Submitted electronically through the IFAC website and to janmunro@ifac.org

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Berne, December 14, 2012

Proposed Changes to the Code of Ethics for Professional Accountants ("Code of Ethics"): Responding to a Suspected Illegal Act

Dear Ms. Munro,

The Federal Audit Oversight Authority (FAOA) of Switzerland welcomes the opportunity to comment on the International Ethics Standards Board for Accountants’ Exposure Draft, “Proposed Changes to the Code of Ethics for Professional Accountants ("Code of Ethics"), Responding to a Suspected Illegal Act”, dated August 22, 2012 (hereafter "Draft").

The Audit Oversight Ordinance stipulates that the FAOA determines the auditing standards which audit firms under state oversight must comply with when auditing public companies. In so doing, the FAOA refers to nationally and internationally accepted standards. Through its Ordinance on the Oversight of Audit Firms of 17 March 2008, the FAOA declared the ISA to be binding for auditing statutory and consolidated financial statements prepared in accordance with IFRS (cf. Circular 1/2008 on Approval of Auditing Standards of 17 March 2008).

The FAOA participated in the creation of the International Forum of Independent Audit Regulators (IFIAR) and is committed to playing an active role in that forum. Furthermore, the FAOA is represented in the IFIAR Standards Coordination Working Group. The objectives of this Working Group are to share views on relevant projects and to facilitate discussions with relevant bodies, such as IAASB or IESBA, as regards their standards or other matters.
1. General comments

In general we welcome the approach to establish within the Code of Ethics, depending on the individual case, the duty, respectively right, of a professional accountant to discuss acts he or she believes are illegal with those charged with governance, or to report them to the relevant authority. Swiss law is acquainted with a multistage approach. It would also be possible for the professional accountant to inform the shareholders of the entity before reporting to the authorities (see paragraph 2.2 below).

2. Specific comments and responses

2.1. "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?"

Yes. In our view the duty to report to the audited entity should relate primarily to those offences that the professional accountant discovers within the scope of his or her legal or statutory audit duties and responsibilities, or that should have been discovered within the course of a proper audit. That being said, the duty to report also covers offences which he or she finds outside the scope of such audit duties and responsibilities. Additionally, the professional accountant generally has no duty to investigate. Should he or she discover an illegal act or evidence of such an act incidentally, however, he or she must carry out the appropriate investigations.

"Illegal acts" should include all violations of objective law provisions, not only criminal offences for example, but also violations of competition or stock exchange law.

2.2. "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?"

Yes, but subject to applicable national law.

Under Swiss law the auditor must notify the Board of Directors in writing of violations of the law, articles of association or organisational regulations. In addition, the auditor must inform the shareholders of violations of the law and articles of association if (1) the violations are significant or (2) the Board does not take reasonable measures in response to the written notification of the auditors. An individual shareholder may also reach out to the authorities, not being bound by the auditor's duty of confidentiality. If the audited entity is obviously over-indebted and the Board of Directors fails to report this, the auditor must notify the Court (Art. 728c Swiss Code of Obligations, CO, SR 220).

Furthermore, in the context of an action under Swiss law, the procedural law provisions of criminal, respectively civil, law and the substantive provisions of special laws, particularly as regards auditor confidentiality and trade secrecy, are also to be considered.

2.3. "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?"

Yes, but subject to applicable national law. We note that Swiss law does not limit the reporting obligation to cases of public interest (see paragraph 2.2 above).
2.4. "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?"

Yes, but subject to applicable national law (see paragraph 2.2 above).

2.5. "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?"

Yes, but subject to applicable national law (see paragraph 2.2 above).

2.6. "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?"

Yes. For example, every professional accountant should have the same duty as a member of the audit team.

2.7. "Do respondents agree that the suspected illegal acts to be disclosed referred to in question '2.5' 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?"

Yes, but subject to applicable national law (see paragraph 2.2 above).

2.8. "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?"

Yes, but subject to applicable national law.

2.9. "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?"

Yes, but subject to applicable national law.

2.10 "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 (see paragraph 2.1 above)

2.11 "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?"

Yes, but subject to applicable national law.
2.12 "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?"

Yes, but subject to applicable national law.

2.13 "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?"

Yes, but subject to applicable national law (see paragraph 2.3 above).

2.14 "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?"

Yes, but subject to applicable national law.

2.15 "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?"

Yes, but subject to applicable national law.

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

Yes.

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

Yes.

2.18 "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?"

Yes, see paragraph 1 above.

In the event of questions, Mr Daniel Huser, Attorney-At-Law (Tel. +41 31 560 22 22; daniel.huser@rab-asr.ch), will be pleased to assist.

Yours faithfully

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