

PROPOSED SECTION 225**(CLEAN)****Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations**

225.1 The purpose of this section is to guide professional accountants in public practice in how to respond to non-compliance with laws and regulations they may come across in the course of providing a professional service to a client. Such non-compliance:

- (a) May have been committed or may be about to be committed by the client or by those charged with governance, management or employees of the client; and
- (b) May have caused, or may cause, substantial harm to the interests of the client, investors, creditors, employees or the wider public in both financial and non-financial terms.

Examples of such non-compliance include the perpetration of a major fraud resulting in significant financial losses to investors, and serious breaches of environmental laws and regulations endangering the health or safety of employees or the public.

225.2 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. In acting in the public interest in these circumstances, the objectives of the professional accountant are:

- (a) To comply with the fundamental principles of integrity and professional behavior;
- (b) Through alerting management or, where appropriate, those charged with governance of the client, to seek to:
 - (i) Have them rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it may be about to occur; and
- (c) To take any further action that may be needed to serve the public interest.

225.3 For the purposes of this section, non-compliance comprises 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. Whether an act constitutes actual non-compliance is ultimately a matter for legal determination by a court of law.

225.4 This section addresses:

- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and
- (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements, but compliance with which may be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

225.5 The provisions of some laws or regulations have a direct effect on the client's financial statements in that they determine the reported amounts and disclosures in those financial statements, for example, tax and pension laws and regulations. Other laws or regulations are to be complied with by management and those charged with governance, or set the provisions under which the client is allowed to conduct its business but do not have a direct effect on its financial statements. These include, for example:

- Laws against money laundering, terrorist financing, corruption and bribery.
- Environmental regulations in the chemical and extractive industries.
- Health and safety regulations in the agricultural, pharmaceutical and food processing industries.
- Product safety regulations.

Non-compliance with those two categories of laws and regulations may result in fines, litigation or other consequences for the client that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to the client, investors, creditors, employees or the wider public.

225.6 In this regard, an act of non-compliance that causes substantial harm is one that results in immediate or ongoing serious adverse consequences to the client, investors, employees or third parties in both financial and non-financial terms, such as significant financial losses, major property damage or impairment, or significant injury to public health and safety.

225.7 This section does not address:

- (a) Matters that are clearly inconsequential. A matter is clearly inconsequential when it is clearly trivial or of little to no consequence, whether judged by the nature of the matter or its impact, financial or otherwise, on the client, its stakeholders or the wider public;
- (b) Personal misconduct unrelated to the business activities of the client; and
- (c) Non-compliance with laws and regulations not committed by the client or by those charged with governance, management or employees of the client. The professional accountant may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Client, Its Management and Those Charged with Governance

225.8 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 identify and address any non-compliance with laws and regulations by the client or by those charged with governance, management or employees of the client.

Responsibilities of Professional Accountants in Public Practice

225.9 In some jurisdictions, there are legal or regulatory provisions governing how non-compliance or suspected non-compliance with laws and regulations is to be addressed. If so, the professional accountant shall obtain an understanding of those provisions and comply with them, including

with respect to any prohibitions on alerting (“tipping-off”) the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

Professional Accountants Performing Audits of Financial Statements

- 225.10 If, in the course of performing an audit of financial statements for the client, the professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall seek to obtain an understanding of the matter, including:
- The nature of the act and the circumstances in which it has been committed or may be about to be committed; and
 - The application of the relevant laws and regulations to the circumstances.
- 225.11 If the professional accountant suspects that non-compliance with laws and regulations has occurred or may be about to occur, the professional accountant shall discuss the matter with management and, where appropriate, those charged with governance.
- 225.12 Such discussion serves to clarify the professional accountant’s understanding of the facts and circumstances relevant to the matter and its potential consequences. The information conveyed by the professional accountant may prompt management or those charged with governance to duly investigate the matter.
- 225.13 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the audit. Depending on the nature and significance of the matter, the professional accountant may consult with others within the firm, a network firm, a relevant professional body, or legal counsel.
- 225.14 The determination of which level of management is the appropriate level with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:
- The nature of the matter.
 - The circumstances and individuals involved.
 - The likelihood of collusion.
 - The potential consequences of the matter.
 - Whether that level of management is able to investigate the matter and take appropriate action.
- 225.15 The appropriate level of management is generally at least one level above the person or persons who appear to be involved in the matter. If the professional accountant believes that management is involved in the non-compliance or suspected non-compliance, the professional accountant shall discuss the matter with those charged with governance. 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.

- 225.16 If:
- (a) No higher level of authority exists;
 - (b) The professional accountant is unsure as to the person to whom to report;
 - (c) Insufficient information is obtained to satisfy the professional accountant that the client is in compliance with laws and regulations; or
 - (d) Management or those charged with governance dispute the facts or the professional accountant's assessment of the potential consequences of the matter,
- the professional accountant is encouraged to obtain legal advice to understand what the possible or alternative courses of action might be.
- 225.17 If management and, where appropriate, those charged with governance agree that there is credible evidence that the non-compliance has occurred or may be about to occur and it has likely caused or would likely cause substantial harm to the interests of the client, investors, creditors, employees or the wider public, the professional accountant shall seek to prompt them to take appropriate and timely actions, if they have not already done so, to:
- (a) Rectify, remediate or mitigate the consequences of the non-compliance where it has occurred;
 - (b) Deter the commission of the non-compliance where it may be about to occur; or
 - (c) Disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest.
- 225.18 Evidence is credible when it would be reasonable in the circumstances to conclude that it is likely that non-compliance has occurred or is about to occur.
- 225.19 The professional accountant shall consider whether the client, its management and those charged with governance understand their legal or regulatory responsibilities with respect to the matter. If not, the professional accountant may recommend that they obtain legal advice.
- 225.20 The professional accountant shall comply with applicable:
- (a) Laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance with laws and regulations to an appropriate authority. In this regard, some laws and regulations stipulate a period within which reports are to be made; and
 - (b) Requirements under professional standards, including:
 - Communication with those charged with governance.
 - Communication with the group engagement team in the case of a group audit.
 - Consideration of the implications of the matter for the auditor's report, including disclosure in the report.
- 225.21 The professional accountant shall determine if further action is needed to:
- (a) Achieve the professional accountant's objectives under this section; and
 - (b) Serve the public interest in the circumstances.

- 225.22 Further action will depend on the legal and regulatory framework and may include one or more of the following:
- Informing the parent entity of the matter in the case of the audit of the financial statements of a component within a group.
 - In the absence of a legal or regulatory requirement to do so, disclosing the matter to an appropriate authority to the extent the professional accountant reasonably believes necessary.
 - Withdrawing from the engagement and the professional relationship where permitted by law or regulation.
- 225.23 The concept of the public interest is not capable of general definition. Each situation needs to be considered individually, taking into account:
- The facts and circumstances of the non-compliance or suspected non-compliance.
 - The nature and extent of the consequences or potential consequences to investors, creditors, employees and the wider public.
- 225.24 The nature and extent of further action needed will depend on various factors, including:
- The appropriateness and timeliness of the response of management and those charged with governance.
 - Whether the appropriateness of such response can be assessed.
 - Whether the circumstances of the non-compliance or suspected non-compliance have caused the professional accountant no longer to have confidence in the integrity of those charged with governance.
 - Whether those charged with governance are independent of management.
 - The urgency of the matter.
 - The pervasiveness of the matter throughout the client.
 - Whether there is a general culture within the client of disregarding laws and regulations.
 - The likelihood of continuing consequences for the client, investors, creditors, employees and the wider public.
 - Whether the non-compliance or suspected non-compliance is likely to recur with impunity.
- 225.25 Relevant factors to consider in judging the appropriateness of the response of management and those charged with governance include whether:
- The non-compliance or suspected non-compliance has been adequately investigated.
 - Action has been, or is being, taken to rectify, remediate or mitigate the consequences of the non-compliance if it has occurred.
 - Action has been, or is being, taken to deter the commission of the non-compliance where it may be about to occur.
 - Appropriate steps have been, or are being, taken to reduce the risk of re-occurrence, for example, additional controls or training.

- The non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.
- 225.26 Examples of circumstances that may cause the professional accountant no longer to have confidence in the integrity of those charged with governance include situations where:
- The professional accountant suspects or has evidence of their involvement or intended involvement in the non-compliance.
 - The professional accountant is aware that they have knowledge of such non-compliance and, contrary to legal or regulatory requirements or the public interest, have not reported, or authorized management to report, the matter to an appropriate authority within a reasonable period.
- 225.27 In determining whether to disclose the matter to an appropriate authority, relevant factors to consider include:
- Whether disclosure would be contrary to law or regulation.
 - Whether there is an appropriate authority to receive the information. An appropriate authority is one that has acknowledged that it can receive such information and cause the matter to be investigated. The appropriate authority to which to disclose the matter will depend on the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
 - The existence of robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
 - Threats to the physical safety of the professional accountant or other individuals.
- 225.28 If the professional accountant decides to disclose the matter to an appropriate authority in such a situation, this would not be considered a breach of the duty of confidentiality under this Code. When making such disclosure, the professional accountant shall act 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 disclosing the matter
- 225.29 In determining the nature and extent of further action needed, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted appropriately in serving the public interest.
- 225.30 Where the professional accountant determines that withdrawing from the engagement and the professional relationship would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the professional accountant's objectives under this section and to serve the public interest. In some jurisdictions, however, there may be limitations as to the further actions available to the professional accountant and withdrawal may be the only available course of action. When withdrawing from the professional relationship, the professional accountant shall comply with the requirements of section 210.

- 225.31 The professional accountant shall consider seeking legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action. The professional accountant may also consider consulting with a relevant professional body.

Professional Accountants in Public Practice Providing Professional Services Other Than Audits of Financial Statements

- 225.32 If, in the course of providing a professional service to a client or when acting for the client, the professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall seek to obtain an understanding of the matter, including:
- The nature of the act and the circumstances in which it has been committed or may be about to be committed; and
 - The application of the relevant laws and regulations to the circumstances.
- 225.33 If the professional accountant suspects that non-compliance with laws and regulations has occurred or may be about to occur, the professional accountant shall discuss the matter with management and, if the professional accountant has access to them, those charged with governance.
- 225.34 Such discussion serves to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The information conveyed by the professional accountant may prompt management or those charged with governance to duly investigate the matter.
- 225.35 The professional accountant is expected to apply knowledge, judgment and expertise, 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. Depending on the nature and significance of the matter, the professional accountant may consult with others within the firm, a network firm, a relevant professional body, or legal counsel.
- 225.36 The determination of which level of management to inform is a question of professional judgment. Relevant factors to consider include:
- The nature of the matter.
 - The circumstances and individuals involved.
 - The likelihood of collusion.
 - The potential consequences of the matter.
 - Whether that level of management is able to investigate the matter and take appropriate action.
- 225.37 If the professional accountant is performing a non-audit service for an audit client of the firm or a network firm, the professional accountant shall consider whether to inform the engagement partner for the audit about the matter. Such communication would enable the audit engagement team to be made appropriately aware of the matter and enable a determination to be made as to how the matter should be addressed in accordance with the provisions of this section.

- 225.38 To comply with the fundamental principles of integrity and professional behavior, the professional accountant shall consider whether the professional accountant can remain associated with the client.
- 225.39 Whether the professional accountant can remain associated with the client and the nature and extent of further action required will depend on factors such as:
- The appropriateness and timeliness of the response of management or those charged with governance to the matter.
 - The involvement of management or those charged with governance in the matter.
 - The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the wider public in both financial and non-financial terms.
 - The urgency of the matter.
 - The likelihood of continuing consequences for the client, investors, creditors, employees and the wider public.
- 225.40 The professional accountant shall also consider whether further action is needed beyond consideration of the professional accountant's association with the client to:
- (a) Achieve the professional accountant's objectives under this section; and
 - (b) Serve the public interest in the circumstances.
- 225.41 Further action may include:
- If the client is not an audit client of the firm or a network firm, disclosing the matter to the external auditor.
 - In the absence of a legal or regulatory requirement to do so, disclosing the matter to an appropriate authority to the extent the professional accountant reasonably believes necessary.
- 225.42 Whether information can be disclosed outside the entity depends on various factors, including:
- Whether doing so would be contrary to law or regulation.
 - Whether the terms or nature of the engagement preclude disclosure of information about the client to third parties, such as in the case of forensic services performed under legal privilege, or where the professional accountant has been engaged by the client to deal with a legally sensitive matter under professional secrecy.
 - Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor (for example, to avoid tipping-off) in an ongoing investigation into the non-compliance or suspected non-compliance.
- 225.43 If the professional accountant decides to disclose the matter to an appropriate authority in such a situation, this would not be considered a breach of the duty of confidentiality under this Code. When making such disclosure, the professional accountant shall act 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 disclosing the matter.

Documentation

- 225.44 *International Standards on Auditing* (ISAs) require a professional accountant performing an audit of financial statements to document significant matters arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions. They also require the professional accountant to document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place.
- 225.45 In the case of professional services other than audits of financial statements, the professional accountant is encouraged to document the nature and substance of the matter, the details of discussions held, and the decisions made concerning the matter, in particular if the matter could have significant consequences for the client or others. Documentation provides a number of benefits, including the following:
- It provides evidence of the professional accountant's judgments in forming conclusions.
 - It may serve to protect the professional accountant if challenged in legal or disciplinary proceedings to justify the professional accountant's actions in responding to the matter.
 - It may assist the professional accountant if required to appear before a court of law or tribunal to provide testimony regarding the matter.
- 225.46 When the matter is documented, it is important that the documentation is prepared in a careful and thoughtful manner and with appropriate diligence as it may be subject to legal discovery if the matter were to be dealt with in a court of law.

PROPOSED SECTION 360

(CLEAN)

Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations

- 360.1 The purpose of this section is to guide professional accountants in business in how to respond to non-compliance with laws and regulations they may come across in the course of carrying out their employment responsibilities. Such non-compliance:
- (a) May have been committed or may be about to be committed by the professional accountant's employing organization or by those charged with governance, management or employees of the employing organization; and
 - (b) May have caused, or may cause, substantial harm to the interests of the employing organization, investors, creditors, employees or the wider public in both financial and non-financial terms.
- Examples of such non-compliance include the perpetration of a major fraud resulting in significant financial losses to the employing organization's shareholders, and serious breaches of environmental laws and regulations endangering the health or safety of employees or the public.
- 360.2 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. In acting in the public interest in these circumstances, the objectives of the professional accountant are:
- (a) To comply with the fundamental principles of integrity and professional behavior;
 - (b) Through alerting management or, where appropriate, those charged with governance of the employing organization, to seek to:
 - (i) Have them rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it may be about to occur; and
 - (c) To take any further action that may be needed to serve the public interest.
- 360.3 For the purposes of this section, non-compliance comprises 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. Whether an act constitutes actual non-compliance is ultimately a matter for legal determination by a court of law.
- 360.4 This section addresses:
- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the employing organization's financial statements; and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organization's financial statements, but compliance with which may be fundamental to the operating aspects of the employing organization's business, to its ability to continue its business, or to avoid material penalties.

360.5 The provisions of some laws or regulations have a direct effect on the employing organization's financial statements in that they determine the reported amounts and disclosures in those financial statements, for example, tax and pension laws and regulations. Other laws or regulations are to be complied with by management and those charged with governance, or set the provisions under which the employing organization is allowed to conduct its business but do not have a direct effect on its financial statements. These include, for example:

- Laws against money laundering, terrorist financing, corruption and bribery.
- Environmental regulations in the chemical and extractive industries.
- Health and safety regulations in the agricultural, pharmaceutical and food processing industries.
- Product safety regulations.

Non-compliance with those two categories of laws and regulations may result in fines, litigation or other consequences for the employing organization that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to the client, investors, creditors, employees or the wider public.

360.6 In this regard, an act of non-compliance that causes substantial harm is one that results in immediate or ongoing serious adverse consequences to the employing organization, its shareholders, employees or third parties in both financial and non-financial terms, such as significant financial losses, major property damage or impairment, or significant injury to public health and safety.

360.7 This section does not address:

- (a) Matters that are clearly inconsequential. A matter is clearly inconsequential when it is clearly trivial or of little to no consequence, whether judged by the nature of the matter or its impact, financial or otherwise, on the employing organization, its stakeholders or the wider public; and
- (b) Personal misconduct unrelated to the business activities of the employing organization;

Responsibilities of the Employing Organization and Its Management and Those Charged with Governance

360.8 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 identify and address any non-compliance with laws and regulations by the employing organization or by those charged with governance, management or employees of the employing organization.

Responsibilities of Professional Accountants in Business

360.9 In some jurisdictions, there are legal or regulatory provisions governing how non-compliance or suspected non-compliance with laws and regulations is to be addressed. If so, the professional accountant shall obtain an understanding of those provisions and comply with them.

- 360.10 Many employing organizations have established protocols and procedures (for example, an ethics policy) regarding how non-compliance or suspected non-compliance with laws and regulations by the employing organization should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the professional accountant's employing organization, the professional accountant shall consider them in determining how to respond to the matter.

Senior Professional Accountants in Business

- 360.11 Senior professional accountants in business are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the presentation of the employing organization's financial and other information, or the employing organization's compliance with laws and regulations. Because of their roles, positions and spheres of influence within the employing organization, there is a greater expectation for them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance with laws and regulations than other professional accountants within the employing organization.
- 360.12 If, in the course of carrying out employment responsibilities, a senior professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall take steps to obtain an understanding of the matter, including:
- The nature of the act and the circumstances in which it has been committed or may be about to be committed;
 - The application of the relevant laws and regulations to the circumstances; and
 - The potential consequences to the employing organization, shareholders, creditors, employees or the wider public.
- 360.13 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional activity the professional accountant is undertaking. Depending on the nature and significance of the matter, the professional accountant may cause, or take appropriate steps to cause, the matter to be investigated internally. The professional accountant may also consult with others within the employing organization, a relevant professional body or legal counsel.
- 360.14 If the professional accountant has credible evidence that the non-compliance has occurred or may be about to occur and it has likely caused or would likely cause substantial harm to the interests of the employing organization, shareholders, creditors, employees or the wider public, the professional accountant shall:
- (a) Subject to paragraph 360.10, discuss the matter with the professional accountant's superior, if any, to enable a determination to be made as to how the matter should be addressed; and
 - (b) Take appropriate steps to:
 - (i) Have the matter communicated with those charged with governance to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities;

- (ii) Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance with laws and regulations to an appropriate authority;
 - (iii) Have the consequences of the non-compliance or suspected non-compliance rectified, remediated or mitigated where it has occurred;
 - (iv) Reduce the risk of re-occurrence;
 - (v) Seek to deter the commission of the non-compliance if it is about to occur; and
 - (vi) Have the matter disclosed to the employing organization's external auditor, if any, to enable the auditor to determine appropriate actions in the context of the external audit.
- 360.15 Evidence is credible when it would be reasonable in the circumstances to conclude that it is likely that non-compliance has occurred or is about to occur.
- 360.16 The professional accountant shall determine if further action is needed to:
- (a) Achieve the professional accountant's objectives under this section; and
 - (b) Serve the public interest in the circumstances.
- 360.17 Further action will depend on the legal and regulatory framework and may include one or more of the following:
- Informing the parent entity of the matter if the employing organization is a component within a group.
 - In the absence of a legal or regulatory requirement to do so, disclosing the matter to an appropriate authority to the extent the professional accountant reasonably believes necessary.
 - Resigning from the employing organization.
- 360.18 The concept of the public interest is not capable of general definition. Each situation needs to be considered individually, taking into account:
- The facts and circumstances of the non-compliance or suspected non-compliance.
 - The nature and extent of the consequences or potential consequences to shareholders, creditors, employees and the wider public.
- 360.19 The nature and extent of further action needed will depend on various factors, including:
- The appropriateness and timeliness of the response of those charged with governance.
 - Whether the appropriateness of such response can be assessed.
 - Whether the circumstances of the non-compliance or suspected non-compliance have caused the professional accountant no longer to have confidence in the integrity of those charged with governance.
 - Whether those charged with governance are independent of management.
 - The urgency of the matter.

- The pervasiveness of the matter throughout the employing organization.
 - The likelihood of continuing consequences for shareholders, creditors, employees and the wider public.
- 360.20 Relevant factors to consider in judging the appropriateness of the response of those charged with governance include whether:
- Those charged with governance have authorized, or refused to authorize, appropriate action to be taken to seek to rectify, remediate or mitigate the consequences of the non-compliance if it has occurred, or to avert the non-compliance if it may be about to occur.
 - The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.
- 360.21 Examples of circumstances that may cause the professional accountant no longer to have confidence in the integrity of those charged with governance include situations where:
- The professional accountant suspects or has evidence of their involvement or intended involvement in the non-compliance.
 - Contrary to legal or regulatory requirements or the public interest, they have not reported the matter, or authorized the matter to be reported, to an appropriate authority within a reasonable period.
- 360.22 In determining whether to disclose the matter to an appropriate authority, relevant factors to consider include:
- Whether disclosure would be contrary to law or regulation.
 - Whether there is an appropriate authority to receive the information. An appropriate authority is one that has acknowledged that it can receive such information and cause the matter to be investigated. The appropriate authority to which to disclose the matter will depend upon the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
 - The existence of robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle blowing legislation or regulation.
 - Threats to the physical safety of the professional accountant or other individuals.
- 360.23 If the professional accountant decides to disclose the matter to an appropriate authority in such a situation, this would not be considered a breach of the duty of confidentiality under this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions.
- 360.24 In determining the nature and extent of any further action needed, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted appropriately in serving the public interest.

- 360.25 Where the professional accountant determines that resigning from the employing organization would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the professional accountant's objectives under this section and to serve the public interest. In some jurisdictions, however, there may be limitations as to the further actions available to the professional accountant and resignation may be the only available course of action.
- 360.26 The professional accountant shall consider seeking legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action. The professional accountant may also consider consulting with a relevant professional body.

Other Professional Accountants in Business

- 360.27 If, in the course of carrying out employment responsibilities, a professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall seek to obtain an understanding of the matter, including:
- The nature of the act and the circumstances in which it has been committed or may be about to be committed; and
 - The application of the relevant laws and regulations to the circumstances.
- 360.28 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional activity the professional accountant is undertaking. Depending on the nature and significance of the matter, the professional accountant may consult with others within the employing organization, a relevant professional body or legal counsel.
- 360.29 If the professional accountant suspects that non-compliance with laws and regulations has occurred or may be about to occur, the professional accountant shall, subject to paragraph 360.10, inform an immediate superior to enable the superior to take appropriate action.

Documentation

- 360.30 The professional accountant is encouraged to document the nature and substance of the matter, the details of discussions held, and the decisions made concerning the matter, in particular if the matter could have significant consequences for the employing organization or others. Documentation provides a number of benefits, including the following:
- It provides evidence of the professional accountant's judgments in forming conclusions.
 - It may serve to protect the professional accountant if challenged in legal or disciplinary proceedings to justify the professional accountant's actions in responding to the matter.
 - It may assist the professional accountant if required to appear before a court of law or tribunal to provide testimony regarding the matter.
- 360.31 When the matter is documented, it is important that the documentation is prepared in a careful and thoughtful manner and with appropriate diligence as it may be subject to legal discovery if the matter were to be dealt with in a court of law.

PROPOSED CHANGES TO OTHER SECTIONS OF THE CODE (CLEAN)

SECTION 100

Introduction and Fundamental Principles

...

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 conduct that discredits the profession.

...

Ethical Conflict Resolution

100.19 A professional accountant may be required to resolve a conflict in complying with the fundamental principles.

100.20 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.

100.21 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.

100.22 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.

100.23 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.

- 100.24 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 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 As a fundamental principle, 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 are circumstances where the professional accountant is or may be required to disclose confidential information, or where such disclosure may be appropriate.
- 140.8 A professional accountant may override the duty of confidentiality when:
- (a) Disclosure is required by law or regulation;
 - (b) There is a professional duty or right to disclose, when not prohibited by law or regulation; or
 - (c) Disclosure is permitted by law and is authorized by the client or the employer.

- 140.9 Circumstances where disclosure is required by law or regulation may include, for example:
- Production of documents or other evidence in the course of legal proceedings.
 - Disclosure to the appropriate public authorities of suspected non-compliance with laws and regulations that comes to light.
- 140.10 Circumstances where a professional accountant may have a professional duty or right to disclose include, for example:
- (a) To comply with the quality review of a member body or professional body;
 - (b) To respond to an inquiry or investigation by a member body or regulatory body;
 - (c) To protect the professional interests of a professional accountant in legal proceedings;
 - (d) To seek to rectify, remediate or mitigate substantial harm to the interests of the client or employer, investors, creditors, employees or the wider public caused by non-compliance or suspected non-compliance with laws and regulations, or to seek to avert such harm that would likely be caused by non-compliance that may be about to occur; or
 - (e) To comply with technical standards.
- 140.11 In deciding whether to disclose confidential information, relevant factors to consider include:
- Whether the interests of 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.

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 conduct that the professional accountant knows or should know may discredit the profession. This includes actions or other 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.
- 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, issues associated with the client (its owners, management or activities). that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, questionable financial reporting practices or other unethical behavior.
- 210.2 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.
- 210.3 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.
- 210.4 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. For example, a threat to compliance with the fundamental principles may be created by a client's unethical behavior such as improper 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 consider terminating the client relationship where termination is not prohibited by law or regulation.

Engagement Acceptance

- 210.5 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.

- 210.6 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.
- 210.7 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.

Changes in a Professional Appointment

- 210.8 A professional accountant in public practice who is asked to replace another professional accountant in public practice, or who is considering tendering for an engagement currently held by another professional accountant in public practice, shall determine whether there are any reasons, professional or otherwise, for not accepting the engagement, such as circumstances that create threats to compliance with the fundamental principles that cannot be eliminated or reduced to an acceptable level by the application of safeguards. For example, there may be a threat to professional competence and due care if a professional accountant in public practice accepts the engagement before knowing all the pertinent facts.
- 210.9 A professional accountant in public practice shall evaluate the significance of any threats. Safeguards shall be applied when necessary to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:
- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted;
 - Asking the existing accountant to provide known information on any facts or circumstances that, in the existing accountant's opinion, the proposed accountant needs to be aware of before deciding whether to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the existing accountant that may influence the decision to accept the appointment; or

- Obtaining necessary information from other sources.

210.10 When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

210.11 An existing accountant is bound by confidentiality. Whether that professional accountant is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:

- (a) Whether the client's permission to do so has been obtained; or
- (b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

Circumstances where the professional accountant is or may be required to disclose confidential information or where such disclosure may otherwise be appropriate are set out in Section 140 of Part A of this Code.

210.12 A professional accountant in public practice will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an existing accountant. Once that permission is obtained, the existing accountant shall comply with relevant legal and other regulations governing such requests. Where the existing accountant provides information, it shall be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the existing accountant, the proposed accountant shall take reasonable steps to obtain information about any possible threats by other means, such as through inquiries of third parties or background investigations of senior management or those charged with governance of the client.

210.13 In the case of an audit of financial statements, a professional accountant shall request the existing accountant to provide known information regarding any facts or circumstances that, in the existing accountant's opinion, the proposed accountant needs to be aware of before deciding whether to accept the engagement. If the client consents to the existing accountant disclosing any such facts or circumstances to the proposed accountant, the existing accountant shall provide the information honestly and unambiguously. If the client fails or refuses to grant the existing accountant permission to discuss the client's affairs with the proposed accountant, the existing accountant shall disclose this fact to the proposed accountant, who shall carefully consider such failure or refusal when determining whether or not to accept the appointment.

210.14 A professional accountant in public practice may be asked to undertake work that is complementary or additional to the work of the existing accountant. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or incomplete information. The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is notifying the existing accountant of the proposed work, which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

SECTION 270

Custody of Client Assets

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- 270.3 As part of client and engagement acceptance procedures for services that may involve the holding of client assets, a professional accountant in public practice shall make appropriate inquiries about the source of such assets and consider legal and regulatory obligations. For example, if the assets were derived from illegal activities, such as money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the professional accountant shall comply with the provisions of section 225.

SECTION 300

(Incorporating Changes Arising from the Part C Project)

Introduction

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300.5 A professional accountant in business may hold a senior position within an organization. The more senior the position of the professional accountant, the greater will be the ability and opportunity to influence policies and decision-making. A professional accountant is expected to encourage an ethics-based culture in an employing organization. To the extent that the professional accountant is in a position to do so, the professional accountant shall take reasonable steps to identify, implement and oversee safeguards in the work environment to encourage or promote an ethics-based culture, including policies and procedures to prevent non-compliance with laws and regulations. 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 policies and procedures help to encourage ethical behavior 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 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 the professional accountant's integrity or objectivity, 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 or actions by others will continue to occur within the work environment, the professional accountant may consider first reporting such matters in accordance with the employing organization's established ethics policies and whistle-blowing procedures. Where such policies and procedures do not exist, the professional accountant may consider consulting with a relevant professional body or obtaining legal advice. In circumstances where all available actions and safeguards have been exhausted and it is not possible to reduce the threat to an acceptable level, a professional accountant may consider resigning from the employing organization.