



The Association of
Accountants and
Financial Professionals
in Business

September 3, 2015

International Ethics Standards Board for Accountants (IESBA) (via IFAC Website)

Dear Members of IESBA:

The Committee on Ethics (CoE) of IMA® (Institute of Management Accountants) is pleased to submit its views to the International Ethics Standards Board for Accountants (IESBA) on its Exposure Draft (ED), *Responding to Non-compliance with Laws & Regulations*. We further wish to emphasize and augment some of our previous general comments about other aspects of the IESBA Code.

IMA is a global association representing more than 75,000 accountants and financial professionals in business. Our members work inside organizations of various sizes, industries, and types, including manufacturing and services, public and private enterprises, not-for-profit organizations, academic institutions, government entities, and multinational corporations.

The CoE is IMA's technical committee on ethics-related matters. It is responsible for encouraging IMA members, their organizations, and other individuals to adopt, promote, and execute superior business practices in management accounting and finance consistent with IMA's mission by advocating the highest ethical principles. It maintains and promotes IMA's principal business and ethics guidance, the IMA Statement of Ethical Professional Practice, and oversees the administration of IMA initiatives designed to ensure compliance with the Statement. It also reviews and responds to research studies, statements, pronouncements, proposals, and other documents issued by domestic and international agencies and organizations.

We wholeheartedly uphold IESBA's overarching objective to serve the public interest by setting high quality ethics standards for professional accountants. We agree that the Code should provide ethical requirements and guidance to help meet its responsibilities and we commend the Board for continuing to pursue closure on the extremely controversial subject of whistleblowing. However, we are not confident the ED will accomplish its stated purpose of providing guidance on "when to blow the whistle," or more importantly, how best to do so, particularly for professional accountants in business (PAIBs).

Summary Comments

An example of Code complexity is the ED's confusing, and apparently prescriptive, mandate for PAIBs to blow the whistle on NOCLAR by informing their superior. This requirement is stated to be "subject to" [really contrary to] an earlier provision in 360.11 that instead suggests consideration of using an organization's established ethics protocols and procedures as a first step, a process with which we strongly agree. We consider this puzzling and apparently contradictory apparent PAIB requirement to be a fatal flaw which should be clarified.

Further, we strongly disagree with the ED's premise that "the response framework for senior PAIBs should be broadly comparable to that for auditors" in view of the widely differing missions for each group and dissimilar organizations. We suggest the overall approach for PAIBs should be modified to take into account the contents of this letter.



The ED also fails to sufficiently recognize the tremendous risk of retaliatory action against PAIB whistleblowers which has taken place historically in spite of legal and other protections. Retribution can include closing of future opportunity or immediate job downgrades, verbal harassment, family upset, mental breakdown, even career-ending damage from future employer shunning. 2014 research by the Ethics Resource Center shows that 21% of those who reported misconduct said they experienced retaliation. We strongly believe the path for PAIB NOCLAR disclosure, whether internally or externally, should always include consideration of the existence of effective whistleblower protection, as stated in the ED as “robust and credible protection from civil, criminal or professional liability or retaliation.”

As advised in previous comment letters, we believe the Code is becoming overly detailed, prescriptive, and lengthy, thus hard for many PAIBs to use. Simplifying and summarizing the Code would make it more easily usable by all PAIBs and other users, while keeping it principles based. We also believe the Code seems much more oriented to auditors and is less helpful to PAIBs.

Comments on Specific Code Provisions

225.6 should add “Employment laws concerning worker health, safety, and working conditions.” Violations of these laws in the past have resulted in considerable costs to clients.

225.8(c) should add “and sub-contractors” after “employees” and before “of the client.” Although not necessarily legally responsible for unlawful actions of their sub-contractors, considerable reputational damage and other costs have occurred from such events in the past, particularly in the shoe, clothing, and mineral exploration industries.

360.2 should add “and sub-contractors” after “employees of the employing organization.” As noted above, history has shown that lawsuits and adverse public opinion have resulted from unlawful actions of sub-contractors.

360.6 should add “Employment laws concerning worker health, safety, and working conditions.” Violations of these laws in the past have resulted in considerable costs to employing organizations.

360.8 should add “and sub-contractors” after “employees of the employing organization.” As noted above, history has shown that lawsuits and adverse public opinion have resulted from unlawful actions of sub-contractors.

360.15 should add “not affiliated with the employing organization” after “legal counsel” because of the potentially severe risk of retaliation against the whistleblower.

360.16, 360.17, and 360.33: As noted in the Summary Comments, we believe the term “subject to” confuses and possibly contradicts the provisions of 360.11 with which we agree. Sections 360.16, 360.17, and 360.33 appear to mandate whistleblowing, thus bypassing the organization’s ethics protocols and procedures. We strongly believe PAIBs should follow their organization’s established policies for resolution of ethical conflict while considering the risk of whistleblower retaliation if anonymity is not assured.

360.26 While we agree that decisions on whether to disclose NOCLAR to an Appropriate Authority should include consideration of the effectiveness of whistleblower protection, we strongly believe this factor should be considered for internal reporting as well, as discussed above in 360.16, 360.17, and 360.33.

360.34, which applies to other than senior PAIBs, refers to actions contained in 360.26 which only applies to senior PAIBs. This reference is confusing and should be clarified.



Comments on Explanatory Memorandum

54 applies only to auditors, but in 115 and the senior PAIB screen of Appendix, there is the mandate to “apply third-party test.” We disagree with the third-party test for PAIBs as we do not believe third parties have experience necessary to be qualified to judge the actions of senior PAIBs, nor would they have the insight into the context of a PAIB’s actions.

70 and 300 should add consideration of assuring anonymity for whistleblowers to minimize risk or retaliation.

72 and 115 should not lump together responsibilities of auditors and senior PAIBs as their missions differ so widely and organizations are so dissimilar.

72 should consider adding a senior PAIB responsibility to endeavor to avoid company policies requiring executives to sign a confidentiality agreement that bars the reporting of potential illegal or unethical activities directly to authorities. Research of high earners in the financial services industry found 28% were asked to sign such agreement and 19% believe, likely, that their employer would retaliate if they did report directly to the authorities.¹

84 and the non-senior PAIB Response Framework screen in Appendix 1 use the term “escalate to” rather than “inform” an immediate superior as stated in 360.33 which 84 references. 84 uses “and” whereas the screen uses “or” indicating a choice. We strongly believe PAIBs should follow their organization’s established policies for resolution of ethical conflict while considering the risk of whistleblower retaliation if anonymity is not assured.

106 We do not agree that “the fiduciary nature of the roles” of a senior PAIB is a valid and apt description for global use and should be changed.

132 and 137 should recognize the potentially devastating costs to a PAIB who suffers retaliation for whistleblowing. As noted above, we believe PAIBs should follow their organization’s established policies for resolution of ethical conflict and consider the risk of whistleblower retaliation if anonymity is not assured.

138 while we agree that the costs to both individual auditors and audit firms may not be consequential, this conclusion does not appear to have considered the cost to PAIBs who report NOCLAR.

ED Request for Specific Comments

General Matters

1. **Q.** Do we believe the guidance in the proposals would support the implementation and application of the legal or regulatory requirement?
 - A. Yes, particularly for auditors. The ED would be strengthened by describing the bounty payments available to whistleblowers in some jurisdictions.

2. **Q.** Do we believe the proposals would be helpful in guiding PAs in fulfilling their responsibility to act in the public interest in the circumstances?
 - A. Partly. The ED would be strengthened by describing the bounty payments available to whistleblowers in some jurisdictions.

(Question 3 is intentionally omitted.)

¹ Verschoor, “Whistleblowers Take Big Risks” in Strategic Finance, August 2015, p 9-10



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Specific Matters

4. **Q.** Do we agree with the proposed objectives for all categories of PAs?
A. Partly. Please see Comments above.

5. **Q.** Do we agree with the scope of laws and regulations covered by the proposed Sections 225 and 360?
A. Yes. Please see Comments above.

6. **Q.** Do we agree with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR?
A. No. Please see Comments above.

7. **Q.** With respect to auditors and senior PAIBs:
A. No to all questions. We strongly object to considering action of auditors and senior PAIBs, in a similar fashion, in view of their widely differing missions and dissimilar organizations. Please see Comments above.

We appreciate the opportunity to comment on this important ED and hope you find our suggestions helpful as you deliberate changes to the Code. Please do not hesitate to contact me should you wish to discuss any of the comments in this letter.

Yours very truly,

A handwritten signature in black ink that reads "Curtis C. Verschoor".

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