

December 12, 2012

Mr Ken Siong
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Re: Exposure Draft: Responding to a Suspected Illegal Act

Dear Mr Siong

As a member of IFAC, the IDW is committed to following the progress of the International Ethics Standards Board for Accountants' work. The IDW appreciates the opportunity to comment on the above mentioned Exposure Draft and proposed changes to the Code of Ethics for Professional Accountants hereinafter referred to as "the ED" and "the Code", respectively.

We agree that it is in the public interest for there to be robust mechanisms to effectively address serious illegal acts perpetrated by entities and individuals in relation to accounting that affect the financial statements they publicise or could otherwise have a serious impact on the public. We also do not dispute that, in certain specific circumstances, professional accountants may have a role to play in this regard. However, whilst we appreciate the intentions behind the initiative, we do not agree that the ED's proposals to change the Code are an appropriate way to address the role of professional accountants with regard to illegal and unethical behavior on the part of those entities and individuals who engage or employ professional accountants as auditors or in any other professional capacity.

GESCHÄFTSFÜHRENDER VORSTAND:
Prof. Dr. Klaus-Peter Naumann,
WP StB, Sprecher des Vorstands;
Dr. Klaus-Peter Feld, WP StB CPA;
Manfred Hamannt, RA

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As we explain in more detail below in this letter, without an effective legal system that has both the power and the resources to effectively deal with suspected illegal acts the proposed actions on the part of professional accountants will be, at best, misplaced, and, at worst, harmful. In our opinion, IESBA is, therefore, not the appropriate body to deal with this issue, rather this is a matter that should be dealt with in national legislation.

As discussed in more detail below, we also do not believe that the approach proposed in the ED is appropriate, since various aspects of the proposals are highly problematical from both a practical and a legal viewpoint. We also express our concerns as to the impact these proposals would probably have on the role of professional accountants in general, and on auditors in particular.

As far as we are aware, France is the only country within Europe to have established a legal responsibility for an auditor to inform state authorities upon having detected certain criminal acts. In all other European Member States, and Germany in particular, the auditor has always had a duty to observe strict confidentiality requirements. In point of fact, German Law does not permit an auditor to disclose his or her findings to any third party – not even to any state authorities in any capacity whatsoever. Indeed German law treats any such breach of confidentiality as a criminal act, which carries a penalty of imprisonment for up to three years. All German laws regulating the court proceedings especially Zivilprozessordnung [Civil Procedure Code], Strafprozessordnung [Criminal Procedure Code], Verwaltungsgerichtsordnung [Public Administrative Law Proceedings] et al. include provisions prohibiting an auditor from acting as a witness unless the auditor has first obtained a release from his duty to maintain confidentiality from the audit client. Thus, were the proposals in the ED to be incorporated within the IESBA Code, they could not be adhered to by auditors in Germany because they are subject to prevailing national law. In this context, we also refer to our more detailed comments below under the heading “Legal Provisions as to Client Confidentiality”.

We therefore note that this one argument regarding the legal situation in Germany is strong enough to completely overrule any disclosure duties stipulated in an IFAC pronouncement such as the IESBA Code of Ethics. Furthermore, introducing the clause "as far as permissible under local law the auditor has the following duties..." does not make any sense when the IFAC is aware that such a provision within the Code would have no regulative power in Germany and other states which have a similar legal environment.

Notwithstanding this argument and a number of other major concerns about the ED as stated in the following paragraphs, we have included responses to the

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individual questions posed by IESBA in an appendix to this letter in order to facilitate IESBA's follow-up work in considering the comments submitted on this proposal.

Major Concerns

Role and Authority of IESBA

In proposing the changes to the Code detailed in the ED, IESBA is attempting to govern an issue that, in any case, must be considered in its entirety. The existence, capacity and effectiveness of the resources and legal framework for reporting, pursuing and penalizing suspected illegal acts to a satisfactory conclusion also need to be taken into account in this context, since there is nothing to be gained from either requiring or expecting individual professional accountants to report suspected illegal acts consistently world-wide, when individual jurisdictions may make insufficient use of the information reported or may not take appropriate measures to prosecute perpetrators. Ensuring such facilities exist to a satisfactory degree at an international level is clearly not within the IESBA remit.

In our opinion, it is the legislator in a particular jurisdiction who is the appropriate party to determine provisions concerning the reporting of illegal acts outside of an entity. In contrast to the IESBA, the legislator is also in a position to determine any provisions necessary to ensure adequate whistle-blower protection, release an accountant from any legal confidentiality obligations, establish provisions to prevent inadvertent "tipping-off" of potential perpetrators, and to ensure that there are credible and effective legal recourses available both in terms of the existence of an authority to which the report is to be made, the professional accountant and the party suspected of perpetrating an illegal act. Indeed, in our view, in jurisdictions that lack such appropriate regulatory infrastructure, the IESBA proposals will most certainly do more harm than good.

One further aspect which IESBA appears not to have considered at all is that of the personal liability of the professional accountant who discloses a suspected illegal act which is subsequently dismissed by the competent authority. Even seemingly well-founded cases i.e., in which evidence has been gathered by forensic accountants and prosecutors view the evidence as being sufficient to bring the case to trial can end with an acquittal. Requiring professional accountants to disclose "suspicions" will mean that the individuals concerned

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are open to severe liability threats (e.g., defamation), which IESBA has no authority to address.

Legal Provisions as to Client Confidentiality

We would like to point out that in many civil law countries, including Germany, the law defines the rights and responsibilities of practitioners. Any code of ethics or other professional pronouncements issued by professional organizations or standards setting bodies can only, at most, interpret these legal requirements. Hence, unlike the situation prevalent in most common law jurisdictions, professional organizations or standards setting bodies in many civil law countries such as Germany cannot impose professional requirements on practitioners that go beyond the law.

IESBA pronouncements can have no direct impact on the legal situation in individual jurisdictions. Paragraph 225.2 recognizes this, but is merely a “reminder” that professional accountants have to abide by the laws in their jurisdictions in which they are active. To the extent that it reminds a professional accountant of issues such as “tipping-off” it may serve some purpose, as the requirements proposed would otherwise often result in professional accountants “tipping-off” perpetrators of illegal acts. Other than this, a reminder that the law prevails is superfluous.

In addition to the provisions in the Code, in many jurisdictions the law specifies that professional accountants are subject to strict client confidentiality. Indeed, client confidentiality is an integral part of professional services, including but not limited to audits, which clients value highly. Professional accountants in public practice often provide a range of services to their clients, such that developing a relationship built on trust in the professional accountant is essentially a cornerstone of the profession.

In some jurisdictions the law specifies the circumstances in which professional accountants, tax advisors, or other professionals are required to divulge to the authorities certain specific information of which they become aware during the provision of professional services. As we explain more fully in responding to q.1, determining the situations in which client confidentiality may be breached is highly problematical, and without absolutely clear and firm criteria should not be judged by an individual professional accountant in adhering to the Code. Breaching client confidentiality is, in our view, a matter for law, not ethics.

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Establishing Whistle-blower Requirements or Expectations within the Code

We fully support IESBA developing a robust Code of Ethics aimed at ensuring that the behaviour of each member of the accountancy profession meets high ethical standards, relevant to his or her particular role. We also support the threats and safeguards approach, and accept that IESBA will need to specify a number of circumstances in which a particular threat is deemed as so significant that no safeguards could reduce the threat to an acceptable level; normally discontinuing a client or employer relationship. However, the concept that an accountant should act as a whistle-blower and thus always need to investigate possible irregularities and be required or expected to report suspected illegal acts to an external authority is not a safeguard to the professional accountant's *own* compliance with any one of the Code's fundamental principles, but a follow-on action taken in the public interest. As such, we do not believe the proposals in the ED fall within the mandate of the IESBA.

Impact on the General Perception of the Accountancy Profession as a Whole

We are particularly concerned that, were the proposals to become effective, the public perception of the whole accountancy profession would be altered; but not necessarily in the way we presume IESBA intends. In our view, this could have severe repercussions for the accountancy profession and, ultimately, for the financial markets and economies the profession serves.

IESBA is proposing that, with certain very drastic exceptions, all professional accountants who are subject to the Code would have to adopt a quasi-legal role in firstly acting as an "investigator", then assuming a role akin to "prosecutor" in deciding whether there are sufficient indications that an illegal act may have been committed, then assessing the public interest implications of the particular case, and then ultimately possibly either becoming whistle-blowers to external authorities (professional accountants who are auditors) or being *expected* to act as whistle-blowers to the external auditor (professional accountants who are not auditors but providers of professional services/internal accountant employees). As we explain in responding to q.1, there are various issues stemming from the fact that accountants are not generally trained in such matters.

Furthermore, as the proposals in the ED lack sufficiently firm criteria to govern the matters that would be reportable under the proposals neither the public nor members of the accountancy profession will be able to form a view of the exact

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dimensions of the proposed measures. In contrast, most legal provisions governing e.g., money laundering give relatively clear indications as to the nature of the illegal acts to be so reported. This could have wide ranging consequences for the profession, as – without sufficient transparency – some potential clients may be unwilling to take any risk at all that unfounded suspicions or even inadvertent acts on their part could mean that their professional accountants would be required or expected to approach authorities. In short, our concern is that some potential clients may seek to “avoid” professional accountants and chose other sources for certain services or in employee selection. We fear that such a course of action may not be limited to those entities who believe that they may have something to hide, and may not be restricted to particular jurisdictions. Any move towards other less stringently controlled professions or less well-qualified individuals would clearly not be in the public interest.

The intended and perceived effectiveness of the proposals will also be impacted by various other factors that would preclude consistent application. For example, not all entities have auditors, not all jurisdictions have an appropriate authority to which an auditor could usefully report and many jurisdictions have established client confidentiality in law, which the Code cannot override. Some, but not all, accountants will use the “right” to report that the Code would provide. Not all those who act as accountants are subject to the Code. For example in Germany the professions of Steuerberater [Tax advisers] and Bilanzbuchhalter [Accounting Technicians who may not provide audit services] are not, and would not be subject to any similar provisions. This would mean that German Public Auditors would be at a serious disadvantage. Of most significance is the fact that the exceptional circumstances in which a professional accountant would not be expected to act, and an auditor not required to act are likely to mean that the most serious or wide-ranging cases, which without question are those that ought to be reported in the public interest will be the very ones not reported. This fact alone certainly calls the effectiveness of the proposals in a global context into question. In this context, we would like to stress that we are in no way questioning the need for such exceptions.

Role of an Auditor and Impact on Audit Scope

The ED proposes to use the auditor as whistle-blower in all cases (where there is an auditor) as a last resort in the public interest, claiming that this approach will have a potential deterrent effect, resulting in less illegal acts being committed. As we have discussed above, we are concerned that this could

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make entities more reluctant to engage and employ professional accountants. This could have other unintended consequences, for example, driving a change in behaviour (professional accountants might, whether consciously or not, become less suspicious and those perpetrating illegal acts may develop ever more sophisticated ways of hiding such acts). Neither scenario is desirable in the public interest.

By using the auditor as an instance of last resort in this way, the proposals would also force a shift in the auditor's current role – which is not within the remit of IESBA. Paragraphs 11 and 12 of ISA 200 set forth the overall objectives of the auditor in an audit of historical financial statements, which is ultimately to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework. The proposals also go beyond the requirements of ISA 250, which deals with the auditor's consideration of laws and regulations and the auditor's reaction to instances of non-compliance with laws and regulations. A number of aspects of the proposals are in direct contrast to the approach taken by the IAASB in this context. For example, ISA 250 explains the inherent limitations of an audit in this context (ISA 250.5), differentiates between different categories of legal provisions (laws and regulations that have a direct effect on the determination of material amounts on the financial statements, those that have no direct effect but compliance with which is fundamental to business or avoiding material penalties (ISA 250.6)) and requires the auditor to consider the need to obtain legal advice in certain situations – but does not require the auditor break client confidentiality. IESBA does not mention inherent limitations nor, as we point out below, does it provide any form of de minimis consideration. Together, these omissions mean that the ED could give the impression that all suspected illegal acts, irrespective of their probable impact will be followed through and potentially may ultimately be reported to the authorities. This is highly unrealistic, and, at best, will lead to an expectations gap and at worst will have serious implications for the accountancy profession.

One major difference in the IESBA's and the IAASB's approach, which gives us considerable cause for concern, lays in the fact that the ISAs follow a risk-based approach, looking at material matters, whereas the IESBA essentially takes the opposite approach, in requiring every initial suspicion to be followed up before the professional accountant is required to consider the potential magnitude or public interest implications. Paragraph 225.5 does not even foresee the professional accountant to dismissing matters of a minor or insignificant nature. In addition, whether the reasonable steps to be taken in paragraph 225.5 IESBA is proposing would equate with the concept of reasonable assurance in the ISAs

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is not clear, as is the level of suspicion that an accountant is required to reach, for example in cases where little firm evidence exists to allay or confirm the suspicion. For example, should the accountant follow the concept of innocent until proved guilty apply in determining whether to report a particular matter?

As we explain in our response to q.1, the accountancy profession does not generally have sufficient training, authority or rights of access to facilitate the detection of illegal acts, which, by their very nature, may be perpetrated with the intention of making them difficult to detect. Whilst an audit of financial statements performed pursuant to ISA does require the auditor to exercise professional skepticism throughout the performance of the audit (ISA 200.15), and to perform specific procedures in consideration of the potential for fraud (ISA 240), an audit cannot (and should not) equate to a forensic audit such as might be needed as part of a thorough investigation by the authorities.

Accountants in public practice who provide professional services to non-audit clients and individual accountants employed by an entity will generally also not have the forensic accountant's means and authority to pursue any suspicions they may have.

Clearly in situations where there is no auditor the proposals will result in an unequal outcome. Given the concerns in many jurisdictions associated with raising thresholds for statutory audits, we are concerned that this is one more factor that could ultimately discourage entities from undergoing audits on a voluntary basis. We do not entirely agree with the views expressed on page 10 of the Explanatory Memorandum as to entities with no external auditor, and are concerned that the public perception may differ, given our concerns explained above as to impact on the profession as a whole.

Public Expectations

We appreciate that a stated objective of IESBA is to serve the public interest in developing a robust internationally appropriate Code.

In our opinion, public expectations in respect of other professional services and accountants employed in business are unlikely to equate fully to those attaching to auditors.

Given the public interest element of an audit of historical financial statements, we also appreciate that the public will generally expect an auditor to act in an appropriate manner when, during the course of an audit of financial statements, the auditor becomes aware that an audit client has, in all likelihood, committed

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an illegal act. Indeed, without a detailed understanding of what an audit involves, the public may expect – or even desire – that all illegal acts will come to the auditor’s attention. Due to the inherent limitations of an audit in this context (see ISA 250.5) this is not necessarily achievable in all audits. We are concerned that the approach the IESBA has taken in developing the proposals may fuel this expectation further.

At the same time, the public expects the accountancy profession to act with discretion and respect client confidentiality. This is likely to be an important aspect of professional services that clients value highly.

Notwithstanding the fact that we do not support the IESBA pursuing these proposals further, we trust that our comments will be useful in further debate of this issue.

If you have any questions relating to our comments in this letter, we should be pleased to discuss matters further with you.

Yours sincerely,



Klaus-Peter Feld
Executive Director



Helmut Klaas
Director European Affairs

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APPENDIX

Responses to individual questions

1. Do respondents agree that if a professional accountant identifies a suspected illegal act, and the accountant is unable to dispel the suspicion, the accountant should be required to discuss the matter with the appropriate level of management and then escalate the matter to the extent the response is not appropriate? If not, why not and what action should be taken?

ISA 250.19 requires auditors who suspect there may be non-compliance with certain laws and regulations to discuss the matter with management and where appropriate with those charged with governance, and to consider the need to obtain legal advice. As we have pointed out in the accompanying letter, the approach taken in the proposals exceeds that taken by the IAASB, since the IESBA is not proposing a risk-based approach. This proposal, if adopted, would also lead to a change in the scope of an audit.

Extending any such requirement to professional accountants that are otherwise engaged or employed by an entity could be problematical, for a variety of reasons, which we discuss in detail below:

In addition, as a professional body, the IDW cannot agree with the contention made in the Explanatory Memorandum that questions individual accountants may have in complying with specific sections could be dealt with by discussion with relevant professional bodies or with a legal advisor (see 225.22). This “guidance” does not adequately compensate for a lack of firm criteria.

Determining What is in the Public Interest

Determining what is in the public interest is not straightforward. IFAC itself has found it challenging to even define the phrase in general terms, let alone in a specific situation. We are concerned that in proposing a requirement for individual professional accountants – irrespective of whether they are serving as auditors, engaged for the provision of professional services, or directly employed by an entity – to determine whether or not a particular matter is of such consequence that it is in the public interest on the merits of an individual case IESBA will lay the accounting profession open to accusations of getting it wrong either way. If professional accountants are overly cautious they run the risk of being accused of damaging the reputation of the engaging party or employer (libel – which also carries significant liability issues). If they are not

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sufficiently cautious, then, accusations that the accountant “should have reported” are bound to ensue. The proposed requirement in paragraph 225.21 that in making a disclosure to an appropriate authority the professional accountant shall, among other things, “exercise caution when making statements and assertions” merely exacerbates this problem. Without clear criteria with which to determine the public interest in a particular set of circumstances, the proposal is unworkable.

Furthermore, the ED lacks concrete criteria which would enable accountants and the public to form a reliable appreciation as to what sort of suspected illegal acts will be reportable under the ED. We do not believe that the “reasonable and informed third party” test including “weighing all the specific facts and circumstances” and “likely to conclude” is appropriate, and in any case, it cannot be capable of consistent application (culturally) on a global scale. No-one can ever have all the facts.

The proposal gives rise to more questions than answers. For example, citing the number of people affected and extent they could be affected does not seem to us to constitute a reasonable criteria (i.e., to what are such numbers meant to be relative?). How exactly is the accountant expected to consider the “nature of the matter” in addition to or in the context of the magnitude? Further issues arise, such as the extent to which cultural differences are likely to impact an individual accountant’s determination of public interest. As we have mentioned in our accompanying letter, in our opinion this area should be addressed by standard setters and legislators rather than the individual accountant on his/her own capacity.

Professional Judgment as to What Constitutes an Illegal Act

We have a number of concerns with the proposals that a professional accountant be required to take reasonable steps to confirm or dispel his or her suspicion (paragraphs 225.5, 225.16 and 360.4).

Professional accountants are generally neither trained in legal matters, not accorded the authority or powers so as to be able to determine whether an illegal act may have been perpetrated (i.e. accountants are unable to assume the role of legal counsel and certainly not judge and jury, nor do they have the powers equivalent to police forensic accountants, etc.).

The proposal gives rise to more questions than answers. For example, what exactly are these reasonable steps the accountant will take to confirm or dispel the suspicion? Who will pay for this “extra” work, especially if the extra work

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results in the suspicions being dispelled? How will the proposals impact the overall costs to business? How will the proposals impact client relationships, especially if the client believes the “suspicions” are unfounded? How does the professional accountant assess whether the entity’s response is appropriate (paragraph 226.7)? Do the three bullets in paragraph 225.9 imply that as long as management has dealt with this (investigation/remedial action/steps to reduce the risk of reoccurrence) the professional accountant is “off the hook” and no escalation of the matter is warranted? If so, it is questionable whether this is really always the case, or whether even a one-time occurrence could be so serious as to warrant further attention and potentially disclosure to the authorities.

It is also not clear what “unable to dispel the suspicion” means. Does this mean that the auditor has a responsibility beyond the audit of the financial statements to investigate any suspicions of illegal activity even if they do not result in a material misstatement of the financial statements? What level of assurance is associated with “dispelling the suspicion” and what does the auditor do if, due to a lack of evidence, the auditor can neither confirm nor dispel that suspicion?

Furthermore, the requirements to discuss with management etc., escalate the matter may be entirely inappropriate (tipping-off), even if there is no law actually preventing the professional accountant from doing this in a particular jurisdiction.

2. Do respondents agree that if the matter has not been appropriately addressed by the entity, a professional accountant should at least have a right to override confidentiality and disclose certain illegal acts to an appropriate authority?

As noted in our covering letter, we do not believe that IESBA has the authority to allow or deny professional accountants such rights. Client confidentiality is required by law in many jurisdictions, so releasing the professional accountant from this duty in specific circumstances is a matter for national legislators.

Indeed, given the question of IESBA’s authority to govern such matters, we are unable to appreciate the difference between the proposed requirement for auditors to disclose certain information and a right expected to be exercised that IESBA is proposing be extended to professional accountants in public practice and professional accountants in business.

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3. Do respondents agree that the threshold for reporting to an appropriate authority should be when the suspected illegal act is of such consequence that disclosure would be in the public interest? If not, why not and what should be the appropriate threshold?

Given our concerns already explained elsewhere, we do not agree that IESBA is the appropriate body to determine such a threshold, nor that the professional accountant should be required to determine the public interest connotations for each and every suspected illegal act of which he or she may become aware during the provision of audit or other professional services or by dint of his or her employment as an accountant. In our view, the exact determination of such a threshold is a matter for national regulators.

**Matters specific to Professional Accountants in Public Practice
(Section 225 of the Code)**

4. Do respondents agree that the standard for a professional accountant in public practice providing services to an audit client should differ from the standard for a professional accountant in public practice providing services to a client that is not an audit client? If not, why not?

No. As explained, we do not support the proposals that would alter the role of the auditor and of the accountant; the proposed difference is, in our view somewhat arbitrary.

5. Do respondents agree that an auditor should be required to override confidentiality and disclose certain suspected illegal acts to an appropriate authority if the entity has not made adequate disclosure within a reasonable period of time after being advised to do so? If not, why not and what action should be taken?

No. We refer to our accompanying letter. In our view, IESBA is not the appropriate body to address release from client confidentiality in the context of whistle-blowing.

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6. Do respondents agree that a professional accountant providing professional services to an audit client of the firm or a network firm should have the same obligation as an auditor? If not, why not and what action should be taken?

No. We refer to our accompanying letter. In our view the proposals may result in an undesirable impact on the accountancy profession, which would not serve the public interest as a whole.

7. Do respondents agree that the suspected illegal acts to be disclosed referred to in question 5 should be those that affect the client's financial reporting, and acts the subject matter of which falls within the expertise of the professional accountant? If not, why not and which suspected illegal acts should be disclosed?

No. We refer to our accompanying letter.

8. Do respondents agree that a professional accountant providing professional services to a client that is not an audit client of the firm or a network firm who is unable to escalate the matter within the client should be required to disclose the suspected illegal act to the entity's external auditor, if any? If not, why not and what action should be taken?

No. We refer to our accompanying letter.

9. Do respondents agree that a professional accountant providing professional services to a client that is not an audit client of the firm or a network firm should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority and be expected to exercise this right? If not, why not and what action should be taken?

No. We refer to our accompanying letter.

10. Do respondents agree that the suspected illegal acts to be disclosed referred to in question 9 should be those acts that relate to the subject matter of the professional services being provided by the professional accountant? If not, why not and which suspected illegal acts should be disclosed?

No. We refer to our accompanying letter.

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We support the approach taken in ISA 250 which essentially determines three categories of non-compliance with laws and regulations, each of which results in different reaction by the auditor.

Matters Specific to Professional Accountants in Business (Section 360 of the Code)

Our members are generally limited to professional accountants in public practice, and therefore will not be directly affected by the proposal. Indeed in Germany there is no “accountancy” designation as such that would fall under the Code. In other countries there are likely to be professional accountants and other accountants competing with one another, which is also an issue the IESBA need to bear in mind.

We would like to note that IESBA seems to have taken its stance with the aim of having those accountants in business who hold a senior position act in a specific way. The fact is that many accountants in business do not have senior positions and are not well-placed to act upon unethical behavior that has occurred to achieve the desired results and may thus only face the option of resigning from the organization – having accountants who are ethical resign thus leaving only those who are not is neither in the public interest, the interest of the organization, nor the personal interests of the individual accountant.

11. Do respondents agree that a professional accountant in business who is unable to escalate the matter within the client or who has doubts about the integrity of management should be required to disclose the suspected illegal act to the entity’s external auditor, if any? If not, why not and what action should be taken?

We do not view this as an appropriate or necessary measure.

In our opinion, a quality audit in compliance with the ISAs or equivalent national Auditing Standards already deals with compliance with laws and regulations in an appropriate manner. The relationship between the auditor and the accountant could be affected by such requirements.

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12. Do respondents agree that a professional accountant in business should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority and be expected to exercise this right? If not, why not and what action should be taken?

Our members are generally limited to professional accountants in public practice, and therefore will not be directly affected by the proposal.

However, we do not believe that the Code is the appropriate place to govern whistle-blowing, nor do we believe that the proposals will have the desired impact in practice, particularly not in relation to accountants in business.

As we have detailed elsewhere in this letter, we do not believe it is appropriate for the individual professional accountant to be left to decide on the various matters that the proposals would require that could lead to the proposed disclosure. A requirement for a PAIB to “escalate the matter“, a “right” to disclose and an “expectation to exercise the right” will not be effective measures in practice.

13. Do respondents agree that the suspected illegal acts to be disclosed referred to in question 12 above should be acts that affect the employing organization’s financial reporting, and acts the subject matter of which falls within the expertise of the professional accountant? If not, why not and which suspected illegal acts should be disclosed?

As explained elsewhere, disclosure is a matter that should be governed by legislation and not the Code. In our view, the approach taken by the IAASB in ISA 250 is appropriate for the auditor. In respect of other professional services, it would be appropriate for the legislator to define specific circumstances and matters for disclosure as appropriate in the particular jurisdiction.

Other

14. Do respondents agree that in exceptional circumstances a professional accountant should not be required, or expected to exercise the right, to disclose certain illegal acts to an appropriate authority? If not, why not and what action should be taken?

As stated in our covering letter, we do not believe that IESBA is the appropriate body to deal with this issue.

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We believe that the entire approach proposed is fraught with issues and we have grave concerns as to the workability of the proposals. Requiring an accountant to disclose information related to suspected illegal acts even in circumstances when that individual's physical safety or that of others would be threatened would be untenable – thus we appreciate that exceptions are required. However, it is likely to be just these very circumstances which the goal of the initiative seeks to address. In other words, if the more extreme cases are subject to exceptions the benefit of the proposals will be lost. Such provisions also open the door to misuse. In any case, as the IESBA itself explains, there are no provisions for protective mechanisms, which makes the likelihood of accountants taking up any “rights” to disclose unrealistic, notwithstanding the expectation set forth by IESBA.

15. If respondents agree that in exceptional circumstances a professional accountant should not be required, or expected to exercise the right, to disclose certain illegal acts to an appropriate authority, are the exceptional circumstances as described in the proposal appropriate? If not, how should the exceptional circumstances be described?

As we do not agree that IESBA should deal with the issue of suspected illegal acts, we would simply point out that the exceptional circumstances singled out by IESBA are the very circumstances that the proposals would be needed to address thus the proposals fail because they lack the desired effect. As also noted above, the proposal in paragraph 225.15 that a professional accountant in public practice providing services to an audit client (but not a professional accountant in public practice providing services to a non-audit client, nor a professional accountant in business) shall in certain cases consider whether it is appropriate to continue to provide professional services in the particular jurisdiction is too extreme, and we do not understand the logic behind the idea that this should only apply if an audit client is involved and not a non-audit client.

16. Do respondents agree with the documentation requirements? If not, why not and what documentation should be required?

There is a danger that documentation requirements will result in a “cover your back” approach, if accountants seek to please the regulators, alternatively professional accountants may be led not to document certain “uncomfortable” aspects or matters. Ordinarily accountants who take such issues seriously would document specific matters for their own protection.

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17. Do respondents agree with the proposed changes to the existing sections of the Code? If not, why not and what changes should be made?

Suspected Illegal Acts

As explained in detail, we do not support the addition of sections 225 and 360, nor conforming amendments in sections 140.7, 140.8.

Unethical Acts

The text in paragraph 100.21 that IESBA proposes deleting reflects ISA 250.19, but as far as we are aware has no equivalent for accountants not performing an audit. We do not appreciate why this should be deleted, as the accountant remains free to consider taking legal advice, irrespective of whether any specific reporting requirements or expectations exist.

Paragraph 100.21 ought to clarify that a significant conflict is meant.

Paragraph 150.1 ought to clarify that unethical behavior referred to in the last sentence is significant and not an isolated matter of a minor nature.

The last sentence of paragraph 210.5 ought to include “unless prohibited by law” in relation to terminating a specific engagement as some appointments may be subject to legal stipulations.

Paragraph 300.6 introduces the notion that a professional accountant in business (PAIB) has a duty to act in the public interest. The current Part C of the Code relating to PAIBs does not specify this. Indeed Section 300 discusses the various facets of responsibility from external parties to the employing organization and to the profession as a whole. The proposed changes may lead to confusion; we suggest in place of the phrase “public interest” this text be aligned to the rest of Section 300.

Paragraph 300.15 essentially lowers the threshold above which accountants in business might need to resign from their employment from one of continual unethical behavior to a one-off occurrence. This whole issue needs to be handled more sensitively by IESBA. Resignation may be impossible for personal reasons. Threats to the accountant’s person or to others also need to be addressed, as do issues such as whether escalating the matter may mean “tipping-off” the perpetrator.

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In our opinion, stating that unethical behavior constituted improper earnings management or balance sheet valuations (paragraphs 210.5 and 300.6) is highly problematical. These are issues that need to be addressed by accounting standard setters. The audit implications are already covered appropriately by ISA 240. Generalization in the manner proposed is not helpful as regards public perception, since in every case the individual circumstances need to be taken into account by the auditor.

• *18. Do respondents agree with the impact analysis as presented? Are there any other stakeholders, or other impacts on stakeholders, that should be considered and addressed by the IESBA?*

No this appears to be based on supposition and does not take adequate account of practicalities and the potential for unintended consequences. We do not believe this is helpful or likely to be an accurate reflection of impact in practice.