Il Presidente

International Ethics Standards Board for Accountants  
International Federation of Accountants  
529 Fifth Avenue, 6th Floor  
New York, NY 10017  

17 December 2012

Dear Sirs,

Assirevi is pleased to comment on the International Ethics Standards Board for Accountants  
Responding to a Suspected Illegal Act.

Assirevi is the association of Italian audit firms. Its member firms represent the majority of the 
audit firms under the oversight of CONSOB (Commissione Nazionale per le Società e la Borsa) 
and are responsible for the audit of almost all of the companies listed on the Italian stock 
exchange. Assirevi promotes technical research in the field of auditing and accounting and 
publishes technical guidelines for its members. It collaborates with Governmental bodies, 
CONSOB, the Italian accounting profession and other bodies in the development of auditing and 
accounting standards.

Our comments are set out in the attached document.

Should you wish to discuss our comments please do not hesitate to contact us.

Yours faithfully,

Mario Boella  
Chairman
ASSIREVI

COMMENTS ON THE IESBA EXPOSURE DRAFT
Proposed Changes to the Code of Ethics for Professional Accountants
Responding to a suspected illegal act
(August 2012)

Assirevi welcomes the initiatives aimed at making auditing more effective and, in this regard, thanks the IESBA which, through its invitation for comments, has prompted an undoubtedly useful and constructive debate on the response of auditors to suspected illegal acts.

Based on the characteristics and role of this Association, we have examined the Exposure Draft solely from the point of view of the professional accountant in public practice called upon to provide auditing or other related services.

Therefore, Assirevi would like to state at the outset that our examination of the Exposure Draft has found a number of significant issues that should, in our opinion, be considered in more depth by the IESBA.

Following is a brief summary of those issues that we believe could serve as a starting point for a critical review of the Exposure Draft.

Given the importance of these general comments and the appropriateness of reconsidering the premise for the proposed changes to the Code of Ethics, we have decided not to provide an individual response to each question set out in the document.

1) The concept of public interest within the Exposure Draft

In the Exposure Draft, the concept of public interest is central to an auditor’s disclosure duty. Assirevi fully supports the principle stated in Section 100.1 of the Code of Ethics according to which the auditor must act in the public interest. In this regard, recital no. 9 of Directive 2006/43 states that “the public-interest function of statutory auditors means that a broader community of people and institutions rely on the quality of a statutory auditor’s work. Good audit quality contributes to the orderly functioning of markets by enhancing the integrity and efficiency of financial statements.”

However, the general ethical principle that the auditor must protect the public interest becomes, in the Exposure Draft, a crucial element for the duty to disclose a suspected illegal act.

In our opinion, this approach requires further, more specific indication of when disclosure could be made in the public interest.

Basically, as recognised on page 9 of the Exposure Draft, the strong subjectivity of the determination of what is a disclosure in the public interest could lead to a “wide range of conclusions and produce inconsistent results”.

This is an aspect, closely related to the topic discussed in paragraph 2 below, that the IESBA acknowledges it has been considered and that we deem will require further study and consideration.
2) **The duty of disclosure in the public interest and the lack of mechanisms for protecting the auditor**

Assirevi supports the principle, which also serves as the basis for ISA 250, whereby the auditor who identifies a fact or circumstance that could potentially be illegal must bring such fact or circumstance to the attention of the management and those charged with governance of the audited entity.

However, this Association does not support the inclusion, through the Code of Ethics, in the case the entity’s management fails to respond adequately, of an auditors’ requirement to disclose suspected illegal acts to an appropriate authority, if this disclosure is in the public interest, in the absence of specific national legislation or regulations.

In fact, this proposal represents a waiver from the duties of confidentiality and privacy, without providing for “protective mechanisms” to protect the auditor. The IESBA itself states that “such protective mechanisms can only be established by law and it is not possible for the IESBA to establish protective mechanisms for professional accountants who have to comply with the Code.”

In the Exposure Draft, the importance of this issue is made clear where it stresses that it may be “disproportionate to establish a requirement to disclose without providing those who would be required to make the disclosures with any protective mechanisms”. Essentially, without coordination between the disclosure duty arising under an international professional rule and the correlated protective mechanisms that are necessarily left to the discretion of the lawmakers of each nation, the auditor remains exposed to the significant risk of violating the law and contractual obligations.

Moreover, national lawmakers, where they have considered the disclosure of suspected non-compliance with the law appropriate and useful for protecting the public interest, have passed specific provisions addressing the matter. For example, in Italy, auditors of a public interest entity are required to report facts they find censurable, discovered in the course of the audit, to the market oversight authority (Consob) and to the entity’s board of statutory auditors.

Based on the foregoing, along with our comments in paragraph 1, we support the introduction in the Code of Ethics of an auditors’ duty to disclose a suspected illegal act to the management and to those charged with governance of the entity.

Otherwise, any auditors’ duty to make disclosures in the public interest to appropriate authorities should, in Assirevi’s opinion, be determined solely by national laws that could also, at the same time, make provision for suitable mechanisms for protecting the auditor making the disclosure.

3) **The concept of suspected illegal act within the Exposure Draft**

As to the concept of suspected illegal acts, there is an inconsistency between the proposals for modifying the Code of Ethics and ISA 250. The Exposure Draft states on page 5 that “the IAASB will consider whether consequential changes to ISA 250 may be needed in light of changes to the Code”.

However, ISA 250 already requires the auditor to assess:

i) the compliance with the provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial statements, and

ii) the identification of cases of non-compliance with other laws and regulations that may have a material effect on the financial statements.
The IESBA’s approach is different: it does not encompass just “suspected illegal acts that directly or indirectly affect the clients financial reporting” but also those “the subject matter of which falls within the expertise of the professional accountant”.
This second category appears to significantly expand the kinds of situations that the auditor should evaluate, moving away from specific reference to the accounting issues usually falling within auditors’ expertise.
The effects of the proposal would therefore significantly alter the approach of ISA 250, which, in our opinion, is more correct since it is consistent with the nature of audit activity and with the characteristics of the professional accountant.

4) The problems of identifying the appropriate authority to which to make the disclosure under national law.

The identification of the appropriate authority to which the disclosure should be made, could lead to significant problems of interpretation, also related to the specific features of each national regulation.
With regard to certain categories of suspected illegal acts, for example, it could prove difficult to identify a competent authority, in part due to the existence of various judicial and/or oversight authorities that could potentially be considered competent. Therefore, the appropriate authority should be determined at the local legislative and/or regulatory level. Should individual nation’s lawmakers fail to make this designation, this could lead to considerable uncertainty concerning how the duty to make disclosure to the appropriate authority as provided for by the Exposure Draft should be applied.

5) Critical issues related to the performance of non-audit services.

The disclosure duty for professional accountants providing non-audit services proposed in the Exposure Draft could raise two critical issues that, in the opinion of Assirevi, deserve consideration.
First, imposing general disclosure obligations on professional accountants could have an impact on how auditors are involved in the performance of non-audit services, giving an advantage to other categories of professionals not subject to the same restrictions. An example is the conduct of a forensic investigation in which the involvement of outside experts is a per se indication of the suspicion that illegal acts may have been committed.
Second, it is not uncommon for the team providing non-audit services to consist of a variety of different types of professionals, each subject to his/her own profession’s rules of ethics with respect to confidentiality and professional secrecy. The applicability of the disclosure duty for professional accountants may conflict with different ethical codes, such as the attorney confidentiality rules that apply to matters covered by legal privilege.
In light of the foregoing, we can only support the introduction, through the Code of Ethics, also with reference to professional accountant who provide non-audit services, of a requirement to disclose information within the entity, i.e. to make disclosure to the management and those charged with the entity’s governance.

Milan, 17 December 2012