

International Ethics Standards Board  
for Accountants (IESBA)  
International Federation of Accountants (IFAC)  
Attention Mr. Siong  
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| Date                | RE                                       | Reference          | Attachment(s) |
|---------------------|--|--------------------|---------------|
| 14 February<br>2013 | Responding to a suspected<br>Illegal Act | JThD-2013– 01 -001 | -             |

Dear Mr. Siong,

The NBA welcomes the opportunity to comment on the exposure draft: Responding to a Suspected Illegal Act. Providing guidance to professionals on how to respond to a suspicion of an illegal act is worthwhile but also challenging. We agree with the Code of Ethics (CoE) A100.1 when it states: 'A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest.' And it is our opinion that responding to suspected illegal acts is in the public interest therefore we fully support IESBA in choosing such an important project.

Nederlandse  
Beroepsorganisatie  
van Accountants

The logo for the Nederlandse Beroepsorganisatie van Accountants (NBA) features a thick orange horizontal bar above the letters 'NBA' in a bold, orange, sans-serif font.

Nevertheless we have concluded in discussing this exposure draft with professional accountants that the intention of the proposals is not well understood by reading these proposals. It should be clear that these proposals to respond to illegal acts in a professional manner, are written in the context that:

- local law precedes the code of ethics;
- ultimately a judge has to decide if a certain act is illegal, and thus that a professional accountant will only have suspicions;
- professional accountants are not expected to respond in a manner that might endanger their own wellbeing;
- local culture might influence the way in which professional accountants will implement this part of the code;
- the third party test is applicable and thus that the response might differ based on the role and responsibility of an accountant in business;
- there is a materiality perspective in responding to the different types of illegal acts (for instance: suspicions of speeding by a company driver would be a suspicion of an illegal act but might not lead to a response from a professional accountant);
- quitting your job is an ultimate remedy. The decision to quit someone's job should, if possible, be taken in consultation with others. In many cases it is worthwhile to search for legal counsel.

Especially in the area of responding to a suspected illegal acts where living up to the code in certain areas of the world might lead to legal action or even worse, it should be clear that the expectations of the code are limited by the above mentioned principles. Therefore professional accountants can only apply the code when the position of the professional accountant, when responding to a suspected legal act, is regulated and protected by law. If society feels that for professional accountants it is in the public interest to respond to illegal acts it should protect the professional accountants acting. Therefore we encourage IESBA in close cooperation with IFAC to discuss this issue with parties who represent local governments (for instance the G20).

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This does not mean that IESBA should not work on setting standards in the area of suspected illegal acts for jurisdictions, such as the Netherlands, which have legally regulated expectations from and protection for the professional accountant (and other professionals, for that matter) when he has suspicions of an illegal act.

Apart from the context written above that should be better explained we encourage IESBA to provide further guidance on what to do:

- with regards to the different levels of suspicion. In many cases the accountant should investigate and validate his suspicion before discussing this within the organization – this could however prove to be a very extensive and expensive task if the level of validation is not clearly described and restricted ;
- when it is not possible to sufficiently validate the suspicion;
- when an organization has its own procedures to respond to suspicions of illegal acts (this could mean that a professional accountant does not get feedback on his declaration of his suspicion), like a whistleblowers procedure that is anchored in the organization;
- when an internal audit department is involved with respect to the internal reporting lines, including the whistleblowers procedure, before escalating to the external auditor;
- to evaluate the internal response which might lead to the conclusion that the professional accountant should report his suspicion outside the normal reporting lines (eg. the external auditor or legal authorities).

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NBA

As explained above we feel that the current proposals are to implicit. Therefore this response is written assuming that IESBA will work on a new draft for exposure. We therefore will not respond to the individual questions. If IESBA would like to better understand our position or if we could help IESBA in processing this, we are willing to contribute to this important project to help professional accountants to better respond to illegal acts.

For further information on this letter, please contact Jan Thijs Drupsteen via email at [j.th.drupsteen@nba.nl](mailto:j.th.drupsteen@nba.nl).

Yours sincerely,

Dutch Professional Accountancy Association (Dutch acronym: NBA)

Signed by:

Peter Eimers,

Chair of the Ethics & Assurance  
Standards Board

Signed by:

Huub Wieleman,

Chair of the Dutch Professional Accountancy Association