



**The Japanese Institute of
Certified Public Accountants**

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October 21, 2015
Ms. Kathleen Healy
Technical Director
International Auditing and Assurance Standards Board
International Federation of Accountants
529 5th Avenue, 6th Floor
New York, NY 10017 USA

Dear Ms. Healy,

Re: JICPA Response to the Proposed Amendments to the IAASB's International Standards
Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations

The Japanese Institute of Certified Public Accountants (“we”, “our,” and “JICPA”) is grateful for the opportunity to comment on the Proposed Amendments to the IAASB's International Standards *Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations* (“Proposed Standards”). We support that the IAASB proposes limited amendments to certain of its International Standards at this time to enable stakeholders to concurrently review both the IAASB and IESBA proposals. Our specific comments and suggestions are provided below for your consideration.

I. Request for Comments

Whether respondents believe the proposed limited amendments are sufficient to resolve actual or perceived inconsistencies of approach or to clarify and emphasize key aspects of the NOCLAR proposals in the IAASB's International Standards. (Paragraph 12 of Explanatory Memorandum)

We have following comments on specific amendments.

Proposed Amendments to ISA 250 “Consideration of Laws and Regulations in an Audit of Financial Statements”

- Paragraph 8a

We believe that the wording “additional responsibilities” should be reconsidered. This wording does not correctly express the relationship between the auditor's responsibilities under the ISAs and the ethical responsibilities under the IESBA Code. The ethical responsibilities under the IESBA Code are not necessarily “additional” to the responsibilities under the ISAs. We also propose a new footnote referring section 225 of the IESBA Code to clarify the context covered in paragraph 8a. We recommend the following changes:

“8a. ~~The auditor may have additional responsibilities under~~ Relevant ethical requirements *may deal with the auditor's ethical responsibility in responding to* regarding an entity's non-compliance with laws and regulations.^{3a} Complying with those ~~additional~~ responsibilities

may provide further information that is relevant to the auditor's work in accordance with this and other ISAs (for example, regarding the integrity of management or, where appropriate, those charged with governance).

Footnote 3a : See, for example, Section 225 of the International Ethics Standards Board for Accountants' Code of Ethics for Professional Accountants (IESBA Code)"

● Paragraph A5a

We believe that paragraph A5a, which is drawn from Section 225.6 of IESBA Re-ED, should be deleted. As we state in (1) and (2) below, paragraph A5a will cause confusion in the implementation of ISA 250. The IESBA Code and ISAs have different purposes, as we state in (1) below. We are therefore believe the removal of paragraph A5a would not create actual or perceived inconsistencies between the IESBA Code and ISAs.

Alternatively, if the IAASB believes that the examples based on Section 225.6 should be included in ISA 250, then we recommend that the examples be categorized into (a) and (b) as in paragraph 6, included in paragraphs A8 (for category (a)) and A9 (for category (b)), and removed paragraph A5a. We also think that paragraph A9 should include more guidance regarding category (b), in order to assist the auditor in determining which laws and regulations the auditor is required to consider in a specific circumstance of an audit engagement.

(1) Categories of Laws and Regulations

Paragraph 6 of ISA 250 establishes two different categories of laws and regulations (i.e. (a) and (b)), and distinguishes the auditor's responsibilities respectively. Paragraph 6 also already includes examples for each category (i.e., (a), "...such as tax and pension laws and regulations...", and (b), "...compliance with the terms of an operating license, compliance with regulatory solvency requirements, or compliance with environmental regulations..."). However, paragraph A5a introduces examples of laws and regulations again, and the examples are not divided into two categories.

For the purpose of the ISAs that deal with the auditor's responsibility to obtain reasonable assurance and express an opinion on whether the financial statements are free from material misstatements, a clear distinction between the two categories is essential. We believe this is why ISA 250 provides clear guidance for distinction between the two categories in paragraphs A8 and A9 and specifies different requirements for each category. On the other hand, the IESBA Code deals with *ethical* requirements for *all* professional accountants, not only for auditors. The IESBA Re-ED therefore covers a broad range of laws and regulations without specifying different requirements for each category. The IESBA Re-ED also specifies requirements *only after* the professional accountants become aware of information concerning instances of known or suspected NOCLAR. Those differences are valid in the context of the different purposes of the IESBA Code and ISAs.

We believe that repeating the examples of the IESBA Re-ED in ISA 250 would fail to account for the above differences and would cause confusion in the following ways:

- The examples in paragraph A5a are not distinguished by two categories. This could cause an expectation gap such that the auditor's responsibility regarding category (a) was also expanded by the NOCLAR project, which is not what the IESBA intends (please see paragraph 29 of Explanatory Memorandum of the IESBA Re-ED).
- We understand that in most situations, the examples in paragraph A5a would be categorized as (b), except for the example on "tax and pension liabilities and payments," which is already categorized as (a) in the extant paragraph 6 of ISA 250. Paragraph 14 of ISA 250 requires the auditor to perform specific procedures to help

identify instances of non-compliance with laws and regulations for category (b), and the procedures include the inquiry of management and those charged with governance. We think it would be difficult, however, for management and those charged with governance to respond the auditor as to whether the entity is in compliance with all laws and regulations that deal with matters included in paragraph A5a. This is because paragraph A5a is described in general terms, and the extent of the laws and regulations covered by the inquiry is unclear.

(2) The definition of “fraud”

The first bullet of paragraph A5a, which uses the term “fraud” in a different sense from the definition of “fraud” in ISA 240, is confusing. We assume that the IESBA Re-ED uses the term “fraud” in a general sense. Paragraph 11(a) of ISA 240, however, specifically defines “fraud” as “an intentional act by one or more individuals among management, those charged with governance, employees, or third party.” Therefore, the first bullet of paragraph A5a seems to indicate that the non-compliance with laws and regulations committed by a third party would also be covered by ISA 250 and the IESBA Re-ED, which is not what the IESBA intends.

Other International Standards

ISA 240 “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements”

● Paragraph 8a

Paragraph 8a has no relevant connection with the other paragraphs in the Introduction section of ISA 240, which provides guidance for a proper understanding of the auditor’s responsibilities with regard to “fraud” as defined in ISA 240. If the IAASB believes that paragraph 8a should be included, additional guidance to clarify the relationship between “fraud” in ISA 240 and “non-compliance” in ISA 250 should be included, as well (for, example, “*Non-compliance can result from fraudulent activity.*”).

Alternatively, if the IAASB believe there is no ambiguity between “fraud” and “non-compliance” in the extant ISA 240 and additional guidance is deemed to be necessary, it means that paragraph A8a itself is unnecessary and therefore should be deleted.

In addition, the second sentence of paragraph 8a (“Complying with relevant ethical requirements regarding an entity’s non-compliance with laws and regulations may provide further information that is relevant to the auditor’s work in accordance with this and other ISAs”) applies to all ISAs, not only to ISA 240. We therefore believe this sentence is not necessary.

<p>The impact, if any, of the proposed limited amendments in jurisdictions that have not adopted, or do not plan to adopt, the IESBA Code. For example, would any of the changes to the IAASB’s International Standards be deemed incompatible with the relevant ethical requirements that would apply in those jurisdictions? (Paragraph 13 of Explanatory Memorandum)</p>

As commented above, we believe that paragraph A5a of ISA 250 will cause confusion in the implementation of ISA 250, regardless of whether the IESBA Code has been adopted.

II. Invitation for Additional Input

The IAASB was of the view that this Explanatory Memorandum could be a vehicle for soliciting stakeholders' views as to whether there is merit in exploring other aspects of ISA 250 where further improvements may need to be considered in due course (i.e., under a future IAASB Work Plan).

For example, further consideration of the following areas may be viewed as beneficial:

- Whether the existing distinction between the types of laws and regulations (see paragraph 6 of ISA 250) and the different levels of work effort applied to each under extant ISA 250 warrants further investigation or revision.
- Whether ISA 250 should address making inquiries of management or, when appropriate, TCWG, regarding NOCLAR that may occur.
- Whether ISA 250 should include a requirement to obtain an understanding of how management identifies and addresses known or suspected NOCLAR as an essential component in obtaining an understanding of the entity and its environment.
- How ISA 250 addresses personal misconduct related to the business activities of the entity or parties associated with the entity, including contractors.
- How NOCLAR is addressed in other ISAs, such as when dealing with auditor's experts and in a group audit situation (Paragraphs 15 and 16 of Explanatory Memorandum)

We see no need to conduct a comprehensive revision of ISA 250 under the future IAASB Work Plan, since the basic concept and framework in ISA 250 are still effective.

However, we believe that it may be beneficial to explore the following areas in order to assist auditors in applying ISA 250 more effectively:

- *Whether ISA 250 should include a requirement to obtain an understanding of how management identifies and addresses known or suspected NOCLAR as an essential component in obtaining an understanding of the entity and its environment.*

Considering the evolving changes of the environments surrounding the audit and the entity, it may be beneficial to explore this area for certain types of audits (e.g., PIE audits), in order to assist the auditor in identifying instances of non-compliance or suspected non-compliance with laws and regulations that would have a material effect on the financial statements.

- *How NOCLAR is addressed in a group audit situation*

It may be beneficial to explore the idea of developing guidance for the group audits of global entities relevant to ISA 250. At the same time, we think it will be important to recognize that the legal and regulatory frameworks vary considerably by jurisdiction, and to avoid the development of standards that end up difficult to apply in practice.

We hope that our views will be of assistance to the IAASB.

Sincerely yours,

Sayaka Sumida
Executive Board Member - Auditing Standards
The Japanese Institute of Certified Public Accountants