

**RESPONDING TO A SUSPECTED ILLEGAL ACT—
STRAW MAN**

[Note: The changes to Sections 100, 140 and 150 shown in mark-up below are proposed changes to the extant Code.]

SECTION 100**Introduction and Fundamental Principles**

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Fundamental Principles

100.5 A professional accountant shall comply with the following fundamental principles:

...

- (e) Professional Behavior – to comply with relevant laws and regulations and avoid any ~~action-conduct~~ that discredits the profession.

...

SECTION 140**Confidentiality**

140.1 The principle of confidentiality imposes an obligation on all professional accountants to refrain from:

- (a) Disclosing outside the firm or employing organization 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.

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.

Circumstances Where Confidential Information May be Disclosed

140.7 The principle of confidentiality is a cornerstone of the accountancy profession. Confidentiality serves the public interest because it facilitates the free flow of information between a professional accountant and the professional accountant's client or employer. Nevertheless, there following are circumstances where the professional accountants ~~are~~ is or may be required to disclose confidential information, or when such disclosure may be appropriate.

140.8 A professional accountant may override the duty of confidentiality when:

- (~~ab~~) Disclosure is required by law or regulation, for example, when required:
- (i) ~~Production of~~ By a court to present documents or other ~~provision of~~ evidence in the course of legal proceedings; or
 - (ii) ~~Disclosure to the appropriate public~~ To disclose particular matters or information to a regulator or other authorities ~~of infringements of the law that come to light; and~~
- (~~be~~) There is a professional duty or right to disclose, ~~when which is~~ not prohibited by law, for example:
- (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 accountant's interests ~~of a professional accountant~~ in legal proceedings; or
 - (iv) To comply with technical standards ~~and ethics requirements, such as communication of relevant audit matters by the auditor of a subsidiary to the group auditor; or~~
- (~~ac~~) Disclosure is permitted by law and is authorized by the client or the employer.

140.89 In deciding whether to disclose confidential information in these circumstances, relevant factors to consider include:

- Whether the interests of ~~all~~ any 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.
- 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.
- The type of communication that is expected and to whom it is addressed.
- Whether the parties to whom the communication is addressed are appropriate recipients.

140.10 A professional accountant may also disclose confidential information when, in the circumstances described in Sections 225 and 360, the professional accountant judges that disclosure of a suspected illegal act to an appropriate authority would be in the public interest.

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-conduct~~ that the professional accountant knows or should know may discredit the profession. This includes ~~actions-conduct~~ 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. Such conduct may include, for example, not responding to circumstances where the professional accountant suspects that an illegal act has been committed or is about to be committed by a client or employer, as described in Sections 225 and 360 respectively.
- 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.

[Note: The changes to Sections 225 and 360 shown in mark-up below are proposed changes to the exposure draft versions.]

SECTION 225

Responding to a Suspected Illegal Act

225.1 This section ~~describes~~ addresses the ~~circumstances where responsibilities of~~ a professional accountant in public practice ~~shall or has a right to override the fundamental principle of confidentiality and disclose when the professional accountant suspects that an suspected illegal act to an appropriate authority has been committed or is about to be committed by a client.~~ For the purposes of this section, illegal acts comprise fraud and other acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, management or employees of a client which are contrary to the prevailing laws or regulations. Personal misconduct unrelated to the business activities of the ~~entity is client and matters that are clearly inconsequential are~~ excluded. ~~This section refers to suspected illegal acts because w~~Whether a matter constitutes an illegal act is actually illegal is ultimately a matter for legal determination by a court of law.

Responsibility for Compliance with Laws and Regulations

225.2 It is the responsibility of the client or its management, with the oversight of those charged with governance, to ensure that the client's business activities are conducted in accordance with laws and regulations. It is also the responsibility of the client, its management and those charged with governance, to address any illegal acts committed, or about to be committed, by the client or by those charged with governance, management or employees of the client.

Responsibilities of Professional Accountants in Public Practice

225.3~~2~~ If a professional accountant in public practice ~~identifies a suspected~~ suspects that an illegal act has been committed by a client, or by those charged with governance, management or employees of the client, the professional 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 professional accountant shall comply with those requirements.~~

225.4 When required by law or regulation to disclose a suspected illegal act, for example, as a result of pursuant to anti-money laundering legislation, a professional accountant in public practice shall make the disclosure in compliance with the relevant legal or regulatory requirements. In doing so, the professional accountant shall ~~and~~ comply with any prohibitions on alerting ("tipping-off") the client to the pending disclosure.

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.~~

225.4 ~~For the purposes of this section, "audit client" is the entity in respect of which a firm conducts an audit engagement and related entities over which the client has direct or indirect control.~~

225.5 If there are no legal or regulatory requirements, the professional accountant shall address the matter in the manner set out in this section. Where there are legal or regulatory requirements,

the professional accountant may find the guidance in this section helpful in complying with the requirements.

Professional Accountant Providing Professional Services to an Audit Client

Communicating with the Client

225.65 ~~If 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 becomes aware~~ that an illegal act ~~has~~ may have been committed or may be about to be committed by the audit client, or by those charged with governance, management or employees of the audit client, the professional accountant shall seek to obtain an understanding of the nature of the matter and the circumstances in which it arose ~~take reasonable steps to confirm or dispel that suspicion. In doing so seeking to obtain such an understanding, the professional accountant shall gather relevant information available to make an assessment.~~ ~~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. With respect to an audit client, the professional accountant shall evaluate the possible effect on the financial statements.

225.7 With respect to a professional accountant performing a non-audit service for a non-audit client, the professional accountant may have become aware of the suspected illegal act during the course of the engagement, but the matter may not necessarily be within the professional accountant's expertise. Nevertheless, the closer that matter is to the professional accountant's expertise, the greater the duty for that professional accountant to pursue the matter with the client.

225.8 ~~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 on an anonymous basis, or legal counsel to:

- Understand the application of the relevant laws and regulations to the circumstances and whether the act is potentially illegal;
- Assess the gravity of the matter;
- Understand the potential consequences of the matter to the client, including the impact on the client's financial reporting; and
- Identify the possible courses of action.

225.9 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 professional accountant shall ~~consult~~ discuss the matter with the engagement partner for the audit in order that the audit engagement team is made appropriately aware of the matter and may consider the possible consequences on the audit.

225.106 ~~If the professional accountant is unable to dispel the suspicion has reason to believe that an illegal act has been committed or is about to be committed,~~ the professional accountant shall, subject to any considerations to the contrary (see paragraph 225.4), discuss the matter with the client to: ~~appropriate level of management.~~

- (a) Confirm the professional accountant's understanding of the facts and circumstances relevant to the matter, and the potential consequences of the matter; and
- (b) Understand what actions the client, its management or those charged with governance plan to take to address the matter, including whether they plan to disclose it to an appropriate authority.

225.11 In the case of a client that is an entity, the professional accountant shall undertake such discussions with the appropriate level of management and, where appropriate, those charged with governance. The determination of which level of management is the appropriate ~~one level~~ with whom to discuss the matter is a matter of professional judgment. ~~Relevant and is affected by factors to consider include: such as~~

- ~~The~~ nature of the act.
- ~~The~~ circumstances and individuals involved.
- ~~The~~ likelihood of collusion. ~~and~~
- ~~The magnitude gravity~~ of the matter.
- Whether that level of management is able to take action to investigate the matter and take remedial action.

225.12 The professional accountant plays an important role as a trusted advisor to the client. Accordingly, the professional accountant shall consider whether the client, its management or those charged with governance understand their legal or regulatory responsibilities to address the matter and, if not, shall assist them in doing so. The professional accountant may recommend that the client obtain legal advice.

225.13 The appropriate level of management is generally at least one level above the person or persons who appear to be involved in the matter. In the context of an audit engagement, if the professional accountant suspects that management or those charged with governance are involved in the suspected illegal act that has been committed or is about to be committed, the professional accountant shall discuss the matter with the next higher level of authority at the entity, if it exists, such as an audit committee or supervisory board. The professional accountant may also consider discussing the matter with internal auditors, where applicable. In the context of a group audit engagement, the appropriate level may be management at an entity that controls the client. Where no higher authority exists, or if the professional accountant believes that the communication may not be acted upon or is unsure as to the person to whom to report, the auditor shall consider the need to obtain legal advice.

225.14 If the client does not provide sufficient information to satisfy the professional accountant that the client is in compliance with laws and regulations, or if sufficient information about the suspected illegal act cannot be obtained, the professional accountant shall consider the need to obtain legal advice regarding possible actions to take.

Evaluating the Response of the Client

225.15 The professional accountant shall evaluate whether the client, its management or those charged with governance have appropriately addressed the matter.

~~225.8 If the professional accountant has doubts about the integrity or honesty of management or suspects that management is involved in the suspected illegal act, the accountant shall discuss the matter directly with those charged with governance. If the professional accountant has doubts about the integrity or honesty of those charged with governance or suspects that those charged with governance are implicated in the suspected illegal act, the accountant 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.~~

225.169 When determining ~~if the response to whether the client, its management or those charged with governance have addressed~~ the matter ~~is~~ appropriately, the professional accountant shall consider the nature and ~~magnitude-gravity~~ of the matter and factors such as whether:

- The matter has been adequately investigated;
- ~~Remedial a~~Action has been taken to ~~address-remediate~~ the matter; and
- ~~Appropriate steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training.~~
- ~~The matter has been disclosed to an appropriate authority if a legal or regulatory requirement exists for the client to do so, or the professional accountant believes that doing so would be in the public interest.~~

~~225.17 The degree to which the professional accountant is able to evaluate the response of management or those charged with governance may vary with the nature of the professional services provided to the client. In particular, professional accountants that provide audit services to their clients generally have greater access to information and management, by law or otherwise, than professional accountants that provide other professional services to their clients.~~

225.187 If, in the ~~professional~~ accountant's ~~professional~~ judgment, the response ~~to the matter of the client is not appropriate or the professional accountant is unable to assess whether the response is appropriate, and the client is an audit client,~~ the professional accountant shall: ~~escalate the matter to higher levels of management, within the entity and the group, as appropriate. If the highest level of management has not appropriately addressed the matter, the professional accountant shall~~

- (a) ~~d~~Discuss the matter with those charged with governance ~~if the professional accountant has not already done so;~~
- (b) ~~If the engagement is an audit of a component of a group, discuss the matter with management or those charged with governance of the entity or the group, as appropriate. or the group auditor, if applicable; and~~
- (c) ~~In any case the matter shall be discussed with those charged with governance as required by applicable~~ Consider the implications for the auditor's report in accordance with auditing standards.

~~The professional accountant may also consider consulting with a relevant professional body or seeking legal advice.~~

225.19 If, in the professional accountant's judgment, the response of the client is not appropriate or the professional accountant is unable to assess whether the response is appropriate, and the client is not an audit client, the professional accountant shall consider:

- Discussing the matter with those charged with governance if the professional accountant has not already done so.
- Alerting the external auditor, if any, to the matter to enable the external auditor to determine whether specific action is needed in the context of the audit.
- Seeking advice from the professional accountant's professional body.
- Seeking legal advice as to the professional accountant's legal rights and possible courses of action.

225.20 In exceptional circumstances, the professional accountant may consider whether either one or both of the following actions are appropriate when, in the professional accountant's opinion, the client has not appropriately addressed the matter:

- Disclosing the matter to an appropriate authority in accordance with paragraphs 225.21-225.25.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation. Withdrawal, however, is not a substitute for complying with the requirements in this section.

Disclosing a Suspected Illegal Act to an Appropriate Authority

225.21 Where there is no legal or regulatory requirement to disclose the suspected illegal act, and to do so is not contrary to law or regulation in the relevant jurisdiction, the professional accountant shall consider whether voluntary disclosure to an appropriate authority is appropriate. A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Accordingly, a professional accountant is permitted to override the duty of confidentiality under this Code by disclosing to an appropriate authority a suspected illegal act where, in the professional accountant's judgment, such disclosure would be in the public interest.

225.22 The professional accountant is encouraged to seek legal advice to understand the legal implications of disclosure to an appropriate authority.

~~225.10 If the professional accountant or the engagement partner for the audit 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 accountant or the engagement partner for the audit shall advise the entity that the matter should be disclosed to the appropriate authority.~~

~~225.2314~~ In making the determination as to whether or not to disclose would be in the public interest a suspected illegal act to an appropriate authority, the professional accountant shall consider the following: 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. The determination will require professional judgment and consideration of

- Whether the client has already adequately disclosed the matter to an appropriate authority.
- The degree to which the relevant information is known and substantiated.
- ~~†The nature and magnitude gravity~~ of the matter, ~~for example, the size of the amounts involved and the extent of the likely damage.~~
- Whether members of the public are likely to ~~including the number of people that could be affected, by the suspected illegal act and the extent to which those people could be affected.~~
- Whether there is protection afforded by legislation, such as under whistle-blowing legislation.

225.2415 When making a disclosure to an appropriate authority, and thus overriding the fundamental principle of confidentiality, the professional accountant shall act reasonably, in good faith and exercise caution when making statements and assertions. The professional accountant shall also consider whether it is appropriate to inform the client of the professional accountant's intentions before making such disclosure.

225.2512 An appropriate authority is one with responsibility for such a matter. In many instances, that authority will have the ability to investigate and take action to safeguard the public interest. The appropriate authority to which to disclose the matter will depend on the nature of the **suspected** illegal act, for example, a competition regulator in the case of a suspected cartel arrangement, and a securities regulator in the case of **suspected** fraudulent financial reporting in a listed entity.

~~225.13 If the entity has not made an adequate disclosure within a reasonable period of time, after being advised to do so, the professional accountant or the engagement partner for the audit shall disclose the following to the appropriate authority:~~

- ~~• Suspected illegal acts that directly or indirectly affect the client's financial reporting.~~
- ~~• Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant.~~

~~225.14 In exceptional circumstances a professional accountant in public practice is not required, under this section, to disclose the suspected illegal act. Exceptional circumstances would arise where a reasonable and informed third party would conclude that the consequences of disclosure are so severe as to justify not complying with the requirement to disclose, for example, where there would be threats to the physical safety of the professional accountant or other individuals. Where the consequences of disclosure for the professional accountant or others are of a commercial nature, such as the potential loss of a client or income, this would not constitute exceptional circumstances. In such cases the accountant shall determine whether to terminate the professional relationship with the client and whether it is appropriate to continue to provide professional services in the particular jurisdiction.~~

~~Professional Accountant Providing Professional Services to a non-Audit Client~~

~~225.16 If 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 acquires, or receives, information that leads~~

~~the accountant to suspect that an illegal act has been committed by the client, or by those charged with governance, management or employees of the client, the professional accountant shall follow the process outlined in paragraphs 225.5–225.9. If the professional accountant is unable to escalate the matter, the professional accountant shall disclose the matter to the external auditor, if any, to enable the external auditor to escalate the matter.~~

~~225.17 If the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest, there is an appropriate authority to receive the disclosure, and the matter has not been disclosed, the accountant shall advise the entity that the matter should be disclosed to the appropriate authority. If the entity has not made an adequate disclosure within a reasonable period of time, after being advised to do so, the professional accountant shall disclose the matter to the external auditor, if any, if the accountant has not already done so. In determining whether disclosure would be in the public interest and whether there is an appropriate authority to receive the disclosure, the professional accountant shall follow the guidance in paragraphs 225.11 and 225.12.~~

~~225.18 If the suspected illegal act relates to the subject matter of the professional services being provided by the professional accountant, and, after having disclosed the matter to the external auditor if any, in the accountant's professional judgment the response to the matter continues to be not appropriate the accountant has a right to disclose the matter to an appropriate authority. A professional accountant is expected to exercise this right in order to fulfill the accountant's responsibility to act in the public interest.~~

~~225.19 If the client is an individual and the professional accountant is unable to dispel the suspicion, the accountant shall discuss the matter with the individual. If the client admits to the suspected illegal act the professional accountant shall advise the client to disclose the matter to an appropriate authority, if there is an appropriate authority to receive the disclosure. If the client refuses to disclose the matter, or does not admit to the suspected illegal act, the professional accountant shall determine whether to terminate the professional relationship with the individual. If the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest and the subject matter of the illegal act falls within the expertise of the professional accountant, the accountant has a right to disclose the matter to an appropriate authority. A professional accountant is expected to exercise this right in order to fulfill the accountant's responsibility to act in the public interest.~~

~~225.20 In exceptional circumstances a professional accountant would not be expected to exercise the right to disclose to an appropriate authority under paragraphs 225.18 and 225.19. Exceptional circumstances would arise where a reasonable and informed third party would conclude that the consequences of disclosure are so severe as to justify not exercising the right to disclose, for example where there would be threats to the physical safety of the professional accountant or other individuals. Where the consequences of disclosure for the professional accountant or others are of a commercial nature, such as the potential loss of a client or income, this would not constitute exceptional circumstances. If the professional accountant does not exercise the right to disclose the accountant shall consider whether to terminate the professional relationship with the client.~~

~~225.21 When making a disclosure to an appropriate authority, and thus overriding the fundamental principle of confidentiality, the professional accountant shall act reasonably, in good faith and exercise caution when making statements and assertions.~~

Obtaining External Advice

~~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.

Documentation

225.~~26~~²³ The professional accountant ~~shall~~ is encouraged to document the steps the professional accountant took to respond to a suspected illegal acts. ~~The documentation shall include, the persons consulted, responses received, the disclosure, if any, made to an appropriate authority. If the accountant did not disclose the matter under paragraphs 225.14 or 225.20 the documentation shall also include:~~

- ~~• The rationale for not disclosing;~~
- ~~• If the accountant determined not to terminate the professional relationship with the client, the reason why; and~~
- ~~• If the accountant determined that it was appropriate to continue providing professional services in the particular jurisdiction, the reason why.~~

SECTION 360

Responding to a Suspected Illegal Act

- 360.1 This section ~~describes the circumstances where~~ addresses the responsibilities of a professional accountant in business ~~has a right to override the fundamental principle of confidentiality and disclose a suspected~~ when the professional accountant suspects that an illegal act ~~has been committed or is about to be committed by an employing organization to an appropriate authority.~~ For the purposes of this section, illegal acts comprise fraud and other acts of omission or commission, intentional or unintentional, committed by an employing organization, or by those charged with governance, management or employees of an employing organization which are contrary to the prevailing laws or regulations. Personal misconduct unrelated to the business activities of the ~~entity is employing organization and matters that are clearly inconsequential are~~ excluded. ~~This section refers to suspected illegal acts because w/v~~ whether a matter constitutes an ~~illegal~~ act is actually illegal is ultimately a matter for legal determination by a court of law.

Responsibility for Compliance with Laws and Regulations

- 360.2 It is the responsibility of the employing organization and its management, with the oversight of those charged with governance, to ensure that the employing organization's business activities are conducted in accordance with laws and regulations. It is also the responsibility of the employing organization, its management and those charged with governance, to address any illegal acts committed, or about to be committed, by the employing organization or by those charged with governance, management or employees of the employing organization.

Responsibilities of Professional Accountants in Business

- 360.3~~2~~ If a professional accountant in business ~~identifies a suspected~~ suspects that an illegal act ~~has been committed by an employing organization, or by those charged with governance, management or employees of the employing organization,~~ the professional 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 professional accountant shall comply with those requirements. Otherwise, if there are no legal or regulatory requirements, the professional accountant shall address the matter in the manner set out in this section. Where there are legal or regulatory requirements, the professional accountant may find the guidance in this section helpful in complying with those requirements. When required by law or regulation to disclose a suspected illegal act, a professional accountant in business shall make the disclosure in compliance with the relevant legal or regulatory requirements.
- 360.3 ~~If the professional accountant in business identifies a suspected illegal act, the accountant shall consider whether it is appropriate, based on all relevant facts and circumstances, to resign from the employing organization. Resignation shall not be a substitute for disclosure to an appropriate authority as discussed in this section.~~

Communicating with Management or Those Charged with Governance

- 360.4 If a professional accountant in business ~~acquires, or receives, information that leads the accountant to suspect becomes aware~~ that an illegal act ~~has may have~~ been committed ~~or may be about to be committed, by an employing organization, or by those charged with governance, management or employees of an employing organization,~~ the professional accountant shall

~~take reasonable steps to confirm or dispel that suspicion~~ seek to obtain an understanding of the nature of the matter and the circumstances in which it arose. In seeking to obtain such an understanding, the professional accountant shall gather relevant information available to make an assessment. ~~In doing so, t~~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 activity the accountant is undertaking. ~~While the professional accountant may have become aware of the matter when carrying out the professional accountant's employment responsibilities, the suspected illegal act may not necessarily be within the professional accountant's expertise. Nevertheless, the closer that matter is to the professional accountant's expertise, the greater the duty for the professional accountant to pursue the matter with the employer.~~

360.5 The professional accountant shall consider the protocols and procedures, if any, that have been established by the employing organization to address such a matter (for example, an ethics policy).

360.6 ~~In taking reasonable steps to confirm or dispel the suspicion, t~~The professional accountant may wish to consult with others within the organization or, ~~on an anonymous basis,~~ a relevant professional body on an anonymous basis or legal counsel to:

- Understand the application of the relevant laws and regulations to the circumstances and whether the act is potentially illegal;
- Assess the gravity of the matter;
- Understand the potential consequences of the matter to the employing organization; and
- Identify the possible courses of action.

360.5 ~~If the professional accountant is unable to dispel the suspicion, the accountant shall determine the appropriate course of action, taking into account whether the organization has an established mechanism, such as an ethics policy, for addressing such matters.~~

360.76 ~~If the professional accountant has reason to believe that an illegal act has been committed or is about to be committed, t~~The professional accountant shall generally first ~~disclose a suspected illegal act~~ address the matter within the reporting lines of the employing organization by ~~reporting~~ discussing the matter ~~to with an immediate superior or higher levels of management as deemed appropriate in the circumstances. The purposes of this discussion are to:~~

- (a) Confirm the professional accountant's understanding of the facts and circumstances relevant to the matter, and the potential consequences of the matter; and
- (b) Understand what actions the immediate superior, management or those charged with governance plan to take to address the matter, including whether they plan to disclose it to an appropriate authority.

360.8 Professional accountants in business can be involved in a variety roles involving the preparation and reporting of financial information as well general management activities. Employing organizations rely on the expertise of professional accountants in business to help ensure that the business activities are undertaken in accordance with relevant laws and regulations. Accordingly, the professional accountant shall consider whether management or those charged with governance understand their legal or regulatory responsibilities to address

the matter and, if not, shall to the extent practicable assist them in doing so. The professional accountant in business may recommend that the employing organization obtain legal advice

360.9 If the immediate superior or management does not provide sufficient information to satisfy the professional accountant that the employing organization is in compliance with laws and regulations, or if sufficient information about the suspected illegal act cannot be obtained, the professional accountant shall consider the need to obtain legal advice regarding possible actions to take.

360.10 In certain circumstances, the professional accountant may deem it more appropriate to communicate the matter in accordance with the protocols established by the employing organization's ethics policy where such protocols allow for anonymity, rather than discussing the matter with an immediate superior or higher levels of management. This may be appropriate when the professional accountant is employed in a relatively junior position and believes that the illegal act is deliberate and involves different layers of management. This will enable the matter to be rapidly escalated to those best able to address it.

~~If, in the professional accountant's judgment, the response to the matter is not appropriate or the professional accountant suspects that the superior or management is involved in the suspected illegal act, the accountant shall:~~

- ~~• Escalate the matter within the entity, for example with higher levels of management, internal audit, or those charged with governance; or~~
- ~~• Disclose the matter in accordance with any established mechanism such as an ethics policy.~~

~~If the professional accountant is unable to escalate the matter or the professional accountant has doubts about the integrity or honesty of management and there is no established mechanism for reporting such matters such as an ethics hotline, the professional accountant shall disclose the matter to the external auditor, if any.~~

Evaluating the Response of Management or Those Charged with Governance

360.11 The professional accountant shall evaluate whether the professional accountant's immediate superior, management or those charged with governance have taken appropriate remedial action.

360.12 ~~7~~ When determining if the response to the matter is appropriate whether the professional accountant's immediate superior, management or those charged with governance have addressed the matter appropriately, the professional accountant shall consider the nature and magnitude-gravity of the matter and factors such as whether:

- The matter has been adequately investigated;
- Remedial aAction has been taken to address-remediate the matter; and
- Appropriate steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training-; and
- The matter has been disclosed to an appropriate authority if a legal or regulatory requirement exists for the employing organization to do so or the professional accountant believes that doing so would be in the public interest.

360.13 If, in the professional accountant's judgment, the response to the matter is not appropriate, or the professional accountant suspects that the immediate superior or management is involved in the suspected illegal act, or the professional accountant is unable to assess whether the response is appropriate, the professional accountant shall:

- Escalate the matter within the entity, for example with higher levels of management, internal audit, or those charged with governance;
- Disclose the matter to the employing organization's external auditor, if any, to enable the auditor to determine appropriate actions in the context of the external audit, or
- Disclose the matter in accordance with any established mechanism such as an ethics policy.

360.14 If the professional accountant is unable to escalate the matter, or if the professional accountant has doubts about the integrity or honesty of management and those charged with governance and there is no established mechanism such as an ethics policy, the professional accountant shall consider discussing the matter with a relevant professional body on an anonymous basis or legal counsel.

~~360.8 If the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest, there is an appropriate authority to receive the disclosure, and the matter has not been disclosed, the accountant shall advise the employing organization that the matter should be disclosed to the appropriate authority. If the employing organization has not made an adequate disclosure within a reasonable period of time, the professional accountant shall disclose the matter to the external auditor if any, if the accountant has not already done so.~~

~~360.9 If, in the professional accountant's professional judgment, the response to the matter is not appropriate, the accountant has a right, to disclose the following to the appropriate authority:~~

- ~~• Suspected illegal acts that directly or indirectly affect the employing organization's financial reporting.~~
- ~~• Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant.~~

~~A professional accountant is expected to exercise this right to disclose in order to fulfill the accountant's responsibility to act in the public interest.~~

360.15 In exceptional circumstances, the professional accountant shall also consider whether either one or both of the following actions are appropriate when, in the professional accountant's opinion, management or those charged with governance do not take the remedial action that the professional accountant considers appropriate in the circumstances:

- Disclosing the matter to an appropriate authority in accordance with paragraphs 360.16-360.20.
- Resigning from the employing organization. Resignation, however, is not a substitute for complying with the requirements in this section.

~~360.10 In exceptional circumstances an accountant would not be expected to exercise the right to disclose. Exceptional circumstances would arise where a reasonable and informed third party~~

~~would conclude that the consequences of disclosure are so severe as to justify not exercising the right to disclose for example, where there would be threats to the physical safety of the professional accountant or other individuals. If the professional accountant does not exercise this right the accountant shall consider whether to resign from the employing organization.~~

Disclosing a Suspected Illegal Act to an Appropriate Authority

360.16 Where there is no legal or regulatory requirement to disclose the suspected illegal act, and to do so is not contrary to law or regulation in the relevant jurisdiction, the professional accountant shall consider whether voluntary disclosure to an appropriate authority is appropriate. A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Accordingly, a professional accountant in business is permitted to override the duty of confidentiality under this Code by disclosing to an appropriate authority a suspected illegal act where, in the professional accountant's judgment, such disclosure would be in the public interest.

360.17 The professional accountant is encouraged to seek legal advice to understand the legal implications of disclosure to an appropriate authority.

~~360.11 In making the determination as to 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. The determination will require professional judgment and consideration of the nature and magnitude of the matter, including the number of people that could be affected by the suspected illegal act and the extent to which those people could be affected.~~

~~360.13 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, if the accountant decides to disclose the matter to a party outside of the employing organization.~~

360.18 In determining whether or not to disclose a suspected illegal act to an appropriate authority, the professional accountant shall consider the following:

- Whether the employing organization has already adequately disclosed the matter to an appropriate authority.
- The degree to which the relevant information is known and substantiated.
- Whether members of the public are likely to be affected.
- The gravity of the matter, for example, the size of the amounts involved and the extent of the likely damage.
- Whether there is protection afforded by legislation, such as under whistle blowing legislation.

- 360.1914 When making a disclosure to an appropriate authority, and thus overriding the fundamental principle of confidentiality, the professional accountant shall act reasonably, in good faith and exercise caution when making statements and assertions.
- 360.420 An appropriate authority is one with responsibility for such a matter. In many instances, that authority will have the ability to investigate and take action to safeguard the public interest. The appropriate authority to which to disclose the matter will depend upon the nature of the suspected illegal act; for example, a competition regulator in the case of a suspected cartel and a securities regulator in the case of suspected fraudulent financial reporting in a listed entity.

Documentation

360.2145 The professional accountant ~~shall is encouraged to~~ document the steps the professional accountant took to respond to a suspected illegal acts. ~~The documentation shall include the persons consulted, responses received, the disclosure, if any, made to an appropriate authority. If the accountant did not exercise the right to disclose, the documentation shall include:~~

- ~~• The rationale for not disclosing; and~~
- ~~• If the accountant determined not to resign from the employing organization, the reason why.~~

~~The professional accountant shall retain the documentation for a sufficient period of time taking into account relevant laws and regulation.~~