Draft – IESBA Staff Publication

Ethics Considerations in Sustainability-related Reporting

Guidance to Address Concerns about Greenwashing

Note to IESBA Meeting participants

This is a working draft of the IESBA Staff guidance which is intended to highlight the provisions in the extant *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the Code) that help address stakeholder concerns about "greenwashing", i.e., corporate reporting that provides a misleading or false impression about how well a business or investment aligns with its sustainability goals.

The proposed questions are based on a review of real-life cases discussed within the Sustainability Working Group (WG). The draft document is prepared by IESBA staff and incorporates input from the WG, IESBA members, the staff of the International Auditing and Assurance Standards Board and other key stakeholders.

IESBA meeting participants are asked to provide final input on this draft, preferably via email in advance of the meeting. Please email SzilviaSramko@ethicsboard.org. Subject to the input received during the IESBA September 2022 meetings, the document will be finalized and issued by October 2022.

Introduction

In recent years, investors have been increasingly focused on information that provides a better understanding of a company's long-term value creation and enables them to allocate capital to businesses they perceive as being more sustainable. Financial markets have seen accelerated growth in the disclosure of sustainability information.[1] As this information is progressively used in investors' capital allocation decisions, as well as other decisions by customers, employees or potential employees, government agencies and other stakeholders, it is important that it is as reliable as existing financial information, so that there can be justifiable public confidence in what is reported.

The accountancy profession plays a major role in the sustainability-related reporting supply chain. The profession brings to this domain its wide and deep competencies in the preparation and presentation of information and the provision of assurance thereon. The profession has historically demonstrated wide and deep technical competencies and ethical dimensions in preparing, presenting, and assuring financial information. Similarly, those attributes will be invaluable in reporting on non-financial information such as that related to sustainability. Most importantly, public trust in the profession in those crucial roles for sustainability is underpinned by robust global ethics standards, which in turn contributes to confidence in sustainability-related reporting.[2]

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[1] In this publication, the term "sustainability" is used to refer broadly to Environmental, Social and Governance (ESG) matters and related considerations associated with the achievement of the United Nations Sustainable Development Goals (SDGs).

[2] The principles-based provisions in the Code set out in Part 1 – *Complying with the Code Fundamental Principles and the Conceptual Framework* and Part 2 – *Professional Accountants in Business* apply to all professional accountants when preparing or presenting information, including sustainability information.

About IESBA

The International Ethics Standards Board for Accountants (IESBA) is the independent global standard-setting board which develops the *International Code of Ethics for Professional Accountants (including International Independence Standards)* ("the Code" or "the Code of Ethics").[3] At IESBA, we believe that a single set of high-quality ethics standards (including independence requirements) enhances the quality and consistency of services provided by professional accountants, thus contributing to public trust and confidence in the work of the accountancy profession. IESBA carries out its mandate with a strong focus on serving the public interest. It is overseen by the Public Interest Oversight Board (PIOB).

Click here to learn more about the IESBA and its sustainability workstreams.

The IESBA is committed to being part of the rapidly progressing developments regarding sustainability-related reporting and assurance and providing timely responses to ethics and independence-related concerns.[4] This publication is intended to highlight the relevance and applicability of the Code to several ethics-related challenges arising from professional accountants' involvement in sustainability-related reporting and assurance, especially those related to misleading or false sustainability information (i.e., "greenwashing").

The guidance aims to help professional accountants, especially those in business, navigate ethics situations or challenges that might give rise to reporting misleading or false sustainability information. The guidance may also be useful to other professionals involved in such reporting, and other stakeholders, including regulators and oversight bodies, policy makers, investors, those charged with governance (TCWG), national standard setters, professional organizations, accounting firms, government and non-profit organizations, and academia.

The IESBA Staff will consider the need to develop additional guidance as appropriate (e.g., to highlight independence considerations in relation to providing assurance on sustainability information).

This publication does not amend or override the Code, the text of which alone is authoritative. Reading the Q&As is not a substitute for reading the Code. The Q&As are not intended to be exhaustive and reference to the Code itself should always be made. This publication does not constitute an authoritative or official pronouncement of the IESBA.

Questions & Answers

Q1. Does the Code define greenwashing?

No. The term greenwashing is not used or defined in the Code. This term usually refers to practices that involve misleading intended users of the information, or intentionally giving them a false impression about

[3] The Code sets out high quality standards of ethical behavior expected of professional accountants. Translated in about 40 languages, the Code is used or adopted as the basis for national ethics standards or the ethics codes of professional accountancy organizations in about 130 jurisdictions. It is also adopted by the 32 largest international networks of accounting firms (the Forum of Firms) for transnational audits.

[4] In its 2022 progress report on Roadmap for Addressing Financial Risks, the Financial Stability Board (FSB) highlighted that an important area for future work will be on the development of new sustainability assurance, ethics and independence standards, and acknowledged the work of the IESBA and the International Auditing and Assurance Standards Board (IAASB) and the importance in having robust standards and actions to promote consistency in practices.

how well an organization or an investment is aligned with its sustainability goals.[5]

IOSCO's report on *Sustainable Finance and the Role of Securities Regulators and IOSCO* highlighted greenwashing as one of the recurring challenges to investor protection, along with multiple and diverse sustainability frameworks and standards, and the lack of common definitions of sustainable activities. As an example of greenwashing, IOSCO mentioned the over-emphasis on Environmental, Social and Governance (ESG) considerations in the communication of a product or instrument and in corporate information, where such considerations have had a very limited impact on the actual investment or business strategy implemented. Such practices may vary in scope and pervasiveness, from the inappropriate use of specific sustainability-related terms used in an offering document to misrepresentations about an entity's sustainability-related commitments and deceptive marketing practices that deliberately misrepresent a product's sustainable impact.

There are several factors that could contribute to greenwashing, such as:

- The integrity of the reporting framework, if any, and the company's compliance with the framework.
- Availability and quality of corporate sustainability data.
- Lack of integration and connectivity between the financial and non-financial sustainability information.
- Lack of understanding of the control environment, especially of the information technology systems.
- An inadequate control environment, including governance and oversight arrangements that have not kept pace with the internal and external developments.
- Incentives and opportunities (e.g., financial or reputational) to promote more sustainability-aligned products, or to promote the business as being aligned to sustainability goals and trends.
- Lack of regulation or regulation that is only at the nascent stage of development.

Appropriate external assurance can help enhance the quality of sustainability information and reduce the risks of investors and other stakeholders being misled about how well the organization is aligned with its sustainability goals. However, given the still-nascent state of ESG reporting and assurance standards, obtaining assurance alone on sustainability information cannot entirely prevent or safeguard against greenwashing[6]. As with any information, preventing misstatements from occurring is better than relying solely on verifying the information after the fact. It is therefore essential that entities have in place well-functioning systems, processes, and internal controls to accurately collect and report the sustainability information. It is also critical that the conduct and mindset of those involved in sustainability-related reporting be anchored in ethical values, including but not limited to acting with integrity and professional competence and due care.

Greenwashing covers a broad range of behaviors. It might arise from inadvertent errors, acting with insufficient expertise or skills, or omitting, misrepresenting or falsifying information with the intent to mislead investors and other users. In some cases, greenwashing might result in non-compliance with laws and

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[5] See International Organization of Securities Commissions' (IOSCO) publication on *Sustainable Finance and the Role of Securities Regulators and IOSCO* (FR04/2020, April 2020).

[6] Research conducted by the IFAC and the AICPA-CIMA indicates that 80% of sustainability information reported in fiscal 2020 followed multiple standards and frameworks, which calls into question its consistency, comparability, and assurability. Further, while 92% of companies researched provided some degree of ESG information, only 58% of the reporting entities studied also obtained assurance over at least a portion of the information they reported. See *The State of Play in Reporting and Assurance of Sustainability Information: Update 2019-2020 Data & Analysis*.

regulations. The Code requires professional accountants not to be associated with misleading information. It also establishes a responsibility for professional accountants to act in the public interest (see paragraphs 100.1 and R111.2). Intentionally misleading investors and other users of sustainability information would constitute a breach of the fundamental principle of integrity and could be fraudulent tantamount to fraud. In addition, threats to compliance with the fundamental principles of professional competence and due care and professional behavior might also be created.

Q2. The Code includes a robust set of provisions applicable to the preparation and presentation of information. Do professional accountants also have to comply with the Code's provisions when preparing and presenting not only financial, but also non-financial information, including sustainability information, be it presented in stand-alone sustainability reports, annual or integrated reports, or on a company's website?

Yes. The Code specifies that a distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Confidence in the accountancy profession is a reason why businesses, governments and other organizations involve professional accountants in a broad range of areas, including financial and corporate reporting, assurance and other professional activities (paragraphs 100.1 and 100.2). Accountants understand and acknowledge that such confidence is based on the skills and values that accountants bring to the professional activities they undertake, including: (paragraph 100.2)

(a) Adherence to ethical principles and professional standards;

(b) Use of business acumen;

(c) Application of expertise on technical and other matters; and

(d) Exercise of professional judgment.

Irrespective of the nature of the professional activity and the skills and knowledge necessary to perform such activity, a professional accountant must comply with the Code's provisions and meet the public interest responsibility of the profession.

Section 220 of the Code[7] highlights that professional accountants are involved in the preparation or presentation of information both within and outside the organization.[8] This information might assist stakeholders in understanding and evaluating aspects of the employing organization's state of affairs and in making decisions concerning the organization or its products or services.

Information can include financial and non-financial information that might be made public or used for internal purposes. Under Section 220, preparing or presenting information also includes recording, maintaining and approving information (see paragraphs 220.3 A1 to A3). Consequently, when professional accountants prepare or present financial and non-financial information, including sustainability information, they are required to comply with the Code. This includes complying with each of the fundamental principles[9] and

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7 Section 220, *Preparation and Presentation of Information*

8 Given the Code's building blocks approach, Part 1 of the Code is applicable to all professional accountants. Part 2 sets out additional material that applies to professional accountants in business (PAIBs) when performing professional activities. Part 2 is also applicable to individual professional accountants in public practice (PAPPs) when performing professional activities pursuant to their relationship with the firm, whether as contractor, employee or owner. Part 3 of the Code sets requirements and guidance that apply to PAPPs, including those that engaged to assist in preparing and presenting sustainability information.

9 The five fundamental principles of the Code are integrity, objectivity, professional competence and due care, confidentiality, and professional behavior.

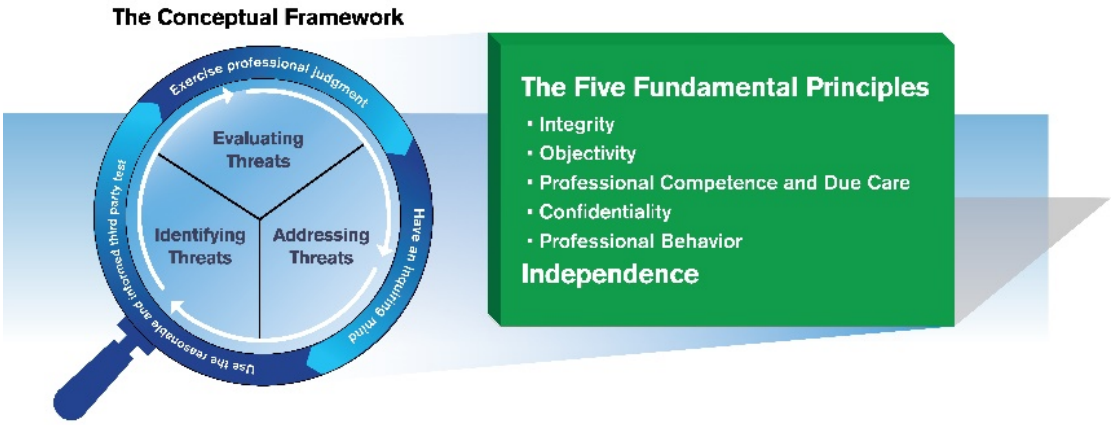
applying the conceptual framework as set out in Part 1 of the Code (paragraphs R110.2 and R120.3).

Applying the conceptual framework helps professional accountants identify, evaluate and address threats to compliance with the fundamental principles when undertaking professional activities (paragraph R120.3). This extends to the preparation and presentation of sustainability information. In particular, the following overarching requirements in the conceptual framework are relevant in producing sustainability information: (paragraph R120.5)

(a) Having an inquiring mind;

(b) Exercising professional judgment; and

(c) Using the reasonable and informed third party test.



Q3. Are there specific provisions in the Code that safeguard against greenwashing?

Yes. Complying with the fundamental principles, in particular integrity, plays an important role in avoiding practices that could lead to greenwashing. For example, professional accountants who comply with the principle of integrity are straightforward and honest in all professional and business relationships, and refrain from being associated with reports, returns, communications or other information, including sustainability information, where the accountant believes that the information:

- Contains a materially false or misleading statement;
- Contains statements or information provided recklessly; or
- Omits or obscures required information where such omission or obscurity would be misleading.

When a professional accountant becomes aware of having been associated with materially false or misleading information, there is an obligation under the Code for the accountant to take steps to be disassociated from that information (paragraphs R111.1 to R111.3). That requirement applies even in difficult situations, or when the professional accountant feels pressured to do otherwise (see Q9).

When preparing and presenting sustainability information, the Code requires professional accountants to: (paragraph R220.4)

- Prepare or present the information in a manner that is intended neither to mislead nor to influence contractual or regulatory outcomes inappropriately; and

- Not omit anything with the intention of rendering the information misleading or of influencing contractual or regulatory outcomes inappropriately.

Q4. The multiplicity of reporting frameworks may result in inconsistent approaches to reporting on sustainability information. Many of those reporting frameworks are voluntary with no independent oversight of preparers, and often limited or no external assurance regarding the sustainability information asserted to be prepared and presented in accordance with such frameworks. This increases the risk and opportunities for greenwashing. Does the Code require compliance with a specific reporting framework when professional accountants prepare and present sustainability information?

The Code requires professional accountants to prepare and present information, including sustainability information, in accordance with the *relevant* reporting framework, where applicable (paragraph R220.4). However, when no sustainability reporting framework is applicable/ available, the Code requires the professional accountant to exercise professional judgment to identify and consider: (paragraph R220.6)

(a) The purpose for which the sustainability information is to be used;

(b) The context within which it is given; and

(c) The audience to whom it is addressed.

The Code recognizes that preparing or presenting information might require the exercise of discretion in making professional judgments. For example, this might involve selecting disclosures about risks under the applicable sustainability reporting framework. The Code is clear that in making judgments, professional accountants must not exercise discretion with the intention of misleading others or influencing contractual or regulatory outcomes inappropriately (paragraphs R220.5 and 220.5 A1). The Code expects that in preparing or presenting sustainability information, a professional accountant will include the relevant background, assumptions and other disclosures to enable those who might rely on such information to form their judgments (paragraphs R220.6 and 220.6 A1).

Q5. Sustainability-related terms are constantly emerging, resulting in different definitions across jurisdictions. There is a lack of common understanding or transparency, for example, about what is meant by "sustainable investment" and "sustainability risks." The descriptors for sustainability-related performance metrics (e.g., "green" or "ethical") are not yet standardized or defined. These inconsistencies present challenges in providing transparency and reliable sustainability information. What guidance is provided under the Code to address this matter?

The Code does not explicitly deal with this matter. However, the overarching requirements, including the fundamental principles and the conceptual framework, apply. Application of the conceptual framework would lead the professional accountant to exercise professional judgment and use the reasonable and informed third-party test in deciding on which terms are fit for purpose. In the case of the preparation and presentation of information, including sustainability information, the Code requires professional accountants to exercise professional judgment to describe clearly the true nature of a business transaction or activity (paragraph R220.4 (c)).

In exercising judgments about the appropriate term to use in a sustainability report, it is relevant to consider the purpose, context, and audience of the report. Further, labelling a product or a service with a sustainability-related term with the intent to misrepresent or falsely describe the nature of the product or

service to investors and others would constitute a breach of the fundamental principles of integrity and professional behavior (paragraphs R220.5, R220.6 and see Q2 and Q3).

Q6. The lack of reliable and comparable ESG data is a key challenge to tackling confusion in the ESG marketplace. In the absence of a common standard and enforcement mechanism, it can be challenging to measure the impact of certain ESG factors. It is even harder to track and disclose metrics, especially in the case of some of the social factors that tend to be more qualitative in nature and less well-defined. Does the Code provide any guidance for professional accountants regarding presenting and reporting on such matters?

Yes. When preparing and presenting information, the Code requires professional accountants to exercise professional judgment to represent the facts accurately and completely in all material aspects (paragraph R220.4 (c) and see Q2 to Q4).

Complying with the fundamental principle of professional competence and due care involves attaining and maintaining professional knowledge and skills at the level required to ensure that the client or employing organization receives competent professional service, based on the current technical and professional standards (paragraph R113.1). It also involves making the client or the employing organization or other users of the services or activities aware of the limitations inherent in the services and activities (paragraph R113.3).

Under Section 230[10] of the Code, a professional accountant must not intentionally mislead an employing organization as to the level of expertise or experience possessed. If the professional accountant does not have sufficient expertise for the particular professional activity, this creates a self-interest threat to compliance with the fundamental principle of professional competence and due care. If that threat cannot be addressed, the Code requires the professional accountant to determine whether to decline to perform the duties in question (paragraphs R230.3 and R230.4). Obtaining assistance or training from someone with the necessary expertise is an example of an action that might be an appropriate safeguard to address a self-interest threat to professional competence and due care (paragraph 230.3 A4).

The provisions above include requirements for professional accountants to have sufficient knowledge and expertise when exercising professional judgment. This would apply when deciding whether the sustainability information is reasonable, complete and reliable.

Q7. Making misleading or inaccurate claims about the sustainability-related performance of an investment without providing evidence for the claims is another form of greenwashing. This could lead investors to purchase products based on false or unsubstantiated information about the products or the company's sustainability-related performance. Does the professional accountant have any responsibility to verify the credibility of the sustainability-related information or performance?

Yes. When applying the conceptual framework, professional accountants should not accept information at face-value – the Code requires them to have an inquiring mind. This involves: (Paragraphs R120.5 (a), 120.5 A1)

(a) Considering the source, relevance and sufficiency of information obtained, taking into account the nature, scope and outputs of the professional activity being undertaken; and

[10] Section 230, *Acting with Sufficient Expertise*

(b) Being open and alert to a need for further investigation or other action.

The Code provides guidance to assist professional accountants in considering the source, relevance and sufficiency of information obtained. In the context of the sustainability information, the professional accountant might consider, for example, whether: (paragraph 120.5 A2)

- New information has emerged or there have been changes in facts and circumstances.
- The information or its source might be influenced by bias or self-interest.
- There is reason to be concerned that potentially relevant information might be missing from the facts and circumstances known to the accountant.
- There is an inconsistency between the known facts and circumstances and the accountant's expectations.
- The information provides a reasonable basis on which to reach a conclusion.
- There might be other reasonable conclusions that could be reached from the information obtained.

In applying an inquiring mind, professional accountants should consider whether the information presented is substantiated. If a professional accountant knows or has reason to believe that the sustainability information is false or misleading, they must take the necessary steps specified under the Code (see Q2, Q3 and Q10).

Q8. ESG metrics can be broadly categorized as point-in-time measurements. Different timing of disclosure of ESG data can lead to inconsistency in the presentation of the information and make it difficult to compare advancement in ESG goals. Does the Code provide guidance in relation to the timing of the disclosure of sustainability information if the relevant reporting framework does not determine it?

Yes. The Code specifically requires that a professional accountant exercise professional judgment to classify and record information in a timely and proper manner (paragraph R220.4 (c)). The Code also prohibits a professional accountant from exercising discretion with the intention of misleading others or influencing contractual or regulatory outcomes inappropriately (paragraph R220.5). These provisions apply when preparing or presenting sustainability information, including ESG data.

Consequently, even if it is not specified by the relevant reporting framework, professional accountants need to record ESG data in a timely manner. Further, professional accountants should not choose the timing of disclosure of the ESG data to achieve a more favorable presentation or better outcome.

Q9. There is a great deal of pressure to meet ESG goals in the current environment. There is also a great deal of incentives and opportunities to "cherry-pick" or "greenwash" ESG-related information. Does the Code provide guidance on how to deal with such pressure?

Yes. Section 270[11] of the Code sets out that professional accountants must not allow pressure from others to result in a breach of compliance with the fundamental principles (paragraph R270.3). Individuals involved in reporting sustainability information might experience pressure to report misleading sustainability information to meet investors' and other stakeholder expectations. Some might also experience pressure to misrepresent how certain programs, projects or products are labeled as sustainable. Pressure could be explicit or implicit and might come from within the employing organization or be driven by internal and

[11] Section 270, *Pressure to Breach the Fundamental Principles*

external expectations. For example, this pressure might be exerted by superiors to inappropriately reduce the extent of due diligence work needed to attach a "sustainable" label to a product, or to do so without sufficient expertise.

The Code provides guidance regarding evaluating and addressing the threats created by such pressure. Discussing the circumstances creating the pressure and consulting with others about such circumstances might assist in evaluating the level of threats to compliance with the fundamental principles. Consultations[12] might include discussing the matter with a superior, legal counsel, or relevant professional or regulatory bodies. The professional accountant might also consider disclosing the matter in line with the employing organization's policies (including ethics and whistleblowing policies) (paragraphs 270.3 A3 to A5).

The Code also explicitly prohibits a professional accountant from placing pressure on others if the professional accountant knows or has reason to believe it would result in a breach of the fundamental principles (see paragraph R270.3). This might involve, for example, placing pressure on others in the organization responsible for the preparation or presentation of sustainability information to provide misleading information about the organization's achievement of sustainability goals.

Q10. There is a lack of common standards for reporting on sustainability information, and reporting on such information is voluntary in many jurisdictions. Consequently, some companies choose to disclose certain ESG-related matters (e.g., carbon emissions) while omitting others (e.g., human-rights-related issues or information about diversity, equity and inclusion). Some companies also obscure which ESG risks are important and material and could emphasize one risk over the others (trade-offs). This practice is potentially misleading because it does not give investors and other stakeholders a holistic picture of the sustainability-related risks to the company. Would such cherry-picking constitute non-compliance with the Code's provisions?

Maybe. When preparing and presenting information, the Code requires professional accountants to prepare or present the information in accordance with a relevant reporting framework, where applicable (paragraph R220.4 (a)).

If there are no requirements to apply specific sustainability reporting frameworks and the company decides to report only certain sustainability risks, this *would not* constitute non-compliance with the Code's provisions per se. However, the professional accountant is required to: (paragraph R220.4, subparagraphs (b)-(d))

- Determine whether the information is prepared and presented in a manner that is intended neither to mislead nor to influence contractual or regulatory outcomes inappropriately. Professional accountants should not to omit anything with the same intention.
- Exercise professional judgment to represent the facts accurately and completely in all material respects. Exercising of professional judgment is also relevant to identify and consider the purpose for which the information is to be used, the context within which it is given, and the audience to whom it is addressed (paragraph R220.6).

When disclosure of particular aspects of the sustainability performance is not required or standardized, this allows professional accountants the ability to exercise discretion in making professional judgments regarding the presentation of the sustainability information. While this is permissible under the Code,

[12] This consultation requires being alert to the principle of confidentiality.

professional accountants are prohibited from exercising discretion with the intention of misleading others or influencing contractual or regulatory outcomes inappropriately (see paragraph R220.5).

Q11. Sustainability-related information is mainly characterized and determined by the specific circumstances of the industry and sector in which the client's organization operates. As reporting frameworks are not necessarily industry-specific, and if no particular metrics and definitions are available, the disclosure of sustainability information across different sectors could lead to greenwashing and make it difficult to compare ESG goals/advancements. Does the Code provide any guidance for professional accountants how to prepare and present sustainability information taking into account the particular characteristics of the organization's industry?

As mentioned in the response to Q10 above, when there is no requirement to comply with a particular sustainability reporting framework, or it does not include specific industry-related provisions, the Code requires professional accountants to exercise professional judgment to identify and consider the purpose for which the information is to be used, the context within which it is given, and the audience to whom it is addressed (paragraph R220.6).

Disclosure and statements on sustainability goals could vary and have different receptions in different sectors. For example, a factory's ESG goals and carbon footprint have a different context depending on the industry in which it operates. Therefore, as part of identifying threats to compliance with integrity or other fundamental principles, the professional accountant is required to understand the specific facts and circumstances (paragraphs R120.6 to 120.6 A2). This might involve considering specific information on the industry and the users' understanding of such information. Such an understanding helps in determining whether the presentation of the information might be misleading and whether there is sufficient context provided having regard to the audience. The use of reasonable and informed third party test is relevant in this regard (paragraph R120.5).

The reasonable and informed third party test is a consideration by the professional accountant about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the accountant knows, or could reasonably be expected to know, at the time the conclusions are made. The reasonable and informed third party does not need to be an expert of the industry or an accountant but would possess the relevant knowledge and experience to understand and evaluate the appropriateness of the accountant's conclusions in an impartial manner (paragraph 120.5 A1).

Q12. Suppose a professional accountant prepared a sustainability report and subsequently learns that information in that report is misleading. In investigating the matter, the professional accountant also obtains information that suggests there has been non-compliance with a particular law or regulation. What is the professional accountant's responsibility under the Code?

When a professional accountant knows, or has reason to believe, that the information they are associated with is misleading, the Code requires the accountant to take appropriate actions to seek to resolve the matter (paragraph R220.8). Such appropriate actions might include: (paragraph 220.8 A1)

- Discussing concerns that the information is misleading with the professional accountant's superior and/or the appropriate level(s) of management within the accountant's employing organization or

those charged with governance, and requesting such individuals to take appropriate action to resolve the matter, such as:

  - Having the information corrected.
  - If the information has already been disclosed to the intended users, informing them of the correct information.

- Consulting the policies and procedures of the employing organization (for example, an ethics or whistleblowing policy) regarding how to address such matters internally.

If the professional accountant reported the concern to the organization, but the accountant continues to have reason to believe that the information is misleading (for example, if the organization has not dealt with the matter in an appropriate manner) the Code provides guidance on further actions that might be appropriate:[13] (paragraph 220.8 A2)

- Consulting with (i) the relevant professional body, (ii) the internal or external auditor of the employing organization, or (iii) a legal counsel.
- Determining whether any requirements exist to communicate to:
  - Third parties, including users of the information.
  - Regulatory and oversight authorities.

After exhausting all options mentioned above, if the professional accountant still determines that appropriate action has not been taken and there is reason to believe that the information is misleading, the Code explicitly requires the professional accountant to refuse to be or to remain associated with the information. In those circumstances, the Code notes that it might be appropriate for the professional accountant to resign from the employing organization (paragraphs R220.9 and 220.9 A1).

If the professional accountant becomes aware of information that suggests there has been non-compliance with laws and regulations (NOCLAR), the professional accountant is also required to comply with the Code's NOCLAR provisions set out in Section 260.[14] The NOCLAR provisions require the professional accountant to take appropriate actions in those circumstances. NOCLAR comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations. The non-compliance could be committed by any of the following parties: (see paragraph 260.5 A1)

- The professional accountant's employing organization;
- Those charged with governance of the employing organization;
- Management of the employing organization; or
- Other individuals working for or under the direction of the employing organization.

Non-compliance might have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. Under the Code, non-compliance that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. An example of such non-compliance is a breach of environmental laws and regulations endangering the health or safety of employees or the public (paragraph 260.5 A3).

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[13] Provided that the accountant remains alert to the principle of confidentiality.

[14] Section 260, *Responding to Non-Compliance with Laws and Regulations*

Section 260 of the Code specifies objectives for professional accountants to guide them in responding to an actual or suspected NOCLAR (paragraph 260.4).

Where a professional accountant becomes aware of, or suspects, a NOCLAR, the Code requires the accountant to take action on a timely basis. As part of taking timely steps to address the matter, the professional accountant needs to have regard to the nature of the matter and the potential harm to the interests of the employing organization, investors, creditors, employees or the general public (paragraph R260.10).

Q13. Oversight by TCWG, including audit committee members and boards of directors play a vital role in enhancing the quality of corporate reporting, including about sustainability information such as those relating to strategy, risks and opportunities. Does the Code include any provisions or guidance regarding the involvement of TCWG, including to mitigate risks of greenwashing?

Effective communication with TCWG provides enhanced transparency and contributes in promoting an ethical culture in an organization, especially when leaders within the organization hold themselves and others accountable for demonstrating ethical values. Except for in the case of professional accountants in public practice that audit financial statements,[15] the Code does not expressly specify requirements for accountants to communicate with TCWG. However, its does provide requirements and guidance to assist accountants in:

- Determining the appropriate individual(s) within the employing organization with whom to communicate (paragraphs R200.9 to 200.10 A1, R300.9 to 300.10 A1).
- Communicating with individuals who have management as well as governance responsibilities (paragraphs R200.10 to 200.10 A1, R300.10 to 300.10 A1).

In addition, the Code sets out circumstances when communication with TCWG might help in evaluating threats to compliance with the fundamental principles or in resolving specific issues. Some of these circumstances help in addressing matters that might otherwise increase the risks of greenwashing. In particular, the Code provides requirements and guidance that helps in responding to situations that might involve:

- *Pressure to Breach the Fundamental Principles of Ethics.* There is a great deal of pressure on the organizations, including professional accountants involved in sustainability-related reporting to meet internal and external ESG targets, goals and expectations. Such pressure might arise from within the organization, e.g., from a colleague or a superior, external parties such as customers, lenders or vendors. This is increasingly prevalent in the current environment.

  Professional accountants are prohibited from allowing pressure from others to (or placing pressure on others that the accountant knows or has reason to believe would) result in a breach of compliance with the fundamental principles. The Code notes the importance of factors, such as culture and leadership, including the extent to which these reflect the importance of ethical behavior and the expectation that employees will act ethically (paragraph 270.3 A3), and stresses the importance of

[15] In addition to ethics-related requirements and guidance set out in Parts 1-3 of the Code, professional accountants in public practice that audit financial statements are required to comply with International Independence Standards. These standards require firms to communicate with TCWG about independence, specifically in relation to NAS and fee-related matters.

discussing[16] the circumstances creating the pressure and consulting with others in evaluating threats. The Code specifically identifies TCWG as an example with whom a professional accountant might wish to escalate matters within an organization, as appropriate, explaining any consequential risks to the organization (paragraph 270.3 A3). (See also Q9)

- *Association with Misleading Information.* When the professional accountant knows or has reason to believe that information (including sustainability information) with which the accountant is associated is misleading, the accountant needs to take appropriate actions to seek to resolve the matter. The Code provides examples of actions that the accountant might take in such circumstances. One of such examples is discussing concerns about the misleading information with TCWG and requesting them to take appropriate action to resolve the matter (paragraphs R220.8 to 200.8 A1). (See also Q12.)
- *Actual or Suspected NOCLAR.* The employing organization's management, with the oversight of TCWG, is responsible for ensuring that the employing organization's business activities are conducted in accordance with laws and regulations (paragraph 260.8 A1). If a professional accountant becomes aware of a matter that is not only misleading but constitutes a NOCLAR when reporting on sustainability information, the accountant must take action to address the NOCLAR (paragraph R260.10). The Code specifies the actions that should be taken by the accountant. In particular, senior professional accountants are required to take appropriate steps to communicate with TCWG about NOCLAR-related matters (including actual and suspected non-compliance). Such communication positions the accountant to obtain concurrence from TCWG as to the appropriateness of actions taken to respond to the NOCLAR and enables them to fulfill their responsibilities (paragraphs R260.14 and 260.14 A1).

[16] Such discussion and consultation require being alert to the principle of confidentiality