



NZ AUDITING  
AND ASSURANCE  
STANDARDS BOARD

## AMENDMENTS TO PROFESSIONAL AND ETHICAL STANDARD 1 (REVISED) RESPONDING TO NON-COMPLIANCE WITH LAWS AND REGULATIONS

This Standard was issued on 25 August 2016 by the New Zealand Auditing and Assurance Standards Board of the External Reporting Board pursuant to section 12(b) of the Financial Reporting Act 2013.

This Standard is a disallowable instrument for the purposes of the Legislation Act 2012, and pursuant to section 27(1) of the Financial Reporting Act 2013 takes effect on 22 September 2016.

The amendments are effective as of 15 July 2017. Early adoption is permitted.

In finalising this Standard, the New Zealand Auditing and Assurance Standards Board has carried out appropriate consultation in accordance with section 22(1) of the Financial Reporting Act 2013.

This Standard has been issued to amend Professional and Ethical Standard 1 (Revised) *Code of Ethics for Assurance Practitioners* as a result of changes made by the International Ethics Standards Board for Accountants (IESBA) to the IESBA Code of Ethics for responding to non-compliance with laws and regulations.

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**AMENDMENTS TO PROFESSIONAL AND ETHICAL STANDARD 1  
(REVISED) RESPONDING TO NON-COMPLIANCE WITH LAWS AND  
REGULATIONS**

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## **A: INTRODUCTION**

This document sets out the amendments to Professional and Ethical Standard 1 (Revised) *Code of Ethics for Assurance Practitioners*. This amending standard has been issued as a result of changes made to the International Code of Ethics for Professional Accountants issued by the International Ethics Standard Board for Accountants (IESBA).

Section B of this document sets out a new section 225 to be added to Professional and Ethical Standard 1 (Revised). The text has not been underlined but the entire section is new.

Section C of this document sets out conforming amendments to other sections of extant PES 1 (Revised). Section C uses underlines and strike through to indicate changes to existing sections of PES 1 (Revised).

## **B: NEW SECTION 225 TO BE ADDED TO PROFESSIONAL AND ETHICAL STANDARD 1 (REVISED)**

*Section 225 is a new section to be added to PES 1 (Revised). The text is not underlined but the entire section is new.*

### **Responding to Non-Compliance with Laws and Regulations**

#### **Purpose**

- 225.1 An assurance practitioner may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a professional service to a client. The purpose of this section is to set out the assurance practitioner's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the assurance practitioner in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the client, including whether or not it is a public interest entity.
- 225.2 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, by management or by other individuals working for or under the direction of a client which are contrary to the prevailing laws or regulations.
- 225.3 In some cases, there are legal or regulatory provisions governing how assurance practitioners should address non-compliance or suspected non-compliance which may differ from or go beyond this section. When encountering such non-compliance or suspected non-compliance, the assurance practitioner has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.
- 225.4 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the assurance practitioner are:
- (a) To comply with the fundamental principles of integrity and professional behaviour;
  - (b) By alerting management or, where appropriate, those charged with governance of the client, to seek to:
    - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
    - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
  - (c) To take such further action as appropriate in the public interest.

## Scope

- 225.5 This section sets out the approach to be taken by an assurance practitioner who encounters or is made aware of non-compliance or suspected non-compliance with:
- (a) Laws and regulations generally recognised 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.
- 225.6 Examples of laws and regulations which this section addresses include those that deal with:
- Fraud, corruption and bribery.
  - Money laundering, terrorist financing and proceeds of crime.
  - Securities markets and trading.
  - Banking and other financial products and services.
  - Data protection.
  - Tax and pension liabilities and payments.
  - Environmental protection.
  - Public health and safety.
- 225.7 Non-compliance 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 investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.
- 225.8 An assurance practitioner who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the client, its stakeholders and the general public, is not required to comply with this section with respect to such matters.
- 225.9 This section does not address:
- (a) Personal misconduct unrelated to the business activities of the client; and
  - (b) Non-compliance other than by the client or those charged with governance, management or other individuals working for or under the direction of the client.

This includes, for example, circumstances where an assurance practitioner has been engaged by a client to perform a due diligence assignment on a third party entity and the identified or suspected non-compliance has been committed by that third party.

The assurance practitioner may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

### **Responsibilities of the Client’s Management and Those Charged with Governance**

225.10 It is the responsibility of the client’s 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 management and those charged with governance to identify and address any non-compliance by the client, by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the client.

### **Responsibilities of Assurance Practitioners<sup>#</sup>**

225.11 Where an assurance practitioner becomes aware of a matter to which this section applies, the steps that the assurance practitioner takes to comply with this section shall be taken on a timely basis, having regard to the assurance practitioner’s understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.

#### *Obtaining an Understanding of the Matter*

225.12 If an assurance practitioner engaged to perform an assurance engagement becomes aware of information concerning an instance of non-compliance or suspected non-compliance, whether in the course of performing the engagement or through information provided by other parties, the assurance practitioner shall obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

225.13 The assurance practitioner is expected to apply knowledge, professional judgement and expertise, but is not expected to have a level of knowledge of laws and regulations that is greater than that which is required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter,

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<sup>#</sup> Paragraphs 225.12 – 225.38 have been expanded in PES 1 (Revised) to apply to all assurance engagements in New Zealand. Paragraphs 225.39- 56 of the IESBA Code of Ethics that cover Professional Services Other than Audits of Financial Statements have therefore not been included.

the assurance practitioner may consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

- 225.14 If the assurance practitioner identifies or suspects that non-compliance has occurred or may occur, the assurance practitioner shall discuss the matter with the appropriate level of management and, where appropriate, those charged with governance.
- 225.15 Such discussion serves to clarify the assurance practitioner's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.
- 225.16 The appropriate level of management with whom to discuss the matter is a question of professional judgement. Relevant factors to consider include:
- The nature and circumstances of the matter.
  - The individuals actually or potentially 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.
- 225.17 The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. If the assurance practitioner believes that management is involved in the non-compliance or suspected non-compliance, the assurance practitioner shall discuss the matter with those charged with governance. The assurance practitioner may also consider discussing the matter with internal auditors, where applicable. In the context of a group, the appropriate level may be management at an entity that controls the client.

*Communicating the Matter to the Entity's External Auditor<sup>#</sup>*

- NZ225.17.1 If the assurance practitioner is performing a non-audit service for an audit client of the firm, or a component of an audit client the assurance practitioner shall communicate non-compliance or suspected non-compliance within the firm, unless prohibited from doing so by law or regulation. The communication shall be made in accordance with the firm's protocols or procedures or, in the absence of such protocols and procedures, directly to the audit engagement partner.
- NZ225.17.2 If the assurance practitioner is performing a non-audit service for an audit client of a network firm, or a component of an audit client of a network firm, the assurance practitioner shall consider whether to communicate the non-compliance or suspected non-compliance to the network firm. Where the communication is made, it shall be made in accordance with the network's protocols or procedures or, in the absence of such protocols and procedures, directly to the audit engagement partner.

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<sup>#</sup> Paragraphs NZ225.17.1-5 have been moved and amended by the NZAuASB from paragraphs 225.44 to 48 of the IESBA Code.



- NZ225.17.3 If the assurance practitioner is performing a non-audit service for a client that is not:
- (a) An audit client of the firm or a network firm; or
  - (b) A component of an audit client of the firm or network firm,
- the assurance practitioner shall consider whether to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if any.
- NZ225.17.4 Factors relevant to considering the communication in accordance with paragraphs NZ225.17.2 and NZ225.17.3 include:
- Whether doing so would be contrary to law or regulation.
  - Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
  - Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.
  - Whether management or those charged with governance have already informed the entity's external auditor about the matter.
  - The likely materiality of the matter to the audit of the client's financial statements or, where the matter relates to a component of a group, its likely materiality to the audit of the group financial statements.
- NZ225.17.5 In all cases, the communication is to enable the audit engagement partner to be informed about the non-compliance or suspected non-compliance and to determine whether and, if so, how it should be addressed in accordance with the provisions of this section.

#### *Addressing the Matter*

- 225.18 In discussing the non-compliance or suspected non-compliance with management and, where appropriate, those charged with governance, the assurance practitioner shall advise 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;
  - (b) Deter the commission of the non-compliance where it has not yet occurred; or
  - (c) Disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest.
- 225.19 The assurance practitioner shall consider whether the client's management and those charged with governance understand their legal or regulatory responsibilities with respect to the non-compliance or suspected non-compliance. If not, the assurance practitioner may suggest appropriate sources of information or recommend that they obtain legal advice.
- 225.20 The assurance practitioner shall comply with applicable:

- (a) Laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority. In this regard, some laws and regulations may stipulate a period within which reports are to be made; and
- (b) Requirements under auditing and assurance standards, including those relating to:
  - Identifying and responding to non-compliance, including fraud.
  - Communicating with those charged with governance.
  - Considering the implications of the non-compliance or suspected non-compliance for the assurance report.

*Communication with Respect to Groups*

225.21 [Amended by the NZAuASB].

NZ225.21.1 An assurance practitioner may:

- (a) For purposes of an audit of group financial statements, be requested by the group engagement team to perform work on financial information related to a component of the group; or
- (b) Be engaged to perform an audit or review of a component's financial statements for purposes other than the group audit, for example, a statutory audit.

Where the assurance practitioner becomes aware of non-compliance or suspected non-compliance in relation to the component in either situation, the assurance practitioner shall, in addition to responding to the matter in accordance with the provisions of this section, communicate it to the group engagement partner unless prohibited from doing so by law or regulation. This is to enable the group engagement partner to be informed about the matter and to determine, in the context of the group audit, whether and, if so, how it should be addressed in accordance with the provisions in this section.

225.22 [Amended by the NZAuASB].

NZ225.22.1 Where the group engagement partner becomes aware of non-compliance or suspected non-compliance in the course of an audit of group financial statements, including as a result of being informed of such a matter in accordance with paragraph 225.21, the group engagement partner shall, in addition to responding to the matter in the context of the group audit in accordance with the provisions of this section, consider whether the matter may be relevant to one or more components:

- (a) Whose financial information is subject to work for purposes of the audit of the group financial statements; or
- (b) Whose financial statements are subject to audit or review for purposes other than the group audit, for example, a statutory audit.

If so, the group engagement partner shall take steps to have the non-compliance or suspected non-compliance communicated to those performing work at components where

the matter may be relevant, unless prohibited from doing so by law or regulation. If necessary in relation to subparagraph (b), appropriate enquiries shall be made (either of management or from publicly available information) as to whether the relevant component(s) is subject to audit or review and, if so, to ascertain to the extent practicable the identity of the auditor. The communication is to enable those responsible for work at such components to be informed about the matter and to determine whether and, if so, how it should be addressed in accordance with the provisions in this section.

*Determining Whether Further Action is Needed*

225.23 The assurance practitioner shall assess the appropriateness of the response of management and, where applicable, those charged with governance.

225.24 Relevant factors to consider in assessing the appropriateness of the response of management and, where applicable, those charged with governance include whether:

- The response is timely.
- 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 any non-compliance.
- Action has been, or is being, taken to deter the commission of any non-compliance where it has not yet occurred.
- 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.

225.25 In light of the response of management and, where applicable, those charged with governance, the assurance practitioner shall determine if further action is needed in the public interest.

225.26 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

- The legal and regulatory framework.
- The urgency of the matter.
- The pervasiveness of the matter throughout the client.
- Whether the assurance practitioner continues to have confidence in the integrity of management and, where applicable, those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees or the general public.

- 225.27 Examples of circumstances that may cause the assurance practitioner no longer to have confidence in the integrity of management and, where applicable, those charged with governance include situations where:
- The assurance practitioner suspects or has evidence of their involvement or intended involvement in any non-compliance.
  - The assurance practitioner is aware that they have knowledge of such non-compliance and, contrary to legal or regulatory requirements, have not reported, or authorised the reporting of, the matter to an appropriate authority within a reasonable period.
- 225.28 In determining the need for, and nature and extent of, further action, the assurance practitioner shall exercise professional judgement and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the assurance practitioner at the time, would be likely to conclude that the assurance practitioner has acted appropriately in the public interest.
- 225.29 Further action by the assurance practitioner may include:
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
  - Withdrawing from the engagement and the professional relationship where permitted by law or regulation.
- 225.30 Where the assurance practitioner 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 assurance practitioner's objectives under this section. In some cases, however, there may be limitations as to the further actions available to the assurance practitioner and withdrawal may be the only available course of action.
- 225.31 Where the assurance practitioner has withdrawn from the professional relationship pursuant to paragraphs 225.25 and 225.29, the assurance practitioner shall, on request by the proposed successor assurance practitioner, provide all such facts and other information concerning the identified or suspected non-compliance that, in the predecessor assurance practitioner's opinion, the proposed successor assurance practitioner needs to be aware of before deciding whether to accept the audit appointment. The predecessor assurance practitioner shall do so despite paragraph 210.14, unless prohibited by law or regulation. If the proposed successor assurance practitioner is unable to communicate with the predecessor assurance practitioner, the proposed successor assurance practitioner shall take reasonable steps to obtain information about the circumstances of the change of appointment by other means, such as through enquiries of third parties or background investigations of management or those charged with governance.
- 225.32 As consideration of the matter may involve complex analysis and judgements, the assurance practitioner may consider consulting internally, obtaining legal advice to understand the assurance practitioner's options and the professional or legal implications

of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

#### Determining Whether to Disclose the Matter to an Appropriate Authority

225.33 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

225.34 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the assurance practitioner may determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The entity is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The entity is regulated and the matter is of such significance as to threaten its license to operate.
- The entity is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the entity's securities or pose a systemic risk to the financial markets.
- Products that are harmful to public health or safety would likely be sold by the entity.
- The entity is promoting a scheme to its clients to assist them in evading taxes.

The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority 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.
- Whether there exists 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.
- Whether there are actual or potential threats to the physical safety of the assurance practitioner or other individuals.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an on-going investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.

- 225.35 If the assurance practitioner determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the assurance practitioner shall act in good faith and exercise caution when making statements and assertions. The assurance practitioner shall also consider whether it is appropriate to inform the client of the assurance practitioner's intentions before disclosing the matter.
- 225.36 In exceptional circumstances, the assurance practitioner may become aware of actual or intended conduct that the assurance practitioner has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the assurance practitioner shall exercise professional judgement and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.

#### *Documentation*

- 225.37 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the assurance practitioner shall, in addition to complying with the documentation requirements under applicable auditing or assurance standards, document:
- How management and, where applicable, those charged with governance have responded to the matter.
  - The courses of action the assurance practitioner considered, the judgements made and the decisions that were taken, having regard to the reasonable and informed third party perspective.
  - How the assurance practitioner is satisfied that the assurance practitioner has fulfilled the responsibility set out in paragraph 225.25.
- 225.38 International Standards on Auditing (New Zealand) (ISAs (NZ)), for example, require an assurance practitioner performing an audit of financial statements to:
- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached, and significant professional judgements made in reaching those conclusions;
  - 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; and
  - Document identified or suspected non-compliance, and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.

NZ225.38.1 International Standards on Assurance Engagements (New Zealand) (ISAEs (NZ)) and International Standard on Review Engagements (New Zealand) (ISRE (NZ)) require an assurance practitioner performing an assurance engagement to:

- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached thereon, and significant professional judgements made in reaching those conclusions;
- 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.

225.39 – 225.56 Deleted by the NZAuASB.

## C: CONSEQUENTIAL AND CONFORMING CHANGES TO OTHER SECTIONS OF PROFESSIONAL AND ETHICAL STANDARD 1 (REVISED)

### (MARK-UP FROM EXTANT PES 1 (REVISED))

*Amendments to extant Professional and Ethical Standard 1 (Revised) are shown. New text is underlined and deleted text is struck through.*

## SECTION 100

### Introduction and Fundamental Principles

...

#### *Fundamental Principles*

100.5 An assurance practitioner shall comply with the following fundamental principles:

...

- (e) *Professional Behaviour* – to comply with relevant laws and regulations and avoid any ~~action~~ conduct that discredits the assurance practitioner's profession.

...

#### Ethical Conflict Resolution

100.19 An assurance practitioner 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, an assurance practitioner shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the assurance practitioner may wish to consult with other appropriate persons within the firm for help in obtaining resolution.

100.21 Where a matter involves a conflict with, or within, an organisation, an assurance practitioner shall determine whether to consult with those charged with governance of the organisation, such as the board of directors or the audit committee.



- 100.22 It may be in the best interests of the assurance practitioner 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, an assurance practitioner may consider obtaining professional advice from the relevant professional body or from legal advisors. The assurance practitioner generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege. ~~Instances in which the assurance practitioner may consider obtaining legal advice vary. For example, an assurance practitioner may have encountered a fraud, the reporting of which could breach the assurance practitioner's responsibility to respect confidentiality. The assurance practitioner may consider obtaining legal advice in that instance to determine whether there is a requirement to report.~~
- 100.24 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, an assurance practitioner shall, ~~where possible~~ unless prohibited by law, refuse to remain associated with the matter creating the conflict. The assurance practitioner 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, or the firm.

#### *Communicating with Those Charged with Governance*

- 100.25 When communicating with those charged with governance in accordance with the provisions of this Code, the assurance practitioner or firm shall determine, having regard to the nature and importance of the particular circumstances and matter to be communicated, the appropriate person(s) within the entity's governance structure with whom to communicate. If the assurance practitioner or firm communicates with a subgroup of those charged with governance, for example, an audit committee or an individual, the assurance practitioner-or firm shall determine whether communication with all of those charged with governance is also necessary so that they are adequately informed.
- 100.26 In some cases, all of those charged with governance are involved in managing the entity, for example, a small business where a single owner manages the entity and no one else has a governance role. In these cases, if matters are communicated with person(s) with management responsibilities, and those person(s) also have governance responsibilities, the matters need not be communicated again with those same person(s) in their governance role. The assurance practitioner or firm shall nonetheless be satisfied that communication with person(s) with management responsibilities adequately informs all of those with whom the assurance practitioner or firm would otherwise communicate in their governance capacity.

## SECTION 140

### Confidentiality

- 140.1 The principle of confidentiality imposes an obligation on all assurance practitioners to refrain from:
- (a) Disclosing outside the firm 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 An assurance practitioner 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 An assurance practitioner shall maintain confidentiality of information disclosed by a prospective client.
- 140.4 An assurance practitioner shall maintain confidentiality of information within the firm.
- 140.5 An assurance practitioner shall take reasonable steps to ensure that staff under the assurance practitioner's control and persons from whom advice and assistance is obtained respect the assurance practitioner's duty of confidentiality.
- 140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between an assurance practitioner and a client. When an assurance practitioner acquires a new client, the assurance practitioner is entitled to use prior experience. The assurance practitioner shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.
- 140.7 As a fundamental principle, confidentiality serves the public interest because it facilitates the free flow of information from the assurance practitioner's client to the assurance practitioner. Nevertheless, the following are circumstances where assurance practitioners are or may be required to disclose confidential information or when such disclosure may be appropriate:
- (a) Disclosure is permitted by law and is authorised by the client;
  - (b) Disclosure is required by law, for example:
    - (i) Production of documents or other provision of evidence in the course of legal proceedings; or
    - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
  - (c) There is a professional duty or right to disclose, when not prohibited by law:
    - (i) To comply with the quality review of a professional body;
    - (ii) To respond to an enquiry or investigation by a professional body or regulatory body;

- (iii) To protect the professional interests of an assurance practitioner in legal proceedings; or
- (iv) To comply with technical and professional standards, including ethical and ethics requirements.

NZ140.7.1 The circumstances in paragraph 140.7 do not take into account New Zealand legal and regulatory requirements. An assurance practitioner considering disclosing confidential information about a client without their consent is ~~strongly~~ advised to first obtain legal advice.

140.8 In deciding whether to disclose confidential information, relevant factors to consider include:

- Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client consents to the disclosure of information by the assurance practitioner.
- 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 judgement 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.

#### ~~Fraudulent or Illegal Activities and Confidentiality~~

~~NZ140.9 Where an assurance practitioner, in the course of the assurance practitioner's assurance engagements, discovers evidence of fraudulent or illegal activities, the assurance practitioner shall:~~

- ~~(a) — Where appropriate, raise the matter with those charged with governance of the client; and~~
- ~~(b) — Consider the assurance practitioner's legal and professional rights and duties to disclose the information to other parties, (as described in NZ 140.10 below).~~

~~NZ140.10 In circumstances where the assurance practitioner discovers evidence of fraudulent or illegal activities and there is no legal or professional right or duty to disclose, then the assurance practitioner shall not communicate the information to a third party without the consent of those charged with governance of the client. However, the assurance practitioner shall do all that can be done to persuade those charged with governance of the client to fulfil any legal obligations. If those charged with governance decline, the assurance practitioner shall consider safeguarding the assurance practitioner's integrity by declining to undertake further assurance engagements on behalf of the client concerned.~~

## **SECTION 150**

### **Professional Behaviour**

- 150.1 The principle of professional behaviour imposes an obligation on all assurance practitioners to comply with relevant laws and regulations and avoid any ~~action~~ conduct that the assurance practitioner knows or should know may discredit the assurance practitioner's profession. This includes ~~actions~~ conduct that a reasonable and informed third party, weighing all the specific facts and circumstances available to the assurance practitioner at that time, would be likely to conclude adversely affects the good reputation of the assurance practitioner's profession.
- 150.2 In marketing and promoting themselves and their work, assurance practitioners shall not bring the assurance practitioner's profession into disrepute. Assurance practitioners 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, an assurance practitioner shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, ~~questionable~~ issues associated with the client (its owners, management or activities) ~~– 210.2 Client issues~~ that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, or questionable financial reporting practices or other unethical behaviour.
- 210.23 An assurance practitioner 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.
- 210.43 Where it is not possible to reduce the threats to an acceptable level, the assurance practitioner shall decline to enter into the client relationship.
- 210.54 ~~It is recommended that an assurance practitioner periodically review acceptance decisions for recurring client engagements. Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the assurance practitioner to decline the engagement had that information been available earlier. An assurance practitioner 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 behaviour such as improper earnings management or balance sheet valuations. If an assurance practitioner identifies a threat to compliance with the fundamental principles, the assurance practitioner 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 assurance practitioner shall consider terminating the client relationship where termination is not prohibited by law or regulation.~~

#### *Engagement Acceptance*

- 210.56 The fundamental principle of professional competence and due care imposes an obligation on an assurance practitioner to provide only those services that the assurance practitioner is competent to perform. Before accepting a specific client engagement, an assurance practitioner 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.

210.67 An assurance practitioner 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.

210.78 When an assurance practitioner intends to rely on the advice or work of an expert, the assurance practitioner shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable standards issued by the External Reporting Board, the New Zealand Auditing and Assurance Standards Board and the New Zealand Accounting Standards Board. Such information may be gained from prior association with the expert or from consulting others.

#### *Changes in a Professional Appointment*

210.89 An assurance practitioner who is asked to replace another assurance practitioner, or who is considering tendering for an engagement currently held by another assurance practitioner, 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 an assurance practitioner accepts the engagement before knowing all the pertinent facts.

210.910 An assurance practitioner shall evaluate the significance of any threats. ~~Depending on the nature of the engagement, this may require direct communication with the existing assurance practitioner to establish the facts and circumstances regarding the proposed change so that the assurance practitioner can decide whether it would be appropriate 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 assurance practitioner that may influence the decision to accept the appointment.~~

210.11 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 or predecessor assurance practitioner will be requested so that enquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted;
- Asking the ~~existing—predecessor~~ assurance practitioner to provide known information on any facts or circumstances that, in the ~~existing—predecessor~~ assurance practitioner's opinion, the proposed successor assurance practitioner 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 predecessor assurance practitioner 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, an assurance practitioner shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

210.11~~3~~ An assurance practitioner may be asked to undertake work that is complementary or additional to the work of the existing assurance practitioner. 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 assurance practitioner of the proposed work, which would give the existing assurance practitioner the opportunity to provide any relevant information needed for the proper conduct of the work.

210.12~~4~~ An existing or predecessor ~~former~~ assurance practitioner is bound by confidentiality. Whether that assurance practitioner is permitted or required to discuss the affairs of a client with a proposed assurance practitioner 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 assurance practitioner 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.

~~NZ210.113.1 Subject to statutory disclosure powers to appropriate authorities the existing or former assurance practitioner is ethically precluded from disclosing confidential information obtained in the course of an engagement to the proposed assurance practitioner unless the client specifically consents.~~

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

210.143 ~~An assurance practitioner shall request the predecessor assurance practitioner to provide known information regarding any facts or other information that, in the predecessor assurance practitioner's opinion, the proposed successor assurance practitioner needs to be aware of before deciding whether to accept the engagement. Except for the circumstances involving identified or suspected non-compliance with laws and regulations set out in paragraph 225.31:~~

- ~~(a) If the client consents to the predecessor assurance practitioner disclosing any such facts or other information, the predecessor assurance practitioner shall provide the information honestly and unambiguously; and~~
- ~~(b) If the client fails or refuses to grant the predecessor assurance practitioner permission to discuss the client's affairs with the proposed successor assurance practitioner, the predecessor assurance practitioner shall disclose this fact to the proposed successor assurance practitioner, who shall carefully consider such failure or refusal when determining whether or not to accept the appointment.~~

~~NZ210.12.1 An assurance practitioner who is asked to replace an existing or former assurance practitioner shall:~~

- ~~(a) Request the prospective client's permission to communicate with the existing or former assurance practitioner; and~~
- ~~(b) On the receipt of the client's permission, request in writing of the existing or former assurance practitioner
  - ~~(i) whether there are any reasons, professional or otherwise, for not accepting the appointment;~~
  - ~~(ii) to provide known information on any facts or circumstances that, in the existing assurance practitioner's opinion the proposed assurance practitioner needs to be aware of before deciding whether or not to accept the appointment; and~~~~



(ii) ~~if there are such matters, all the details necessary to enable the proposed assurance practitioner to make an informed decision.~~

~~If the client consents to the existing or former assurance practitioner disclosing any such facts or circumstances to the proposed assurance practitioner, the existing or former assurance practitioner shall provide the information honestly and unambiguously.~~

~~If the client fails or refuses to grant the existing or former assurance practitioner permission to discuss the client's affairs with the proposed assurance practitioner, the existing or former assurance practitioner shall disclose this fact to the proposed assurance practitioner who shall carefully consider such failure or refusal when determining whether or not to accept the appointment.~~

~~If the client does not give permission for the existing or former assurance practitioner to discuss the client's affairs, the proposed assurance practitioner shall, in the absence of exceptional circumstances, decline the appointment.~~

~~In exceptional circumstances, if the proposed assurance practitioner is unable to communicate with the existing assurance practitioner, the proposed assurance practitioner shall take reasonable steps to obtain information about any possible threats by other means, such as through enquiries of third parties or background investigations of senior management or those charged with governance of the client, who shall carefully consider such failure or refusal when determining whether or not to accept the appointment.~~

~~210.142 An assurance practitioner may be asked to undertake work that is complementary or additional to the work of the existing assurance practitioner. 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 assurance practitioner of the proposed work, which would give the existing assurance practitioner 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, an assurance practitioner shall make appropriate enquiries 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 assurance practitioner ~~may consider seeking legal advice~~ shall comply with the provisions of section 225.

**D: EFFECTIVE DATE**

The amendments to will be effective as of 15 July 2017. Early adoption is permitted.

## **E: ACCOMPANYING ATTACHMENT: CONFORMITY TO THE INTERNATIONAL CODE OF ETHICS**

The principles and requirements of the *Amendments to Professional and Ethical Standard 1 (Revised) Responding to Non-Compliance with Laws and Regulations* are consistent with the amendments to the IFAC Code except for the following:

- The requirements of section 225 of the IFAC Code (paragraphs 225.12 – 38) that apply only to audits of financial statements have been broadened to apply to all assurance engagements. Paragraphs from the IFAC Code dealing with professional services other than audits of financial statements (paragraphs 225.39-225.56) have not been included in PES 1 (Revised) as these are similar to and are now captured by paragraphs 225.12-38 of PES 1 (Revised).
- In expanding paragraphs 225.12-38 to apply to all assurance practitioners, the following additional requirements apply to all assurance practitioners, not just to auditors of financial statements, as required by the IFAC Code:
  - The assurance practitioner shall obtain an understanding of the matter when they become aware of information concerning an instance on non-compliance. (paragraph 225.12). This differs from paragraph 225.39 of the IFAC Code that requires that the professional accountant shall seek to obtain an understanding of the matter.
  - Where the assurance practitioner believes that management is involved in the non-compliance, the assurance practitioner is required to discuss the matter with those charged with governance. (paragraph 225.17)
  - The assurance practitioner shall advise management and where appropriate those charged with governance to take appropriate and timely actions to rectify, deter or disclose the matter to an appropriate authority. (Paragraph 225.18)
  - The assurance practitioner shall consider whether the client's management and those charged with governance understand their legal or regulatory responsibilities. (paragraph 225.19)
  - The assurance practitioner shall comply with applicable laws and regulations and requirements under auditing and assurance standards. (paragraph 225.20)
  - There is a requirement for the assurance practitioner to assess the appropriateness of managements response and additional factors to consider in assessing the appropriateness of the response (paragraphs 225.23-24) and additional factors to consider to determine what further action is necessary. (paragraph 225.26)

- The assurance practitioner shall take into account whether a reasonable and informed third party would conclude that the practitioner acted in the public interest. (paragraph 225.28)
  - Withdrawal is not a substitute for the assurance practitioner taking other actions. (paragraph 225.30)
  - After withdrawal, the predecessor assurance practitioner shall provide all information to a successor accountant, when requested by the successor assurance practitioner, despite section 210.14. (paragraph 225.31)
  - Additional guidance on when to disclose the matter to an appropriate authority. (paragraph 225.34)
  - A requirement (paragraph 225.37) rather than an encouragement to document the matter and the assurance practitioner's response.
- Paragraphs specific to other professional services that apply to other assurance engagements (for example 225.44-48 covering communicating the matter to the entity's external auditor) have been moved and amended by the NZAuASB in paragraphs NZ225.17.1-5.
  - A reference to reviews has been added to paragraph NZ 225.21.1 and paragraph NZ 225.22.1 to clarify that the requirements apply when an assurance practitioner is engaged to perform an audit or review of a component's financial statements.
  - Paragraph NZ225.38 has been added to described the documentation requirements included in Assurance Standards of non-audit assurance engagements.