used as a vehicle to try to accomplish this and cannot, in our view, be effective in doing so.

Significantly, the Organisation for Economic Co-operation and Development (“OECD”) issued an anti-bribery recommendation in 2009 designed to strengthen efforts to prevent, detect and investigate foreign bribery. The adoption of the OECD Recommendation occurred after a working group (1) reviewed the existing OECD Anti-Bribery Convention², (2) met with “more than 30 representatives of civil society, the private sector, multi-lateral institutions

¹ See proposed paragraphs 225.18, 225.19, and 360.9.

² “The OECD Anti-Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the ‘supply side’ of the bribery transaction.” <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/oecdconventiononcombatingbriberyofforeignpublicofficialsininternationalbusinesstransactions.htm>

and the legal profession”³, and (3) reviewed comments on a consultation paper received from 35 interested stakeholders. Of particular relevance here are the following recommendations made by the OECD concerning disclosure by the external auditor of suspected acts of bribery:

- Member countries should require the external auditor who discovers indications of a suspected act of bribery of a foreign public official to report this discovery to management and, as appropriate, to corporate monitoring bodies.
- Member countries should encourage companies that receive reports of suspected acts of bribery of foreign public officials from an external auditor to actively and effectively respond to such reports.
- Member countries should consider requiring the external auditor to report suspected acts of bribery of foreign public officials to competent authorities independent of the company, such as law enforcement or regulatory authorities, and **for those countries that permit such reporting, ensure that auditors making such reports reasonably and in good faith are protected from legal action.** (emphasis added)

The 34 OECD member countries and five non-member countries - Argentina, Brazil, Bulgaria, Russia, and South Africa - agreed to put in place new measures to reinforce their efforts to prevent, detect and investigate foreign bribery consistent with the 2009 OECD Recommendation.⁴

It is striking to compare and contrast not only the extent of the OECD and IESBA research and consultation processes, but also the OECD’s fundamentally different approach from that followed in the proposed standards issued by the Board. Most importantly, the OECD recommends member countries consider requiring disclosures by the external auditor to external authorities only if the auditor is provided the necessary legal protections.

The IESBA cannot provide professional accountants with the necessary legal protections against the potential consequences of disclosure of suspected illegal acts.

Many countries have improved compliance with laws and regulations by adopting provisions either encouraging or in some cases mandating that certain matters be reported. Auditors in particular are required under certain circumstances to report suspected illegal acts in a number of countries, including the US, UK, and South Africa, among others. Accompanying these requirements are often legal protections the Board is simply unable to grant.⁵

³ <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/reviewofocdanti-briberyinstrumentspublicconsultation.htm>

⁴ <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/oecdconventiononcombatingbriberyofforeignpublicofficialsininternationalbusinesstransactions.htm>

⁵ For example, Section 10A(c) of the Securities Exchange Act of 1934 provides “[n]o registered public accounting firm shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rule promulgated pursuant thereto.”

The Board recognizes there may be “exceptional circumstances” where the professional accountant would not be required to disclose the suspected illegal act, but they are very limited and ineffective in dealing with our fundamental concerns. Proposed paragraph 225.14 provides that “[w]here the consequences of disclosure for the professional accountant or others are of a commercial nature, such as the potential loss of a client or income, this would not constitute exceptional circumstances.” Thus, it seems the Board did not intend this exception to cover concerns about the potential litigation costs the professional accountant might face as a result of complying with the proposal’s requirements that lack any legal protections.

Professional accountants will rarely know with certainty that an illegal act has in fact taken place. As a result, under any mandatory reporting regime, professional accountants will be required to potentially spend significant time investigating suspected illegal acts and then report acts that while suspected, may in the end turn out not to have violated the law. Without adequate legal protections, this will expose professional accountants to damage claims from such reporting. Some jurisdictions tend to be more litigious than others. In such jurisdictions, clients, shareholders or the subject of the report, who may believe the professional accountant caused harm by disclosing a suspected illegal act that perhaps turns out not to be, may sue the professional accountant for damages. Professional accountants might also be sued for failing to identify or report to an appropriate authority a suspected illegal act. The threat of litigation would not seem to qualify as an “exceptional circumstance” contemplated under paragraph 225.14; yet the cost and associated burden of defending against such lawsuits could be quite significant, as could be the brand damage involved in the process.

Notwithstanding these concerns, we appreciate that the professional accountant in public practice who provides audit services must comply with International Standards on Auditing (“ISA”). In particular, ISA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*, covers the actions an auditor must take when a suspected illegal act has been identified. We fully support this standard which is designed to determine that the auditor acts in the public interest. Moreover, in our view, the IAASB is better positioned to determine what steps are appropriate for auditors when encountering a suspected illegal act and the Code should not go beyond what is required of auditors under the ISAs.

The proposal places investigatory requirements on professional accountants that are inappropriate.

As noted, we agree with the requirements set forth in ISA 250 that auditors must follow when non-compliance or suspected non-compliance with laws and regulations has been identified. However, under the proposal, all professional accountants identifying a suspected illegal act, must take steps “to confirm or dispel the suspicion” and subsequently determine the appropriateness of the response by management. The proposal does not address many challenges that could prevent the professional accountant from meeting the investigatory requirements, including but not limited to:

- The professional accountant may be asked to undertake investigations without having the requisite expertise or experience to perform.
- The professional accountant may be required to report an act that he or she was not able to reasonably evaluate, which may expose the professional accountant to liability from which the professional accountant is not protected.
- The data source of the issues in question may be protected by legal privilege.
- The professional accountant is not an attorney and yet the proposed standard calls for legal interpretations. Illegal acts are not defined in the ED and would therefore require an understanding of local, national and international laws and regulations.
- The professional accountant may no longer be involved with the engagement by the time that management completes its evaluation and response.
- The evaluation of management's response may require a legal interpretation of the steps taken and it is not clear who would provide that interpretation.

The proposal fails to provide practical guidance on key concepts.

The proposal provides that the professional accountant who suspects an illegal act is required to “take reasonable steps to confirm or dispel that suspicion.” If the professional accountant cannot dispel the suspicion, the professional accountant is required to discuss the matter with the appropriate level of management, escalating the matter if necessary. If the professional accountant determines the illegal act “is of such consequence that disclosure to an appropriate authority would be in the public interest”, the professional accountant is required to advise the client to disclose the matter. The proposal elaborates on these requirements; however, we find the commentary unhelpful, as the professional accountant is left with the challenge of answering many questions, including the following:

- What are considered “reasonable steps”?
- How can the suspicion be dispelled without the expertise of a lawyer?
- Is the level of suspicion required to be totally dispelled before the professional accountant can conclude that disclosure to management is unnecessary?
- Must any suspected illegal act be investigated and communicated to management, regardless of materiality or significance?
- When is a suspected illegal act “of such consequence” that disclosure is required?
- How can a determination be made as to what is in the “public interest” when the views of reasonable and informed third parties may differ?

The proposal also fails to address what we believe will likely be significant cross-border complexities given the confidentiality and privacy laws in many countries. It will result in inconsistent application and risks, even with respect to reporting a particular suspected illegal act.

As noted, we support the Board's undertaking of a project to provide practical guidance when a professional accountant encounters a suspected illegal act; however, for the guidance to be helpful and provide for consistent interpretation and application, much greater clarity is required.

The proposal sets de facto requirements to disclose that are inappropriate.

Under the proposal, when a professional accountant providing professional services to a non-audit client has notified the external auditor of a suspected illegal act and the response continues to be inappropriate, the accountant has a right to disclose the matter to an appropriate authority but "is expected to exercise this right in order to fulfill the accountant's responsibility to act in the public interest." Similar language is contained in the proposal applicable to public accountants in business. We object to these provisions for several reasons.

First, by stating that a professional accountant is expected to act a certain way, a de facto standard is potentially created. The burden shifts to the professional accountant to justify why he or she did not exercise the right to disclose. Second, the assumption in these requirements is that the public interest served by public reporting trumps all other interests in all circumstances. Certainly the professional accountant should in all cases consider the public interest, which is particularly relevant when the professional accountant provides assurance services, along with other interests. However, other interests the professional accountant should consider may be equally as or more important than the public interest, such as the duty to the client, contractual arrangements, and compliance with laws, regulations and professional standards.

The proposal overturns the long-standing duty of confidentiality without due consideration of the consequences.

Professional accountants in public practice have long had a duty to their clients of maintaining confidentiality, as covered in Section 140 of the Code. Professional accountants in business have had a similar duty to their employers. The proposed changes to the Code could, in our view, have a dramatic impact on the relationship between professional accountants and their clients or employers, as the case may be. Moreover, the change could result in harming rather than helping the public. For example, a client may be less forthcoming when providing information to the professional accountant for fear such information will be disclosed externally. This consequence would be of particular concern in the case of audit services where candid communications between the client and the auditor are essential. Such an outcome could negatively impact audit quality and the quality of financial reporting, which would not be in the public interest. Although it is difficult to anticipate the consequences of this proposal on the client/employer relationship with the professional accountant, we believe they could be significant. The Board does not seem to have given sufficient consideration to the impact of making such a significant change to the professional accountant's duty of confidentiality.

Another example of where the proposed changes to the Code could have a dramatic impact on the relationship between professional accountants and their clients is when forensic accountants are hired to investigate suspected illegal acts. In these cases, forensic accountants are often retained through an attorney in order to preserve attorney-client privilege and perform certain procedures and factually report observations. The professional accountants typically do not make judgments about the suspected illegal acts or whether the “response to the matter is appropriate”. These judgments are made by the engaging attorney. The proposed changes to the Code could not only impact the scope of the work that professional accountants currently perform, but they could also result in situations where the professional accountants could be required under the Code to disclose privileged information, which would conflict with ethical responsibilities that attorneys have with respect to their clients and may be inconsistent with the very purpose of the forensic engagement.

The proposed changes potentially create conflicts between the professional standards with which many professional accountants must comply.

The proposed changes to the Code, if adopted, will likely create conflicts with the confidentiality and privacy laws, regulations, rules or standards in the countries in which professional accountants practice. The Board might argue that this is a non-issue because of language in the Preface and paragraph 100.1 of the Code, providing that if a member body, firm or professional accountant is prohibited from complying with certain parts of the Code by law or regulation, they shall comply with all other parts of the Code. However, the need to comply with provisions of the Code is only waived in the case of conflicts with law or regulation.

Moreover, there are various situations where it provides no protection at all. Consider for example the case where a professional accountant belongs to more than one professional body, including one which happens to be a member body of IFAC (e.g., an accountant who is also a lawyer, valuation specialist, forensic auditor, internal auditor, or management accountant). This is not uncommon for professional accountants, particularly those providing a wide range of non-assurance services. To the extent the other professional body has adopted ethics standards, it is highly likely such standards include a duty of confidentiality to the client, thereby creating a conflict with the standards of the IFAC member body that adopts the IESBA’s proposal. The professional accountant would be put in the position of violating other professional standards to which he or she is subject in order to comply with the IESBA’s proposal. The exception for situations where there is a conflict with law or regulation would not be applicable.

Moreover, the Preface provides:

“Some jurisdictions may have requirements and guidance that differ from those contained in this Code. Professional accountants in those jurisdictions need to be aware of those differences and comply with the more stringent requirements and guidance unless prohibited by law or regulation.”

In our example, how is the professional accountant who encounters a suspected illegal act to decide which is the more stringent requirement – the confidentiality requirement imposed by the “non-IESBA” professional standards that the professional accountant is required to comply with or the proposed IESBA requirement to override the confidentiality provision and disclose a suspected illegal act to an appropriate authority or the external auditor? Such a conflict would put the professional accountant in an untenable position.

If adopted as proposed, there may be a detrimental impact on convergence.

The IESBA’s stated objective in its Terms of Reference “is to serve the public interest by setting high-quality ethics standards for professional accountants and by facilitating the convergence of international and national ethics standards, thereby enhancing the quality and consistency of services provided by professional accountants throughout the world and strengthening public confidence in the global accounting profession.” Clearly, convergence of international and national ethics standards is a key objective of the IESBA and we share the view that convergence of international and national ethics standards is highly desirable.

Given our understanding of the diversity of views on this proposal, we believe that it is possible that some member bodies of IFAC (and possibly a significant number) will decide not to adopt the proposal to require disclosure of suspected illegal acts to an appropriate authority or the external auditor for many of the reasons stated above. We understand that the exposure draft process affords member bodies with the opportunity to express their views. We urge the Board to carefully consider these views before finalizing standards that if not adopted by member bodies, would hinder rather than foster convergence.

The IESBA has failed to comply with “IFAC’s Standards-Setting Public Interest Activity Committees Due Process and Working Procedures”

In promulgating international standards, IFAC’s standards-setting bodies, including the IESBA, must follow certain due process and working procedures. Before commencing a project, a proposal is prepared based on research and on appropriate consultation within the Board. Consideration must be given to the costs and benefits of the anticipated output of the proposed project. We believe the IESBA has failed to follow the required due process procedures for several reasons.

The project proposal adopted by the Board and the objective of the project posted on the IFAC website state as follows:

This project will include:

- (a) Revisions to Section 140 *Confidentiality* to provide additional practical guidance to professional accountants on how to respond when encountering a suspected fraud or illegal act;

(b) A new section in Part B to provide practical guidance for professional accountants in public practice on how to respond when encountering a suspected fraud or illegal act; and

(c) A new section in Part C to provide practical guidance for professional accountants in business on how to respond when encountering a suspected fraud or illegal act.

We note that the ED goes well beyond providing practical guidance. We don't believe adopting mandatory requirements for reporting suspected illegal acts to appropriate authorities or the external auditor can be equated with providing additional guidance for professional accountants when encountering such acts. Thus, the outcome of this project seems to go far beyond its stated scope.

We believe that should the Board desire to continue exploring mandatory reporting to external parties, it needs to conduct a true impact analysis, addressing costs and benefits of mandatory versus permissive whistleblowing provisions, as well as a study of the whistleblowing provisions that exist in many countries. We do not believe the explanatory memorandum contains evidence that sufficient research and analysis had been completed to support the proposal.

We also believe the Board needs to seek input from many "appropriate authorities" before considering a standard that would ostensibly require action on their part to respond to such reporting. The proposal appears to be based on the assumption that appropriate authorities desire such reporting and have the processes and procedures in place for dealing with information disclosed by professional accountants. We believe there may be many cases where the authorities would not welcome such disclosures and/or do not have the resources to deal with such reporting. Therefore, by mandating disclosure of suspected illegal acts, the Board may be creating an expectation gap between what the public expects will be done by the appropriate authority with the disclosed information on suspected illegal acts and what in fact will be done.

Specific Comments

Given our overarching concerns with the approach taken in the ED, we believe the Board should re-evaluate its proposal with a view toward providing more useful practical guidance and eliminating mandatory reporting requirements. Nevertheless, below we provide responses to many of the detailed questions posed in the ED which we hope will inform the Board considerations.

1. Do respondents agree that if a professional accountant identifies a suspected illegal act, and the accountant is unable to dispel the suspicion, the accountant should be required to discuss the matter with the appropriate level of management and then escalate the matter to the extent the response is not appropriate? If not, why not and what action should be taken?

In our view, professional accountants performing an audit currently must comply with the ISAs. We believe the ISAs set the appropriate standard which should not be overridden by the IESBA Code. Professional accountants who learn of a suspected illegal act while performing services not governed by the ISAs should have an obligation to consider, among other things, whether disclosure to the appropriate level of management is appropriate taking into account the particular facts and circumstances, including any laws or regulations governing disclosure in the particular jurisdiction. We also believe the ordering of the disclosures should clearly begin with management and then to the governing body as needed.

2. Do respondents agree that if the matter has not been appropriately addressed by the entity, a professional accountant should at least have a right to override confidentiality and disclose certain illegal acts to an appropriate authority?

No. For the reasons stated in our general comments above, we believe the obligation to disclose suspected illegal acts to an appropriate authority rests with management and those charged with governance. A right to disclose that includes an expectation that such right will be exercised creates a de facto requirement to disclose, which we do not support.

3. Do respondents agree that the threshold for reporting to an appropriate authority should be when the suspected illegal act is of such consequence that disclosure would be in the public interest? If not, why not and what should be the appropriate threshold?

No. For the reasons stated in our general comments above, we do not believe the Code should require the reporting of suspected illegal acts to an appropriate authority. Moreover, this question seems to presume that there is a correlation between the significance of the suspected illegal act and the extent of the public interest, i.e., the greater the consequence of the suspected illegal act, the greater the public interest. We do not support that presumption. The “in the public interest” standard set out in the ED, “consideration of the nature and magnitude of the matter, including the number of people that could be affected by the suspected illegal act and the extent to which those people could be affected,” is vague, as we noted above, and could be read to require the accountant to exercise judgment in areas beyond his or her professional expertise.

Matters specific to professional accountants in public practice (Section 225 of the Code)

4. Do respondents agree that the standard for a professional accountant in public practice providing services to an audit client should differ from the standard for a professional accountant in public practice providing services to a client that is not an audit client? If not, why not?

Professional accountants in public practice who provide audit services are required to perform the engagement in accordance with the ISAs and all local and national standards. As noted, the issue of suspected illegal acts and the actions the auditor should take are addressed in the ISAs, which we fully support. We do not believe the Code is the appropriate place to draw

distinctions between the ethics standards that apply when the client is an audit client versus those that apply to non-audit clients (other than independence standards for obvious reasons).

5. Do respondents agree that an auditor should be required to override confidentiality and disclose certain suspected illegal acts to an appropriate authority if the entity has not made adequate disclosure within a reasonable period of time after being advised to do so? If not, why not and what action should be taken?

No, for the reasons stated above. We believe the auditor should follow the requirements in the ISAs. Management and those charged with governance are responsible for determining whether suspected illegal acts get reported to appropriate authorities.

6. Do respondents agree that a professional accountant providing professional services to an audit client of the firm or a network firm should have the same obligation as an auditor? If not, why not and what action should be taken?

Yes, although we do not agree with the obligations stated in the ED. We believe the Code should include guidance for the professional accountant when encountering a suspected illegal act and that guidance need not vary based on the nature of the professional services provided.

7. Do respondents agree that the suspected illegal acts to be disclosed referred to in question 5 should be those that affect the client's financial reporting, and acts the subject matter of which falls within the expertise of the professional accountant? If not, why not and which suspected illegal acts should be disclosed?

No, because we do not believe disclosure should be required for the reasons stated in our general comments.

8. Do respondents agree that a professional accountant providing professional services to a client that is not an audit client of the firm or a network firm who is unable to escalate the matter within the client should be required to disclose the suspected illegal act to the entity's external auditor, if any? If not, why not and what action should be taken?

No. We disagree with any requirement to disclose a suspected illegal act to the external auditor for the reasons stated above. Moreover, disclosure to the external auditor may be in violation of a duty the accountant has to the client, including contractual arrangements between the accountant and client.

9. Do respondents agree that a professional accountant providing professional services to a client that is not an audit client of the firm or a network firm should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority and be expected to exercise this right? If not, why not and what action should be taken?

No. For the reasons stated in our general comments above, we believe the obligation to disclose suspected illegal acts to an appropriate authority rests with management and those charged with governance. A right to disclose that includes an expectation that such right will be exercised creates a de facto requirement to disclose, which we do not support.

10. Do respondents agree that the suspected illegal acts to be disclosed referred to in question 9 should be those acts that relate to the subject matter of the professional services being provided by the professional accountant? If not, why not and which suspected illegal acts should be disclosed?

As noted in our response to question 9, we do not support any standard indicating that a professional accountant is expected to exercise a right to disclose. However, in terms of reporting suspected acts to management, we would not necessarily limit consideration to only those suspected illegal acts relating to the subject matter of the professional services. The professional accountant could learn of a suspected illegal act unrelated to the professional services being provided during the course of the engagement.

Matters specific to professional accountants in business (Section 360 of the Code)

11. Do respondents agree that a professional accountant in business who is unable to escalate the matter within the client or who has doubts about the integrity of management should be required to disclose the suspected illegal act to the entity's external auditor, if any? If not, why not and what action should be taken?

No. We disagree with any requirement to disclose a suspected illegal act to the external auditor for the reasons stated above. Moreover, disclosure to the external auditor may be in violation of a duty the accountant has to the client or contractual arrangements between the accountant and client.

12. Do respondents agree that a professional accountant in business should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority and be expected to exercise this right? If not, why not and what action should be taken?

No. For the reasons stated in our general comments above, we believe the obligation to disclose suspected illegal acts to an appropriate authority rests with management and those charged with governance. A right to disclose that includes an expectation that such right will be exercised creates a de facto requirement to disclose, which we do not support.

13. Do respondents agree that the suspected illegal acts to be disclosed referred to in question 12 above should be acts that affect the employing organization's financial reporting, and acts the subject matter of which falls within the expertise of the professional accountant? If not, why not and which suspected illegal acts should be disclosed?

No. We do not support any standard indicating that a professional accountant is expected to exercise a right to disclose. However, with respect to disclosing a suspected illegal act to an appropriate person within the employer's organization, we would not necessarily limit consideration to only those suspected illegal acts relating to the employing organization's financial reporting or the subject matter that falls within the expertise of the professional accountant. Depending on the particular facts and circumstances, the professional accountant might encounter a suspected illegal act outside of his or her area of expertise where reporting the matter to his or her employer seems the appropriate course of action.

Other

14. Do respondents agree that in exceptional circumstances a professional accountant should not be required, or expected to exercise the right, to disclose certain illegal acts to an appropriate authority? If not, why not and what action should be taken?

We are not responding to this question because we do not agree with the requirement to disclose.

15. If respondents agree that in exceptional circumstances a professional accountant should not be required, or expected to exercise the right, to disclose certain illegal acts to an appropriate authority, are the exceptional circumstances as described in the proposal appropriate? If not, how should the exceptional circumstances be described?

We are not responding to this question because we do not agree with the requirement to disclose.

16. Do respondents agree with the documentation requirements? If not, why not and what documentation should be required?

No. We strongly oppose the documentation requirements set forth in the ED. Clearly, it is important for the professional accountant when performing professional services to comply with the standards covering the provision of such services, including any documentation standards. When providing audit services, for example, the auditor should comply with the documentation standards in the ISAs. It is also important for firms to comply with the documentation requirements in ISQC 1. Whereas it is appropriate to include documentation requirements in these standards, we do not believe it is appropriate to have documentation requirements in an ethics code, a point we have made in response to the exposure drafts on proposed changes to Sections 290 and 291 of the Code.

We do not believe the proposed documentation requirements appropriately fall within the IEBSA's purview of promulgating ethics standards. At most, if the Board were to adopt additional guidance (not requirements) for professional accountants when encountering suspected illegal acts, the only reference to documentation we would support would be something along the lines of the statement in paragraph 100.20 of the Code, which provides

“[i]t 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.”

17. Do respondents agree with the proposed changes to the existing sections of the Code? If not, why not and what changes should be made?

As we hope that the Board, after consideration of our overarching concerns with the approach taken in the ED, will reissue a significantly revised proposal, we believe it is premature to provide specific drafting suggestions at this time. We would welcome the opportunity to provide specific drafting suggestions on a revised proposal.

18. Do respondents agree with the impact analysis as presented? Are there any other stakeholders, or other impacts on stakeholders, that should be considered and addressed by the IESBA?

For the reasons stated above, we believe the IESBA’s impact analysis has not sufficiently considered the ramifications or costs of this proposal, nor the fundamental changes in the nature of the relationship that professional accountants in public practice may have with their clients and that professional accountants in business may have with their employers, if this standard were to be adopted as proposed.

* * *

We would be pleased to discuss our comments with members of the IESBA or its staff. If you wish to do so, please feel free to contact Chuck Horstmann, Managing Director of Global Independence and Global Chief Ethics Officer, at (212) 492-3958.

Sincerely,

Deloitte Touche Tohmatsu Limited

Deloitte Touche Tohmatsu Limited