



The Association of  
Accountants and  
Financial Professionals  
in Business

December 13, 2012

To: International Ethics Standards Board for Accountants

Subject: Comments on the "Proposed Changes to the Code of Ethics for Professional Accountants Responding to a Suspected Illegal Act"

The IMA<sup>®</sup> (Institute of Management Accountants) Committee on Ethics appreciates the opportunity to comment on the IESBA Exposure Draft: "Proposed Changes to the Code of Ethics for Professional Accountants Responding to a Suspected Illegal Act." IMA has its own Statement of Ethical Professional Practice, with which all members are required to comply. As part of our Committee's charter, we "provide input on ethics issues in professional development and comment on draft pronouncements of regulatory bodies or other organizations." We hope that you find our comments useful.

While the IESBA code and the proposed changes cover professional accountants both in public practice and in business, our comments primarily will refer to the changes related to professional accountants in business ("PAIB"), since IMA is a worldwide professional association of more than 65,000 management accountants representing this area of the profession. Therefore, it is from the perspective of the professional accountant in business that our comments are made.

In regards to your request for specific comments:

**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?**

On this question, we must clearly state that we can only address PAIB and not public accountants (who have audit, tax, and compliance responsibilities). We believe that our response may differ based on this distinction. However, for PAIB, yes, we agree with this basic principle. According to the IMA Statement of Ethical Professional Practice (the "Statement"), after determining that the existing ethics policy of the organization does not resolve the issue, the accountant should discuss the issue with his/her immediate supervisor ("except when it appears that the supervisor is involved") and then should "submit the issue to the next management level" if/as necessary.

**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?**

We have significant reservations about an accountant overriding confidentiality and this should only be done in the most significant and clear circumstances. According to IMA's Statement, "communication of such problems to authorities or individuals not employed or engaged by the organization is not considered appropriate, unless you believe there is a clear violation of the law." This principle brings us



into conflict to some of the proposed IESBA changes. One such conflict is the usage of the term “suspects” in the IESBA document. In our view, a mere suspicion is not enough of a basis to breach confidentiality – instead, the issue should be communicated externally only if it involves a “clear violation of the law.” There can be many instances of employees suspecting things that perhaps they don’t have the background to fully understand and to report this externally without it being a “clear violation” would be irresponsible. This could, potentially, unfairly damage the reputation of the organization and set the accountant up for unnecessary potential legal actions (not to mention loss of employment).

**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?**

See response to question #2 above for our view on the use of the word “suspected” instead of a “clear violation.” We also believe that the word “materially” should be added in front of the phrase “in the public interest” in the IESBA document. In other words, it’s important that this be a significant or material issue which would affect the public interest, and not a frivolous or minor issue.

**4. – 10.**

No comment.

**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?**

We disagree with the statement that the accountant should be “required” to disclose the “suspected illegal act” to the external auditor. First, please see our response to question #2 above for our disagreement with using the word “suspected.” Secondly, if there is a “clear violation of the law” our Statement clearly recommends the accountant to “consult [his/her] own attorney as to legal obligations and rights concerning the ethical conflict.” Different situations and jurisdictions may lead to varied recommended outcomes and a blanket statement that an accountant should always breach confidentiality in these issues (as the IESBA proposed document suggests) is inappropriate. It is more appropriate for the accountant to seek professional legal assistance in these situations to determine the best course of action. Our suggestion to the IESBA would be to adjust the terminology from “require” to “may be permitted” or something similar.

**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?**

See our response to #11.

**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?**

We believe that the current proposed language is too limiting and should not be used. Please see our responses to #1 and #2 for our opinion on the proper course of action for PAIB to take in the event of a possible breach of ethical conduct.

**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?**

Yes, we agree. For some related discussion, see above responses, especially to #2.

**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?**

Yes, we agree with circumstances as described, but we would also widen the question of when it is appropriate for a PAIB to not disclose based on our responses above, especially to #2.

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

No comment.

**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?**

See various responses above.

**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?**

Based on our reading of the released documents, there appears to be a discrepancy between the language on page 19 in the proposed document changes versus the appendix on page 31. On page 31, in the bottom section, the matrix states that a proposed change for accountants in "public practice providing services to a non-audit client and professional accountants in business," "Disclosure will be *permitted* when certain conditions are met." (*italics ours*). However, on page 19, the language says the professional accountant "*shall disclose*" (360.6 and 360.8) (*italics ours*). We suggest clarifying whether the IESBA truly means whether the accountant must or may disclose the situation and to make sure that both the actual document and the summarizing matrix are in full alignment on this issue.



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For your information, I am including a copy of IMA's Statement of Ethical Professional Practice. The IMA Committee on Ethics hopes you find the Statement and our comments to your exposure draft helpful. Again, thank you for the opportunity to comment on your proposed changes to the Code of Ethics.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Atlas", with a stylized flourish at the end.

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## **IMA STATEMENT OF ETHICAL PROFESSIONAL PRACTICE**

Members of IMA shall behave ethically. A commitment to ethical professional practice includes: overarching principles that express our values, and standards that guide our conduct.

### **PRINCIPLES**

IMA's overarching ethical principles include: Honesty, Fairness, Objectivity, and Responsibility. Members shall act in accordance with these principles and shall encourage others within their organizations to adhere to them.

### **STANDARDS**

A member's failure to comply with the following standards may result in disciplinary action.

#### **I. COMPETENCE**

Each member has a responsibility to:

1. Maintain an appropriate level of professional expertise by continually developing knowledge and skills.
2. Perform professional duties in accordance with relevant laws, regulations, and technical standards.
3. Provide decision support information and recommendations that are accurate, clear, concise, and timely.
4. Recognize and communicate professional limitations or other constraints that would preclude responsible judgment or successful performance of an activity.

#### **II. CONFIDENTIALITY**

Each member has a responsibility to:

1. Keep information confidential except when disclosure is authorized or legally required.
2. Inform all relevant parties regarding appropriate use of confidential information. Monitor subordinates' activities to ensure compliance.
3. Refrain from using confidential information for unethical or illegal advantage.

#### **III. INTEGRITY**

Each member has a responsibility to:

Mitigate actual conflicts of interest, regularly communicate with business associates to avoid apparent conflicts of interest. Advise all parties of any potential conflicts.



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1. Refrain from engaging in any conduct that would prejudice carrying out duties ethically.
2. Abstain from engaging in or supporting any activity that might discredit the profession.

#### **IV. CREDIBILITY**

Each member has a responsibility to:

1. Communicate information fairly and objectively.
2. Disclose all relevant information that could reasonably be expected to influence an intended user's understanding of the reports, analyses, or recommendations.
3. Disclose delays or deficiencies in information, timeliness, processing, or internal controls in conformance with organization policy and/or applicable law.

#### **RESOLUTION OF ETHICAL CONFLICT**

In applying the Standards of Ethical Professional Practice, you may encounter problems identifying unethical behavior or resolving an ethical conflict. When faced with ethical issues, you should follow your organization's established policies on the resolution of such conflict. If these policies do not resolve the ethical conflict, you should consider the following courses of action:

1. Discuss the issue with your immediate supervisor except when it appears that the supervisor is involved. In that case, present the issue to the next level. If you cannot achieve a satisfactory resolution, submit the issue to the next management level. If your immediate superior is the chief executive officer or equivalent, the acceptable reviewing authority may be a group such as the audit committee, executive committee, board of directors, board of trustees, or owners. Contact with levels above the immediate superior should be initiated only with your superior's knowledge, assuming he or she is not involved. Communication of such problems to authorities or individuals not employed or engaged by the organization is not considered appropriate, unless you believe there is a clear violation of the law.
2. Clarify relevant ethical issues by initiating a confidential discussion with an IMA Ethics Counselor or other impartial advisor to obtain a better understanding of possible courses of action.
3. Consult your own attorney as to legal obligations and rights concerning the ethical conflict.

**IMA Ethics Helpline Number: 800-245-1383**