

# SUPPLEMENT TO STRUCTURE ED-2 CHAPTER 2 – RESTRUCTURING CHANGES TO NOCLAR FINAL PRONOUNCEMENT

[Mark-Up]

This document has been prepared by the Staff of the International Ethics Standards Board for Accountants® (IESBA) for information only. It contains the mark-up of the restructuring changes made to the July 2016 the final NOCLAR Pronouncement, [Responding to Non-compliance with Laws and Regulations](#).<sup>1</sup>

For ease of reference, the text of the proposed conforming amendments arising from the Safeguards project, referenced in the January 2017 Exposure Draft: [Improving the Structure of the Code of Ethics for Professional Accountants – Phase 2](#), is shaded in gray (see also the January 2017 Exposure Draft: [Proposed Revisions Pertaining to Safeguards in the Code – Phase 2](#)).

## PART ~~C~~2 – PROFESSIONAL ACCOUNTANTS IN BUSINESS

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### Section ~~360~~260

#### Responding to Non-Compliance with Laws and Regulations

##### ~~Purpose~~Introduction

- 260.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.
- 260.2 Threats to compliance with the principles of integrity and professional behavior are created when an accountant becomes aware of an act or suspected act of non-compliance with laws and regulations.
- 260.3 ~~360.5~~ This ~~s~~Section 260 sets out requirements and application material regarding the approach to be taken by a professional accountant ~~who encounters or is made aware of when responding to non-compliance or suspected non-compliance with:~~
- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the employing organization's financial statements; and
  - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organization's financial statements, but compliance with which ~~may~~might be fundamental to the operating aspects of the employing organization's business, to its ability to continue its business, or to avoid material penalties.

<sup>1</sup> Extant Sections 225 and 360, *Responding to Non-compliance with Laws and Regulations*

## **Requirements and Application Material**

### **General**

260.4 A1 ~~360.2~~ Non-compliance with laws and regulations (“non-compliance”) comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by the following parties:

(a) ~~†~~The professional accountant’s employing organization; ~~or by~~

(b) ~~†~~Those charged with governance of the employing organization; ~~by~~

(c) ~~‡~~Management of the employing organization; ~~or by~~

(d) ~~‡~~Other individuals working for or under the direction of the employing organization, which are contrary to the prevailing laws or regulations.

260.4 A2 ~~360.6~~ Examples of laws and regulations which this section addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

**R260.5** The professional accountant shall apply ~~†~~this section ~~applies regardless of the nature of the employing organization, including whether or not it is a public interest entity.~~

260.5 A1 ~~360.4~~ A professional accountant ~~in business may~~ might encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of carrying out professional activities. ~~The purpose of ~~†~~This section is to set out the professional accountant’s responsibilities when encountering such non-compliance or suspected non-compliance, and guides the professional accountant in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the employing organization, including whether or not it is a public interest entity.~~

**R260.6** ~~360.3~~ In some jurisdictions, there are legal or regulatory provisions governing how professional accountants ~~should~~ are required to address non-compliance or suspected non-compliance, ~~which may~~ These legal or regulatory provisions might differ from or go beyond the provisions in this section. When encountering such non-compliance or suspected non-compliance, the professional accountant ~~has a responsibility to~~ shall obtain an understanding of those legal or regulatory provisions and comply with them, including:

**(a)** ~~a~~Any requirement to report the matter to an appropriate authority; and

**(b)** ~~a~~Any prohibition on alerting the relevant party prior to making any disclosure

260.6 A1 ~~260.6 A1~~ A prohibition on alerting the client prior to making any disclosure might arise, for example, pursuant to anti-money laundering legislation.

260.7 A1 ~~360.4~~ A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the professional accountant are:

- (a) To comply with the ~~fundamental~~ principles of integrity and professional behavior;
- (b) By alerting management or, where appropriate, those charged with governance of the employing organization, to seek to:
  - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
  - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
- (c) To take such further action as appropriate in the public interest.

### Scope

260.7 A2 ~~360.7~~ Non-compliance ~~may~~ might result in fines, litigation or other consequences for the employing organization, ~~that may have a potentially materially effect on~~ affecting its financial statements. Importantly, such non-compliance ~~may~~ might have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

260.7 A3 ~~360.8~~ A professional accountant who encounters or is made aware of matters that are clearly inconsequential ~~is not required to comply with this section.~~ Whether a matter is clearly inconsequential is to be judged by their with respect to its nature and their-its impact, financial or otherwise, on the employing organization, its stakeholders and the general public, is not required to comply with this section with respect to such matters.

260.7 A4 ~~360.9~~ This section does not address:

- (a) Personal misconduct unrelated to the business activities of the employing organization; and
- (b) Non-compliance ~~other than by parties other than those specified in paragraph 260.4 A1 the employing organization or those charged with governance, management, or other individuals working for or under the direction of the employing organization.~~

The professional accountant ~~may~~ might nevertheless find the guidance in this section helpful in considering how to respond in these situations.

## Responsibilities of the Employing Organization’s Management and Those Charged with Governance

- 260.8 A1 ~~360.10~~ ~~It is the responsibility of~~ The employing organization’s management, with the oversight of those charged with governance, is responsible for ~~to ensure~~ that the employing organization’s business activities are conducted in accordance with laws and regulations. ~~It is also the responsibility of~~ Management and those charged with governance are also responsible for ~~to~~ identifying and addressing any non-compliance by:
- (a) ~~the~~ The employing organization; ~~or by~~
  - (b) ~~a~~ An individual charged with governance of the entity; ~~by~~
  - (c) ~~a~~ A member of management; ~~or by~~
  - (d) ~~e~~ Other individuals working for or under the direction of the employing organization.

## Responsibilities of Professional Accountants in Business

- R260.9 ~~360.11~~ ~~Many employing organizations have established protocols and procedures (for example, an ethics policy or internal whistle blowing mechanism) regarding how non-compliance or suspected non-compliance by the employing organization should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the professional accountant’s employing organization to address non-compliance or suspected non-compliance, the professional accountant shall consider them in determining how to respond to such non-compliance.~~
- 260.9 A1 ~~360.11~~ Many employing organizations have established protocols and procedures (for example, an ethics policy or internal whistle blowing mechanism) regarding how to raise non-compliance or suspected non-compliance by the employing organization should be raised internally. These protocols and procedures include, for example, an ethics policy or internal whistle-blowing mechanism. Such protocols and procedures may might allow for matters to be reported anonymously through designated channels.
- R260.10 ~~360.12~~ Where a professional accountant becomes aware of a matter to which this section applies, the steps that the professional accountant takes to comply with this section shall be taken on a timely basis. For the purpose of taking timely steps, the accountant shall haveing regard to the professional accountant’s understanding of the nature of the matter and the potential harm to the interests of the employing organization, investors, creditors, employees or the general public.

## Responsibilities of Senior Professional Accountants in Business

- 260.11 A1 ~~360.13~~ Senior professional accountants in business (“senior professional accountants”) are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organization’s human, financial, technological, physical and intangible resources. ~~Because of their roles, positions and spheres of influence within the employing organization,~~ There is a greater expectation for them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-

compliance than other ~~professional~~ accountants within the employing organization. This is because of senior professional accountants' roles, positions and spheres of influence within the employing organization.

#### *Obtaining an Understanding of the Matter*

**R260.12** ~~360.14~~ If, in the course of carrying out professional activities, a senior professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the ~~professional~~ accountant shall obtain an understanding of the matter. This understanding shall include:

- (a) The nature of the act and the circumstances in which it has occurred or ~~may~~ might occur;
- (b) The application of the relevant laws and regulations to the circumstances; and
- (c) The potential consequences to the employing organization, investors, creditors, employees or the wider public.

260.12 A1 ~~360.15~~ A senior professional accountant is expected to apply knowledge and expertise, and exercise professional judgment ~~and expertise. However, but the accountant is not~~ expected to have a level of understanding of laws and regulations ~~beyond~~ greater than that which is required for the ~~professional~~ accountant's role within the employing organization. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

260.12 A2 ~~360.15~~ Depending on the nature and significance of the matter, the senior professional accountant ~~may~~ might cause, or take appropriate steps to cause, the matter to be investigated internally. The ~~professional~~ accountant ~~may~~ might also consult on a confidential basis with others within the employing organization or a professional body, or with legal counsel.

#### *Addressing the Matter*

**R260.13** ~~360.16~~ If the senior professional accountant identifies or suspects that non-compliance has occurred or ~~may~~ might occur, the ~~professional~~ accountant shall, subject to paragraph ~~360.14~~ R260.9, discuss the matter with the ~~professional~~ accountant's immediate superior, if any, ~~to enable a determination to be made as to how the matter should be addressed.~~ If the ~~professional~~ accountant's immediate superior appears to be involved in the matter, the ~~professional~~ accountant shall discuss the matter with the next higher level of authority within the employing organization.

260.13 A1 The purpose of the discussion is to enable a determination to be made as to how to address the matter.

**R260.14** ~~360.17~~ The senior professional accountant shall also take appropriate steps to:

- (a) Have the matter communicated to those charged with governance ~~to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities;~~

- (b) Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority;
- (c) Have the consequences of the non-compliance or suspected non-compliance rectified, remediated or mitigated;
- (d) Reduce the risk of re-occurrence; and
- (e) Seek to deter the commission of the non-compliance if it has not yet occurred.

260.14 A1~~360.17~~(a) The purpose of communicating the matter to those charged with governance is to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities.

**R260.15** ~~360.18~~ In addition to responding to the matter in accordance with the provisions of this section, the senior professional accountant shall determine whether disclosure of the matter to the employing organization's external auditor, if any, is needed.

260.15 A1 ~~360.18~~ Such disclosure would be pursuant to the senior professional accountant's duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

#### *Determining Whether Further Action Is Needed*

**R260.16** ~~360.19~~ The senior professional accountant shall assess the appropriateness of the response of the ~~professional~~ accountant's superiors, if any, and those charged with governance.

260.16 A1 ~~360.20~~ Relevant factors to consider in assessing the appropriateness of the response of the senior professional accountant's superiors, if any, and those charged with governance include whether:

- The response is timely.
- They have taken or authorized appropriate action to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred.
- The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

**R260.17** ~~360.21~~ In light of the response of the senior professional accountant's superiors, if any, and those charged with governance, the ~~professional~~ accountant shall determine if further action is needed in the public interest.

260.17 A1 ~~360.22~~ The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

- The legal and regulatory framework.
- The urgency of the ~~matter~~ situation.
- The pervasiveness of the matter throughout the employing organization.
- Whether the senior professional accountant continues to have confidence in the integrity of the ~~professional~~ accountant's superiors and those charged with governance.

- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organization, investors, creditors, employees or the general public.

260.17 A2 ~~360.23~~ Examples of circumstances that ~~may~~ might cause the senior professional accountant no longer to have confidence in the integrity of the ~~professional~~ accountant's superiors and those charged with governance include situations where:

- The ~~professional~~ accountant suspects or has evidence of their involvement or intended involvement in any non-compliance.
- Contrary to legal or regulatory requirements, they have not reported ~~the matter~~, or authorized the ~~matter to be reported~~ of, the matter to an appropriate authority within a reasonable period.

**R260.18** ~~360.24~~ ~~In determining the need for, and nature and extent of any further action needed, t~~The senior professional accountant shall exercise professional judgment in determining the need for, and nature and extent of, further action. In making this determination, the accountant shall and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted appropriately in the public interest.

260.18 A1 ~~360.25~~ Further action ~~by that~~ the senior professional accountant ~~may~~ might take includes:

- Informing the management of the parent entity of the matter if the employing organization is a member of a group.
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Resigning from the employing organization.

260.18 A2 ~~360.26~~ ~~Where the senior professional accountant determines that r~~Resigning from the employing organization ~~would be appropriate, doing so would is not be~~ a substitute for taking other actions that ~~may~~ might be needed to achieve the senior professional accountant's objectives under this section. In some jurisdictions, however, there ~~may~~ might be limitations as to the further actions available to the ~~professional~~ accountant, and In such circumstances, resignation may might be the only available course of action.

260.19 A1 ~~360.27~~ As consideration of the matter ~~may~~ might involve complex analysis and judgments, the senior professional accountant ~~may~~ might consider:

- eConsulting internally, ~~r~~
- eObtaining legal advice to understand the ~~professional~~ accountant's options and the professional or legal implications of taking any particular course of action, ~~r~~ or
- eConsulting on a confidential basis with a regulator or professional body.

## Determining Whether to Disclose the Matter to an Appropriate Authority

260.20 A1 ~~360.28~~ Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

260.20 A2 ~~360.29~~ The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or ~~may~~ might be caused by the matter to investors, creditors, employees or the general public. For example, the senior professional accountant ~~may~~ might determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The employing organization is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The employing organization is a ~~regulated entity~~ and the matter is of such significance as to threaten its license to operate.
- The employing organization is listed on a securities exchange and the matter ~~could~~ might result in adverse consequences to the fair and orderly market in the employing organization's securities or pose a systemic risk to the financial markets.
- It is likely that the employing organization would sell Pproducts that are harmful to public health or safety ~~would likely be sold by the employing organization.~~
- The employing organization is promoting a scheme to its clients to assist them in evading taxes.

260.20 A3 ~~360.29~~ The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend upon the nature of the matter, ~~For example,~~ the appropriate authority would be a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the senior professional accountant or other individuals.

**R260.21** ~~360.30~~ If the senior professional accountant determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this ~~will~~ is not ~~be considered~~ a breach of the duty of confidentiality under ~~Section 140-Subsection 114 of this the~~ Code. When making such disclosure, the ~~professional~~ accountant shall act in good faith and exercise caution when making statements and assertions.

**R260.22** ~~360.31~~ In exceptional circumstances, the senior professional accountant ~~may~~ might become aware of actual or intended conduct that the ~~professional~~ accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. ~~Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity~~ In these circumstances, the professional accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach ~~of law or regulation~~. Such disclosure ~~will is not be considered a~~ breach of the duty of confidentiality under ~~Section 140 Subsection 114 of this the~~ Code.

260.22 A1 ~~360.32~~ Prior to deciding whether to disclose the matter to an appropriate authority immediately, the professional accountant might consider whether it would be appropriate to discuss the matter with management or those charged with governance of the employing organization.

#### *Documentation*

260.23 A1 ~~360.32~~ In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the senior professional accountant is encouraged to have the following matters documented:

- The matter.
- The results of discussions with the ~~professional~~ accountant's superiors, if any, and those charged with governance and other parties.
- How the ~~professional~~ accountant's superiors, if any, and those charged with governance have responded to the matter.
- The courses of action the ~~professional~~ accountant considered, the judgments made and the decisions that were taken.
- How the ~~professional~~ accountant is satisfied that the ~~professional~~ accountant has fulfilled the responsibility set out in paragraph ~~360.24~~ R260.17.

#### **Responsibilities of Professional Accountants Other than Senior Professional Accountants in Business**

**R260.24** ~~360.33~~ If, in the course of carrying out professional activities, a professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the ~~professional~~ accountant shall seek to obtain an understanding of the matter. This understanding shall include ~~ing~~ the nature of the act and the circumstances in which it has occurred or ~~may~~ might occur.

260.24 A1 ~~360.34~~ The professional accountant is expected to apply knowledge and expertise, and exercise professional judgment ~~and expertise~~. However, ~~but the~~ accountant is not expected to have a level of understanding of laws and regulations ~~beyond~~ greater than that which is required for the ~~professional~~ accountant's role within the employing organization. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

260.24 A2~~360.34~~ Depending on the nature and significance of the matter, the professional accountant ~~may~~ might consult on a confidential basis with others within the employing organization or a professional body, or with legal counsel.

**R260.25** ~~360.35~~ If the professional accountant identifies or suspects that non-compliance has occurred or ~~may~~ might occur, the ~~professional~~ accountant shall, subject to paragraph ~~360.14~~ R260.9, inform an immediate superior to enable the superior to take appropriate action. If the ~~professional~~ accountant's immediate superior appears to be involved in the matter, the ~~professional~~ accountant shall inform the next higher level of authority within the employing organization.

**R260.26** ~~360.36~~ In exceptional circumstances, the professional accountant may ~~decide~~ determine that disclosure of the matter to an appropriate authority is an appropriate course of action. If the ~~professional~~ accountant does so pursuant to paragraphs ~~360.29~~ 260.20 A2 and A3, this ~~will~~ is not be considered a breach of the duty of confidentiality under ~~Section 140~~ Subsection 114 of this the Code. When making such disclosure, the ~~professional~~ accountant shall act in good faith and exercise caution when making statements and assertions.

### Documentation

260.27 A1 ~~360.37~~ In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the professional accountant is encouraged to have the following matters documented:

- The matter.
- The results of discussions with the ~~professional~~ accountant's superior, management and, where applicable, those charged with governance and other parties.
- How the ~~professional~~ accountant's superior has responded to the matter.
- The courses of action the ~~professional~~ accountant considered, the judgments made and the decisions that were taken.

## **PART B3 – PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE**

### **Section 225-360**

#### **Responding to Non-Compliance with Laws and Regulations**

##### **Purpose/Introduction**

360.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.

360.2 Threats to compliance with the principles of integrity and professional behavior are created when an accountant becomes aware of an act or suspected act of non-compliance with laws and regulations.

360.3-225.5 This ~~s~~Section 360 sets out requirements and application material regarding the approach to be taken by a professional accountant ~~who encounters or is made aware of when responding to~~ non-compliance or suspected non-compliance with:

- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and
- (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements, but compliance with which ~~may~~ might be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

##### **Requirements and Application Material**

###### **General**

360.4 A1-225.2 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by the following parties:

- (a) ~~a~~ A client; ~~or by~~
- (b) ~~†~~ Those charged with governance of a client; ~~or by~~
- (c) ~~‡~~ Management of a client; ~~or by~~
- (d) ~~e~~ Other individuals working for or under the direction of a client, ~~which are contrary to the prevailing laws or regulations.~~

360.4 A2-225.6 Examples of laws and regulations which this section addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.

- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

**R360.5** ~~360.34~~ The professional accountant shall apply this section regardless of the nature of the client, including whether or not it is a public interest entity.

~~360.5 A1 225.1~~ A professional accountant in public practice may ~~might~~ encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a professional service to a client. ~~The purpose of this section is to set out the professional accountant's responsibilities when encountering such non-compliance or suspected non-compliance, and guides the professional accountant in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the client, including whether or not it is a public interest entity.~~

**R360.6** ~~225.3~~ In some jurisdictions, there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance, ~~which may~~ These legal or regulatory provisions might differ from or go beyond the provisions in this section. When encountering such non-compliance or suspected non-compliance, the professional accountant ~~has a responsibility to~~ shall obtain an understanding of those legal or regulatory provisions and comply with them, including:

- ~~(a)~~ (a) Any requirement to report the matter to an appropriate authority; and
- ~~(b)~~ (b) Any prohibition on alerting the client prior to making any disclosure.

~~360.6 A1~~ A prohibition on alerting the client prior to making any disclosure might arise, for example, pursuant to anti-money laundering legislation.

~~360.7 A1 225.4~~ A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the professional accountant are:

- (a) To comply with the ~~fundamental~~ principles of integrity and professional behavior;
- (b) By alerting management or, where appropriate, those charged with governance of the client, to seek to:
  - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
  - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
- (c) To take such further action as appropriate in the public interest.

### Scope

~~360.7 A2 225.7~~ Non-compliance ~~may~~ might result in fines, litigation or other consequences for the client, ~~that may have a potentially materially effect on affecting its financial statements.~~ Importantly, such non-compliance ~~may~~ might have wider public interest implications in

terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

360.7 A3 225.8 A professional accountant who encounters or is made aware of matters that are clearly inconsequential ~~is not required to comply with this section.~~ ~~Whether a matter is clearly inconsequential is to be judged by their with respect to its nature and their its impact,~~ financial or otherwise, on the client, its stakeholders and the general public, ~~is not required to comply with this section with respect to such matters.~~

360.7 A4 225.9 This section does not address:

- (a) Personal misconduct unrelated to the business activities of the client; and
- (b) Non-compliance ~~other than by parties other than those specified in paragraph 360.4 A1 the client or those charged with governance, management or other individuals working for or under the direction of the client.~~ This includes, for example, circumstances where a professional accountant has been engaged by a client to perform a due diligence assignment on a third party entity and the identified or suspected non-compliance has been committed by that third party.

The ~~professional accountant may might~~ nevertheless find the guidance in this section helpful in considering how to respond in these situations.

### **Responsibilities of the Client's Management and Those Charged with Governance**

360.8 A1 225.10 ~~It is the responsibility of the client's mManagement, with the oversight of those charged with governance, is responsible for to ensure~~ that the client's business activities are conducted in accordance with laws and regulations. ~~It is also the responsibility of mManagement and those charged with governance are also responsible for to identifying and addressing~~ any non-compliance by:

- (a) ~~†The client;~~ by
- (b) ~~a~~An individual charged with governance of the entity;~~† by~~
- (c) ~~a~~A member of management;~~† or by~~
- (d) ~~e~~Other individuals working for or under the direction of the client.

### **Responsibilities of Professional Accountants in Public Practice**

R360.9 225.11 Where a professional accountant becomes aware of a matter to which this section applies, the steps that the ~~professional accountant~~ takes to comply with this section shall be taken on a timely basis. In taking timely steps, the accountant shall haveing regard to the ~~professional accountant's understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.~~

## Audits of Financial Statements

### *Obtaining an Understanding of the Matter*

**R360.10** ~~225.12~~ If a professional accountant engaged to perform an audit of financial statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance, ~~whether in the course of performing the engagement or through information provided by other parties,~~ the professional accountant shall obtain an understanding of the matter.<sup>7</sup> This understanding shall includeing the nature of the act and the circumstances in which it has occurred or ~~may~~ might occur.

360.10 A1 ~~225.12~~ The professional accountant might become aware of the instance of non-compliance or suspected non-compliance in the course of performing the engagement or through information provided by other parties.

360.10 A2 ~~225.13~~ The professional accountant is expected to apply knowledge and expertise, and exercise professional judgment and expertise. However, ~~but the accountant~~ is not expected to have a level of knowledge of laws and regulations ~~that is~~ greater than that which is required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

360.10 A3 ~~225.13~~ \_\_\_\_\_ Depending on the nature and significance of the matter, the professional accountant ~~may~~ might consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

**R360.11** ~~225.14~~ If the professional accountant identifies or suspects that non-compliance has occurred or ~~may~~ might occur, the professional accountant shall discuss the matter with the appropriate level of management and, where appropriate, those charged with governance.

360.11 A1 ~~225.15~~ ~~Such—~~ The purpose of the discussion serves ~~is~~ to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also ~~may~~ might prompt management or those charged with governance to investigate the matter.

360.11 A2 ~~225.16~~ The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:

- The nature and circumstances of the matter.
- The individuals actually or potentially involved.
- The likelihood of collusion.
- The potential consequences of the matter.
- Whether that level of management is able to investigate the matter and take appropriate action.

360.11 A3 ~~225.17~~ The appropriate level of management is ~~generally~~ usually at least one level above the ~~person~~ individual or ~~persons~~ individuals involved or potentially involved in the matter. In the context of a group, the appropriate level ~~may~~ might be management at an entity that controls the client.

~~360.11 A4225.17~~ The professional accountant ~~may~~ might also consider discussing the matter with internal auditors, where applicable. ~~In the context of a group, the appropriate level may be management at an entity that controls the client.~~

**R360.12** ~~225.17~~ If the professional accountant believes that management is involved in the non-compliance or suspected non-compliance, the ~~professional~~ accountant shall discuss the matter with those charged with governance.

#### *Addressing the Matter*

**R360.13** ~~225.18~~ In discussing the non-compliance or suspected non-compliance with management and, where appropriate, those charged with governance, the professional accountant shall advise them to take appropriate and timely actions, if they have not already done so, to:

- (a) Rectify, remediate or mitigate the consequences of the non-compliance;
- (b) Deter the commission of the non-compliance where it has not yet occurred; or
- (c) Disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest.

**R360.14** ~~225.19~~ The professional accountant shall consider whether the client's management and those charged with governance understand their legal or regulatory responsibilities with respect to the non-compliance or suspected non-compliance.

~~360.14 A1225.19~~ If ~~not~~ management and those charged with governance do not understand their legal or regulatory responsibilities with respect to the matter, the professional accountant ~~may~~ might suggest appropriate sources of information or recommend that they obtain legal advice.

**R360.15** ~~225.20~~ The professional accountant shall comply with applicable:

- (a) Laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority. ~~In this regard, some laws and regulations may stipulate a period within which reports are to be made;~~ and
- (b) Requirements under auditing standards, including those relating to:
  - Identifying and responding to non-compliance, including fraud.
  - Communicating with those charged with governance.
  - Considering the implications of the non-compliance or suspected non-compliance for the auditor's report.

~~360.15 A1225.20~~ Some laws and regulations might stipulate a period within which reports of non-compliance or suspected non-compliance are to be made to an appropriate authority.

#### Communication with Respect to Groups

**R360.16** ~~225.21~~ A professional accountant may:

- ~~(a) For purposes of an audit of group financial statements, be requested by the group engagement team to perform work on financial information related to a component of the~~

~~group; or~~

~~(b) Be engaged to perform an audit of a component's financial statements for purposes other than the group audit, for example, a statutory audit.~~

Where ~~the a~~ professional accountant becomes aware of non-compliance or suspected non-compliance in relation to ~~the a~~ component of a group in either of the following two situations, the professional accountant shall, in addition to responding to the matter in accordance with the provisions of this section, communicate ~~it the~~ matter to the group engagement partner unless prohibited from doing so by law or regulation:

(a) The accountant is, for purposes of an audit of the group financial statements, be requested by the group engagement team to perform work on financial information related to a the component of the group; or

(b) Be. The accountant is engaged to perform an audit of a the component's financial statements for purposes other than the group audit, for example, a statutory audit.

The communication to the group engagement partner shall be in addition to responding to the matter in accordance with the provisions of this section.

360.16 A1225.24 This ~~The purpose of the communication is to enable the group engagement partner to be informed about the matter and to determine, in the context of the group audit, whether and, if so, how to address it should be addressed~~ in accordance with the provisions in this section.

**R360.17** ~~225.22~~ Where the group engagement partner becomes aware of non-compliance or suspected non-compliance in the course of an audit of group financial statements, ~~including as a result of being informed of such a matter in accordance with paragraph 225.21,~~ the group engagement partner shall, in addition to responding to the matter in the context of the group audit in accordance with the provisions of this section, consider whether the matter ~~may~~ might be relevant to one or more components:

(a) Whose financial information is subject to work for purposes of the audit of the group financial statements; or

(b) Whose financial statements are subject to audit for purposes other than the group audit, for example, a statutory audit.

This consideration shall be in addition to responding to the matter in the context of the group audit in accordance with the provisions of this section.

**R360.18** ~~225.22~~ ~~If so~~ the non-compliance or suspected non-compliance might be relevant to one or more of the components specified in paragraph R360.17(a) and (b), the group engagement partner shall take steps to have the ~~non-compliance or suspected non-compliance~~ matter communicated to those performing work at the components ~~where the matter may be relevant,~~ unless prohibited from doing so by law or regulation.

If necessary in relation to subparagraph (b), the group engagement partner shall arrange for appropriate inquiries shall to be made (either of management or from publicly available information) as to whether the relevant component(s) specified in paragraph R360.17(b) is subject to audit and, if so, to ascertain to the extent practicable the identity of the auditor.

360.18 A1 225-22 The purpose of the communication is to enable those responsible for work at such the components to be informed about the matter and to determine whether and, if so, how to address it ~~should be addressed~~ in accordance with the provisions in this section.

360.18 A2 225-22 For the components specified in paragraph R360.17(b), the inquiries might be made either of management or from publicly available information.

*Determining Whether Further Action Is Needed*

**R360.19** ~~225-23~~ The professional accountant shall assess the appropriateness of the response of management and, where applicable, those charged with governance.

360.19 A1 225-24 Relevant factors to consider in assessing the appropriateness of the response of management and, where applicable, those charged with governance include whether:

- The response is timely.
- The non-compliance or suspected non-compliance has been adequately investigated.
- Action has been, or is being, taken to rectify, remediate or mitigate the consequences of any non-compliance.
- Action has been, or is being, taken to deter the commission of any non-compliance where it has not yet occurred.
- Appropriate steps have been, or are being, taken to reduce the risk of re-occurrence, for example, additional controls or training.
- The non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

**R360.20** ~~225-25~~ In light of the response of management and, where applicable, those charged with governance, the professional accountant shall determine if further action is needed in the public interest.

360.20 A1 225-26 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

- The legal and regulatory framework.
- The urgency of the ~~matter~~ situation.
- The pervasiveness of the matter throughout the client.
- Whether the professional accountant continues to have confidence in the integrity of management and, where applicable, those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees or the general public.

360.20 A2 225.27 Examples of circumstances that ~~may~~ might cause the professional accountant no longer to have confidence in the integrity of management and, where applicable, those charged with governance include situations where:

- The ~~professional~~ accountant suspects or has evidence of their involvement or intended involvement in any non-compliance.
- The ~~professional~~ accountant is aware that they have knowledge of such non-compliance and, contrary to legal or regulatory requirements, have not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.

**R360.21** ~~225.28 In determining the need for, and nature and extent of, further action, t~~The professional accountant shall exercise professional judgment in determining the need for, and nature and extent of, further action. In making this determination, the accountant shall and take into account whether a reasonable and informed third party, ~~weighing all the specific facts and circumstances available to the professional accountant at the time,~~ would be likely to conclude that the ~~professional~~ accountant has acted appropriately in the public interest.

360.21 A1 225.29 Further action ~~by that~~ the professional accountant ~~may~~ might take includes:

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation.

360.21 A2 225.30 ~~Where the professional accountant determines that w~~Withdrawing from the engagement and the professional relationship ~~would be appropriate, doing so would~~ is not be a substitute for taking other actions that ~~may~~ might be needed to achieve the professional accountant's objectives under this section. In some jurisdictions, however, there ~~may~~ might be limitations as to the further actions available to the ~~professional~~ accountant, and in such circumstances, withdrawal may ~~might~~ be the only available course of action.

**R360.22** ~~225.34~~Where the professional accountant has withdrawn from the professional relationship pursuant to paragraphs ~~225.25~~ R360.20 and ~~225.29~~ 360.21 A1, the ~~professional~~ accountant shall, on request by the proposed successor accountant, provide all such facts and other information concerning the identified or suspected non-compliance ~~that, in the predecessor accountant's opinion, to the proposed successor accountant needs to be aware of before deciding whether to accept the audit appointment.~~ The predecessor accountant shall do so despite paragraph ~~210.14~~ R320.11, unless prohibited by law or regulation.

360.22 A1 225.34 The facts and other information to be provided are those that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the audit appointment. Section 320 addresses communications from proposed successor accountants.

**R360.23** ~~225.34~~ If the proposed successor accountant is unable to communicate with the predecessor accountant, the proposed successor accountant shall take reasonable steps to obtain information about the circumstances of the change of appointment by other means.<sup>7</sup>

360.23 A1225.31 ~~such as through~~ Other means to obtain information about the circumstances of the change of appointment include inquiries of third parties or background investigations of management or those charged with governance.

360.24 A1 225.32 As consideration of the matter ~~may~~ might involve complex analysis and judgments, the professional accountant ~~may~~ might consider:

- ~~e~~ Consulting internally.
- ~~e~~ Obtaining legal advice to understand the ~~professional~~ accountant's options and the professional or legal implications of taking any particular course of action. ~~or~~
- ~~e~~ Consulting on a confidential basis with a regulator or professional body.

#### Determining Whether to Disclose the Matter to an Appropriate Authority

360.25 A1 225.33 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

360.25 A2 225.34 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or ~~may~~ might be caused by the matter to investors, creditors, employees or the general public. For example, the professional accountant ~~may~~ might determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The entity is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The entity is regulated and the matter is of such significance as to threaten its license to operate.
- The entity is listed on a securities exchange and the matter ~~could~~ might result in adverse consequences to the fair and orderly market in the entity's securities or pose a systemic risk to the financial markets.
- It is likely that the entity would sell ~~P~~ products that are harmful to public health or safety ~~would likely be sold by the entity~~.
- The entity is promoting a scheme to its clients to assist them in evading taxes.

360.25 A3225.34 The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend on the nature of the matter. ~~f~~ For example, the appropriate authority would be a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.

- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the professional accountant or other individuals.

**R360.26** ~~225.35~~ If the professional accountant determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this ~~will~~ is not be considered a breach of the duty of confidentiality under ~~Section 140 Subsection 114 of this the~~ Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions. The professional accountant shall also consider whether it is appropriate to inform the client of the professional accountant's intentions before disclosing the matter.

**R360.27** ~~225.36~~ In exceptional circumstances, the professional accountant ~~may~~ might become aware of actual or intended conduct that the professional accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. ~~Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity~~ In these circumstances, the professional accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach ~~of law or regulation~~. Such disclosure ~~will~~ is not be considered a breach of the duty of confidentiality under ~~Section 140 Subsection 114 of this the~~ Code.

360.27 A1 Prior to deciding whether to disclose the matter to an appropriate authority immediately, the professional accountant might consider whether it would be appropriate to discuss the matter with management or those charged with governance of the entity.

#### *Documentation*

**R360.28** ~~225.37~~ In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the professional accountant shall, ~~in addition to complying with the documentation requirements under applicable auditing standards~~, document:

- How management and, where applicable, those charged with governance have responded to the matter.
- The courses of action the professional accountant considered, the judgments made and the decisions that were taken, having regard to the reasonable and informed third party ~~perspective~~ test.
- How the professional accountant is satisfied that the professional accountant has fulfilled the responsibility set out in paragraph ~~R360.20~~ 225.25.

360.28 A1 ~~225.38~~ This documentation is in addition to complying with the documentation requirements under applicable auditing standards. *International Standards on Auditing* (ISAs), for example, require a professional accountant performing an audit of financial statements to:

- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached, and significant professional judgments made in reaching those conclusions;
- Document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place; and
- Document identified or suspected non-compliance, and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.

### Professional Services Other than Audits of Financial Statements

#### *Obtaining an Understanding of the Matter and Addressing It with Management and Those Charged with Governance*

**R360.29** ~~225.39~~ If a professional accountant engaged to provide a professional service other than an audit of financial statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the ~~professional~~ accountant shall seek to obtain an understanding of the matter. ~~This understanding shall include~~ ing the nature of the act and the circumstances in which it has occurred or ~~may~~ might be about to occur.

360.29 A1 ~~225.40~~ The professional accountant is expected to apply knowledge and expertise, and exercise professional judgment and expertise. However, the accountant ~~but~~ is not expected to have a level of understanding of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

360.29 A2 ~~225.39~~ Depending on the nature and significance of the matter, the professional accountant ~~may~~ might consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

**R360.30** ~~225.41~~ If the professional accountant identifies or suspects that non-compliance has occurred or ~~may~~ might occur, the ~~professional~~ accountant shall discuss the matter with the appropriate level of management, ~~and, if the professional accountant has access to them those charged with governance, the accountants shall also discuss the matter with them and where appropriate, those charged with governance.~~

360.30 A1 ~~225.42~~ ~~Such—~~ The purpose of the discussion serves ~~is~~ to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also ~~may~~ might prompt management or those charged with governance to investigate the matter.

360.30 A2 ~~225.43~~ The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:

- The nature and circumstances of the matter.
- The individuals actually or potentially involved.
- The likelihood of collusion.

- The potential consequences of the matter.
- Whether that level of management is able to investigate the matter and take appropriate action.

*Communicating the Matter to the Entity's External Auditor*

**R360.31** ~~225.44~~ If the professional accountant is performing a non-audit service for:

**(a)** ~~a~~An audit client of the firm; or

**(b)** ~~a~~A component of an audit client of the firm,

the ~~professional~~ accountant shall communicate the non-compliance or suspected non-compliance within the firm, unless prohibited from doing so by law or regulation. The communication shall be made in accordance with the firm's protocols or procedures, ~~or, if~~ in the absence of such protocols and procedures, it shall be made directly to the audit engagement partner.

**R360.32** ~~225.45~~ If the professional accountant is performing a non-audit service for:

**(a)** ~~a~~An audit client of a network firm; or

**(b)** ~~a~~A component of an audit client of a network firm,

the ~~professional~~ accountant shall consider whether to communicate the non-compliance or suspected non-compliance to the network firm. Where the communication is made, it shall be made in accordance with the network's protocols or procedures, ~~or, if~~ in the absence of such protocols and procedures, it shall be made directly to the audit engagement partner.

**R360.33** ~~225.46~~ If the professional accountant is performing a non-audit service for a client that is not:

**(a)** An audit client of the firm or a network firm; or

**(b)** A component of an audit client of the firm or a network firm,

the ~~professional~~ accountant shall consider whether to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if any.

~~360.34 A1 225.47~~ Factors relevant to considering the communication in accordance with paragraphs ~~R360.32 to R360.33 225.45 and 225.46~~ include:

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.
- Whether management or those charged with governance have already informed the entity's external auditor about the matter.
- The likely materiality of the matter to the audit of the client's financial statements or, where the matter relates to a component of a group, its likely materiality to the audit of the group financial statements.

360.35 A1 225.48 ~~In all cases~~ the circumstances addressed in paragraphs R360.31 to R360.33, the purpose of the communication is to enable the audit engagement partner to be informed about the non-compliance or suspected non-compliance and to determine whether and, if so, how to address it ~~should be addressed~~ in accordance with the provisions of this section.

*Considering Whether Further Action Is Needed*

**R360.36 225.49** The professional accountant shall also consider whether further action is needed in the public interest.

360.36 A1 225.50 Whether further action is needed, and the nature and extent of it, will depend on factors such as:

- The legal and regulatory framework.
- The appropriateness and timeliness of the response of management and, where applicable, those charged with governance.
- The urgency of the ~~matter~~ situation.
- The involvement of management or those charged with governance in the matter.
- The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.

360.36 A2 225.54 Further action by the professional accountant ~~may~~ might include:

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation.

360.36 A3 225.52 In considering whether to disclose to an appropriate authority, relevant factors to take into account include:

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.

**R360.37 225.53** If the professional accountant determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this ~~will is not be considered~~ a breach of the duty of confidentiality under ~~Section 140 Subsection 114 of this the~~ Code. When making such disclosure, the ~~professional~~ accountant shall act in good faith and exercise caution when making statements and assertions. The ~~professional~~ accountant shall also consider whether it is appropriate to inform the client of the ~~professional~~ accountant's intentions before disclosing the matter.

**R360.38** ~~225.54~~ In exceptional circumstances, the professional accountant ~~may~~ might become aware of actual or intended conduct that the ~~professional~~ accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. ~~Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity~~ In these circumstances, the ~~professional~~ accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure ~~will is not be considered~~ a breach of the duty of confidentiality under ~~Section 140 Subsection 114 of this the~~ Code.

360.38 A1 Prior to deciding whether to disclose the matter to an appropriate authority immediately, the professional accountant might consider whether it would be appropriate to discuss the matter with management or those charged with governance of the entity.

360.39 A1-225.55 The professional accountant ~~may~~ might consider:

- ~~e~~Consulting internally.<sub>7</sub>
- ~~e~~Obtaining legal advice to understand the professional or legal implications of taking any particular course of action.<sub>7</sub> ~~or~~
- ~~e~~Consulting on a confidential basis with a regulator or professional body.

#### *Documentation*

360.40 A1-225.56 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the professional accountant is encouraged to document:

- The matter.
- The results of discussion with management and, where applicable, those charged with governance and other parties.
- How management and, where applicable, those charged with governance have responded to the matter.
- The courses of action the ~~professional~~ accountant considered, the judgments made and the decisions that were taken.
- ~~How the professional~~ accountant is satisfied that the ~~professional~~ accountant has fulfilled the responsibility set out in paragraph ~~225.49~~ R360.36.
-