

PROPOSED SECTION 225

(CLEAN)

Responding to Non-Compliance with Laws and Regulations

Purpose

- 225.1 A professional accountant in public practice may come across or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a professional service to a client. The purpose of this section is to set out the professional accountant's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the professional accountant in assessing the implications of the matter and the possible courses of action when responding to it.
- 225.2 Non-compliance with laws and regulations comprises acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, by management or by other individuals working for, or under the direction or oversight of, a client which are contrary to the prevailing laws or regulations.
- 225.3 In some jurisdictions, there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance with laws and regulations. When encountering such non-compliance or suspected non-compliance, the professional accountant has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting ("tipping-off") the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.
- 225.4 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance with laws and regulations, the objectives of the professional accountant are:
- (a) To comply with the fundamental principles of integrity and professional behavior;
 - (b) By alerting management or, where appropriate, those charged with governance of the client, to seek to:
 - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
 - (c) To take such further action as appropriate in the public interest.

Scope

- 225.5 This section addresses:
- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and

- (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements, but compliance with which may be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

225.6 Examples of laws and regulations which this section addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

225.7 Non-compliance with laws and regulations may result in fines, litigation or other consequences for the client that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. In this regard, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

225.8 This section does not address:

- (a) Matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the client, its stakeholders and the general public;
- (b) Personal misconduct unrelated to the business activities of the client; and
- (c) Non-compliance with laws and regulations committed by persons other than the client or those charged with governance, management or other individuals working for, or under the direction or oversight of, the client. This includes, for example, circumstances where a professional accountant has been engaged by a client to perform a due diligence assignment on a third party entity and the identified or suspected NOCLAR has been committed by that third party.

The professional accountant may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Client's Management and Those Charged with Governance

225.9 It is the responsibility of the client's management, with the oversight of those charged with governance, to ensure that the client's business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and those charged with governance to identify and address any non-compliance with laws and regulations by the client or by those

charged with governance, by management or by other individuals working for, or under the direction or oversight of, the client.

Responsibilities of Professional Accountants in Public Practice Performing Audits of Financial Statements

225.10 Paragraphs 225.11-34 apply to professional accountants performing audits of financial statements.

Obtaining an Understanding of the Matter

225.11 If a professional accountant engaged to perform an audit of financial statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, whether in the course of performing the audit engagement or through information provided by other parties, the professional accountant shall obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

225.12 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have a level of knowledge of laws and regulations that is greater than that which is required to undertake an audit. Whether an act constitutes actual non-compliance with a law or regulation is ultimately a matter for determination by an appropriate judicial or adjudicative body. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the firm, a network firm, a relevant professional body, or legal counsel.

225.13 If the professional accountant suspects that non-compliance with laws and regulations has occurred or may occur, the professional accountant shall discuss the matter with the appropriate level of management and, where appropriate, those charged with governance.

225.14 Such discussion serves to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.

225.15 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:

- The nature and circumstances of the matter.
- The individuals actually or potentially involved.
- The likelihood of collusion.
- The potential consequences of the matter.
- Whether that level of management is able to investigate the matter and take appropriate action.

225.16 The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. If the professional accountant believes that management is involved in the non-compliance or suspected non-compliance, the professional accountant shall discuss the matter with those charged with governance. The professional accountant may also consider discussing the matter with internal auditors, where applicable. In

the context of a group, the appropriate level may be management at an entity that controls the client.

Addressing the Matter

- 225.17 In discussing the matter with management and, where appropriate, those charged with governance, the professional accountant shall advise them to take appropriate and timely actions, if they have not already done so, to:
- (a) Rectify, remediate or mitigate the consequences of the non-compliance;
 - (b) Deter the commission of the non-compliance where it has not yet occurred; or
 - (c) Disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest.
- 225.18 The professional accountant shall consider whether the client's management and those charged with governance understand their legal or regulatory responsibilities with respect to the matter. If not, the professional accountant may suggest appropriate sources of information or recommend that they obtain legal advice.
- 225.19 The professional accountant shall comply with applicable:
- (a) Laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance with laws and regulations to an appropriate authority. In this regard, some laws and regulations may stipulate a period within which reports are to be made; and
 - (b) Requirements under professional standards, including those relating to:
 - Identifying and responding to non-compliance with laws and regulations, including fraud.
 - Communicating with those charged with governance.
 - Considering the implications of the matter for the auditor's report.

Group Audits

- 225.20 In the case of a group audit, the professional accountant shall communicate the matter with the group engagement team unless prohibited from doing so by law or regulation.

Determining Whether Further Action is Needed

- 225.21 The professional accountant shall assess the appropriateness of the response of management and, where applicable, those charged with governance.
- 225.22 Relevant factors to consider in assessing the appropriateness of the response of management and, where applicable, those charged with governance include whether:
- The response is timely.
 - The non-compliance or suspected non-compliance has been adequately investigated.
 - Action has been, or is being, taken to rectify, remediate or mitigate the consequences of any non-compliance.

- Action has been, or is being, taken to deter the commission of any non-compliance where it has not yet occurred.
 - Appropriate steps have been, or are being, taken to reduce the risk of re-occurrence, for example, additional controls or training.
 - The non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.
- 225.23 In light of the response of management and, where applicable, those charged with governance, the professional accountant shall determine if further action is needed in the public interest.
- 225.24 In determining the need for, and nature and extent of, further action, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted appropriately in the public interest.
- 225.25 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:
- The legal and regulatory framework.
 - The urgency of the matter.
 - The pervasiveness of the matter throughout the client.
 - Whether the professional accountant continues to have confidence in the integrity of management and, where applicable, those charged with governance.
 - Whether the non-compliance or suspected non-compliance is likely to recur.
 - Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees or the general public.
- 225.26 Examples of circumstances that may cause the professional accountant no longer to have confidence in the integrity of management and, where applicable, those charged with governance include situations where:
- The professional accountant suspects or has evidence of their involvement or intended involvement in any non-compliance.
 - The professional accountant is aware that they have knowledge of such non-compliance and, contrary to legal or regulatory requirements, have not reported, or authorized reporting of, the matter to an appropriate authority within a reasonable period.
- 225.27 Further action may include:
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
 - Withdrawing from the engagement and the professional relationship where permitted by law or regulation.
- 225.28 Where the professional accountant determines that withdrawing from the engagement and the professional relationship would be appropriate, doing so would not be a substitute for taking other

actions that may be needed to achieve the professional accountant's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the professional accountant and withdrawal may be the only available course of action. When withdrawing from the professional relationship, the professional accountant shall comply with the requirements of section 210.

- 225.29 As consideration of the matter may involve complex analysis and judgments, the professional accountant may consider obtaining legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action. The professional accountant may also consider consulting on a confidential basis with a regulator or relevant professional body.

Determining Whether to Disclose the Matter to an Appropriate Authority

- 225.30 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making the disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

- 225.31 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the professional accountant may determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The client is a regulated entity and the matter is of such significance as to threaten its license to operate.
- The client is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the client's securities or pose a systemic risk to the financial markets.
- Products that are harmful to public health or safety would likely be sold by the entity.

The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend on the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the professional accountant or other individuals.

225.32 If the professional accountant determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions. The professional accountant shall also consider whether it is appropriate to inform the client of the professional accountant's intentions before disclosing the matter.

Documentation

225.33 *International Standards on Auditing* (ISAs) require a professional accountant performing an audit of financial statements to:

- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions;
- Document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place; and
- Include in the documentation identified or suspected non-compliance with laws and regulations, and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.

225.34 Where the professional accountant concludes that an identified or suspected non-compliance with laws and regulations is a significant matter, the professional accountant shall, in addition to complying with the documentation requirements under the ISAs, document:

- How management and, where applicable, those charged with governance have responded to the matter.
- The courses of action the professional accountant considered, the judgments made and the decisions that were taken, having regard to the reasonable and informed third party perspective.
- How the professional accountant is satisfied that the professional accountant has fulfilled the responsibility set out in paragraph 225.23.

Responsibilities of Professional Accountants in Public Practice Providing Professional Services Other Than Audits of Financial Statements

225.35 Paragraphs 225.36-49 apply to professional accountants providing professional services other than audits of financial statements.

Obtaining an Understanding of the Matter and Addressing It with Management and Those Charged with Governance

225.36 If a professional accountant engaged to provide a professional service other than an audit of financial statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may be about to occur.

- 225.37 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. Whether an act constitutes actual non-compliance with a law or regulation is ultimately a matter for determination by an appropriate judicial or adjudicative body. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the firm, a network firm, a relevant professional body, or legal counsel.
- 225.38 If the professional accountant suspects that non-compliance with laws and regulations has occurred or may occur, the professional accountant shall discuss the matter with the appropriate level of management and, if the professional accountant has access to them and where appropriate, those charged with governance.
- 225.39 Such discussion serves to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.
- 225.40 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:
- The nature and circumstances of the matter.
 - The individuals actually or potentially involved.
 - The likelihood of collusion.
 - The potential consequences of the matter.
 - Whether that level of management is able to investigate the matter and take appropriate action.

Communicating the Matter to the Entity's External Auditor

- 225.41 If the professional accountant is performing a non-audit service for an audit client of the firm or a network firm, the professional accountant shall consider whether to communicate the matter within the firm or to the network firm in accordance with the firm's or the network's protocols or procedures or, in the absence of such protocols and procedures, to the audit engagement partner. If the client is not an audit client of the firm or a network firm, the professional accountant shall consider whether to communicate the matter to the firm that is the external auditor, if any. In all cases, the communication is to enable the engagement partner for the audit to be informed about the matter and to determine how it should be addressed in accordance with the provisions of this section.
- 225.42 Factors relevant to considering such communication include:
- Whether doing so would be contrary to law or regulation.
 - Whether the purpose of the engagement is to investigate potential non-compliance with laws and regulations within the entity to enable it to take appropriate action.
 - Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor (for example, to avoid tipping-off) in an ongoing investigation into the non-compliance or suspected non-compliance.

- Whether management or those charged with governance have already informed the entity's external auditor about the matter.
- The likely materiality of the matter to the audit of the client's financial statements.

Considering Whether Further Action is Needed

- 225.43 The professional accountant shall also consider whether further action is needed in the public interest.
- 225.44 Whether further action is needed, and the nature and extent of it, will depend on factors such as:
- The legal and regulatory framework.
 - The appropriateness and timeliness of the response of management and, where applicable, those charged with governance.
 - The urgency of the matter.
 - The involvement of management or those charged with governance in the matter.
 - The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.
- 225.45 Further action may include:
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
 - Withdrawing from the engagement and the professional relationship where permitted by law or regulation.
- 225.46 In considering whether to disclose outside the client, relevant factors to take into account include:
- Whether doing so would be contrary to law or regulation.
 - Whether the purpose of the engagement is to investigate potential non-compliance with laws and regulations within the entity to enable it to take appropriate action.
 - Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor (for example, to avoid tipping-off) in an ongoing investigation into the non-compliance or suspected non-compliance.
- 225.47 If the professional accountant determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions. The professional accountant shall also consider whether it is appropriate to inform the client of the professional accountant's intentions before disclosing the matter.
- 225.48 The professional accountant may consider obtaining legal advice to understand the professional or legal implications of taking any particular course of action. The professional accountant may also consider consulting on a confidential basis with a regulator or relevant professional body.

Documentation

225.49 Where the professional accountant concludes that an identified or suspected non-compliance with laws and regulations is a significant matter, the professional accountant is encouraged to document:

- The matter.
- The results of discussion with management and, where applicable, those charged with governance and other parties.
- How management and, where applicable, those charged with governance have responded to the matter.
- The courses of action the professional accountant considered, the judgments made and the decisions that were taken.
- How the professional accountant is satisfied that the professional accountant has fulfilled the responsibility set out in paragraph 225.43.

PROPOSED SECTION 360

Responding to Non-Compliance with Laws and Regulations

Purpose

- 360.1 A professional accountant in business may come across or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of carrying out professional activities. The purpose of this section is to set out the professional accountant's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the professional accountant in assessing the implications of the matter and the possible courses of action when responding to it.
- 360.2 Non-compliance with laws and regulations comprises acts of omission or commission, intentional or unintentional, committed by the professional accountant's employing organization or by those charged with governance, by management, or by other individuals working for, or under the direction or oversight of, the employing organization which are contrary to the prevailing laws or regulations.
- 360.3 In some jurisdictions, there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance with laws and regulations. When encountering such non-compliance or suspected non-compliance, the professional accountant has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting ("tipping-off") the relevant party prior to making any disclosure, for example, pursuant to anti-money laundering legislation.
- 360.4 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance with laws and regulations, the objectives of the professional accountant are:
- (a) To comply with the fundamental principles of integrity and professional behavior;
 - (b) By alerting management or, where appropriate, those charged with governance of the employing organization, to seek to:
 - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
 - (c) To take such further action as appropriate in the public interest.

Scope

- 360.5 This section addresses:
- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the employing organization's financial statements; and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organization's financial statements, but

compliance with which may be fundamental to the operating aspects of the employing organization's business, to its ability to continue its business, or to avoid material penalties.

360.6 Examples of laws and regulations which this section addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

360.7 Non-compliance with laws and regulations may result in fines, litigation or other consequences for the employing organization that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. In this regard, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

360.8 This section does not address:

- (a) Matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the employing organization, its stakeholders or the general public;
- (b) Personal misconduct unrelated to the business activities of the employing organization; and
- (c) Non-compliance with laws and regulations committed by persons other than the employing organization or those charged with governance, management, or other individuals working for, or under the direction or oversight of, the employing organization.

The professional accountant may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Employing Organization's Management and Those Charged with Governance

360.9 It is the responsibility of the employing organization's management, with the oversight of those charged with governance, to ensure that the employing organization's business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and those charged with governance to identify and address any non-compliance with laws and regulations by the employing organization or by those charged with governance, by management, or by other individuals working for, or under the direction or oversight of, the employing organization.

Responsibilities of Professional Accountants in Business

360.10 Many employing organizations have established protocols and procedures (for example, an ethics policy or internal whistle-blowing mechanism) regarding how non-compliance or suspected non-compliance with laws and regulations by the employing organization should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the professional accountant's employing organization, the professional accountant shall consider them in determining how to respond to the matter.

Responsibilities of Senior Professional Accountants in Business

360.11 Senior professional accountants in business are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organization's human, financial, technological, physical and intangible resources. Because of their roles, positions and spheres of influence within the employing organization, there is a greater expectation for them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance with laws and regulations than other professional accountants within the employing organization.

360.12 Paragraphs 360.13-30 apply to senior professional accountants in business.

Obtaining an Understanding of the Matter

360.13 If, in the course of carrying out professional activities, a professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall obtain an understanding of the matter, including:

- The nature of the act and the circumstances in which it has occurred or may occur;
- The application of the relevant laws and regulations to the circumstances; and
- The potential consequences to the employing organization, investors, creditors, employees or the wider public.

360.14 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional accountant's role within the employing organization. Whether an act constitutes actual non-compliance with a law or regulation is ultimately a matter for determination by an appropriate judicial or adjudicative body. Depending on the nature and significance of the matter, the professional accountant may cause, or take appropriate steps to cause, the matter to be investigated internally. The professional accountant may also consult on a confidential basis with others within the employing organization, a relevant professional body or legal counsel.

Addressing the Matter

360.15 If non-compliance has occurred or may occur, the professional accountant shall, subject to paragraph 360.10, discuss the matter with the professional accountant's immediate superior, if any, to enable a determination to be made as to how the matter should be addressed. If the professional accountant's immediate superior appears to be involved in the matter, the

professional accountant shall discuss the matter with the next higher level of authority within the employing organization.

- 360.16 The professional accountant shall also take appropriate steps to:
- (a) Have the matter communicated with those charged with governance to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities;
 - (b) Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance with laws and regulations to an appropriate authority;
 - (c) Have the consequences of the non-compliance or suspected non-compliance rectified, remediated or mitigated;
 - (d) Reduce the risk of re-occurrence; and
 - (e) Seek to deter the commission of the non-compliance if it has not yet occurred.
- 360.17 The professional accountant shall consider whether disclosure of the matter to the employing organization's external auditor, if any, is needed pursuant to the professional accountant's duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

Determining Whether Further Action is Needed

- 360.18 The professional accountant shall assess the appropriateness of the response of the professional accountant's superiors, if any, and those charged with governance.
- 360.19 Relevant factors to consider in assessing the appropriateness of the response of the professional accountant's superiors, if any, and those charged with governance include whether:
- The response is timely.
 - They have taken or authorized appropriate action to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred.
 - The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.
- 360.20 In light of the response of the professional accountant's superiors, if any, and those charged with governance, the professional accountant shall determine if further action is needed in the public interest.
- 360.21 In determining the need for, and nature and extent of any further action needed, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted appropriately in the public interest.
- 360.22 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:
- The legal and regulatory framework.

- The urgency of the matter.
- The pervasiveness of the matter throughout the employing organization.
- Whether the professional accountant continues to have confidence in the integrity of the professional accountant's superiors and those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organization, investors, creditors, employees or the general public.

360.23 Examples of circumstances that may cause the professional accountant no longer to have confidence in the integrity of the professional accountant's superiors and those charged with governance include situations where:

- The professional accountant suspects or has evidence of their involvement or intended involvement in any non-compliance.
- Contrary to legal or regulatory requirements, they have not reported the matter, or authorized the matter to be reported, to an appropriate authority within a reasonable period.

360.24 Further action may include:

- Informing the parent entity of the matter if the employing organization is a member of a group.
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Resigning from the employing organization.

360.25 Where the professional accountant determines that resigning from the employing organization would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the professional accountant's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the professional accountant and resignation may be the only available course of action.

360.26 As consideration of the matter may involve complex analysis and judgments, the professional accountant may consider obtaining legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action. The professional accountant may also consider consulting on a confidential basis with a regulator or relevant professional body.

Determining Whether to Disclose the Matter to an Appropriate Authority

360.27 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making the disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

360.28 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the professional accountant may

determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The employing organization is a regulated entity and the matter is of such significance as to threaten its license to operate.
- The employing organization is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the employing organization's securities or pose a systemic risk to the financial markets.
- Products that are harmful to public health or safety would likely be sold by the employing organization.

The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend upon the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the professional accountant or other individuals.

360.29 If the professional accountant determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions.

Documentation

360.30 Where the professional accountant concludes that an identified or suspected non-compliance with laws and regulations is a significant matter, the professional accountant is encouraged to document:

- The matter.
- The results of discussions with the professional accountant's superiors, if any, and those charged with governance and other parties.
- How the professional accountant's superiors, if any, and those charged with governance have responded to the matter.
- The courses of action the professional accountant considered, the judgments made and the decisions that were taken.
- How the professional accountant is satisfied that the professional accountant has fulfilled the responsibility set out in paragraph 360.20.

Responsibilities of Other Professional Accountants in Business

- 360.31 Paragraphs 360.32-36 apply to professional accountants in business other than those who meet the description of a senior professional accountant in business in paragraph 360.11 above.
- 360.32 If, in the course of carrying out professional activities, a professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.
- 360.33 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional accountant's role within the employing organization. Whether an act constitutes actual non-compliance with a law or regulation is ultimately a matter for determination by an appropriate judicial or adjudicative body. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the employing organization, a relevant professional body or legal counsel.
- 360.34 If the professional accountant suspects that non-compliance with laws and regulations has occurred or may occur, the professional accountant shall, subject to paragraph 360.10, inform an immediate superior to enable the superior to take appropriate action. If the professional accountant's immediate superior appears to be involved in the matter, the professional accountant shall inform the next higher level of authority within the employing organization.
- 360.35 In exceptional circumstances, the professional accountant may decide that disclosure of the matter to an appropriate authority is an appropriate course of action. If the professional accountant does so pursuant to paragraph 360.28, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions.

Documentation

- 360.36 Where the professional accountant concludes that an identified or suspected non-compliance with laws and regulations is a significant matter, the professional accountant is encouraged to document:
- The matter.
 - The results of discussions with the professional accountant's superior, management and, where applicable, those charged with governance and other parties.
 - How the professional accountant's superior has responded to the matter.
 - The courses of action the professional accountant considered, the judgments made and the decisions that were taken.

**CONSEQUENTIAL AND CONFORMING CHANGES
TO OTHER SECTIONS OF THE CODE
(CLEAN)**

SECTION 100

Introduction and Fundamental Principles

...

Fundamental Principles

100.5 A professional accountant shall comply with the following fundamental principles:

...

- (e) Professional Behavior – to comply with relevant laws and regulations and avoid any conduct that discredits the profession.

...

Conflicts of Interest

...

Ethical Conflict Resolution

100.19 A professional accountant may be required to resolve a conflict in complying with the fundamental principles.

100.20 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process:

- (a) Relevant facts;
- (b) Ethical issues involved;
- (c) Fundamental principles related to the matter in question;
- (d) Established internal procedures; and
- (e) Alternative courses of action.

Having considered the relevant factors, a professional accountant shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the professional accountant may wish to consult with other appropriate persons within the firm or employing organization for help in obtaining resolution.

100.21 Where a matter involves a conflict with, or within, an organization, a professional accountant shall determine whether to consult with those charged with governance of the organization, such as the board of directors or the audit committee.

100.22 It 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.

- 100.23 If a significant conflict cannot be resolved, a professional accountant may consider obtaining professional advice from the relevant professional body or from legal advisors. The professional accountant generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege.
- 100.24 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant shall, unless prohibited by law, refuse to remain associated with the matter creating the conflict. The professional accountant shall determine whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

Communicating with Those Charged with Governance

- 100.25 When communicating with those charged with governance in accordance with the provisions of this Code, the professional accountant or firm shall determine, having regard to the nature and importance of the particular circumstances and matter to be communicated, the appropriate person(s) within the entity's governance structure with whom to communicate. If the professional accountant or firm communicates with a subgroup of those charged with governance, for example, an audit committee or an individual, the professional accountant or firm shall determine whether communication with all of those charged with governance is also necessary so that they are adequately informed.
- 100.26 In some cases, all of those charged with governance are involved in managing the entity, for example, a small business where a single owner manages the entity and no one else has a governance role. In these cases, if matters are communicated with person(s) with management responsibilities, and those person(s) also have governance responsibilities, the matters need not be communicated again with those same person(s) in their governance role. The professional accountant or firm shall nonetheless be satisfied that communication with person(s) with management responsibilities adequately informs all of those with whom the professional accountant or firm would otherwise communicate in their governance capacity.

SECTION 140

Confidentiality

- 140.1 The principle of confidentiality imposes an obligation on all professional accountants to refrain from:
- (a) Disclosing outside the firm or employing organization confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
 - (b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.
- 140.2 A professional accountant shall maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.
- 140.3 A professional accountant shall maintain confidentiality of information disclosed by a prospective client or employer.
- 140.4 A professional accountant shall maintain confidentiality of information within the firm or employing organization.
- 140.5 A professional accountant shall take reasonable steps to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.
- 140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant changes employment or acquires a new client, the professional accountant is entitled to use prior experience. The professional accountant shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.
- 140.7 As a fundamental principle, confidentiality serves the public interest because it facilitates the free flow of information between a professional accountant and the professional accountant's client or employing organization. Nevertheless, the following are circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:
- (a) Disclosure is permitted by law and is authorized by the client or the employer;
 - (b) Disclosure is required by law, for example:
 - (i) Production of documents or other provision of evidence in the course of legal proceedings; or
 - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
 - (c) There is a professional duty or right to disclose, when not prohibited by law:
 - (i) To comply with the quality review of a member body or professional body;
 - (ii) To respond to an inquiry or investigation by a member body or regulatory body;

- (iii) To protect the professional interests of a professional accountant in legal proceedings; or
- (iv) To comply with technical and professional standards, including ethics requirements.

140.8 In deciding whether to disclose confidential information, relevant factors to consider include:

- Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant.
- Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment shall be used in determining the type of disclosure to be made, if any.
- The type of communication that is expected and to whom it is addressed.
- Whether the parties to whom the communication is addressed are appropriate recipients.

SECTION 150

Professional Behavior

- 150.1 The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know may discredit the profession. This includes conduct that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession.
- 150.2 In marketing and promoting themselves and their work, professional accountants shall not bring the profession into disrepute. Professional accountants shall be honest and truthful and not:
- (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
 - (b) Make disparaging references or unsubstantiated comparisons to the work of others.

SECTION 210

Professional Appointment

Client Acceptance and Continuance

- 210.1 Before accepting a new client relationship, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behavior may be created from, for example, issues associated with the client (its owners, management or activities) that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, questionable financial reporting practices or other unethical behavior.
- 210.2 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level.
- Examples of such safeguards include:
- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or
 - Securing the client's commitment to address the questionable issues, for example, through improving corporate governance practices or internal controls.
- 210.3 Where it is not possible to reduce the threats to an acceptable level, the professional accountant in public practice shall decline to enter into the client relationship.
- 210.4 Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the professional accountant to decline the engagement had that information been available earlier. A professional accountant in public practice shall, therefore, periodically review whether to continue with a recurring client engagement. For example, a threat to compliance with the fundamental principles may be created by a client's

unethical behavior such as improper earnings management or balance sheet valuations. If a professional accountant in public practice identifies a threat to compliance with the fundamental principles, the professional accountant shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not possible to reduce the threat to an acceptable level, the professional accountant in public practice shall consider terminating the client relationship where termination is not prohibited by law or regulation.

Engagement Acceptance

- 210.5 The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice to provide only those services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.
- 210.6 A professional accountant in public practice shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:
- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
 - Acquiring knowledge of relevant industries or subject matters.
 - Possessing or obtaining experience with relevant regulatory or reporting requirements.
 - Assigning sufficient staff with the necessary competencies.
 - Using experts where necessary.
 - Agreeing on a realistic time frame for the performance of the engagement.
 - Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.
- 210.7 When a professional accountant in public practice intends to rely on the advice or work of an expert, the professional accountant in public practice shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

Changes in a Professional Appointment

- 210.8 A professional accountant in public practice who is asked to replace another professional accountant in public practice, or who is considering tendering for an engagement currently held by another professional accountant in public practice, shall determine whether there are any

reasons, professional or otherwise, for not accepting the engagement, such as circumstances that create threats to compliance with the fundamental principles that cannot be eliminated or reduced to an acceptable level by the application of safeguards. For example, there may be a threat to professional competence and due care if a professional accountant in public practice accepts the engagement before knowing all the pertinent facts.

210.9 A professional accountant in public practice shall evaluate the significance of any threats. Safeguards shall be applied when necessary to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:

- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted;
- Asking the existing accountant to provide known information on any facts or circumstances that, in the existing accountant's opinion, the proposed accountant needs to be aware of before deciding whether to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the existing accountant that may influence the decision to accept the appointment; or
- Obtaining necessary information from other sources.

210.10 When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

210.11 An existing accountant is bound by confidentiality. Whether that professional accountant is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:

- (a) Whether the client's permission to do so has been obtained; or
- (b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

Circumstances where the professional accountant is or may be required to disclose confidential information or where such disclosure may otherwise be appropriate are set out in Section 140 of Part A of this Code.

210.12 A professional accountant in public practice will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an existing accountant. Once that permission is obtained, the existing accountant shall comply with relevant legal and other regulations governing such requests. Where the existing accountant provides information, it shall be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the existing accountant, the proposed accountant shall take reasonable steps to obtain information about any possible threats by other means, such as through inquiries of third parties or background investigations of senior management or those charged with governance of the client.

210.13 In the case of an audit of financial statements, a professional accountant shall request the existing accountant to provide known information regarding any facts or circumstances that, in the existing accountant's opinion, the proposed accountant needs to be aware of before deciding whether to

accept the engagement. Unless prohibited by law or regulation, the existing accountant shall disclose honestly and unambiguously any such facts or circumstances and provide any other information considered appropriate to the proposed accountant.

- 210.14 If, in the case of an audit of financial statements, the client's consent is required by law or regulation before the existing accountant may disclose information to the proposed accountant, the existing accountant shall seek to obtain such consent. If the client fails or refuses to grant the existing accountant permission to discuss the client's affairs with the proposed accountant, the existing accountant shall disclose this fact to the proposed accountant, who shall carefully consider such failure or refusal when determining whether or not to accept the appointment.
- 210.15 A professional accountant in public practice may be asked to undertake work that is complementary or additional to the work of the existing accountant. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or incomplete information. The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is notifying the existing accountant of the proposed work, which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

SECTION 270

Custody of Client Assets

.....

- 270.3 As part of client and engagement acceptance procedures for services that may involve the holding of client assets, a professional accountant in public practice shall make appropriate inquiries about the source of such assets and consider legal and regulatory obligations. For example, if the assets were derived from illegal activities, such as money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the professional accountant shall comply with the provisions of section 225.