

International Ethics Standards Board for Accountants  
(IESBA)

Attn. Mr. Ken Siong  
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Submitted via email to [kensiong@ethicsboard.org](mailto:kensiong@ethicsboard.org)

Date	Re	Our ref	Attachment	Direct dial nr
10 September 2015	ED Responding to Non- Compliance with Laws and Regulations	JTD	x	+31 20-3010215

Dear Mr. Siong,

The NBA welcomes the opportunity to comment on the Exposure Draft (ED) providing guidance to professionals on how to respond to Non-Compliance with Laws and Regulations. A task worthwhile but also challenging.

As a member of the Federation of European Accountants (FEE), we support in general the comments FEE provided to you in its response to this ED. We have, however, identified some aspects which we would like to bring to your attention:

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## General comments

### 1. Definition of 'public interest'

In our opinion it is not desirable to have a strict definition of 'public interest'. In fact, a more principle based definition is a precondition for a worldwide application of the framework. It creates the possibility to use professional judgement to determine what is (acting in) the public interest, taking into account the particular circumstances and the particular culture and particular time one operates in. Different possible outcomes of the professional judgement process are the logical result of the principles based approach of the CoE.

### 2. Legal advice

We are supportive of the fact that IESBA recognizes the importance of obtaining legal advice when determining whether further action is needed, what someone's options are and what the implications of taking any particular course of action are (paragraphs 225.26, 225.46, 360.25). We think legal advice is even more important in the environment where a legal or regulatory requirement, which the PA is to comply with, is absent. We suggest IESBA to emphasize this even more.

In addition, we recommend to add to paragraph 225.26 and 360.26 that the opinion of other professionals, such as an ethicist, could be obtained as a valuable alternative or additional source of advice to the sources mentioned (regulators and professional bodies).

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## Remarks related to specific questions in the Exposure Draft

**Question 2. Where there is no legal or regulatory requirement to report identified or suspected NOCLAR to an appropriate authority, do respondents believe the proposals would be helpful in guiding PAs in fulfilling their responsibility to act in the public interest in the circumstances?**

3. See our comments under 1. above.
4. In addition, we wish to emphasize that we agree with the imposition of the third party test relative to the determination of the need for, and nature and extent of, further action (in respect to all PAs, not to PAIBs only). Application of the third party test is the logical result of the application of the conceptual framework of the CoE, since the third party test is part of that framework. Different possible outcomes are inherent in a conceptual framework approach. What a reasonable and informed third party expects a PA to do, depends on the specific facts and circumstances, culture, the general ethical views at that time and the PA's role and position.

**Question 5. Do respondents agree with the scope of laws and regulations covered by the proposed Sections 225 and 360?**

5. We do not believe that disclosure could be precluded under the engagement terms in contractual agreements with clients etc. We believe that all professional accountants have an equal responsibility to act in the public interest. This is the result of the starting point of the COE that all PA's have to comply with the same fundamental principles in order to act in the public interest (the underlying basic assumption of the COE). The nature of both the engagement and the relationship with the party services are provided to, are factors to take into consideration when determining the nature and extent of action(s) to be taken.
6. We emphasize the underlying basic assumption of the CoE that a distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest.

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**Question 7b. Do respondents agree with the imposition of the third party test relative to the determination of the need for, and nature and extent of, further action?**

7. See our remarks under 3. and 4. above.

**Question 7c. Do respondents agree with the examples of possible courses of further action? Are there other possible courses of further action respondents believe should be specified?**

8. We believe that the examples provided will assist the auditor to come to a conclusion on whether to disclose or not, based on professional judgement and taking all factors into consideration.

**Question 7d. Do respondents support the list of factors to consider in determining whether to disclose the matter to an appropriate authority?**

9. In addition to FEE's comment, we refer to paragraph 225.21/360.20: "Whether the non-compliance or suspected non-compliance is likely to recur." We believe that the likelihood of recurrence should not be a factor to be taken into account.

For further information on this letter, please contact Mr. Jan Thijs Drupsteen via email at [j.th.drupsteen@nba.nl](mailto:j.th.drupsteen@nba.nl).

Yours sincerely,

Royal NBA, Dutch Ethics & Assurance Standards Board



Prof.dr. Peter W.A. Eimers RA,  
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