

Supplement C to Agenda Item 2

Note: This supplement has been prepared for information only. A comprehensive summary of the significant comments received on the August 2012 exposure draft (ED), [Responding to a Suspected Illegal Act](#), and the Task Force’s related analysis of significant issues were [presented](#) at the March 2013 IESBA meeting. As the ED proposals have been comprehensively revised in light of the significant comments on the ED, no attempt has been made to respond to each individual comment from respondents. All comment letters on the ED can be accessed [here](#).

Please consider the environment before printing this supplement.

ED Responding to a Suspected Illegal Act—Compilation of Other ED Comments

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1.	AAA ¹	<p>In sections discussing professional accountants employed in business, there appears to be a conflict in the message. For example, section 300.5 states “Established ethics policies and whistle-blowing procedures that have been communicated to all employees may be useful to achieve the objective of establishing and maintaining an ethics-based culture. Such procedures help to encourage ethical behavior and increase the likelihood of senior management being alerted to a problem in time to prevent serious damage.” This appears to authorize professional accountants to use anonymous hotlines to communicate the existence of illegal activities. However, section 300.15 requires “professional accountant shall discuss the matter with the appropriate level of management. If the response to the matter is not appropriate, the professional accountant shall escalate the matter to higher levels of management to the extent possible.” This precludes anonymous reporting by these professionals.</p> <p>The proposed changes to Section 140 address confidentiality of information obtained by the professional accountant. We suggest the IESBA add clarification to paragraph 140.7, which addresses circumstances in which the accountant may disclose confidential information. Section (a) provides guidance on situations in which the client authorizes the disclosure of information.</p> <p>It is unclear whether sections (b) and (c) of paragraph 140.7 discuss situations in which the accountant does not need consent from the appropriate party to disclose confidential information. The proposed standard seems to imply that client consent is not necessary under the circumstances outlined in sections (b) and (c). If this is the case, one contributor proposes another situation in which the auditor can disclose without client consent. It seems logical that if an audit client has been sued and the plaintiff’s attorneys approach the auditor, the auditor may not be able to obtain client consent to cooperate with a valid subpoena in such a case.</p>

¹ For a list of abbreviations, see Appendix 1 to the March 2013 IESBA [agenda material](#).

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		<p>A second suggestion for Section 140 involves the list of situations in which the accountant can disclose information in 140.7(b)(i). We suggest the IESBA consider the insertion of more specific wording involving disclosure of documents or providing evidence in legal proceedings. Is the intent to require disclosure during all phases of legal proceedings, or should disclosure be mandated only under a valid subpoena or similar order from an authoritative body? Such wording could be similar to an exception to client confidentiality in the AICPA Code of Professional Conduct Rule 301 involving subpoenas (AICPA 2012).</p> <p>Scope of the Proposed Standard</p> <p>The proposed standard is unclear regarding the scope of the auditor’s responsibility for illegal acts. Is the auditor responsible for detecting all possible illegal acts, or is the scope limited to illegal acts related to financial reporting? Paragraph 225.5 is the primary source of this confusion. This paragraph is somewhat contradictory in stating that the accountant does not have extensive knowledge of laws and regulations outside of the scope of the professional service involved, but the proposed statement does not include any wording that places restrictions on the type of illegal act an auditor can be reasonably expected to detect. A related issue arises in paragraph 225.10, which requires auditors to determine the severity of the illegal act. However, it does not provide any guidance on determining severity. Is it based on financial statement impact of another metric? It seems reasonable that auditors would be most able to detect illegal acts related to financial reporting.</p> <p>This is an important distinction because if the intent is to include all possible illegal acts in the scope of the standard, unintended consequences are likely. For example, the auditor’s engagement risk likely will increase, driving up audit fees. Further, will firms need to spend an excessive amount of time training auditors on a multitude of laws rather than focusing training efforts on more traditional audit activities such as risk assessment and detecting misstatements?</p> <p>If the intent is to limit the scope of this standard to illegal acts related to financial reporting, I recommend the addition of wording similar to that found in AU 317 (PCAOB 2010). This standard makes multiple references to illegal acts related to financial reporting, and provides the example of illegal acts that may arise following insider trading in AU 317.06.</p> <p>Implementation of Reporting to Appropriate Authority</p> <p>The contributors felt that the language of the document is unclear as to how many sources of “appropriate authority” the auditor is responsible for reporting. Certainly everything in the document is in the singular. But, for example, assume an auditor suspects an “indirect effect” illegal act relating to occupational safety that requires financial statement disclosure. On the one hand the securities regulator authority might be informed due to omission of, say, a contingent liability from the financial statements. Does a professional accountant also have a responsibility to inform an occupational safety authority in a country that has such an authority? Related there may be various “appropriate authorities” at different levels of the government (e.g., in US state authorities).</p> <p>If the singular form of “appropriate authority” means only one authority, it would seem helpful to tell accountants how to “pick one” in situations such as the above.</p>

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		<p>In particular, if an audit client discloses an illegal act in the financial statements in accordance with the provisions of paragraph 225.10 of the Exposure draft, is requirement of “disclosure to the appropriate authority” met? Guidance on the form of disclosure is needed. Moreover, does audit report disclosure of information on the suspected illegal act constitute auditor disclosure to an appropriate authority when those financial statements are filed with that authority (e.g., a securities regulator)? Or must there be another communication with that authority?</p> <p>Paragraph 225.9 of the Exposure Draft provides the adequate investigation, remedial action, and appropriate steps to reduce the risk of re-occurrence criteria. Where does proper disclosure in the financial statements (for a suspected illegal act so requiring) fit in? Is it a remedial action? or should there be a fourth bullet relating to financial statement disclosure?</p> <p>Disclosure of Suspected Illegal Acts</p> <p>The contributors also expressed concerns over the definition of “suspected” illegal acts, and whether disclosure of “suspected” illegal acts is in public interest. What exactly constitutes a “suspected” illegal act? What is the probability threshold for a disclosure of “suspected” illegal act (e.g. is it a likelihood of 50% or higher, i.e. “more likely than not” that an illegal act has occurred)?</p> <p>Moderate Impact of Disclosures</p> <p>The contributors felt that it is unclear how to define “a moderate impact” of such disclosures. Moreover, it is unclear how such “moderate disclosures” may impact client-auditor relationship.</p> <p>Editorial Comment</p> <p>The definition of an “audit client” appears in paragraph 225.4, well after “client” is introduced in 225.1. WE suggest integrating this definition into the first paragraph.</p>
2.	AICPA	<p>1. Laws and Regulations May Preempt the Contemplated Disclosures</p> <p>In the United States, both federal and state laws recognize various accountant-client privileges or impose a general duty of confidentiality on accountants that applies to both audit and non-audit engagements as well as professional services performed for an employer. For example, most, if not all, states have confidentiality statutes or regulations that generally serve to prohibit CPAs from voluntarily disclosing client or employer records or information to third parties, including regulatory authorities, without client consent, and some states also recognize an accountant-client privilege with regard to the disclosure of client information.</p> <p>In certain circumstances, federal and state statutes and regulations may require, permit, or forbid an accountant from disclosing confidential client information to third parties. For example, recognizing the important role that accountants and other tax return preparers play in helping their clients comply with the requirements of the Internal Revenue Code, Congress has provided for the imposition of civil and criminal penalties on preparers who knowingly or recklessly disclose to third parties information furnished to them in connection with the preparation of tax returns, subject to narrow exceptions. Under one such exception, the Internal Revenue Service allows, but does not require, preparers to disclose information relating to actual or potential violations of criminal laws to government authorities. Notably, however, this exception</p>

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		<p>does not authorize tax return preparers to disclose information relating to suspected violations of other laws (i.e., civil or administrative laws) to government authorities, nor does it authorize preparers to disclose information relating to suspected violations of civil or criminal laws to professional accountants employed by other firms, such as a client’s external auditors.</p> <p>The proposed requirements in Sections 225 and 260 relating to the disclosure of suspected illegal acts to appropriate authorities and to external auditors would, in many instances, conflict with existing confidentiality requirements under U.S. federal and state laws. Accordingly, numerous revisions to federal and state laws likely would have to be adopted in order to override these existing confidentiality requirements. Similar issues undoubtedly would arise in other jurisdictions.</p> <p>While the Preface to the Code, Section 100.1 of the Code and the proposed revisions to Section 140.7 of the Code suggest that the disclosures contemplated under proposed Sections 225 and 260 would not be required if “prohibited by law,” we believe the adoption of the proposed revisions to the Code, as currently drafted, could result in substantial confusion in practice among both accounting firms and professional accountants as to their obligations when confronted with inconsistent duties and obligations proposed in the Exposure Draft. Such confusion could arise, for example, if a national regulator or authority retained existing confidentiality laws that provided for limited disclosures to external authorities in specific circumstances, but also purported to require professional accountants to comply with the Code’s requirements. The Preamble to the Code states that professional accountants should comply with the “more stringent” requirement in such situations, but it would by no means always be clear which requirement should be considered the most “stringent” under such circumstances. Accordingly, in light of existing confidentiality laws, and the potential for confusion as to the relationship between such laws and the proposed revisions to the Code, many member bodies of the IESBA may be reluctant or unwilling to adopt the proposed revisions in their current form. Were this to occur, this would seriously detract from the IESBA’s objective, as stated in its Terms of Reference, of “facilitating the convergence of international and national ethics standards, thereby enhancing the quality and consistency of services provided by professional accountants throughout the world and strengthening public confidence in the global accounting profession.” We fully support this key objective, but believe that the IESBA’s adoption of the proposed revisions to the Code, as currently drafted, would likely hinder its advancement. In comparison, we believe that the alternative approach that we have outlined above is more workable and would attract broader support while still protecting the public interest.</p> <p>2. The Responsibility to Disclose Suspected Illegal Acts to Authorities Should Rest with Clients and Employers, Not Professional Accountants, Unless Required by National Law or Regulation</p> <p>The Exposure Draft would require professional accountants to report suspected illegal acts to the appropriate levels of management of a client or employer, and possibly to those charged with governance, if management’s response is not timely and appropriate. We agree with this basic approach and generally would also support a requirement to encourage a client or employer to disclose a suspected illegal act to an external authority, in appropriate circumstances. However, we do not believe that the Code should impose a responsibility on a</p>

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		<p>professional accountant to disclose suspected illegal acts by a client or employer to an authority. Instead, we believe that any such obligation should only arise pursuant to a separate requirement outside the Code, based on a national law or regulation.</p> <p>The concept of client confidentiality is one of the fundamental principles of the accounting profession. While there may be situations in which auditors and other professional accountants are required or permitted to report suspected illegal acts involving clients to external authorities, such provisions have been carefully and narrowly crafted by national regulators in a manner that typically recognizes the general interest in preserving client confidentiality, safeguards the information received from accountants in the hands of regulators, and provides accountants with a liability “safe harbor” against potential claims that an accountant has prematurely or improperly disclosed information to an authority. Indeed, as noted in the Exposure Draft, “[r]equirements to disclose illegal acts are normally established by law and are generally accompanied by regulations that afford protection from retaliation to those who make such disclosures.”</p> <p>For example, Section 10A under the United States Securities Exchange Act of 1934 (the “Exchange Act”) imposes an obligation on auditors to “blow the whistle” and notify the Securities and Exchange Commission (“SEC”) of certain illegal acts involving their public company audit clients which they become aware of “in the course of conducting an audit.” Exceptional circumstances must be met, however, to require such disclosure. In particular, before the auditor is required to report directly to the SEC, (1) the auditor must have concluded that an issuer has “likely” engaged in an illegal act that has a “material” effect on its financial statements; (2) neither management nor the board of directors has taken timely and appropriate remedial action in response to the illegal act; (3) the issuer’s failure to take remedial action is reasonably expected to warrant departure from the auditor’s standard report or to warrant resignation; (4) the auditor has directly reported its conclusions to the issuer’s board of directors; and (5) the issuer has failed to notify the SEC of the auditor’s report on a timely basis, as required by statute. In addition, SEC regulations implementing Section 10A expressly provide that information provided by an auditor to the SEC under Section 10A is non-public and exempt from disclosure to third parties under the Freedom of Information Act. Moreover, Section 10A includes an “auditor liability” safe harbor that provides that no accounting firm shall incur liability in any private action relating to “any finding, conclusion or statement” in a firm’s Section 10A report to the SEC.</p> <p>The SEC’s “up-the-ladder” reporting requirements for attorneys who represent issuers before the SEC provide another example of a regulatory judgment that, in extraordinary circumstances, it may be appropriate to override professional privilege and a professional’s duty of confidentiality to a client. Under those requirements, an attorney representing an issuer is expected to make inquiries within a company when he or she receives “evidence of a material violation,” which is defined as “credible evidence, based upon which it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing, or is about to occur.” However, an attorney is only allowed to disclose confidential information regarding a client to the SEC when, among other things, the attorney reasonably believes such disclosure is necessary “[t]o prevent the issuer from committing a material violation that is likely to cause substantial injury to the financial interest or property of the issuer or investors.” As with the Section 10A requirements for accountants, the “up-the-ladder” rules include a liability safe harbor that protects attorneys who provide</p>

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		<p>information to the SEC in good faith against any discipline or liability under any inconsistent standards in other jurisdictions where the attorney is admitted or practices.</p> <p>In comparison, the Exposure Draft contemplates a much wider range of potential disclosures by professional accountants to external authorities, yet the IESBA has no ability to afford such disclosures confidential treatment in the hands of the authorities that receive them or to provide accountants who make such disclosures with whistle-blower or liability safe-harbor protections. Indeed, the IESBA acknowledged “[s]uch protective mechanisms can only be established by law and it is not possible for the IESBA to establish protective mechanisms for professional accountants who have to comply with the Code.” Accordingly, we believe that it should be the responsibility of national regulators in the various jurisdictions, and not the IESBA, to determine the circumstances under which suspected illegal acts should be reported by professional accountants to external authorities and to provide for appropriate safe-harbor protections. Without such protections, both accounting firms and individual accountants who disclose suspected illegal acts to appropriate authorities pursuant to the Code might be subjected to claims from clients and third parties alleging that they had made premature or inappropriate disclosures of confidential client information.</p> <p>3. The Proposed Disclosure Requirements Could Have a Chilling Effect on Accountant-Client Communications and the Engagement of Professional Accountants</p> <p>We also believe that requiring a professional accountant to disclose suspected illegal acts to external authorities in the range of circumstances contemplated in the Exposure Draft could have a chilling effect on the accountant-client relationship. If an accountant was required to disclose suspected illegal acts to external authorities, without satisfying the stringent criteria set forth in national laws such as Section 10A of the Exchange Act, the client may be more inclined to withhold information from the accountant and less forthcoming on issues that could affect an audit or other services provided. In addition, if a professional accountant and a client were to have a difference of opinion as to whether, for example, (i) an illegal act had actually occurred, (ii) the client had taken appropriate remedial action, or (iii) the client had implemented proper controls to reduce the risk of future violations, each of which could bear on the advisability of disclosing a matter to an appropriate authority, it could place the client and professional accountant in an adversarial relationship that could hinder audit quality, potentially threaten auditor independence, or negatively impact the quality of other services performed.</p> <p>These concerns are magnified here by the fact that the proposals, as drafted, would apply not only to professional accountants providing audit services, but also to accountants providing non-audit services to clients and accountants in business. In those situations, subjecting a professional accountant to inquiry obligations and potential disclosure requirements that would not apply to non-accountants providing similar services could well lead clients and employers to retain or hire less qualified firms or individuals to perform such services. We believe this could have a profound impact on the market for professional services, with unintended, negative consequences for the public interest, including businesses and investors.</p> <p>4. Information Learned by Professional Accountants Providing Non-Audit Services Should Be Excluded from the Scope of the Standard</p>

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		<p>As discussed in General Comment No. 3, the IESBA's proposed disclosure requirements could have a chilling effect on the willingness of companies to retain professional accountants to provide non-audit services. We believe that this risk is sufficiently great with respect to certain categories of non-audit services that the IESBA should consider excluding information acquired by professional accountants while performing such services from the scope of the proposed requirements.</p> <p>For example, professional accountants provide forensic accounting services, where they are retained for the purpose of investigating suspected wrongdoing, in many instances in response to the discovery of suspected fraud or illegal acts. In an investigative or litigation setting, such services may include, by way of illustration, the analysis of company books and records, data discovery and management, interviews, valuations, modeling, and expert testimony. Clients will be reluctant to hire professional accountants to provide such services, if any suspected illegal acts that are uncovered or confirmed are subject to potential disclosure by the forensic accountants to external authorities. Instead, clients may turn to other service providers, not subject to the Code's requirements, who may not be as competent to render such services. That result would not be in the public interest. Similar considerations exist with respect to other types of consulting services provided by professional accountants, such as environmental remediation assessments.</p> <p>The Exposure Draft also does not address the specific issues raised where a professional accountant is requested by legal counsel to assist counsel, whose own client may have committed, or been alleged to have committed, an illegal act. When professional accountants are retained in the United States to perform the types of forensic accounting services described above, they are typically retained by legal counsel to do so. In such situations, the accountant's client is the law firm, who retains the accountant on a privileged basis, pursuant to contractual arrangements that include strict confidentiality provisions. The attorney will have his or her own legal and ethical obligations to the client, want to coordinate discussions with the client, and need to control what, if any, communications are made to third parties, including external auditors and regulators. By exercising such control and supervision over the accountant's work and communications with third parties, the attorney ensures that relevant privileges are protected and that he or she is satisfying his or her ethical duties.</p> <p>Conversely, if legal counsel understands that a professional accountant may have an independent obligation to interact with management, external auditors or regulators, counsel will be far less inclined to retain an accountant in such an advisory or consultative role. For example, legal counsel would be concerned that certain steps taken by an accountant retained by such counsel to escalate an issue within an organization, or any mandatory disclosures by that accountant to external authorities, might waive privilege broadly with respect to the underlying issues on which the accountant was consulted by legal counsel. Were such a waiver found to have occurred, the attorney and his or her client might be required to disclose other communications between legal counsel and the accountant, or between legal counsel and his or her client, to third parties, including investigatory agencies and adverse parties in private litigation. This could have significant ramifications for the attorney's client and expose both the attorney and accountant to a significant liability risk, since the attorney's client could allege that the attorney and accountant were responsible for a waiver of a privilege that properly belonged to the client, and not to the accountant or attorney, and which the client should have been allowed to control. Few legal counsel would be willing to assume that potential risk, and professional accountants should not be placed in a position where, by providing advisory services that they may be well qualified</p>

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		<p>and best suited to render, they might nevertheless subject legal counsel to a significant liability risk or incur such potential exposure themselves.</p> <p>These examples are not intended to be exhaustive, but they illustrate the dangers of imposing inquiry obligations and reporting requirements on professional accountants. In a related whistleblower context, the SEC has determined that individuals who become aware of information about potential illegal acts while providing services that are intended to promote a company’s compliance with laws and regulations, or in connection with an entity’s legal representation, should not be encouraged to “blow the whistle” on the company, absent exceptional circumstances that are not set forth in the Exposure Draft. We believe that a similar sensitivity to the significant role that accountants play in helping companies achieve compliance with their legal and regulatory obligations and assisting legal counsel would justify an exclusion of the types of non-audit engagements described above from the scope of the IESBA’s proposed requirements.</p> <p>5. Professional Accountants Should Be Required to Consider Disclosing Suspected Illegal Acts to a Company’s External Auditor, Where Permitted</p> <p>The IESBA proposal would require a professional accountant in public practice providing professional services to a client that is not an audit client of the firm or of a network firm, as well as professional accountants in business, to disclose a suspected illegal act to the client’s external auditor, where one exists, in two situations. Specifically, disclosure to the external auditor would be required if the professional accountant either (i) encountered difficulty in escalating the matter within the client or employer, or (ii) concluded that the client or employer had failed to make an adequate disclosure of the matter to an appropriate authority within a reasonable period of time after the professional accountant advised the client or employer to make such a disclosure.</p> <p>It would often be beneficial for the external auditor to have knowledge of a suspected illegal act in a timely matter, and such knowledge might enable or require the auditor to escalate the matter to the appropriate levels of the client’s management and possibly those charged with governance. In the United States, such disclosure might also be required in some cases under existing professional standards, which require professional accountants in business to be candid in dealing with his or her employer’s external auditors and to not “knowingly fail to disclose material facts.” At the same time, situations might also arise where a low-level staff person who has not had any prior dealings with the external auditor becomes aware of a suspected illegal act involving his or her client or employer. In such situations, it would be more practical for the accountant to report the suspected activity to a superior than to require him or her to bring it to the attention of the external auditor directly.</p> <p>Accordingly, we would support a requirement that a professional accountant in public practice who is not the auditor and a professional accountant in business consider disclosing a suspected illegal act to the external auditor, provided that such disclosure would not violate any legal or contractual confidentiality or non-disclosure requirements applicable to his or her engagement or employment. We believe this approach would provide professional accountants with an appropriate degree of flexibility in determining how best to bring a suspected illegal act to the attention of those in a position to act upon such information.</p>

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		<p>Finally, in those situations where the information is provided to the external auditor by another professional accountant, we believe that the client or employer, and not the external auditor, should be responsible for deciding whether the matter should be disclosed to an appropriate authority. General Comment No. 2 explains the basis for our position in more detail.</p> <p>6. The Specific Circumstances Requiring Warranting Inquiry, Escalation and Potential Disclosure Should Be Refined and Clarified</p> <p>In general, we believe that it is appropriate for a professional accountant to report suspected illegal acts to the appropriate levels of management of a client or employer, and possibly to those charged with governance, if management’s response is not timely and appropriate. However, we believe that the IESBA should refine and clarify the circumstances under which a professional accountant should discuss a matter involving a suspected illegal act with management or those charged with governance at a client or employer. This would also apply to the circumstances where an accountant would be expected to encourage a client or employer to make disclosure to an appropriate authority (or to make such disclosure to the authority directly, if the IESBA moves forward with the proposal as drafted).</p> <p>6.1 Materiality Considerations</p> <p>As drafted, the Exposure Draft does not expressly mention or incorporate the notion of “materiality” for purposes of determining when a professional accountant should (i) look into a suspected illegal act, (ii) discuss the matter with the appropriate level of management, (iii) escalate the matter to higher levels of management or those charged with governance, (iv) advise a client or employer that matter should be disclosed to an appropriate authority, or (v) disclose the matter directly to an appropriate authority. Instead, the Exposure Draft deals with the concept of materiality indirectly by suggesting that, in making such determinations, a professional accountant is expected to exercise “professional judgment” and weigh “all the specific facts and circumstances,” including “the magnitude of the matter” and whether a suspected illegal act is “of such consequence” that disclosure would be in the public interest.</p> <p>We believe that expressly introducing the notion of materiality for purposes of the various determinations expected of professional accountants under the proposed standard would provide clearer guidance. Professional accountants are familiar with the concept of materiality, and existing laws and professional auditing standards addressing illegal acts incorporate a materiality standard. Conversely, they also make clear that accountants are not expected to pursue or escalate immaterial items. For example, Section 10A(b)(2)(A) of the Exchange Act requires auditors to report illegal acts to the SEC only if they have a “material effect” on an issuer’s financial statements and the issuer has failed to respond appropriately, while current International Standards on Auditing and United States Generally Accepted Auditing Standards provide that an auditor has no obligation to communicate with those charged with governance about matters that are “clearly inconsequential.” Since professional accountants are well-versed with such standards, we believe the IESBA should also employ them here.</p> <p>6.2 Level of Suspicion</p> <p>The Exposure Draft would require a professional accountant who suspects that an illegal act may have occurred at a client or employer to take “reasonable steps” to “confirm or dispel” that suspicion. If the accountant is “unable to dispel” the suspicion, the accountant may then</p>

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		<p>be required to take a series of steps, beginning with discussing the matter with the appropriate level of management at the client or employer and possibly concluding with the disclosure of the matter to an appropriate authority.</p> <p>We believe that the IESBA should provide further guidance as to what types of steps it believes are “reasonable” for a professional accountant to take when he or she suspects that an illegal act may have occurred. While professional accountants providing audit services to clients may be comfortable under current standards assessing the potential impact of a suspected illegal act on a client’s financial statements and other aspects of an audit, neither auditors nor other professional accountants are likely to have similar familiarity making inquiries about a client’s or employer’s compliance or non-compliance with other laws and regulations that may have, at most, an immaterial and indirect effect on the financial statements. If the IESBA decides to move forward with its proposal, we believe that it should provide more detailed and explicit guidance as to how accountants providing such non-audit services would satisfy themselves that they have taken “reasonable steps” to address their suspicions.</p> <p>We also believe that the IESBA should recognize, in considering the need for additional guidance (or potential exceptions from the scope of the proposed requirements) that professional accountants performing non-audit services are frequently engaged by clients for a limited purpose. In such circumstances, the client may be unwilling to respond to questions, or grant access to additional information, that might enable the accountant to confirm or dispel his or her initial suspicions. The client may also take the position that any such inquiries or procedures are outside the scope of the accountant’s engagement and that all costs relating to the accountant’s inquiries should be borne by the accountant. In addition, the client might quickly decide to replace the accountant with another service provider not subject to similar obligations, leaving the accountant uncertain as to his or her obligations.</p> <p>Accordingly, we believe that, if the IESBA moves forward with its proposal, it should offer practical guidance to professional accountants providing non-audit services as to how they should fulfill their obligations under some of these challenging scenarios, which readily could be expected to arise in practice. Absent such guidance, we believe that professional accountants might also face an unacceptable risk that they had taken what they believed in good faith to have been reasonable steps to dispel their suspicions that a client or employer had engaged in an illegal act, only to be second-guessed for “not having done enough” if, at a later point, a determination was made by a court or a regulatory body that the client or employer had engaged in illegal conduct.</p> <p>In addition, the IESBA has not specified what level of suspicion a professional accountant should continue to have before pursuing the various escalation steps set forth in the Exposure Draft, such as discussing a matter with those charged with governance or with external authorities. In our view, a professional accountant should be required to have a reasonable belief that a suspected illegal act is at least “likely” to have occurred before the accountant is expected to take such additional steps. We believe such a requirement would be consistent with current professional auditing standards, which contemplate that auditors will exercise professional judgment in determining whether to escalate a discussion of suspected non-compliance with laws or regulations within a client.</p>

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		<p>Without such clarification, an accountant may believe that he or she is required to continue to pursue the matter further, so long as he or she harbors any suspicion that an illegal act may have taken place. We do not believe that the IESBA intended this result, which might lead to the costly and time-consuming escalation of matters involving the mere possibility that a client or employer may have violated a law or regulation or an accountant’s inability to satisfy himself or herself “beyond the shadow of a doubt” that a violation has not occurred.</p> <p>6.3 The “Public Interest” Disclosure Standard</p> <p>As drafted, new Sections 225 and 360 of the Code would require a professional accountant (or, in some cases, the audit engagement partner) who became aware of a suspected illegal act to advise a client or employer to disclose a suspected illegal act to an appropriate authority, if the accountant determines that such disclosure would be in the “public interest.” If the client or employer then failed to make the recommended disclosure, the professional accountant or engagement partner would be required, or would have a right, to disclose the suspected illegal act to an appropriate authority in certain circumstances.</p> <p>A hallmark of the accounting profession is its acceptance of the responsibility to act in the public interest, and we fully agree that accountants should always strive to do so. However, in the context of the Exposure Draft, the term “public interest” is undefined. Proposed Sections 225.11 and 360.11 merely state that, in determining whether disclosure would be in the public interest, the professional accountant “shall take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances would be likely to conclude that the suspected illegal act is of such consequence that disclosure would be in the public interest.” This standard does not provide professional accountants with clear guidance as to what a “reasonable and informed third party” would conclude to be in the “public interest,” since the public interest may reflect the views of various constituencies and stakeholders with different and competing perspectives.</p> <p>We note that IFAC Policy Position 5 currently defines the public interest as “[t]he net benefits for, and procedural rigor employed on behalf of, all society in relation to any action, decision, or policy.” The Exposure Draft does not state whether the term “public interest” should be similarly understood for purposes of proposed Sections 225 and 360. However, the IFAC’s definition in Policy Position 5 only underscores the difficulties that accountants might face if they were expected, in essence, to undertake a cost-benefit analysis on behalf of “all society” each time they were faced with a decision whether to advise a client or employer to disclose a suspected illegal act to an appropriate authority or to notify such authority directly.</p> <p>As a result, we believe that the “public interest” standard for disclosure set forth in the Exposure Draft is unduly vague, and would likely lead to varying and inconsistent interpretations by professional accountants at - and within - different firms and in different jurisdictions. Since the obligations contemplated under the Code presumably would be imposed on individual accountants, as well as their firms, this could lead to situations, for example, in which one professional accountant reached a conclusion that a suspected violation was not of sufficient consequence to warrant disclosure, while another professional accountant with the same information may reach the opposite conclusion. The Exposure Draft provides no guidance on how such differences of opinion should be resolved and, in our view, the prospect of such</p>

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		<p>inconsistent and subjective interpretations of a new ethics standard would not serve the needs of investors or other capital markets participants.</p> <p>6.4 Determining the “Appropriate Authority”</p> <p>The Exposure Draft contemplates disclosures of suspected illegal acts to “the appropriate authority” in various circumstances, and describes “[a]n appropriate authority” as “one with responsibility for such matter.” In practice, however, we believe that it might prove difficult for a professional accountant to determine who would be considered the “appropriate authority” for reporting purposes.</p> <p>For example, there may be multiple authorities in one or more countries with jurisdiction over a client’s or employer’s suspected illegal acts, and a professional accountant may be uncertain as to which authority a proposed disclosure should be made. The Exposure Draft also does not address what a professional accountant’s responsibilities would be if the accountant recommended that a client or employer disclose a matter to a particular authority, and the client or employer responded that it believed any such disclosure should be made to a different authority. In addition, if a client or employer is not subject to regulation by authorities such as a competition regulator or a securities regulator, the only “appropriate authority” to receive a report may simply be a local law enforcement authority with limited personnel and resources. This might be the case, for example, with respect to many small and medium-sized private companies.</p> <p>Accordingly, accountants may face uncertainties both in determining which entity should be considered the “appropriate authority” for reporting purposes and in determining whether disclosures should only be made to authorities that reasonably might be expected to take some action upon receiving disclosure of a suspected illegal act. In our view, these uncertainties further support the conclusion that the types of external reporting requirements contemplated under the Exposure Draft should be imposed, if at all, by regulators with appropriate subject-matter jurisdiction and expertise, and not by the IESBA in the Code.</p> <p>6.5 Distinguishing Between a Requirement and a “Right” to Disclose a Suspected Illegal Act</p> <p>The IESBA’s proposal would require a professional accountant in public practice providing professional services to an audit client, or the audit engagement partner, to report certain suspected illegal acts to an appropriate authority, if the client had failed to make such disclosure after being advised to do so by the professional accountant or the engagement partner. In comparison, professional accountants providing services to a non-audit client or in business would have a right to disclose such acts, if the client or employer had failed to follow the accountant’s advice to disclose, and normally would be “expected” to exercise that right.</p> <p>It does not appear to us that there is any significant difference between the proposed requirement to disclose suspected illegal acts and the “right” to disclose such acts, when the proposal states that the professional accountant is “expected” to exercise this right in order “to fulfill the accountant’s responsibility to act in the public interest.” In either case, the disclosure apparently would be excused only if “exceptional circumstances” existed in which a reasonable third party would conclude that “the consequences of disclosure are so severe as to justify” not making the disclosure to an appropriate authority. Should the IESBA decide to move forward with the proposal, we believe it should</p>

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		eliminate this distinction, which might lead to unnecessary confusion as to the scope of the obligation that the IESBA is seeking to impose on professional accountants.
3.	APESB	<p>APESB suggests the IESBA consider the following additional matters in the final drafting process:</p> <ul style="list-style-type: none"> • Professional accountants in the public sector in statutory positions of responsibility, such as Auditors General, securities regulators, and tax commissioners, may be in office for a specified period of time and may not be able to resign. Accordingly, we recommend that the IESBA consider qualifying the applicable provisions with “where permitted by law or regulation”; • Whether there are certain circumstances where the scope of work is so limited that it affects the ability of the professional accountant to be in a position to appropriately identify a suspected illegal act, such as an auditor of a small subsidiary company who does not have access to all the relevant information of the client; • Some professional accountants also serve in an executive or governance role such as CEO, CFO or Board member and the revisions should reflect guidance on circumstances where the professional accountant is within Those Charged with Governance; and • Additional guidance for the auditor or professional accountant in an executive or governance role on circumstances to consider disclosing the suspected illegal act in the audit report or the financial report.
4.	Assirevi	<p>Given the importance of these general comments and the appropriateness of reconsidering the premise for the proposed changes to the Code of Ethics, we have decided not to provide an individual response to each question set out in the document.</p> <p>1) The concept of public interest within the Exposure Draft</p> <p>In the Exposure Draft, the concept of public interest is central to an auditor’s disclosure duty.</p> <p>Assirevi fully supports the principle stated in Section 100.1 of the Code of Ethics according to which the auditor must act in the public interest. In this regard, recital no. 9 of Directive 2006/43 states that “the public-interest function of statutory auditors means that a broader community of people and institutions rely on the quality of a statutory auditor’s work. Good audit quality contributes to the orderly functioning of markets by enhancing the integrity and efficiency of financial statements”.</p> <p>However, the general ethical principle that the auditor must protect the public interest becomes, in the Exposure Draft, a crucial element for the duty to disclose a suspected illegal act.</p> <p>In our opinion, this approach requires further, more specific indication of when disclosure could be made in the public interest.</p> <p>Basically, as recognised on page 9 of the Exposure Draft, the strong subjectivity of the determination of what is a disclosure in the public interest could lead to a “wide range of conclusions and produce inconsistent results”.</p> <p>This is an aspect, closely related to the topic discussed in paragraph 2 below, that the IESBA acknowledges it has been considered and that we deem will require further study and consideration.</p>

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		<p>2) The duty of disclosure in the public interest and the lack of mechanisms for protecting the auditor</p> <p>Assirevi supports the principle, which also serves as the basis for ISA 250, whereby the auditor who identifies a fact or circumstance that could potentially be illegal must bring such fact or circumstance to the attention of the management and those charged with governance of the audited entity.</p> <p>However, this Association does not support the inclusion, through the Code of Ethics, in the case the entity’s management fails to respond adequately, of an auditors’ requirement to disclose suspected illegal acts to an appropriate authority, if this disclosure is in the public interest, in the absence of specific national legislation or regulations.</p> <p>In fact, this proposal represents a waiver from the duties of confidentiality and privacy, without providing for “protective mechanisms” to protect the auditor. The IESBA itself states that “such protective mechanisms can only be established by law and it is not possible for the IESBA to establish protective mechanisms for professional accountants who have to comply with the Code.”</p> <p>In the Exposure Draft, the importance of this issue is made clear where it stresses that it may be “disproportionate to establish a requirement to disclose without providing those who would be required to make the disclosures with any protective mechanisms”. Essentially, without coordination between the disclosure duty arising under an international professional rule and the correlated protective mechanisms that are necessarily left to the discretion of the lawmakers of each nation, the auditor remains exposed to the significant risk of violating the law and contractual obligations.</p> <p>Moreover, national lawmakers, where they have considered the disclosure of suspected non-compliance with the law appropriate and useful for protecting the public interest, have passed specific provisions addressing the matter. For example, in Italy, auditors of a public interest entity are required to report facts they find censurable, discovered in the course of the audit, to the market oversight authority (Consob) and to the entity’s board of statutory auditors.</p> <p>Based on the foregoing, along with our comments in paragraph 1, we support the introduction in the Code of Ethics of an auditors’ duty to disclose a suspected illegal act to the management and to those charged with governance of the entity.</p> <p>Otherwise, any auditors’ duty to make disclosures in the public interest to appropriate authorities should, in Assirevi’s opinion, be determined solely by national laws that could also, at the same time, make provision for suitable mechanisms for protecting the auditor making the disclosure.</p> <p>3) The concept of suspected illegal act within the Exposure Draft</p> <p>As to the concept of suspected illegal acts, there is an inconsistency between the proposals for modifying the Code of Ethics and ISA 250. The Exposure Draft states on page 5 that “the IAASB will consider whether consequential changes to ISA 250 may be needed in light of changes to the Code”.</p> <p>However, ISA 250 already requires the auditor to assess:</p>

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		<p>i) the compliance with the provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial statements, and</p> <p>ii) the identification of cases of non-compliance with other laws and regulations that may have a material effect on the financial statements.</p> <p>The IESBA's approach is different: it does not encompass just “suspected illegal acts that directly or indirectly affect the clients financial reporting” but also those “the subject matter of which falls within the expertise of the professional accountant”.</p> <p>This second category appears to significantly expand the kinds of situations that the auditor should evaluate, moving away from specific reference to the accounting issues usually falling within auditors' expertise.</p> <p>The effects of the proposal would therefore significantly alter the approach of ISA 250, which, in our opinion, is more correct since it is consistent with the nature of audit activity and with the characteristics of the professional accountant.</p> <p>4) The problems of identifying the appropriate authority to which to make the disclosure under national law.</p> <p>The identification of the appropriate authority to which the disclosure should be made, could lead to significant problems of interpretation, also related to the specific features of each national regulation.</p> <p>With regard to certain categories of suspected illegal acts, for example, it could prove difficult to identify a competent authority, in part due to the existence of various judicial and/or oversight authorities that could potentially be considered competent. Therefore, the appropriate authority should be determined at the local legislative and/or regulatory level. Should individual nation's lawmakers fail to make this designation, this could lead to considerable uncertainty concerning how the duty to make disclosure to the appropriate authority as provided for by the Exposure Draft should be applied.</p> <p>5) Critical issues related to the performance of non-audit services.</p> <p>The disclosure duty for professional accountants providing non-audit services proposed in the Exposure Draft could raise two critical issues that, in the opinion of Assirevi, deserve consideration.</p> <p>First, imposing general disclosure obligations on professional accountants could have an impact on how auditors are involved in the performance of non-audit services, giving an advantage to other categories of professionals not subject to the same restrictions. An example is the conduct of a forensic investigation in which the involvement of outside experts is a per se indication of the suspicion that illegal acts may have been committed.</p> <p>Second, it is not uncommon for the team providing non-audit services to consist of a variety of different types of professionals, each subject to his/her own profession's rules of ethics with respect to confidentiality and professional secrecy. The applicability of the disclosure duty for professional accountants may conflict with different ethical codes, such as the attorney confidentiality rules that apply to matters covered by legal privilege.</p>

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		<p>In light of the foregoing, we can only support the introduction, through the Code of Ethics, also with reference to professional accountant who provide non-audit services, of a requirement to disclose information within the entity, i.e. to make disclosure to the management and those charged with the entity's governance.</p>
5.	BDO	<p>We reiterate our support for improved guidance for professional accountants in responding to suspected illegal acts. However, we believe this should be accomplished through guidance involving communications with management of the entity and, if necessary, those charged with governance, rather than through disclosure to external authorities, which should instead be governed by local laws and regulations.</p>
6.	CAI	<p>5.2.6 Recommendations</p> <p>Following the examination of the issues, the Review Group considers that the issues raised by the profession were both valid and reasonable. In coming to its conclusions, the Review Group has had regard to the various issues outlined above and to its terms of reference and concludes that the most appropriate approach would be to make recommendations for the development of new reporting obligations and for any review of existing obligations that might take place in the future.</p> <p>Accordingly, the Review Group recommends that if new auditor reporting obligations are to be introduced in future, they should be developed with regard to the following criteria –</p> <ul style="list-style-type: none"> • Consultation – the audit profession, together with other interested parties, should be consulted at any early stage of the development of any legislative proposals; • Materiality – in order to facilitate the taking into account, where applicable / appropriate, of materiality considerations, de minimis provisions be included in reporting obligations; • Consistency – in order to facilitate, to the extent practicable, consistency across auditors' reporting obligations, the language used in expressing those obligations should be consistent; • Protection – adequate legislative protection should be afforded to auditors in circumstances where they are required to make statutory reports to regulatory authorities; • Avoidance of duplication – to the extent practicable, provision should be made that where an issue identified by an auditor would otherwise give rise to reporting obligations to two or more statutory / regulatory authorities (such as, under anti-money laundering legislation, auditors and other designated bodies can be required to report the same offence to both the Revenue Commissioners and An Garda Síochána), a single report to one of the relevant authorities would discharge the auditor's responsibility to report with only a requirement to furnish any other relevant statutory/ regulatory authorities with a copy of the report; • Web access – to the extent practicable, the making of on-line reports should be facilitated.

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		<p>In the event that any of the auditors' existing reporting obligations are to be amended, any such amendments should be developed having regard to the foregoing criteria.</p> <p>Given that auditors' current reporting obligations extend across a number of codes of legislation, which in turn come within the aegis of a number of separate Government Departments and Offices, the Review Group considers that it is likely to be more difficult to achieve consistency of legislative approach to statutory reporting in the near term. That said, the Review Group recommends that consideration be given to the establishment of a cross Departmental group charged with examining the extent to which the objective of consistency of approach might be achieved and that such group should include representatives of the profession. One possibility might be to provide in company law a comprehensive reporting obligation for auditors and the disapplication of all other reporting regimes to auditors.</p> <p>The Review Group submits that, if the foregoing criteria were to be applied to future and / or amended auditor reporting requirements, the benefits accruing would include –</p> <ul style="list-style-type: none"> • A reporting framework more readily understood by the auditing profession and, as a consequence, a more consistent approach to reporting; and • Reduced costs to the audit profession, leading in turn to reduced costs to business.
7.	CalCPA (PPC)	<p>The California Society of CPA's Committee on Professional Conduct reviewed the above Exposure Draft. We provide the following observations and comments for consideration responding to the IESBA's exposure draft. Our comments reflect our concern if this International standard is imposed on our members.</p> <p>CONFIDENTIALITY</p> <p>The principle of confidentiality is fundamental to our code of professional conduct in the U.S. Disclosure of client information cannot be made without their consent. This is a long honored tenet our clients have come to expect. Current standards allow disclosure with the clients consent or pursuant to court order. There is, and should be, a high burden on the accountant who discloses confidential information. The proposed standard does not meet this high burden and should not be adopted.</p> <p>ILLEGAL ACTS</p> <p>Identifying illegal acts is central to the proposed standard. The determination of illegal acts in the US is determined by attorneys and courts. While auditors or CPAs serving as expert witnesses provide evidence of the occurrence of an illegal act they do not express an opinion as to the actual legality of a given set of transactions or behaviors. To do so would likely constitute the improper practice of law by the accountant. Accountants would also be required to disclose "suspected" illegal acts. Disclosure of a suspected illegal act which is later determined to be appropriate could expose accountants to lawsuits for slander with damages.</p> <p>A basic requirement of a criminal (illegal) act is <i>Scienter</i> (intent or knowledge of wrongdoing). That is the purview of attorneys and ultimately the trier of fact. While CPAs may be necessary to develop the evidence to establish <i>Scienter</i> would this standard obligate CPAs to opine on</p>

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		<p>this legal issue? The proposed standard states: “The proposal would require a professional accountant when encountering a suspected illegal act to take reasonable steps to confirm or dispel the suspicion and to discuss the matter with the appropriate level of management.” If the accountant is discharged from the engagement then information necessary to confirm or dispel suspicion will not be available. If this becomes habit by companies suspected of illegal acts it may actually produce a result opposite of the intent of the proposed standard.</p> <p>DISCLOSE TO AN APPROPRIATE AUTHORITY</p> <p>The proposed standard states “The ultimate determination of whether it is in the public interest to take action against those who committed the act should be made by the appropriate authority and not the professional accountant. It is therefore appropriate to require the accountant to disclose the matter to provide the authority with notification such that it can then investigate the matter further and determine whether action should be taken against those who committed the act.” The term “appropriate authority” pervades the proposed standard. The requirement of disclosure by employed accountants disclosing their suspicions to the outside auditors has merit. But disclosure outside the company executives or board of directors should not be required particularly by outside auditors without legislative protection and immunity for the disclosure.</p> <p>REGULATORY AUTHORITIES IN VARIOUS STATES</p> <p>If the proposed ruling were imposed on California accountants it is uncertain how the current regulations would affect our CPAs. Federal regulations would no doubt require modification to increase disclosure by accountants while protecting them while they will meet their obligations under the standard</p>
8.	CGA Ca	<p>“Although gold dust is precious, when it gets in your eyes it obstructs your vision” - Hsi-Tang (Zen Master)</p> <p>We believe that the robustness of the ethical framework of a profession is the gold standard for judging its integrity and credibility. We would like to note that CGA-Canada’s Code of Ethical Principles and Rules of Conduct (CEPROC) is aligned with that of the IESBA, commensurate with its obligations as the founding member of the IFAC. We disapprove of the use of legal excuses above ethics, probity, propriety and best practice. However, we believe that the proposals in the ED are an aggressive consequence to the recent corporate scandals and we visualize the following quandaries:</p> <ul style="list-style-type: none"> • High possibility of legal liability for professional accountants; • Risks to the professional accountants where the management and/or regulators could not be trusted or relied upon; • Likelihood of behavioral issues such as withholding of information from the professional accountants and lack of trust in professional accountants; • Loss of trusted advisor status as professional accountants are pitted against their clients; and,

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		<ul style="list-style-type: none"> • Competitive disadvantage relative to other professionals, such as lawyers, who are not burdened with similar obligations but, on the contrary, enjoy privileged communication with their clients. For example, an individual client will be more comfortable discussing tax matters with a professional tax lawyer relative to a professional tax accountant, if the proposals in the present ED become effective. <p>In order to highlight the last bullet point, we would also like to refer to a study that explores the actions of both Arthur Andersen and Vinson & Elkins as they related to the Enron fraud. Analysis is given to the inherent differences between the roles of accountants and lawyers in business transactions and consideration is given to the specific actions of the lawyers and accountants involved with Enron, given their respective professional duties and obligations. The premise of this study is that Vinson & Elkins and Arthur Andersen each played equally essential roles in the perpetuation of the fraud, and that it was an inequitable result that Arthur Andersen met its demise while Vinson & Elkins survived relatively unscathed.</p> <p>We note that the original goal of the project was to provide only additional guidance for professional accountants in public practice and in business on how to respond in situations where they encounter a suspected fraud or illegal act. However, the proposals in this ED are likely to impose onerous burden on professional accountants; expand the scope of obligations of the professional accountants, and enhance the expectations of the public from the professional accountants. We also visualize significant implementation issues because of differing legal environments across jurisdictions - an unfair result for those jurisdictions where the requirements will not be implemented due to the legal environment, when compared to those jurisdictions where the provisions will have to be fully enacted. We note that the proposals in this ED will create significant difficulties for the SMPs and professional accountants in business without any legal or financial support from the relevant professional accounting body. We are also concerned that the proposals would undermine the trust of clients and employers in professional accountants. Furthermore, we must recognize that the proposed sections may add significantly to the obligations of professional accountants, both in respect of existing ethical requirements and law and regulations. These new obligations have a real cost to firms, one which is not likely to be funded by a client since the tangible work product (output) provided to them will remain unchanged.</p> <p>We concur with dissenting views of one of the IESBA members that does not support “the provisions that establish an obligation for a professional accountant to report a suspected illegal act by a client to a third party outside the client, regardless of the circumstances, as there are no means for the Code of Ethics to provide the protections that must necessarily accompany such a serious obligation. The legal and ethical implications of imposing such an obligation are so complex, the jurisdictional issues so diverse, and the personal impacts so potentially severe, that the regulation of whistleblowing should be the sole responsibility of those in each jurisdiction (e.g., legislators) who have the authority to accompany such a serious obligation with the appropriate protections.”</p> <p>We believe that IESBA can further the goal of enhancing the credibility of the profession by conducting the post implementation review of the extant code and resolving issues arising from such review in order to make the code explicit and robust. An ardent and overzealous code of ethics which would enervate professional accountants instead of empowering them is not the right course of action. We invite the IESBA to</p>

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		<p>revise the proposals in the present ED so as to provide only additional guidance in the instances of suspected illegal acts, in accordance with the original intention of the project without imposing sweeping new requirements on the professional accountants.</p>
9.	CICPA	<p>Other Comment on Non-Audit Services (Advisory and Tax)</p> <p>Clients may engage accounting firms to carry out non-audit services that trigger considerations of suspected illegal acts. The question is whether professional accountants need and if so, whether it is practical, to report all such cases.</p> <p>The objective of the engagement may be to implement steps to eliminate the suspected illegalities. Therefore, a requirement in the Code to report suspect illegal acts is counter-intuitive to the intention of these engagements.</p> <p>Examples:</p> <p>(1) Firms may be engaged to investigate whistleblower accusations.</p> <p>(2) In financial due diligence engagements, teams often encounter allegations or talk of what may or may not be illegal acts.</p> <p>(3) Firms may be engaged to conduct reviews of suspicious “red flag” businesses, such as Reverse Takeovers (RTOs) for the benefit of future potential investors.</p>
10.	CIPFA	<p>We have some detailed comments on other sections:</p> <p>Paragraph 360.8</p> <p>This paragraph applies where the professional accountant determines that the suspected illegal act is of such consequence that disclosure to an appropriate authority would be in the public interest. In such circumstances, the professional accountant is required to advise the employing organisation that the matter should be disclosed to the appropriate authority.</p> <p>It is suggested that, where relevant, the matter of disclosure to an appropriate authority should be brought to the attention of the Audit Committee or the Chair of the Audit Committee in the first instance.</p> <p>Paragraph 360.9</p> <p>This paragraph applies where the response to the matter (presumably by the external auditor) has not been appropriate. In such circumstances, the professional accountant has a right to disclose certain matters to the appropriate authority. A professional accountant ‘is expected to exercise this right to disclose in order to fulfil the accountant’s responsibility to act in the public interest’.</p> <p>See my comments above on the use of the word “right”.</p> <p>The nature of the suspected illegal acts to be disclosed to an appropriate authority are set out in bullet points. It is not entirely clear whether the bullet points in this paragraph are mutually exclusive or whether the suspected illegal acts must satisfy both criteria i.e. directly or indirectly</p>

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		<p>affecting the employing organisation's financial reporting as well as being within the expertise of the professional accountant. From the consultation, it appears they must both apply, in which case this should be made clear.</p> <p>Paragraph 360.10</p> <p>This paragraph might follow more logically after the current paragraph 360.11 as it provides exceptions to the duty to disclose to an appropriate authority, presumably after it has been determined that such disclosure is in the public interest.</p> <p>Paragraph 360.11</p> <p>This paragraph sets out some factors that should be taken into account when determining whether the disclosure would be in the public interest. It should be specifically stated that this is not a closed list. Other factors that could be usefully mentioned are: reliability and quality of information available and degree of suspicion; legal protection for breach of duty of confidentiality; any legal advice obtained.</p> <p>Paragraph 360.14</p> <p>When making a disclosure to an appropriate authority, the professional accountant is required to act reasonably in good faith and exercise caution when making statements and assertions. I suggest that there should also be a requirement to act objectively.</p>
11.	CPA AU	<p>Notwithstanding our strong concerns with the fundamental concepts that underlie the proposed approach we offer some additional comments for IESBA's consideration.</p> <p>Terminology</p> <p>CPA Australia is of the opinion that the terminology used in the proposal requires more clarity and appears to be incongruent with that adopted in the Code, as well as the commonly accepted understanding of terms.</p> <p>The term 'illegal acts' is used but it is not clear whether the term refers to criminal and civil law or only refers to acts that infringe criminal law. The description of illegal acts offered in paragraphs 225.1 and 360.1 suggests that all acts and not only those that contravene criminal law are included. We suggest that IESBA clarifies this issue as we consider it important that professional accountants know the laws and regulations this guidance is addressing.</p> <p>A relevant consideration relates to the expressed or implied term of confidentiality contained in employment contracts. It is not clear from the proposal whether professional accountants in business would be expected to breach their contractual obligations and bear the civil liability for doing so in order to disclose a suspected illegal act. If that is the case, the Code would potentially be requiring professional accountants to breach their common law obligations in order to comply with its requirements.</p> <p>Further, the distinction is made between a requirement to disclose and a right to disclose. For example, it is proposed that Members in Business will have a requirement to disclose to an external auditor, if there is one, and a right to disclose to an external authority. The proposed guidance states that they are expected to exercise this right to disclose. Paragraph 100.5 and 140.1 of the Code in relation to</p>

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		<p>confidentiality state that information should not be disclosed ‘unless there is a legal or professional right or duty to disclose’. Generally, a right is a demand placed on others by the person possessing it while a duty is a demand placed on persons who have it. The proposal imposes a requirement and a right. We question whether it is possible to impose the expectation that a right is exercised and whether the Code can impose expectations on professional accountants as to what they should do with their rights. Paragraph 100.4 of the Code states that ‘the use of the word “shall” in this Code imposes a requirement on the professional accountant or firm to comply with the specific provision in which “shall” has been used.’ We therefore question why the word ‘shall’ has not been used in line with the Code’s adopted terminology.</p> <p>Objective</p> <p>It is not clear whether the motivation of this proposal is to address illegal acts, to report illegal acts or achieve both. Paragraph 360.7, for example, lists the sort of factors that need to be considered:</p> <p>‘When determining if the response to the matter is appropriate the professional accountant shall consider the nature and magnitude of the matter and factors such as whether:</p> <ul style="list-style-type: none"> • The matter has been adequately investigated; • Remedial action has been taken to address the matter; and • Appropriate steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training.’ <p>The proposal suggests that even if the response to the matter is appropriate, the professional accountant would still be required to disclose to the external auditor and an external authority. There seems to be a distinction between disclosure of illegal acts and addressing illegal acts that is not sufficiently developed, making the proposed paragraphs lack coherence and order. It appears that professional accountants would have to follow through on two fronts:</p> <ul style="list-style-type: none"> • address the illegal act and see what has been done to minimise reoccurrence, and • make sure the client discloses to appropriate authority or else the professional accountant makes the disclosure. <p>Obtaining Advice</p> <p>Paragraphs 225.8 and 360.13 suggest that professional accountants may consider it appropriate: ‘to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege to assist in determining the appropriate course of action’. It is possible that the legal advisor may be of the opinion that the matter should not be disclosed. If that is the case, professional accountants should be able to adopt such an opinion if they consider it appropriate, otherwise the value of gaining expert opinion is not evident.</p> <p>Enforcement</p>

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		<p>In relation to enforcement and discipline, it may be possible to hold someone responsible for not disclosing when a professional accountant is confronted with a ‘smoking gun’ and does not disclose. It is not clear how the requirement to disclose based on ‘reasonable suspicion’ can be enforced.</p> <p>The proposal also does not address how acts that may be illegal in one jurisdiction should be addressed by network firms if they are legal in another.</p> <p>Explanatory Memorandum</p> <p>In addition to our concerns about the content of the proposal, we would also like to bring to the attention of IESBA some concerns we have about the language and sentiments expressed in the EM.</p> <p>In relation to IESBA’s consideration of factors supporting a requirement to disclose, the EM states that IESBA considered that ‘requiring disclosure will result in disclosure occurring more consistently in these situations than providing a right to disclose because there will be less discretion for the accountant to determine whether to disclose.’ Given that a fundamental characteristic of the accounting profession and IESBA’s Code is professional judgement, this view appears to contradict the existing framework and conflict with the Code and its conceptual framework. It can also be understood as expressing some underlying assumptions about professional accountants which could be concerning as they suggest that discretion should be limited and rules should be imposed instead of the principles and judgement based approach that is the foundation of the Code.</p> <p>On the relationship between the professional accountant and the non-audit client or employer the EM states: ‘The IESBA is of the view that imposing a requirement on other professional accountants in public practice and professional accountants in business would not be consistent with the role of such professional accountants which is more of a fiduciary nature towards the client and employer. In addition, a professional accountant providing services to a non-audit client may not have appropriate access to management or those charged with governance to adequately escalate the matter.’ It is not clear what is the meaning of ‘consistent with the role of such professional accountants’ and whether IESBA’s view is that disclosing to the external auditor does not affect the fiduciary relationship. Our opinion is that this comment in the EM can be perceived as contradictory to the proposed requirements which in fact impose an expectation to disclose.</p> <p>The EM further states: ‘However, the IESBA is of the view that for smaller entities which have no external auditor, there is a low probability of occurrence of illegal acts of such consequence and as such is of the view that such circumstances would be rare.’ We question the validity of IESBA’s view and whether this view then indicates that disclosure is only required for entities that have an external auditor. If this is indeed the case, IESBA may wish to consider developing guidance for public interest entities only.</p>
12.	ICAA	<p>The pace of change in standard-setting and related regulatory prescription has been pronounced across all jurisdictions and at the international level in recent times. Within this environment, it is unclear to us whether the ability of professional accountants to accommodate, process, assimilate, support and introduce new requirements in the timeframe in which they are being introduced has been acknowledged by standard-setters, particularly in the context of the SMP sector. While we recognise the need for robust ethical and professional standards</p>

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		<p>for the profession, we do not consider that the IESBA has made out a pressing case for reform of provisions dealing with responding to a suspected illegal act. Without any such justification for reform, and given the current volume of regulatory changes, we consider that the proposed changes in this exposure draft have the potential to impact negatively on the attractiveness and ongoing viability of the accounting profession. We therefore encourage the IESBA to consider these concerns within the specific framework of this exposure draft</p>
13.	ICAEW	<p>For the avoidance of doubt it might be helpful to clarify that the guidance applies to known as well as suspected illegal acts.</p> <p>If IESBA is considering undertaking more research on this area, given the fundamental change that the proposed amendment to the code potentially causes on the relationship between accountants and employers, we draw attention to not only ICAEW’s report Acting in the public interest: a framework for analysis , but also the UK Fraud Advisory panel’s report Fraud reporting: a shared responsibility .</p> <p>In view of the keen interest in this complex and fundamentally important area, we hope that IESBA will re-issue whatever its revised proposals are, following assessment of the consultation responses, for further comment.</p>
14.	ICPAC	<p>Professional Accountants in Public Practice – Professional Accountant Providing Professional Services to an Audit Client</p> <p>It is felt that the application of the Code guidance would be better clarified/ helped by the incorporation of the decision tree/ chart as an appendix setting out the various options in different cases.</p> <p>225.8</p> <p>Clarification required - Relevant professional body referred to here would be the one the accountant has qualified with (e.g. ACCA/ICAEW/CIMA etc), or the one which provides the practicing license e.g. ICPAC in Cyprus?</p> <p>225.10</p> <p>It is felt that the onus should be on the audit engagement partner to advise the entity that the matter should be disclosed to the appropriate authority and further this advice should be issued in writing in order to protect the engagement partner in case of failing to respond to reports of illegal acts committed by the audit client.</p> <p>225.13</p> <p>The reportable offences should also include “any other suspected illegal act which may be deemed to be significant by the professional accountant”.</p> <p>Further, it is recommended to explain fully what is meant by “expertise of the professional accountant”, as this can be confusing e.g. would an ACCA be able to report illegal securities act, if his/ her background/ area of specialization relates to accounts preparation/ financial reporting?</p> <p>225.14</p>

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		<p>As mentioned already, providing for exceptional circumstances would defeat the purpose of this ED, as proof/ validation of such circumstances will be almost impossible to establish. As a consequence, professional accountants will be allowed to (falsely) retrospectively maintain the existence of exceptional circumstances in order to offer explanations for failing to act when needed.</p> <p>Whistle-blowers should be offered full confidentiality/ protection and their right to report illegal acts should be safeguarded by specific law in each jurisdiction.</p> <p>The offering of anonymity in reporting could also be an alternative option (i.e. web-based reporting hotline, with the option to provide as many facts/ information as deemed necessary to support the allegation made), however, this may provide a forum for unfounded malicious attacks against persons/ corporate entities. In such cases, in-depth assessment of the allegations made and evidence/ information provided could determine seriousness/ validity of the allegations made.</p> <p>225.15</p> <p>It is recommended that all external advisors to a firm, whether providing professional services to an audit or a non-audit client, should be required to complete a questionnaire and submit it to the lead engagement partner after the completion of their assignments routinely. Such questionnaires should clearly require the professional accountant to report of any incidents of any suspected illegal acts as noted during the course of the provision of the professional services to the client, or provide a declaration to the contrary i.e. that no suspected illegal acts were noted during their engagement.</p> <p>Professional Accountants in Public Practice – Professional Accountant Providing Professional Services to a non- Audit Client</p> <p>It is felt that the application of the Code guidance would be better clarified/ helped by the incorporation of the decision tree/ chart as an appendix setting out the various options in different cases.</p> <p>225.18 Need to define a length of time to be allowed to the external auditor for responding to the reporting of the illegal acts.</p> <p>225.20</p> <p>As mentioned already, providing for exceptional circumstances would defeat the purpose of this ED, as proof/ validation of such circumstances will be almost impossible to establish. As a consequence, professional accountants will be allowed to (falsely) retrospectively maintain the existence of exceptional circumstances in order to offer explanations for failing to act when needed.</p> <p>Whistle-blowers should be offered full confidentiality/ protection and their right to report illegal acts should be safeguarded by specific law in each jurisdiction.</p> <p>The offering of anonymity in reporting could also be an alternative option (i.e. web-based reporting hotline, with the option to provide as many facts/ information as deemed necessary to support the allegation made), however, this may provide a forum for unfounded malicious attacks against persons/ corporate entities. In such cases, in-depth assessment of the allegations made and evidence/ information provided could determine seriousness/ validity of the allegations made.</p>

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		<p>Professional Accountants in Public Practice - Obtaining External Advice 225.22 Clarification required - Relevant professional body referred to here would be the one the accountant has qualified with (e.g. ACCA/ICAEW/CIMA etc), or the one which provides the practicing license e.g. ICPAC in Cyprus? How anonymous? - This is unlikely to operate effectively in a small country like Cyprus, where the market is small, entities and auditors are easy to identify. How about if the professional body provides own legal advisors for such cases?</p> <p>Professional Accountants in Public Practice - Documentation 225.23 Agreed. Additional provisions need to be made in respect of the record-keeping – i.e. where the professional accountant works in an audit firm, would these be kept within the records of the audit file? Would a copy be centrally recorded also by the audit firm? What if the professional accountant works in business? Where would these records need to be maintained? Would copies need to be maintained in two places for safekeeping? Definite need for additional guidance.</p> <p>Professional Accountants in Business – Professional Accountants in Business It is felt that the application of the Code guidance would be better clarified/ helped by the incorporation of the decision tree/ chart as an appendix setting out the various options in different cases.</p> <p>360.6 It is felt that the proposal does not adequately address the options available to the professional accountant in cases where the illegal acts are committed by those charged with governance, i.e. those responsible for appointing the external auditors. Would the professional accountant still be required to disclose the matters to the external auditor? What if the above scenario, related to a case where the internal auditor (professional accountant) has investigated the illegal acts already, made recommendations for remedial action (where possible) to the Audit Committee, attempted to disclose to the external auditors the reports' existence but both the Audit Committee and external auditors fail to respond, what options would be available to the professional accountant?</p> <p>360.8 It is felt that “reasonable time” to act should be defined in terms of days. US similar provisions define 120 days a reasonable time.</p> <p>360.9 The Code of Ethics should make adequate provisions for options available to the professional accountant whereby he/she has reported illegal acts to the audit engagement partner and he/she has failed to respond appropriately/ adequately within “a reasonable time” [see above</p>

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		<p>definition need]. One option here would be for the reporting to be in writing to the audit firm ethics/ independence committee as well as the lead engagement partner to ensure that some additional monitoring would take place within the audit firm itself.</p> <p>Also, ring-fencing the mandatory rotation of audit firms (not partners) every 6-7 years is likely to mitigate risks of collusion/ tolerance/ personal relationships between clients and audit firms. Practice dependence on audit fees should also be better scrutinized by independence watchdogs, especially in cases of clients with presence in overseas locations – i.e. are the amounts of audit fees charged for overseas operations justified by the number of employees there/ materiality (or potential risk) to group/ extent of service offered?</p> <p>360.10 It is felt that the proposal does not provide an elaborate definition of “reasonable and informed third party”.</p> <p>It is further regarded insufficient to simply advise to “consider whether to resign from the organization” – i.e. in cases where illegal acts have criminal implications, the only option available would be to resign?</p> <p>It is therefore recommended that alternative means of reporting should be encouraged, e.g. named/ anonymous, using web-based hotline, separate investigative authority, with appropriate police/ investigation teams, combined with counseling and legal support, to assist with illegal act reporting as well as making disclosures of threats received to physical safety of self and others.</p> <p>360.11 A more elaborate definition of “public interest” is recommended, together with the use of examples, as this can be quite subjective and down to individual interpretations. E.g. would the case of corruption and illegal acts initiated by top management, within a semi-governmental organization, ignored by external auditors due to personal relationships/ conflicts of interests of individual audit partners, be regarded as of “public interest”? Would this decision alter where the said organization becomes dependent on the government for funding as a result of the above mismanagement? Further, one can argue that serious incidences of tax evasion by companies could be regarded as being in the public interest – therefore all these require further clarification.</p> <p>Lastly, for the above to work, the whistle-blowers protection law should be uniform across the European community at least – perhaps an EU directive needs to be drafted for adoption by all member states to ensure that whistle-blowers are at least equally treated.</p>
15.	ICPAK	<p>Further, we are of the opinion that there is need to include professional accountants who sit in governance bodies like boards and policy making bodies</p>
16.	IDW	<p>Matters Specific to Professional Accountants in Business (Section 360 of the Code)</p> <p>Our members are generally limited to professional accountants in public practice, and therefore will not be directly affected by the proposal. Indeed in Germany there is no “accountancy” designation as such that would fall under the Code. In other countries there are likely to be professional accountants and other accountants competing with one another, which is also an issue the IESBA need to bear in mind.</p> <p>We would like to note that IESBA seems to have taken its stance with the aim of having those accountants in business who hold a senior position act in a specific way. The fact is that many accountants in business do not have senior positions and are not well-placed to act upon unethical behavior that has occurred to achieve the desired results and may thus only face the option of resigning from the organization –</p>

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		having accountants who are ethical resign thus leaving only those who are not is neither in the public interest, the interest of the organization, nor the personal interests of the individual accountant.

17.	IFA	<p>The chief concern is that although warnings are expressed in the proposed wording of new Section 225.2 (for instance), UK members of the IFA and other UK member bodies may be tempted to ignore the requirements of UK law relating to “tipping off” and possibly ignore the requirement to make a confidential report to the Serious Organised Crime Agency (SOCA), an omission punishable by a fine and possibly imprisonment.</p> <p>“225.2 If a professional accountant in public practice identifies a suspected illegal act, the accountant shall consider whether there are any applicable legal or regulatory requirements governing how the suspected illegal act is to be addressed and, if so, the accountant shall comply with those requirements.”</p> <p>“When required by law or regulation to disclose a suspected illegal act, for example as a result of anti-money laundering legislation, a professional accountant in public practice shall make the disclosure in compliance with the relevant legal or regulatory requirements and comply with any prohibitions on alerting (“tipping-off”) the client to the pending disclosure.”</p> <p>Termination of the contract as described as an option in 225.3 would not be an option as this might at that point be interpreted as “tipping off”:</p> <p>“225.3 If the professional accountant in public practice identifies a suspected illegal act, the accountant shall consider whether it is appropriate, based on all relevant facts and circumstances, to terminate the professional relationship with the client. Termination shall not be a substitute for disclosure to an appropriate authority as discussed in this section.”</p> <p>The proposed Section 225.5 gives even more cause for concern, as it could involve consulting with others:</p> <p>“225.5If a professional accountant in public practice providing professional services to an audit client of the firm or network firm acquires, or receives, information that leads the accountant to suspect that an illegal act has been committed by the audit client, or by those charged with governance, management or employees of the audit client, the accountant shall take reasonable steps to confirm or dispel that suspicion. In doing so, the professional accountant is expected to apply knowledge, judgment and expertise when considering the matter, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. In taking reasonable steps to confirm or dispel the suspicion, the professional accountant may wish to consult with others within the firm, a network firm or, on an anonymous basis, a relevant professional body. If the professional accountant in public practice is performing a non-audit service for an audit client of the firm, or a network firm, the accountant shall consult with the engagement partner for the audit.”</p> <p>Section 225.6 gives even more cause for concern on the “tipping off” point:</p> <p>“225 If the professional accountant is unable to dispel the suspicion, the accountant shall discuss the matter with the appropriate level of management.....”</p> <p>The remaining paragraphs of section 225 also give cause for concern, especially:</p>
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		<p>“225.22 In determining how to comply with the requirements of this section, including whether to disclose the suspected illegal act to an appropriate authority, and if so, to which authority, the professional accountant may wish to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of professional privilege. In addition, the professional accountant may wish to seek legal advice to obtain an understanding of any protection afforded by legislation, such as that afforded in some jurisdictions under whistle-blowing legislation.”</p> <p>Whistle-blowing is not an option; he is required by law to report to SOCA.</p> <p>We have similar concerns which relate to proposed Section 360.</p> <p>The proposed changes to Section 100 seem sensible and we are happy to endorse them. However, the proposed changes to Section 140 would be difficult to reconcile with our views expressed above on proposed Sections 225 and 360.</p> <p>We would broadly support the proposed change to Sections 150 and 210, as well as 300.</p>
18.	IFAC SMP	<p>As one can see from our responses to the questions above we have identified a number of issues and concerns which we feel demand further consideration before the Code is finalized. Since the public interest is central to this ED we suggest that the IESBA might wish to conduct an impact analysis of the proposals to determine the likely net benefits or otherwise of the proposals including the impact on client relationships.</p> <p>For the avoidance of doubt it might be helpful to clarify that the proposed revision to the Code applies to known as well as suspected illegal acts.</p>
19.	IIA	<p>Our suggested changes are intended to clarify the requirements if the IESBA elects to move forward with the proposed additions.</p> <ol style="list-style-type: none"> 1. Illegal act is defined as “Acts of omission or commission, intentional or unintentional, committed by a client, or those charged with governance, management or employees of a client or its service providers engaged to provide relevant services, which are contrary to prevailing laws or regulations.” <p>In the era of outsourcing, we recommend that the definition also includes outsourced service providers in the extended entity. There should be discussion on the oversight and disclosure responsibilities regarding SIAs related to outsourced service providers.</p> <ol style="list-style-type: none"> 2. One category of SIAs is “Subject matter of which falls within the expertise of the PA.” <p>Another category is “Related to the subject matter of the professional services being provided by the PA,” these terms need to be clearly better defined.</p> <ol style="list-style-type: none"> 3. The revised Code requires that PAs take reasonable steps to confirm or dispel SIAs. However, there is no definition or guidance of what constitute reasonable steps.

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		<p>4. There are documentation retention requirements for PAIBs (360.15), however, there is no documentation requirement for PAIPPs (225.23).</p> <p>225.10 states: “If the <u>professional accountant or the engagement partner for the audit</u> determines that the suspected illegal act is of such consequence that disclosure to an appropriate authority would be in the public interest, there is an appropriate authority to receive the disclosure, and the matter has not been disclosed, the <u>accountant or the engagement partner for the audit</u> shall advise the entity that the matter should be disclosed to the appropriate authority.”</p> <p>However, 225.11 states: “In making the determination as to whether disclosure would be in the public interest, <u>the professional accountant</u> shall take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances, would be likely to conclude that the suspected illegal act is of such consequence that disclosure would be in the public interest...”</p> <p>225.13 states: “If the entity has not made an adequate disclosure within a reasonable period of time, after being advised to do so, <u>the professional accountant or the engagement partner</u> for the audit shall disclose the following to the appropriate authority...”</p> <p>It is not clear under what circumstances the PA would be responsible for making the determination on the disclosure and under what circumstances it is the responsibility of the EP. Also, the EP is referenced in 225.10 and 225.13 but not in 225.11.</p> <p>5. The proposal addresses SIAs, suspected is missing in 225.19 (see underlined), “...If the professional accountant determines that the suspected illegal act is of such consequence ...and the subject matter of the <u>suspected</u> illegal act falls within the expertise of the professional accountant...”</p> <p>6. Throughout sections 225 and 360, there are many common sections that are applicable to all types of PAs, such as the definition of illegal acts, definition of appropriate authority, reasonable steps expected to dispel or confirm the suspicion, factors to determine if the response is appropriate, factors to consider in determining if the disclosure will be in the public interest, caution when making disclosure to an appropriate authority, documentation requirements, termination of relationship with the client, etc. (See 225.1 - 3; 225.5; 225.9; 225.11 - 15; 225.17; 225.20 - 23; 360.1 - 4; 360.7 – 15.) Some sections are identical some are almost identical verbatim with some subtle differences. Excessive repetition could distract attention.</p> <p>To make it more user-friendly and concise, we recommend creating a general section that is applicable to all types of PAs. Sections 225 and 360 should then be used to highlight distinctive requirements for different types of PAs.</p> <p>7. To facilitate review, we also recommend using a decision tree structure to show the decision making process under different scenarios for different types of PAs and using a table to show the applicability of each type of SIAs.</p>
20.	IRBA	As the IRBA does not regulate professional accountants in business we have not commented on the proposed changes to Section 360 in Part C of the IESBA Code.

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21.	NZAuSB	<p>Taking Account of Regulatory Arrangements</p> <p>As an organisation that establishes legal requirements on assurance practitioners, we are of the view that the matters covered in the ED are better placed in the context of the legal or regulatory environment rather than in the Code of Ethics for Professional Accountants (the Code). This is particularly as liabilities could flow from any action taken by assurance practitioners in this area. While the NZAuSB understands the outcome the IESBA is trying to achieve, the proposals do not address potential conflicting responsibilities. There is a risk that by including the responsibilities in the Code, it may cause difficulties in those jurisdictions where the issues are dealt with in the regulatory environment.</p> <p>At the very least, there is a close link to the regulatory regime that operates in a country that needs to be taken into account. Therefore, the need for this standard, and the way in which it is applied, is likely to vary from jurisdiction to jurisdiction. In jurisdictions where the issue is dealt with satisfactorily by law, a standard such as that proposed may not be necessary to this extent. In other jurisdictions it may be appropriate for the professional body to establish such ethical requirements on its members. In yet other jurisdictions it may be that the independent standard setter has a role to play, although the link to audit quality may not always be clear in these situations.</p> <p>For example, in New Zealand the Protected Disclosures Act 2000 applies to whistle blowing activities and to a significant extent addresses the matters contained in the ED. It is not altogether clear that a standard such as that proposed is therefore necessary in our situation – at least not as an additional legal requirement on assurance practitioners. The NZAuSB is mindful, however, that such protections are not necessarily available in all jurisdictions.</p> <p>The NZAuSB's view is that these matters are often likely to be better dealt with in law rather than as an ethical standard. The NZAuSB's view is supported by comments received from the New Zealand Financial Markets Authority (FMA) in its submission on the proposal. While the FMA is supportive of the principle underlying the proposals it has noted the following :</p> <p>“Professional codes of ethics cannot provide complete immunity. Without robust legal protection assurance providers may be exposed to increased litigation risk as a consequence of the proposed duty even when disclosures are made in good faith. Consequently the proposed duty could lead to increased compliance costs on assurance providers. In our view this risk should to be taken into account in settling the proposed obligation”.</p> <p>Accordingly, the NZAuSB:</p> <ul style="list-style-type: none"> • recommends that the standard makes allowance for situations where the issues are dealt with in regulation rather than in the Code; and • does not support any requirement for an assurance practitioner to breach the fundamental principle of confidentiality and to disclose a suspected illegal act to an appropriate authority, where there is no legal protection available to the assurance practitioner. <p>Scope of the Investigation and Reporting</p> <p>The NZAuSB considers that the requirements to dispel the suspicion regarding a suspected illegal act, and the threshold for reporting are too broad, too vague and therefore open to a wide range of interpretations.</p>

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		<p>To suspect an illegal act is a relatively low test. The NZAuASB is of the view that it is not the role of the assurance practitioner to investigate all potential suspected illegal acts, and that the broad drafting as proposed potentially extends the scope of the assurance practitioner's role too far.</p> <p>The NZAuASB therefore recommends that, regardless if the IESBA decide to require the assurance practitioner to investigate and report suspected illegal acts where it is in the public interest to do so or if it decides to provide guidance on how the assurance practitioner should comply with the legal or regulatory requirement, we believe that the standard must provide greater clarity about the nature and type of illegal acts that assurance practitioners should be expected to further investigate.</p> <p>As noted above in paragraph 9, the New Zealand FMA identifies the risk of increased cost with the requirement to disclose suspected illegal acts. The NZAuASB is equally concerned that the imposition of requirements or expectations on the assurance practitioner to investigate and report suspected illegal acts will result in costs for the assurance practitioners that cannot be recovered through the assurance engagement being undertaken. The proposals do not provide sufficient clarity around the increased compliance cost that may be ultimately borne by assurance practitioners.</p> <p>Onus Placed on the Auditor</p> <p>The NZAuASB is concerned about the proposal that a professional accountant providing professional services to a client that is not an audit client should be required to disclose the matter to the external auditor.</p> <p>The NZAuASB is of the view that it is not appropriate for these professional accountants to be able to pass the responsibility on to the external auditor, and that this extends the obligation of the auditor beyond the scope of the audit.</p> <p>The NZAuASB therefore recommends that the primary responsibility for following up on any suspected illegal acts should remain with the professional accountant, or other advisor, that identifies the concern. However, we concur that the assurance practitioner should be advised, where relevant.</p>
22.	PICPA	<p>A CPA providing professional services to a client who is not an audit client would be required to follow the same steps as a CPA providing professional services to an audit client. However, in many situations the services are of limited duration. This could preclude compliance with the proposed requirement to confirm or dispel suspicions of suspected illegal acts, as these CPAs may not have continued access to the relevant people or documents.</p> <p>The committee supports the right of the CPA "to discuss the matter with a relevant professional body on an anonymous basis," and notes that this right is currently not provided for in the Code.</p> <p>The exposure document, in several locations throughout the text (e.g., Sections 225.5, 225.9, and 225.22), indicates that the accountant "may wish to consult with others within the firm, a network firm, or on an anonymous basis." The committee believes that consultation is an</p>

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		<p>important part of providing high quality professional services, and requests that the language in this section be strengthened to both encourage consultation and provide a right to consult on an anonymous basis.</p> <p>In several paragraphs throughout the document (e.g., 225.19), the proposal indicates that the accountant “has a right” and then notes that the accountant “is expected to exercise this right.” It is not clear how this expectation differs from a requirement. The committee requests that the language be clarified.</p>
23.	PWC	<p>We have not explicitly addressed the supplementary questions that the Board has raised in the Exposure Draft given our overall view of the proposal and because we do not believe that the questions address the core issues, though our responses do implicitly address the questions. If, however, the Board is, in its analysis of responses, assessing numerical support for the proposals implied in each question, we note that we would not support any of the proposals other than in principle (if the proposals were to proceed) questions 14 and 15 which relate to the exceptional circumstances in which the professional accountant is not required to disclose a matter externally (provided the provision was suitably amended). In particular, we note:</p> <p>(a) We believe that the "exceptional circumstances" provision is too vague and narrow to provide adequate protection. We would strongly support an expanded provision with the exceptional circumstances carve-out more particularly defined and expanded to include, for example, where the accountant is at risk of exposure to legal liability or where there is a lack of adequate legal whistle-blower protection.</p> <p>(b) Our view of the proposals would not be ameliorated by amending the proposed Code so that it merely enacted a “right which the accountant is expected to exercise” as opposed to a “requirement.” While to be sure there is a conceptual difference between a “right” and a “requirement”, in this context characterizing the Code as simply creating a “right” and not a “requirement” would, we think, exacerbate the problems we have identified. A “right” creates additional ambiguity and introduces the concept of discretion which in practice would cause more uncertainty and render the provision even more difficult to apply. Without any clear standards as to how a professional accountant should exercise his or her discretion, a discretionary right would either render the provision meaningless or open up every decision to second guessing, making the decision even more difficult to defend. Moreover, we do not believe the Code can give a professional accountant a unilateral "right" to breach statutory, regulatory or contractual obligations including duties to protect confidentiality. At most the Code could provide that where the law or contractual obligations do not preclude reporting (140.7), an accountant's report to an appropriate authority would not be a breach of the Code and would thus not be a disciplinary matter or otherwise need to be dealt with under the planned provisions on breaches of the Code.</p> <p>(c) We support the principles behind the proposed changes to Sections 210 and 300, although we suggest that certain wording changes as set forth in attachment 2 are appropriate.</p> <p>An alternative approach: what we support</p> <p>PwC supports professional standards and national legislation/regulation requiring auditors and other accountants (and indeed other professions such as lawyers and bankers) to bring suspicions of illegal acts, within their area of expertise, to client management and, where</p>

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		<p>appropriate, those charged with governance. The Code could help guide professional accountants as to what not to do in the face of information of suspected illegal activity. For example, the Code could contain a set of principles, consistent with professional standards, that a professional accountant cannot assist the client in carrying out illegal acts, cannot turn a blind eye to suspected illegal activity and should consider if and how the matter should be reported to client personnel and those charged with governance.</p> <p>We also support compliance with law or regulation requiring disclosure by auditors (or others) of specified matters to an appropriate authority, provided there is proper protection, sufficiently specific triggers for reporting, and the matter is within the competence of the accountant. As evident by Section 10A in the United States, and by legislation in, for example, France and South Africa , proper protection can only be provided by regulation or law and entails anonymity for the whistle-blower, criminal, legal and professional liability protection for bona fide reporting, and legal safeguards to ensure fair outcomes for the accused. We note that the Organisation for Economic Co-operation and Development recommended in 2009 in its recommendation on anti-bribery measures that the member countries, in developing appropriate laws and regulations on auditors reporting such matters, ensure that those reporting reasonably and in good faith are protected from legal action.</p> <p>Any external reporting responsibility should rest primarily with management and those charged with governance. If an auditor suspects management fraud, auditing standards require a report to those charged with governance and responsibility for further action rests with them. If the company’s actions are considered inadequate, the external auditor’s role is, depending upon the facts and circumstances, to report to the company’s Board and then to the market either by qualifying the audit report, disclaiming an opinion, or resigning. Only national legislators are in a position to determine the appropriate and delicate balance between the long term benefits of confidentiality and professional obligations to the effectiveness of the accounting profession and who, in the larger scheme of things, should be responsible for reporting suspected illegal activity and in what circumstances.</p> <p>Conclusion</p> <p>Given the importance of this topic, we urge the Board to carefully consider the feedback from all respondents and to consider holding hearings and roundtable discussions about other ways, including the adoption of relevant guidance, by which these goals might be achieved. We do not believe this proposal should proceed in its current form and we recommend that the Board effectively treat this as an initial consultation and be prepared to re-expose any further proposals in this area.</p> <p>In addition, given that a key issue is the role of auditors with respect to suspected illegal activity, we also encourage the Board to fully involve the International Auditing and Assurance Standards Board in future deliberations on this topic. We also encourage the Board to work with those within IFAC involved in developing any further guidance on the meaning of the “public interest”.</p> <p>We believe that the Board should also undertake an analysis of the legal implications and potential conflicts with existing laws and regulations, including researching jurisdictional experiences with existing legal whistle-blowing schemes (e.g. in the USA, France, Australia and Belgium). We would be happy to assist in performing that analysis.</p>

