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The Hundred Group
of Finance Directors

Investor Relations and Markets Committee

By email: janmunro@ethicsboard.org

Jan Munro
IESBA Deputy Director
International Ethics Standards Board for Accountants
529 Fifth Avenue
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New York
NY 10017
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17 December 2012

Dear Ms Munro

RESPONDING TO A SUSPECTED ILLEGAL ACT

We are pleased to submit our views set out in the IESBA exposure draft "Responding to a Suspected Illegal Act" published August 2012.

Who we are

The Hundred Group represents the views of the Chief Financial Officers of FTSE 100 index constituents and several large UK private companies. Our Members collectively employ over 1.8 million people in the UK, and pay, or generate, taxes equivalent to 12% of the UK Exchequer's overall tax take. We seek to assist the development of UK businesses particularly in the areas of tax, reporting, pensions, regulation, capital markets and corporate governance.

Our views

We are concerned with a number of proposals in the exposure draft that increase the responsibility placed on accountants in business, especially those in more junior positions and would also welcome further guidance on a number of terms used in the proposals.

We would welcome clarification of what is meant by the "public interest" in the context of responding to an illegal act, which is a vital part of this proposal. This should be specifically differentiated from "of interest to the public" in an environment where the two are frequently confused. We do not believe that there is currently sufficient agreement on what is actually meant by the term "the public interest" for it to form the basis of any proposal for responding to suspected illegal acts. In our view, it may be worth considering what interested parties (and the public at large) understand by "the public interest" in the context of the varying activities and roles undertaken by accountants.

We do not believe that it is clear what is meant by "suspected". There are obvious difficulties in determining when a matter is to be regarded as a "suspected illegal act" as the test is inevitably subjective. We would strongly recommend that further guidance is included to clarify the meaning of "suspected" and how this would be applied in practice, especially where there are situations where the suspicion of an illegal act exists but there may be insufficient evidence to prove it in a court of law.

We also think that the requirement to take "reasonable steps" when confirming or dispelling a suspicion needs further clarification and guidance. If an accountant obtains information that leads them to suspect that an illegal act has been committed, the accountant "shall take reasonable steps to confirm or dispel that suspicion" by applying "knowledge, judgement and expertise" to the matter. It is not clear what "reasonable steps" entail and because each accountant's practical experience and knowledge is different, it is likely that this could vary significantly.

We have reservations about including professional accountants in business in these proposals as they are in a very different position from accountants in public practice. A number of Group CFO's of FTSE 100 companies have significant responsibility and yet are not technically "professional accountants" by qualification. We would welcome clarification of whether this would apply to them too. Whilst the proposals recognise that professional accountants in business are in a different position to those in practice, the demands on the accountant in business where they have no whistle-blowing protection are excessive, particularly for accountants who are in a junior position. We believe that employees who have disclosed any potential illegal acts at the place of employment are likely to find the reporting process very difficult, and may have pressure brought to bear by their employers to withdraw their allegations. We believe that it is also possible that their employment could be terminated by some employers or that they face law suits for breach of confidentiality clauses in their employment contracts. A simpler and more effective course of action in the corporate arena would be to mandate the use of robust whistle-blowing processes, which most FTSE 100 Companies already have in place, instead of layering on a further "accountant specific" requirement.

We therefore believe that it is vital that protection is given to accountants making these disclosures and that this can only be provided through legislation.

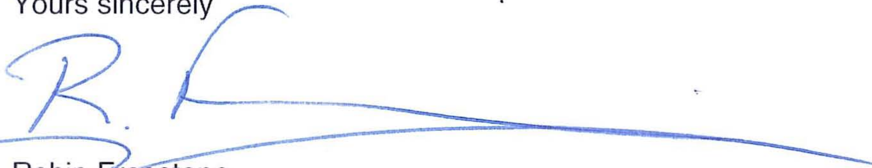
We understand that one of the key drivers for the proposals is that by mandating a framework for the escalation and disclosure of suspected illegal acts, they should provide a measure of protection for accountants in business.

Our view is that existing mandatory disclosure regimes almost invariably give a person making a disclosure protection against legal attack where such disclosures are made in good faith. We believe the draft proposals are not able to provide the protection needed and therefore strongly recommend some level of protection through local legislation.

We do not believe that it is in the public interest to expose accountants in business to such a significant level of risk (particularly where the suspected illegal act on which the disclosure is based may not be able to be proved in court) and believe it is fair and reasonable to provide a safe harbour or immunity where disclosures are made in good faith.

Please feel free to contact me if you wish to discuss the views expressed in this letter.

Yours sincerely



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