



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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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:

The U.S. Chamber of Commerce (the “Chamber”) is the world’s largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector. These members are both users and preparers of financial information. The Chamber created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy.

The CCMC recognizes the vital role external audits play in capital formation and supports efforts to improve the effectiveness of auditors. As such, we appreciate the opportunity to comment on the International Ethics Standards Board for Accountants (“IESBA”) *Exposure Draft on Responding to a Suspected Illegal Act* (“the Proposal”) issued on August 22, 2012. The CCMC strongly believes that lawbreakers should be caught and punished. However, the Proposal should be modified to reflect the predominant role of national legal authorities and to avoid adverse consequences that may degrade information gathering needed for transparent and relevant financial reports.

The IESBA’s expressed objective in promulgating the Proposal is to mitigate illegal acts, including fraudulent financial reporting, by modifying confidentiality standards to impose new and special duties on professional accountants for disclosing suspected illegal activities. These duties would include a de facto requirement for external auditors to disclose suspected illegal acts to an appropriate external authority

if, in the auditor's judgment, the suspected illegal act is of such consequence that reporting would be in the public interest and the entity has not self-reported.

Mitigating illegal acts is an important public policy issue. However, the Proposal's approach to doing so is problematic at best. For example, the Proposal runs counter to the whistleblower provisions contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act passed by the U.S. Congress in 2010 and the 2009 recommendations of the Organisation for Economic Co-operation and Development ("OECD") to strengthen efforts to prevent, detect, and investigate foreign bribery. After extensive deliberation and due process, OECD recommended that 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;
- 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; and
- Consider requiring the external auditor to report suspected acts of bribery of foreign 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.

The OECD recommendations recognize that national legislators and regulators are best positioned to impose and, therefore, should be the source of any requirements for the external reporting of suspected illegal activities to authorities. Yet, at its core, the Proposal represents mandated whistleblowing for auditors and other professional accountants. But again, it is legislators and regulators that have the authority to establish mandatory whistleblowing requirements and to provide the necessary legal protections to accompany such requirements, which the IESBA acknowledges that it cannot do.

Further, from an entity perspective, the OECD recommendations recognize that the primary responsibility for addressing illegal acts, including the obligation to disclose suspect illegal activity, resides with management and those charged with governance. Placing special burdens on professional accountants—whether external auditors or those in public practice providing non-audit services to companies that are not audit clients or those in business employed by companies—including to override the fundamental principle of confidentiality and disclose a suspected illegal act to an appropriate external authority, is misplaced and unworkable. The Proposal will have detrimental unintended consequences for audit quality and the relationship of professional accountants with the entities that they provide services to or that otherwise employ them. Thus, the Proposal does not advance investor protections or serve the public interest generally.

Finally, the Proposal has a number of requirements that lack guidance or otherwise involve vague or impractical notions. For example, the Proposal requires the professional accountant who suspects an illegal act to take reasonable steps to confirm or dispel that suspicion. However, the Proposal fails to provide guidance for doing so, including guidance on materiality for determining which suspected illegal acts would be the focus of further efforts. In addition, the Proposal fails to fully appreciate the limitations on the expertise of professional accountants to confirm or dispel suspicions of illegal activity. The expertise of lawyers would be needed to do so. Thus, considering these two issues, the Proposal appears to be creating a dynamic whereby professional accountants would need to seek legal advice in any and all circumstance of suspected illegal activity regardless of nature or magnitude.

Accordingly, the CCMC respectfully suggests that the proposal be modified so that *in appropriate circumstances*, a professional accountant should be expected to:

- Report suspected illegal acts to the appropriate levels of management of a client or employer, and possibly to those charged with governance, if management's response is not timely and appropriate;
- Consider disclosure to the external auditor, provided that such disclosure would not violate any legal or contractual confidentiality or non-disclosure requirements applicable to the engagement;

- Encourage the client or employer to disclose the matter to an appropriate authority;
- Such an obligation should only be required of an accountant by a national regulator, pursuant to a law or regulation that also incorporates “safe-harbor” provisions that protect the accountant from potential liability for allegedly unauthorized or unjustified disclosures consider his or her continuing relationship with the client or employer if the client or employer fails to address the professional accountant’s concerns; and
- Consider his or her continuing relationship with the client or employer if the client or employer fails to address the professional accountant’s concerns.

Thank you for your consideration and the CCMC stands ready to assist in these efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Tom Quaadman