



September 4, 2015

Mr. Stavros Thomadakis,  
Chair  
International Ethics Standards Board for Accountants

Submitted via the [IESBA website](#)

**Re: Proposed Changes to the *Code of Ethics for Professional Accountants Addressing Responding to Non-Compliance with Laws and Regulations***

Dear Mr. Thomadakis,

The International Federation of Accountants® (IFAC®) Professional Accountants in Business (PAIB) Committee, values the opportunity to comment on the International Ethics Standards Board for Accountants® (IESBA®)'s Exposure Draft (ED) proposing changes to the *Code of Ethics for Professional Accountants* (the Code) addressing responding to non-compliance with laws and regulations (NOCLAR).

This response reflects the views of the PAIB Committee. Key matters are highlighted in this cover letter, while answers to the specific questions are provided in the appendix.

**Overall Comments**

The PAIB Committee sees this Exposure Draft as a significant improvement over the original Exposure Draft ([Proposed Changes to the Code of Ethics for Professional Accountants Addressing Responding to a Suspected Illegal Act](#)) and believe it addresses many of the significant concerns we raised in our [previous response](#). For example, the concept of a professional accountant having a right to disclose non-compliance together with an expectation that that right will be exercised has rightly been dropped. In addition, there is now clear reference to legal safeguards for whistleblowers, or lack of such, as one of the factors that a profession accountant in business may consider when deciding whether or not to disclose non-compliance. However, we are pleased to provide the following additional perspectives and suggestions to these revised proposed changes.

*Clarify the need for the proposed changes*

The explanatory memorandum mentions “the importance of, and the high level interest, in this topic” as expressed in the various roundtable sessions. This is vague and still does not truly clarify the need for the proposed changes, as we advocated for in our previous response. The relevant fundamental principles of integrity and professional behavior are described in the Code in a very clear way, and the Code already provides a solid basis for the professional accountant to exercise her or his own professional judgment. For example, section 140.7 of the current Code already provides the overall provision that the professional accountant “may be required to disclose confidential information [in case of] a professional duty or right to disclosure when not prohibited by law.”

The explanatory memorandum says “the aim should be to bring about a change in behavior.” Does the IESBA have evidence or strong indications that there are issues with the application of these principles,



that practitioners find this additional guidance useful in making a professional judgment, and/or that the Framework would deliver the expected benefits and actually contribute to better achieving the intended outcomes? When preparing the impact analysis, did the IESBA also consider the impact if the proposed changes to the Code are *not* implemented? Improved clarification of, or further research into the need for, this addition to the Code would be welcome.

*Clarify the meaning of “becoming aware” of possible NOCLAR*

Professional accountants in business should be vigilant and alert to possible NOCLAR but should not be responsible for seeking it out. While the objective of the ED is to develop a framework that guides professional accountants in business when they come across NOCLAR, it is not entirely clear how they would be considered to have knowledge of NOCLAR. It should be clarified that "becoming aware" (proposed paras. 360.14 and 360.31 of the ED) should be limited to actual knowledge of information and does not include constructive knowledge.

*Guidance should not replace professional judgment*

Given the fundamental principles as determined in the Code, the PAIB Committee believes that professional accountants, through their professional judgment, should primarily be able to determine for themselves how to respond to NOCLAR given the specific circumstances. This Framework could be a useful guidance in that process but it should not replace the professional accountant’s own professional judgment. The Framework should make this explicitly clear.

*Take risk of retaliation into account*

History shows that whistleblowers face great risk of personal retaliation—loss of job, end of career from future employer shunning, family difficulties, mental breakdowns, etc., especially in jurisdictions with weak or no whistleblower and witness protection laws. This may be even more relevant for professional accountants working directly for an organization than for public accountants who are typically still able to continue to work with and for their own organization. For these reasons, the Code should allow professional accountants to weigh these factors into their professional judgment.

We hope you find our suggestions useful and constructive as you finalize the changes to the Code. Please do not hesitate to contact me should you wish to discuss any of the matters raised in this letter.

Yours sincerely,

A handwritten signature in black ink that reads "Charles Tilley". The signature is written in a cursive, flowing style.

Charles Tilley  
Chair, IFAC Professional Accountants in Business Committee



## Appendix A: Responses to Specific Comments

Name: Charles Tilley  
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Stakeholder group: Professional Accountants in Business Committee  
Organization name: International Federation of Accountants (IFAC)  
Industry sector: Not-for-profit  
Geographical region: Global

***Question 1. Where law or regulation requires the reporting of identified or suspected NOCLAR to an appropriate authority, do respondents believe the guidance in the proposals would support the implementation and application of the legal or regulatory requirement?***

We partly agree, as this depends on the nature of the applicable legal and regulatory requirements. With respect to the usefulness of this guidance in supporting the application of the fundamental principles of the Code, see our general comments above.

***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?***

We feel it would be more appropriate to report identified or suspected NOCLAR to an appropriate authority to be addressed by national legislators and legislative requirements, rather than relying on an ethics code for professional accountants.

In addition, see our comments to question 7(a) about using the concept of “substantial harm” rather than or as a proxy for “public interest.”

***Question 3. The Board invites comments from preparers (including TCWG), users of financial statements (including regulators and investors) and other respondents on the practical aspects of the proposals, particularly their impact on the relationships between:***

***(a) Auditors and audited entities;***

***(b) Other PAs in public practice and their clients; and***

***(c) PAIBs and their employing organizations.***

We believe the proposals can provide practical guidance, but cannot and should not replace professional judgment on applying the fundamental principles of the Code, taking into account the specific circumstances around a particular NOCLAR issue. The Framework should emphasize this.

We recognize that the relationships between the parties identified in this question might be affected negatively as a consequence of taking action in case of a suspected NOCLAR, but the public interest motive should prevail (taking specific personal and other circumstances into consideration, of course).



**Question 4. Do respondents agree with the proposed objectives for all categories of PAs?**

We partly agree, as appropriate application of the fundamental principles should be the overarching objective for all professional accountants. This is dependent on all relevant specific circumstances, not limited to which category a professional accountant belongs. See also our response to question 6.

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

Generally yes, although appropriate application of the fundamental principles of the Code means taking into account all specific circumstances here as well.

**Question 6. Do respondents agree with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR?**

We agree with the underlying idea that different circumstances require different approaches. However, it is questionable if a differential approach among the four standard/pre-defined categories would adequately cover the broad accountancy profession and would pay sufficient attention to all relevant circumstances. An unwanted side-effect might be, for example, that the reasoning might shift from determining the best response given the specific circumstances, to determining the most applicable category and then following that prescribed approach, even though that might not be the best response in the specific circumstances.

In addition, especially for an external stakeholder, it might be difficult to distinguish between professional accountants in public practice serving in an audit role or providing services. They both operate under the same firm name, and actions (and non-actions) from professional accountants providing services might reflect badly on their audit colleagues.<sup>1</sup> Similarly, from an external perspective, it might also be difficult to draw the line between a senior or non-senior professional accountant in business, especially as they are all professionally qualified and subject to the same Code. For example, what happens if a junior professional accountant in business is heavily involved in compiling fraudulent financial statements? Again, as it depends on the specific circumstances, a standard differentiation as proposed in this Framework—without adequate cautioning that these are only examples and that professional judgment is required in all circumstances—might create more issues than that it solves.

**Question 7. With respect to auditors and senior PAIBs:**

**(a) Do respondents agree with the factors to consider in determining the need for, and the nature and extent of, further action, including the threshold of credible evidence of substantial harm as one of those factors?**

As this Framework is intended to provide guidance on how to apply the fundamental principles of the Code regarding NOCLAR, we believe that the basis for determination of further action should be one and the same. As the basis for the fundamental principles is the “public interest,” that should be the same criterion for this Framework, and not this newly introduced, foreign concept of “substantial harm.” Moreover, “substantial harm” is also a much narrower concept than “public interest,” which might unjustifiably exclude certain

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<sup>1</sup> See, for example, the discussion accounting firms supporting their clients with tax avoidance. Even though this is most likely not done by the audit providers, it still reflects back to them.



NOCLAR events from further action. For these reasons, we believe that “substantial harm” could be used as an *example* of a NOCLAR issue that is in the public interest but not *replace* the public interest criterion.

***(b) 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?***

We believe the third party test is a suitable means for determining the need for, and nature and extent of, further action. However, specific circumstances have to be taken into account here as well, requiring professional judgment over and above the third party test.

In addition, the ED rightly speaks about a “reasonable and informed” third party, which means someone who understands not only the specific circumstances but also the role and responsibilities of the professional accountant.

***(c) 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?***

We agree with the possible courses of further action as examples, but other courses might be warranted, all depending on the specific circumstances. However, instead of specifying beyond these examples, the guidance should rather encourage the application of professional judgment.

In addition, it is not clear why the ED expects all the initial actions in the proposed paras. 360.16-360.18 to be taken together. Our view is that possible courses of further action should be escalated progressively, only if the matter remains unresolved.

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

Generally yes, although such a list is not and could not be an exhaustive enumeration of factors but rather a set of examples.

***Question 8. For PAs in public practice providing services other than audits, do respondents agree with the proposed level of obligation with respect to communicating the matter to a network firm where the client is also an audit client of the network firm?***

No specific comments.

***Question 9. Do respondents agree with the approach to documentation with respect to the four categories of PAs?***

We partly agree. As argued in our previous comment letter, professional accountants should take an “apply or explain” approach to resolving suspected NOCLAR issues, in which case appropriate documentation should be strongly recommended for all professional accountants (for later justification). However, we also flagged concerns over the proper security of such documentation, especially if it is determined that no NOCLAR took place and disclosure is not necessary. Some guidance on proper safeguarding of the documentation based on its sensitivity should, therefore, be included in any changes to the Code.



### ***PAIBs working in the public sector***

In addition to these specific comments, and with respect to professional accountants in business working in the public sector—as indicated in your request for general comments—the PAIB Committee would like to draw your attention to the recent IFAC/CIPFA publication [\*International Framework: Good Governance in the Public Sector\*](#) to help improve and encourage effective public sector governance. We believe this Framework can be very useful for professional accountants in business working in the public sector in determining what good governance in the public sector constitutes, and what does not. The Framework emphasizes the fundamental principle of behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law. The Framework also provides guidance on guarding against corruption and whistleblowing. Possibly, the Framework could be mentioned as a source of reference, especially for professional accountants in business working in the public sector.

### ***PAIBs working in small and medium-sized entities (SMEs)***

The PAIB Committee believes some additional attention to professional accountants in business who work for small- and medium-sized entities (SMEs) would be welcome. The differences with larger organizations are too wide to be solved only with the proposed partition between professional accountants in business in senior positions and all other positions.

### ***Editorial suggestions***

It would be more user friendly if the titles stated more clearly and more frequently whether a section is applicable to a public accountant – auditor, public accountant – consultant, professional accountant in business, or senior professional accountant in business. In addition, the diagrams and flowcharts are currently part of the explanatory memorandum and not part of the proposed changes in the Code. As they form useful guidance, the IESBA might consider making them part of the actual proposed changes and include them in, or as an appendix to, the Code.



## **Appendix B: The IFAC PAIB Committee**

The PAIB Committee serves IFAC member bodies and professional accountants worldwide who work in commerce, industry, financial services, education, and the public and the not-for-profit sectors. It promotes and contributes to the value of professional accountants in business by increasing awareness of the important roles professional accountants play, supporting member bodies in enhancing the competence of their members, and facilitating the communication and sharing of good practices and ideas.

The PAIB Committee seeks to provide the perspective of professional accountants in business, which is also illustrated by two key publications:

- [\*Competent and Versatile: How Professional Accountants in Business Drive Sustainable Organizational Success\*](#) emphasizes the core belief professional accountants in business should uphold high ethical standards in accordance with the Code.
- [\*Defining and Developing an Effective Code of Conduct for Organizations\*](#) highlights the important role that professional accountants in business can play in driving and supporting organizational ethics and fostering a values-based organization.

For the accountancy profession to deliver on its public interest mandate and bring about confidence in the global financial system, we have to recognize that the majority of professional accountants work in organizations alongside many other professionals. Ultimately, ethical behaviors and practices in organizations are facilitated by the quality of the governance arrangements of the organization itself, starting with the tone and the action at the top, and its own code of ethics and/or conduct. We believe that professional accountants can, and should, work within their organizations to influence ethical practices.

More information about the PAIB Committee and its publications is available at [www.ifac.org/paib](http://www.ifac.org/paib).