

**Feedback Statement on March 2011 CAG Comments**

<b>CAG Member Comment</b>	<b>Task Force Consideration</b>
<p>Mr. Fleck noted the decision of whether it was in the public interest to disclose a matter would always ultimately be up to the professional judgment of the accountant. Mr. Franchini agreed, noting that it might be useful for the guidance to explicitly recognize this fact.</p> <p>Ms. Lang noted although additional guidance could be given the determination of whether reporting was in the public interest was up to the professional judgment of the individual accountant. She noted that this will be particularly difficult for accountants in SMPs and SMEs.</p>	<p>The Task Force considered the matter and included the statement that the determination of whether disclosure is in the public interest is a matter of professional judgment. In addition the Task Force introduced a reasonable observer test.</p>
<p>Mr. Pannier stated that the sequential nature of the guidance seemed to be a practical approach.</p>	<p>Sequential nature has been maintained</p>
<p>Mr. Peyret stated that the guidance could be seen as the conscience clause in the Code. He noted that an employee's first duty is to the employer but if there is a problem the employee is on their own. He noted that the option for the professional accountant in business to disclose to the auditor was a sensible approach. He noted that there would be an extra complexity in international groups because what might be acceptable in one jurisdiction would be unacceptable in another jurisdiction.</p>	<p>The Task Force has maintained disclosing to the external auditor as an option.</p>
<p>Ms. Bastolla noted the nature of the response would depend not only on the nature of the matter but also the role of the professional accountant.</p>	<p>The approach differentiates between professional accountants in public practice that are auditors and professional accountants in public practice that are providing non-assurance services to non audit clients.</p>
<p>Mr. Johnson said that the split between the professional accountant in practice and business is fundamental. It was important that professional accountants in business also have an obligation to report as this might result in more timely reporting.</p>	<p>Task Force has maintained requirement to report</p>
<p>Mr. Bradbury stated that he was somewhat nervous about the proposed expansion to address improper or unethical matters. While it was possible to define a fraud or illegal act, there was considerably more subjectivity associated with determining whether something was improper or unethical.</p>	<p>Task Force has amended guidance to require reporting of certain suspected illegal acts when reporting would be in the public interest. The</p>

<p>Mr. Koktvedgaard stated that he was not sure whether it would be possible to define an unethical matter. He noted that if a company stated in its annual report that it did not use child labor and the auditor was aware that child labor was used, auditing standards would require the auditor to disclose this information. Mr. Fleck noted that there was no guidance for the auditor if there was no statement in the annual report.</p> <p>Mr. Casel noted that there are differing interpretations of what is and what is not ethical. He noted that it would be important to ensure that the drafting did not result in a requirement that was circular. With this proviso, he stated that he was generally supportive of the approach proposed.</p>	<p>Task Force reviewed the guidance contained in Section 100 to determine whether it should be amended to address unethical acts, and in particular paragraph 100.17-100.22. The Task Force concluded that the area was adequately addressed and no changes were necessary.</p>
<p>Mr. Pannier stated that the Task Force might find it helpful to look at the United Nations legislation addressing breaches of sanctions. Mr. Franchini indicated that the Task Force would look at the legislation.</p>	<p>The guidance explicitly states that if there is a legal requirement to report, the accountant shall make the disclosure in compliance with the legislation.</p>
<p>Mr. Hansen stated that the interpretation of whether a matter was within the expertise of the professional accountant could be interpreted quite broadly. Mr. Franchini agreed that there was judgment involved.</p> <p>Mr. Franchini indicated that the Task Force would give thought to whether additional guidance could be given to whether a matter was within the expertise of the accountant</p>	<p>The Task Force has developed some examples of matters which would be within the expertise of the accountant.</p>
<p>Mr. Baumann suggested that the guidance state that the professional accountant might disclose to in-house legal counsel.</p>	<p>The guidance refers to “legal counsel” – which could be internal or external</p>
<p>Mr. Fleck noted that the pre-requisites that the Task Force was considering would probably exist in only a few jurisdictions. He recognized that some would be of the view that there needed to be some recognition of personal exposure if the accountant reports externally. Mr. Pickeur noted that even with the provisions in the Directive, which provide protection, there is no reporting by auditors because confidentiality is put ahead of public interest.</p> <p>Mr. Baumann noted that he did not agree that a protection scheme that affords both anonymity and protection from</p>	<p>The pre-requisites are no longer included in the proposed guidance</p>

<p>liability was an appropriate pre-requisite. Mr. Johnson agreed noting that the pre-requisites would encourage accountants not to report matters.</p>	
<p>Mr. Kuramochi noted that the factors that were to be considered in determining whether disclosure was in the public interest did not seem to be the right factors. For example, the first factor, significance to financial reporting, would seem to indicate that if two entities (one large and one small) engaged in the same level of money laundering, the matter would have to be disclosed outside of the smaller entity because of the significance to financial reporting but disclosure would not be necessary for the larger entity. This did not seem to be the right answer because what was important was the significance vis a vis the public interest. With respect to the third criteria of likelihood of recurrence this could be interpreted as meaning that no disclosure was necessary if there was an assurance from management that there would be no repetition of the illegal act. Mr. Franchini indicated that Task Force would consider these matters.</p>	<p>The guidance no longer contains the factors noted, rather the determination of whether disclosure would be in the public interest is based on a reasonable and informed third party test.</p>