

# Non-Compliance with Laws and Regulations (NOCLAR)

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March 17, 2016

# IAASB NOCLAR ED

- Comment period on IAASB ED ended in October 2015
- Response from 2 monitoring group members: IFIAR and IOSCO\*
- 44 Comment letters received in total
  - **Regulators and oversight bodies (4)**
  - **National Standard Setters (10)**
  - **Public Sector (3)**
  - **Firms (5)**
  - **Member Bodies (20)**
  - **Academics (1)**
  - **Individuals and Others (1)**

\* Comment letter not incorporated into issues paper

# IOSCO Commentary Letter

Question on limited amendments and what the IAASB is trying to achieve. Clarity needed that ethical requirements may contain additional responsibilities

Timing of the commentary – i.e. after finalization of the IESBA code

Extend ISA 240 to components in a group i.e. communication of fraud at comments to group management / TCWG

Purpose of ISA / IESBA different – purpose is not to repeat IESBA requirements in the ISA.

Also discussed later on in the issues

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# IOSCO Commentary Letter

Link paragraph 28 (right or duty to report) to the IESBA Code

Typically do not reference in requirements to IESBA Code – hence application material Application material supporting para 28 has been substantially amended.

Documentation requirements of IESBA should be in ISA

Discussed later on in the issues

ISQC 1 – firm internal processes on dealing with NOCLAR

Noted for QC working group

# PURPOSE OF THE IAASB NOCLAR PROJECT

- Limited amendments to ensure no actual or perceived inconsistencies with IESBA Code
- IAASB International Standards still need to be sufficiently flexible to accommodate differing jurisdictional requirements (in laws or regulations or local ethical codes)
- Objectives related to NOCLAR are different:
  - IESBA Code ensuring PA does not turn a blind eye and responds ethically and in the public interest when alerted to NOCLAR
  - IAASB International Standards – responding to NOCLAR to provide evidence to support opinion / conclusion

# OVERALL COMMENTS

- Many supportive of limited amendments
- Some requested more alignment / inclusion of the procedures from IESBA
- Several highlighted their original concerns with IESBA proposals
- Many apprehensive about the timing of the IAASB proposals i.e. should wait for IESBA to complete the changes to the code, so that impact on International Standards can be properly considered
  - TF has considered changes to IESBA ED to date and will consider final changes to the IESBA Code arising from the IESBA March 2016 Board meeting

# CAG FEEDBACK

- Discussion on postponing the group audits sections in IESBA Code until ISA 600 has been revised
- Possible additional scenario to paragraph 28
- Confusion on paragraph 28 – “or otherwise may report”
- Use of “report” in ISA versus “disclose” in IESBA
- More fulsome review – this may be necessary if more limited changes now

# IESBA NOCLAR PROPOSALS

- The point is to ensure PA responds appropriately
- Searching for non-compliance is not a requirement – Code addresses what to do if it comes to the PA’s attention
- Reporting to appropriate authority is only a possible course of action depending on the circumstances
- Many changes to IESBA NOCLAR Proposals since the IESBA ED, particularly group audits, communication to successor auditor, increased emphasis on possible jurisdictional requirements and ‘definition’ of non-compliance
  - TF considered these changes and impact on International Standards

# **Analysis of significant issues and task force recommendations**

**R – Respondents comments**

**TF – Task Force recommendation**

**B – Question for the Board**

# Legal or Ethical Duty or Right to Report NOCLAR and Complying with the Duty of Confidentiality

**ISA 250  
Paragraphs  
28, A19 –  
A19b**

**R**

Several concerns with the use of the term “legal or ethical duty or right” (may be a legal prohibition to report, ethical “right” does not align to ethical “responsibility”, IESBA does not use this terminology)

**TF**

ISA should clearly reflect various circumstances that may exist

**B**

## **Question 1**

- Do the revisions provide better clarity on the possible scenarios encountered in practice?
- Are the changes sufficiently responsive to comments?

# Consistency between the IESBA NOCLAR ED and the International Standards Other Than ISAs

R



TF

- No changes proposed to most of the non-ISA standards in the IAASB ED
  - Scope of laws and regs under IESBA different from non-ISA standards
  - Work effort under IESBA is more than what PA would be doing under the non-ISA standards to support opinion / conclusion
- 
- Scope and work effort – is a matter for IESBA’s consideration
    - Objective of the Code and Standards are different
    - PA is not required to “look for” non-compliance, merely a requirement to respond when PA is alerted to it, and IESBA acknowledges PA’s potential limited knowledge of L&R
  - Include application material in ISRE 2400, ISAE 3000 and ISRS 4410 to draw attention to potential additional responsibility to respond to NOCLAR under ethical codes
    - no changes to ISRE 2410 & ISRS 4400 since in pre-clarity format)

# Consistency between the IESBA NOCLAR ED and the International Standards Other Than ISAs



**B**

**Question 2:** Are the limited amendments to ISRE 2400, ISAE 3000 and ISRS 4410 appropriate?

# Definition of non-compliance

ISA 250.11

IESBA Code  
225.2 & 225.9

R

Definition does not align to the 'definition' of non-compliance in the code

TF

- Change subsequent to IESBA ED to include “other individuals working for or under the direction of a client”
- ISA should be consistent with IESBA Code, although could be implied as increasing the scope of the ISA

B

**Question 3:** Does the Board agree with the changes to the definition?

# Implications of NOCLAR for the Auditor's Report

ISA 250  
Paragraphs  
A18a – A18b

- R**
- Additional guidance needed on the impact of NOCLAR on the auditor's report
  - Possible preclusion on reporting NOCLAR in the auditor's report due to tipping-off provisions or confidentiality preclusions



**TF**

- Include application material to address KAMs and Other Matter paragraphs
- Also address possibility of a preclusion on providing information related to NOCLAR in the basis for a modified opinion.



**B**

**Question 4:** Is the additional application material appropriate?

# Group audits (based on December 2015 IESBA Code draft)

IESBA Code  
225.20, 225.21,  
225.45 & 225.43

R

- Suggestion to update ISA 600 to also address NOCLAR (include in existing ISA 600 project)
- Request for guidance on NOCLAR in group audits

TF

- Noted: revisions to the IESBA code since the ED specifically addressing the communication of NOCLAR between auditors of components and the group engagement team
- Immediate revision of ISA 600 related to NOCLAR not warranted
- Issues paper for GAWG to be drafted by TF

B

**Question 5:** Is there agreement that an immediate revision of ISA 600 is not warranted?

# **Analysis of other issues and task force recommendations**

**R – Respondents comments**

**TF – Task Force recommendation**

**B – Question for the Board**

# Examples of laws and regulations

**ISA 250  
Paragraphs  
6, A5a, A8-A9**

**R**

- Examples are confusing, request for separation between the 2 categories
- Examples create expectation gap
- Some examples (insider trading) not appropriate, some additional examples needed



**TF**

- Examples located in 3 different sources in ISA 250 – considered combining them but would require classification of examples
- Add references to A8 and A9 to bring examples together and indicate in A5a that the classification of examples between the 2 categories depends on nature and circumstances of the entity
- Keep examples consistent with the Code

# Examples of laws and regulations



**B**

**Question 6:** Agree with the revisions to paragraph A5a?

# “Tipping-off” provisions

ISA 250  
Paragraphs  
19, 22, A15

IESBA Code  
225.3

R

- Insufficient emphasis on “tipping-off” provisions in the requirements of ISA 250 (all located in application material)
- More scenarios where the auditor may be unable to communicate with management / TCWG, for example in the event of an investigation by an authority



TF

Additional emphasis to “tipping-off” provision in requirements by adding “unless prohibited by law or regulation”



B

**Question 7:** Is there sufficient emphasis to the “tipping-off” provisions?

# Withdrawal from the engagement

ISA 250.A18

IESBA Code  
225.28

R

- ISA withdrawal provisions inconsistent with IESBA e.g. “in exceptional circumstances”
- ISA needs to be clear that withdrawal is not a substitute for taking other actions

TF

- Code and Standard should be better aligned and withdrawal should not come across as being a last resort
- Highlight that still need to respond to NOCLAR in terms of ethical code

B

**Question 8:** Is it more consistent with IESBA Code and is the removal of “exceptional circumstances” appropriate?

# Additional Responsibilities Under Relevant Ethical Requirements

ISA 250.8a

R



TF



B

- Clarification of the meaning of what are additional responsibilities

- Provide clarity on what is meant by additional responsibilities under relevant ethical requirements

**Question 9:** Do the changes improve the clarity?

# Communication with predecessor auditor

ISA 220.A8a

IESBA Code  
225.30,  
210.13

R

Clarity of the requirements to communicate with predecessor auditor



TF

- Changes to the IESBA Code since ED requiring predecessor auditor to inform successor auditor of NOCLAR, regardless of entity's consent – requirement needs highlighting in ISA 220
- Reference to IESBA Code to provide clarity



B

**Question 10:** Do the references to IESBA Code provide sufficient clarity?

# Documentation requirements

R

- Alignment with documentation requirements of IESBA Code



TF

- No precedent in other ISAs when documentation requirement exists in another place e.g. the Code
- Draw attention in application material to the additional documentation requirements in the Code



B

**Question 11: Agree with the changes?**

ISA 250

Paragraphs  
29, A21 – A22

IESBA Code  
225.36

# Other changes

- Consistency with the IESBA Code:
  - Management → appropriate level of management
  - Legal body → a court or other appropriate adjudicative body
- Engagement letters – include ethical requirements (ISA 210.A24)
- Audit evidence may come from other sources (ISA 500.A26 and A33a)

**Response to other questions**

# Impact in jurisdictions who do not adopt IESBA

R

- Majority – no conflict with local jurisdictional requirements
- Five respondents – current / future conflicts may arise
- Question on how to “measure” local codes against IESBA (i.e. what is “at least as demanding”)

TF

- Various interpretations of paragraph 14 and A14 of ISA 200
- Further consideration by the TF and Steering Committee – feedback at June meeting

B

**Question 12:** Is further exploration of ISA 200.14 and A14 needed and should this be considered in a future project?

# More fulsome review of ISA 250

R

- 10 support future project:
  - Agreed with suggestions in the ED of matters for revision (group audits, going concern, experts, obtaining an understanding, categories of laws and regulations, enquiries of management)
  - Other suggestions: risk-based approach, qualitative considerations, disclosure in the FS to achieve fair presentation, internal audit
- 6 did not support future project

TF

Immediate revision not warranted

B

**Question 13:** Agree that immediate revision is not warranted?

# Next Steps

Timing	Action
March / April	Meeting of IAASB NOCLAR Task Force to finalize amendments to ISA 250 and conforming amendments
April	IESBA approval of NOCLAR requirements
June	IAASB approval of ISA 250 and conforming amendments
Sept	PIOB consideration of due process



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