

# Responding to Suspected Illegal Act

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## Agenda

- Recent activities
- Nature of items to be addressed
- Process for responding to a suspected matter
- Actions after disclosure within organization
- Nature of matters to be disclosed
- Pre-requisites for disclosure
- Discussion

## Recent activities

- TF met briefly after Delhi meeting and has since had two meetings
- Met OECD anti-bribery division in February
- Discussion with CAG in March 2011
- Discussion with NSS in April 2011
- Prepared draft guidance

## **Nature of items to be addressed**

- “Suspected illegal acts” rather than “fraud and illegal acts”
  - Examples provided (225.2 and 360.2) including fraud
- Addresses circumstances where disclosure is not required by law or regulation

## Nature of items to be addressed

- Unethical or improper behavior
  - Issues noted:
    - Acts or behavior which is legally permitted but which does not adhere to moral principles
    - Subjective and can differ between cultures and over time
    - No legal framework
    - Greater exposure to litigation
  - Both CAG and NSS raised issue of subjectivity

## Nature of items to be addressed

- Task force proposal - unethical/improper behavior:
  - Guidance on illegal acts should not deal with unethical or improper behavior or acts
  - However, unethical behavior may appear to be a suspected illegal act until further information has been gathered. E.g. aggressive accounting practices. So unethical matters are addressed to extent that they would be suspected illegal acts.
  - TF proposes additional guidance to be added to section Ethical Conflict Resolution (paragraphs 100.17 to 100.22) as the professional accountant, when encountering such acts or behavior, is facing an ethical conflict
  - Limited guidance already contained in the Code (paragraphs 210.1 to 210.5 - Client Acceptance - and paragraph 300.15) but TF proposes strengthening for client continuance

## **Process for responding to suspected matter**

- Sequential approach to disclosure within the client or employing organization
  - To management at an appropriate level
  - If management response not appropriate to a higher level of authority
  - For a professional accountant in business could disclose to the entity's external auditor
- TF's proposals unchanged from February. The Board, CAG and NSS concurred with TFs proposals.

## **Process for responding to suspected matter**

- Satisfactorily addressed
  - Matter appropriately investigated
  - Appropriate remedial action taken
  - Steps taken to reduce risk of recurrence
  - Disclosure made to an appropriate authority, or disclosure will be made within a reasonable period of time
- TF's proposals unchanged from February. The Board, CAG and NSS concurred with TFs proposals.



## Process for responding to suspected matter

- Matter not satisfactorily addressed
  - Calls into question integrity of client or employer and professional accountant should consider resignation
  - If not disclosed to an appropriate authority by the entity the professional accountant should determine whether such a disclosure would be in the public interest
- TF's proposals unchanged from February. The Board, CAG and NSS concurred with TFs proposals.

## **Actions after disclosure within organization**

- In February, Board agreed that disclosure shall be made to an appropriate authority when determined to be in the public interest
- CAG and NSS concurred with this position
- However, no clear definition of the public interest
- In February Board discussed following factors:
  - Significance to the entity's financial reporting
  - Extent to which external parties are likely to be affected
  - Likelihood of recurrence
- Board and CAG found these factors limiting

## **Actions after disclosure within organization**

- Task force proposal:
  - In making the determination that disclosure would be in the public interest the professional accountant should take into account “whether a reasonable and informed third party, weighing all the facts and circumstances, would likely to conclude that the public interest is best served by disclosing the matter to an appropriate authority”
  - Disclosure to be made to an appropriate authority only after “having given the matter careful thought and having taken appropriate advice”
  - Professional accountant “shall act reasonably, in good faith and exercise caution when making statements and assertions”

## Nature of matters to be disclosed

- In prior meeting Board agreed that the matters to be disclosed if in the public interest are:
  - Suspected illegal acts that directly or indirectly affect financial reporting; and
  - Suspected illegal acts the subject matter of which falls within expertise of the professional accountant
- CAG and NSS concurred with this position

## Nature of Matters to be Discussed

- Task Force proposal:
  - Matters to be addressed has wider scope than matters to be disclosed. This would allow all illegal matters to be addressed initially but focus disclosure requirement on matters that are within the purview of the professional accountant.
  - Suspected illegal acts not affecting financial reporting or that are not within the expertise of the accountant would not be subject to the requirement to disclose if in the public interest. The Code does not impose confidentiality for such matters. Rather confidentiality regarding such matters would be governed by local law and regulation.

## Pre-requisites for disclosure

- Task Force has considered situations where a requirement to disclose might be disproportionate (e.g. threat of physical harm)
- In February the Board suggested following pre-requisites
  - Disclosure is not contrary to laws and regulations;
  - A whistle-blowing protection scheme is in place which affords both anonymity and protection from liability;
  - There is an appropriate authority to receive the disclosure and there is a judicial process which can be trusted.

## Pre-requisites for disclosure

- CAG considered that whistle-blowing protection has not been sufficiently implemented to make pre-requisites practicable
- Task Force proposal:
  - Proposed guidance stipulates that disclosure be made to an appropriate authority
  - Statements regarding ethical requirements versus personal safety in a code on professional ethics would appear inappropriate and may be abused.



# Discussion