

**This paper will be discussed on the conference call**

This agenda paper contains a mark-up from the text that was presented at the IESBA meeting in Dublin

**Proposed Changes to other Sections of Code**

*Ethical Conflict Resolution<sup>1</sup>*

- 100.17 A professional accountant may be required to resolve a conflict in complying with the fundamental principles.
- 100.18 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process:
- (a) Relevant facts;
  - (b) Ethical issues involved;
  - (c) Fundamental principles related to the matter in question;
  - (d) Established internal procedures; and
  - (e) Alternative courses of action.

Having considered the relevant factors, a professional accountant shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the professional accountant may wish to consult with other appropriate persons within the firm or employing organization for help in obtaining resolution.

- 100.19 Where a matter involves a conflict with, or within, an organization, a professional accountant shall determine whether to consult with those charged with governance of the organization, such as the board of directors or the audit committee.
- 100.20 It may be in the best interests of the professional accountant to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.
- 100.21 If a significant conflict cannot be resolved, a professional accountant may consider obtaining professional advice from the relevant professional body or from legal advisors. The professional accountant generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege. Instances in which the professional accountant may consider obtaining legal advice vary.

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<sup>1</sup> ~~This does not take into account proposed changes as a result of conflicts ED<sup>1</sup>~~ In December 2011, the IESBA issued an exposure draft *Proposed Changes to the Code of Ethics for Professional Accountants Addressing Conflicts of Interest*. That exposure draft proposed some changes to Section 100, these changes are not reflected in the above text.

- 100.22 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant shall, unless prohibited by law, refuse to remain associated with the matter creating the conflict. The professional accountant shall determine whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

## SECTION 140

### Confidentiality

- 140.1 The principle of confidentiality imposes an obligation on all professional accountants to refrain from:
- (a) Disclosing outside the firm, employing organization or the auditor confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
  - (b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.
- 140.2 A professional accountant shall maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.
- 140.3 A professional accountant shall maintain confidentiality of information disclosed by a prospective client or employer.
- 140.4 A professional accountant shall maintain confidentiality of information within the firm or employing organization. ~~The relationship between an entity and its auditor must be characterized by complete candor and full disclosure regarding all aspects of the client's business relationships. A professional accountant undertaking a professional activity for an entity would not breach confidentiality under this Code if the accountant disclosed information to the auditor of the entity.~~
- 140.5 A professional accountant shall take reasonable steps to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.
- 140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant changes employment or acquires a new client, the professional accountant is entitled to use prior experience. The professional accountant shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.
- 140.7 The following are circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:
- (a) Disclosure is permitted by law and is authorized by the client or the employer;
  - (b) Disclosure is required by law, for example:
    - (i) Production of documents or other provision of evidence in the course of legal proceedings; or

- (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
  - (c) There is a professional duty or right to disclose, when not prohibited by law:
    - (i) To comply with the quality review of a member body or professional body;
    - (ii) To respond to an inquiry or investigation by a member body or regulatory body;
    - (iii) To protect the professional interests of a professional accountant in legal proceedings;
    - (iv) To comply with technical standards,
    - (v) To comply with requirements contained in Sections 225 and 360 in this Code.
- 140.8 In deciding whether to disclose confidential information, relevant factors to consider include:
- (a) Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant;
  - (b) Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment shall be used in determining the type of disclosure to be made, if any;
  - (c) The type of communication that is expected and to whom it is addressed; and
  - (d) Whether the parties to whom the communication is addressed are appropriate recipients.

## **SECTION 150**

### **Professional Behavior**

- 150.1 The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession, for example if a professional accountant is associated with a client or employing organization that acts unethically.
- 150.2 In marketing and promoting themselves and their work, professional accountants shall not bring the profession into disrepute. Professional accountants shall be honest and truthful and not:
- (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
  - (b) Make disparaging references or unsubstantiated comparisons to the work of others.

## SECTION 210

### Professional Appointment

#### *Client Acceptance and Continuance*

- 210.1 Before accepting a new client relationship, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behavior may be created from, for example, questionable issues associated with the client (its owners, management or activities).
- 210.2 Questionable issues associated with the client that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty, questionable financial reporting practices or other unethical behavior.
- 210.3 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level.
- Examples of such safeguards include:
- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or
  - Securing the client's commitment to address the questionable issues, for example through improving corporate governance practices or internal controls.
- 210.4 Where it is not possible to reduce the threats to an acceptable level, the professional accountant in public practice shall decline to enter into the client relationship.
- 210.5 Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the professional accountant to decline the engagement had that information been available earlier. A professional accountant in public practice shall, therefore, periodically review whether to continue with a recurring client engagement.

~~210.5a~~ ~~A~~For example, a threat to compliance with the fundamental principles may be created by ~~client pressure to reduce fees or~~ a client's unethical behavior such as ~~persistent aggressiveimproper~~ earnings management or balance sheet valuations. If a professional accountant in public practice identifies a threat to compliance with the fundamental principles, the accountant shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not possible to reduce the threat to an acceptable level, the professional accountant in public practice shall terminate the client relationship.

#### *Engagement Acceptance*

- 210.6 The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice to provide only those

services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

210.7 A professional accountant in public practice shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:

- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
- Acquiring knowledge of relevant industries or subject matters.
- Possessing or obtaining experience with relevant regulatory or reporting requirements.
- Assigning sufficient staff with the necessary competencies.
- Using experts where necessary.
- Agreeing on a realistic time frame for the performance of the engagement.
- Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

210.8 When a professional accountant in public practice intends to rely on the advice or work of an expert, the professional accountant in public practice shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

## SECTION 300

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300.5 A professional accountant in business may hold a senior position within an organization. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A professional accountant in business is expected, therefore, to encourage an ethics-based culture in an employing organization that emphasizes the importance that senior management places on ethical behavior. 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 deter malpractice and increase the likelihood of senior management being alerted to a problem in time to prevent serious damage.

300.6 A professional accountant in business shall not knowingly engage in any business, occupation, or activity, such as ~~persistent aggressive~~improper earnings management or balance sheet valuations, that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, impairs or might impair integrity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.

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300.15 If a professional accountant in business believes that unethical behavior has occurred within the employing organization, the 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. If the response is still not appropriate, the professional accountant shall discuss the matter with those charged with governance, if possible. If, in the professional accountant's judgment, the response to the matter is not appropriate, the professional accountant may consider obtaining legal advice and may conclude that it is appropriate to resign from the employing organization.