

## Agenda Item

# A2

**Meeting:** IESBA Consultative Advisory Group  
**Meeting Location:** Virtual Meeting  
**Meeting Dates:** September 7 and 20, 2021

**Draft Minutes of the Public Session of the Meeting of the  
INTERNATIONAL ETHICS STANDARDS BOARD FOR ACCOUNTANTS CONSULATIVE ADVISORY  
GROUP (CAG)**

**Held Virtually on May 17, 2021**

### **PRESENT**

Gaylen Hansen (Chair)

Hilde Blomme

Dr. Christian Orth

Robert De Tullio

Dr. Claes Norberg

Mohini Singh

Prof. Hysen Cela

Paul Thompson

Paul Sobel

Daniel Sarmiento Pavas

Dr. Conchita Manabat

Natasha Landell-Mills

Paul Munter

Takeshi Hirai

James Dalkin

Dr. Bello Lawal Danbatta

Inanc Yazar

Asha Mubarak

Juan Carlos Serrano-Machorro

### **Member Organizations**

National Association of State Boards of Accountancy (NASBA)

Accountancy Europe (AE)

AE

Basel Committee on Banking Supervision (Basel Committee)

Business Europe (BE)

CFA Institute

European Federation of Accountants and Auditors for SMEs (EFAA)

EFAA

Institute of Internal Auditors (IIA)

Inter-American Accounting Association (IAA)

International Association of Financial Executives Institutes (IAFEI)

International Corporate Governance Network (ICGN)

International Organization of Securities Commissions (IOSCO)

IOSCO

International Organization of Supreme Audit Institutions (INTOSAI)

Islamic Financial Services Board (IFSB)

Organisation for Economic Cooperation and Development (OECD)

Sri Lanka Accounting and Auditing Standards Monitoring Board (SLAASMB)

World Bank

Wei Meng World Federation of Exchanges (WFE)

**Observer Organizations**

Dawn McGeachy-Colby IFAC Small and Medium Practices (SMP) Advisory Group (SMPAG)

Lillian Ceynowa<sup>1</sup> U.S. Public Company Accounting Oversight Board (PCAOB)

**Public Interest Oversight Board (PIOB)**

Shigeo Kashiwagi

**IESBA Members and Staff**

Dr. Stavros Thomadakis IESBA Chairman

Caroline Lee IESBA Deputy Chair

Jens Poll IESBA Member, Tax Planning Working Group Chair

James Gunn Managing Director, Professional Standards

Ken Siong Senior Technical Director

Diane Jules Deputy Director

Geoffrey Kwan Principal

Kam Leung Principal

Szilvia Sramko Manager

Carla Vijian Manager

Astu Tilahun Assistant Manager

Diana Vasquez Executive Assistant

David Johnson Senior Manager, Communications

**APOLOGIES**

**Member/Observer Organizations**

Jazmin Gamboa Financial Executives International (FEI)

Sanders Shaffer International Association of Insurance Supervisors (IAIS)

Huseyin Yurdakul IOSCO

George Kabwe International Money Fund

Xiomara Morel World Bank

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<sup>1</sup> Views expressed by the PCAOB Representative represent her views and do not necessarily reflect the views of the PCAOB Board or other Board members or staff.

## **A. Opening Remarks**

Mr. Hansen welcomed all participants to the meeting. He welcomed, in particular, Mr. Shigeo Kashiwagi as the PIOB observer.

## **B. Tax Planning**

Prof. Poll introduced the topic, reminding CAG representatives of the objectives of the Tax Planning initiative. He then provided an update on the Working Group's key information gathering activities in 2020 and recapped the key emerging themes it has identified as presented at the March 2020 CAG meeting.

### TERMINOLOGY

Prof. Poll outlined the Working Group's observations that there is no clear line between "tax planning" and "aggressive tax planning," and that it is difficult to define the latter on a global basis. He noted that some jurisdictions may use several approaches to encourage tax compliance and to discourage unacceptable tax planning practices. The Working Group had therefore been exploring the merit of a principles-based decision-making framework to guide professional accountants (PAs) in identifying what would be deemed acceptable or unacceptable in relation to tax planning.

Among other matters, the following were raised:

- Mr. Hansen noted that at the IESBA-National Standard Setters (NSS) meeting the previous week, there were some comments about the challenges of defining "unacceptable tax planning" and "aggressive tax planning." He wondered why the emphasis was on planning vs. compliance, although they are interrelated activities. He felt that it is more critical to address the role of PAs in business (PAIBs), such as CFOs and financial controllers, as opposed to auditors. Prof. Poll confirmed that PAIBs are scoped in and that for auditors, the recently issued Non-assurance Services (NAS) revisions to the Code will limit tax planning services to audit clients that are aimed at tax avoidance.
- Ms. McGeachy-Colby expressed a concern about trying to define "aggressive tax planning," noting the danger of creating a prescriptive delineation that could be easily circumvented.
- Ms. Blomme supported not attempting to define "aggressive tax planning" and "unacceptable tax planning," noting the potential for different interpretations in different cultures. She was supportive, however, of exploring a principles-based framework to think about unacceptable tax planning, noting that work done by the OECD, Accountancy Europe and others in the EU could provide useful guidance in steering the discussion forward. She was of the view that clarifications would not only help guide PAs ethically in their tax planning activities but also address the broader issue of public perceptions. She also supported economic or commercial substance as being an important consideration as tax planning is about adhering not only to the letter but also the spirit of the law.
- Prof. Poll highlighted a recently issued [OECD report](#) addressing professional enablers of tax and white collar crimes which observed that while professionals offer various legitimate business services to clients, they may also be experts at finding legal loopholes, giving room for the creation of tax avoidance strategies. He emphasized that the starting point is in each jurisdiction in terms of the legally gray area vs. non-compliance with laws and regulations (NOCLAR). He added that consideration should be given to whether, based on the facts and circumstances, there are indicators of risks of unacceptable tax planning which the PA should assess and then inform the employing organization or client. He agreed that the work done by the OECD and the European

Commission on indicators of aggressive tax planning would be helpful in this regard but welcomed other references.

- Ms. Meng was of the view that what is deemed acceptable tax planning will be based on interpretation. She agreed that both the legality and economic substance of transactions are relevant considerations when determining what is acceptable tax planning. In addition, she wondered whether an additional factor is rationality, i.e., whether a transaction has a reasonable business purpose. She also wondered whether non-transactional arrangements should be considered. Prof. Poll responded that the factors noted are indicators the Working Group is considering. He added that the Working Group is also considering non-transaction-driven tax structures.
- Mr. Munter commented that the indicator is whether a transaction has a primary business purpose (such as an acquisition) but which is structured in the most tax efficient way as opposed to one whose primary or sole motivation is tax avoidance. He was of the view that the business purpose is a critical aspect. He added that tax minimization might be an indicator of a problematic area. He also noted that in both International Financial Reporting Standards (IFRS) and US Generally Accepted Accounting Principles (GAAP), there is guidance for uncertain tax positions and that in both sets of standards, this guidance is anchored to the “more likely than not” recognition threshold. He suggested that this might be another indicator or direction the Working Group might consider in terms of unacceptable tax planning.
- Prof. Poll responded that the Working Group considers business purpose as a very important factor. He also highlighted feedback from NSS the previous week indicating that the COVID-19 pandemic had impacted public perceptions of tax structures involving jurisdictions seen as non-compliant.
- Ms. Manabat echoed the observation that there are different tax laws and practices as well as cultural differences across jurisdictions. She added that aggressive tax planning has been an old concern in any economy and that there have been prosecutions of cases and lessons learned. Prof. Poll concurred, noting that while PAs need to be aware of differences in tax regimes and cultures, it is also important to recognize that the environment and public perceptions have changed significantly.
- Mr. Pavas reiterated a concern he shared previously that there are professionals who provide tax planning services who are subject to different codes of ethics. He wondered how this uneven playing field could be addressed with greater clarity. Prof. Poll acknowledged that the Code applies only to PAs but noted that it applies in accountancy firms to non-PAs such as lawyers who are involved in multi-disciplinary teams. He added that feedback from stakeholder outreach had supported the view that if the accountancy profession takes the lead in addressing the issues, it could well influence other professions to do the same.
- Ms. Landell-Mills highlighted that there have been some tax principles that have come out from civil society that might be worth considering, such as an initiative called the [Fair Tax Mark](#) which issued a recent report highlighting four core expectations for companies with respect to the topic of tax avoidance. She also noted that certain tax practices in gray areas of the tax law might be in fact be unidentified NOCLAR as it might not be immediately clear whether they are legally compliant. She was of the view that auditors play a very important role in flagging these issues to investors not only because of the regulatory implications but also because of the reputational risks. Finally, she suggested looking into whether there have been cases involving tax behavior that have been prosecuted and which auditors had not flagged, given the importance of accountability. Prof. Poll noted that the environment has changed dramatically. While tax courts might have seen certain tax

structures as interesting but not illegal in the past, there has now been a significant shift to criminal prosecution of professionals involved in such cases in various jurisdictions. In addition, even if the prosecutions do not lead to criminal convictions, reputations are often damaged.

#### CONSIDERATION OF POSSIBLE RESPONSES

Prof. Poll outlined three options the Working Group had identified regarding possible IESBA responses on the topic, namely:

- Option A: Develop overarching material in the Code to assist PAs comply with the fundamental principles (FPs) and apply the conceptual framework
- Option B: Develop material under one or more specific FPs (e.g. objectivity and professional competence and due care) to explain the expected behavior of PAs performing tax planning activities
- Option C: Develop material outside of the Code itself (e.g., staff Q&As or case studies) on the types and magnitude of the threats created when PAs perform tax planning activities

Prof. Poll highlighted input from the stakeholder outreach that even though tax planning constitutes a very significant part of the work of PAs generally, the Code does not explicitly deal with the topic except in a limited way through the NAS provisions. In contrast, the Code deals with PAs performing audits of financial statements extensively through Part 4A.

Among other matters, the following were raised:

- Ms. McGeachy-Colby noted the IFAC SMP Advisory Group's support for Option C as that option has the benefit of being nimble compared with developing revisions to the Code. Mr. Cela agreed, noting that non-authoritative material (NAM) should be capable of being applied across jurisdictions and cultures. However, he added that there would be merit in a combination of Options A and C to address different perspectives.
- Mr. De Tullio also supported a combination of Options A and C. He recognized that Option A could be seen as prescriptive. However, he felt that if there was nothing specific in the Code on the topic, it would be challenging to address the issues.
- Mr. Hirai expressed a preference for Option C. He noted that in Japan, tax practitioners are often outside the profession. Accordingly, NAM would be more accessible to them. However, he accepted that a combination of Options A and C could be another response. He added that it was difficult to be more definitive without knowing what changes would be made in the Code.
- Ms. Landell-Mills felt that Option A was a sensible response, possibly in combination with Option C. She was of the view that given the importance of the topic, not addressing it in the Code could diminish the Code's credibility.
- Mr. Orth noted Accountancy Europe's support for the initiative. He agreed that the profession should take the lead in addressing the issues. He suggested starting with Option C and seeing if there would be merit in making enhancements to the Code as the thinking matures.
- Mr. Hansen suggested that from NASBA's perspective, the way forward should begin with Option A and then considering whether to pick up Option C as the thinking develops. He added that Option A is more consistent with a focus on changing behavior and supporting enforcement.

Prof. Poll thanked CAG representatives for their input. He observed that at the IESBA-NSS meeting the previous week, NSS that had already published guidance material on the topic preferred Option C compared with those that had not. He also noted that regulatory stakeholders generally preferred Option A. In response to Ms. Landell-Mills' comment, he noted that the perception of having the topic addressed in the Code would be of high importance in the public arena. Finally, he highlighted the criticality of professional judgment and the suggestions at the March 2021 IESBA meeting for the Working Group to consider making appropriate linkages to the provisions and behavioral concepts in the Code addressing NOCLAR, Inducements, and Role & Mindset.

#### PIOB OBSERVER'S REMARKS

Mr. Kashiwagi noted that the PIOB views the initiative to be of high importance. He also noted the good direction taken by the Working Group and the good input provided by CAG representatives. However, he remarked that the PIOB was disappointed with the pace of progress, although he acknowledged the challenges in developing a global view on the topic. He suggested taking a pragmatic approach to quicken the pace, adding that personally he supported both Options A and C.

#### **C. Engagement Team – Group Audits Independence**

Mr. Hansen introduced the session and invited Ms. Lee, IESBA Deputy Chair and one of the Task Force members, to present the topic. Ms. Lee briefed the CAG on the coordination efforts with the IAASB's ISA 600<sup>2</sup> Task Force since October 2020. During the meeting, Ms. Lee also reminded the CAG that the Task Force's work is dependent on the progress of the ISA 600 Task Force's work.

Concerning the revision of ISA 220<sup>3</sup> and the IAASB's change to the definition of "engagement team," Ms. Lee explained the Task Force's proposal to adopt the IAASB's final revised definition of engagement team. In this regard, she highlighted the need to address the potential implications for the Code as the term "engagement team" is a concept central to the International Independence Standards (IIS).

Ms. Lee also briefed the CAG on the Task Force's analysis of the implications of a breach of independence requirements by a component auditor (CA) firm in the context of a group audit, including the communication expectations relative to the group engagement team and those charged with governance of the group.

CAG Representatives noted the presentation and exchanged views about the Task Force's observations and proposals to date. Amongst other matters, the following were raised.

#### DEFINITION OF ENGAGEMENT TEAM

- Messrs. Hansen and Orth expressed support for the Task Force's approach in aligning the definition of engagement team with that in the IAASB's Quality Management (QM) standards. Concerning internal auditors as referred to in the definition, Mr. Orth wondered whether there was a distinction between direct and indirect assistance. Ms. Lee responded that the Task Force had no flexibility to expand on the definition as it is from ISA 220 (Revised).

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<sup>2</sup> Proposed International Standard on Auditing (ISA) 600 (Revised), *Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors)*

<sup>3</sup> ISA 220 (Revised), *Quality Management for an Audit of Financial Statements*

- With respect to external experts, Mr. Hansen provided further context in terms of the influence of external experts on the engagement. In those circumstances, he wondered whether it is the client or the audit firm/group engagement partner who will be accountable for those individuals.
- Mr. Munter highlighted the importance of coordination with the IAASB, especially on aligning the definitions and addressing the related implications for independence with the ISA 600 Task Force. He noted the challenge in enforcing independence requirements when terms with different definitions are used.
- Ms. Landell-Mills commented that from an investor perspective, the independence requirements should cover all individuals who can influence the audit process, including external experts engaged by the firm and internal auditors. She suggested considering a more straightforward, broader approach to the scope focusing on achieving the right outcome for independence. Ms. Landell-Mills also queried whether excluding external experts from the revised definition, and hence from the requirement for independence, was appropriate. She was of the view that it would be a significant matter if external experts had conflicts of interest.
- Mr. Hirai expressed support for the Task Force's approach in aligning the definition of engagement team with that in the IAASB's QM standards.
- Mr. Orth queried the exclusion of external experts from the revised definition as it may imply that external experts are not required to adhere to any independence requirements. Ms. Lee explained that the requirement for independence is determined via the definition of the engagement team, which dictates who is considered an engagement team member on an engagement. The exclusion of external experts from the engagement team was discussed at length with the IAASB in the past to develop the extant definition. The objectivity of an external expert is addressed through ISA 620.<sup>4</sup> This is to be contrasted with an expert engaged by management, which is addressed in ISA 500.<sup>5</sup>

#### BREACHES OF INDEPENDENCE REQUIREMENTS

- Mr. Hansen expressed support for the Task Force's approach to developing the breaches provisions, especially in the context of a CA. He observed that the distinction between CAs inside and outside the firm's network seems unclear in the circumstances when a breach is found. Mr. Norberg agreed, noting that in principle when a breach is found, there should not be any distinction between the actions undertaken by CAs within and outside the network. Ms. Lee explained that the extant Code already addresses breaches at CAs in network. There was a gap, however, with respect to breaches at CAs outside the network.
- Ms. Landell-Mills echoed the same observation as Mr. Hansen and wondered about the Task Force's thinking regarding a CA's finding of a breach and the reporting requirements. She noted that in the event of a breach by the CA, the CA may have a vested interest in not highlighting the breach to the group auditor, and hence potentially adversely impacting the group audit. She also queried from a transparency perspective whether the breach would be reported to the shareholders via communication to those charged with governance. Ms. Lee responded that ISA 600 already requires communication by the CA to the group auditor, with an emphasis on such communication being timely.

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<sup>4</sup> ISA 620, *Using the Work of an Auditor's Expert*

<sup>5</sup> ISA 500, *Audit Evidence*

- Ms. Meng commented on the significance of the CA's work in the context of the group audit and the importance of considering the impact on the group audit in evaluating the significance of the breach. Mr. Dalkin echoed the same observation as Ms. Meng and wondered about the nature and extent of the group auditor's evaluation of the CA breach. Ms. Lee agreed that the role of the CA and the significance of its work to the group audit should factor in the consideration of the group auditor's actions.
- Mr. Pavas expressed support for the Task Force's approach to developing the breaches provisions and noted the importance of documentation of the breach.
- Mr. Hirai suggested that the Task Force should consider principles-based provisions to avoid the Code being too prescriptive given that numerous scenarios could arise in practice. He recommended that the Task Force consider dealing with specific scenarios through non-authoritative guidance. Ms. Lee responded that the Task Force was focused on developing principles-based requirements but that it would also consider recommending that the IESBA commission non-authoritative guidance in due course.
- Ms. Blomme commended the Task Force on its work and noted that Accountancy Europe is supportive of the principles that the Task Force is proposing.
- In terms of the three scenarios in determining the significance of a breach by a CA, Ms. Mubarak inquired about the Task Force's approach to distinguishing between the varying levels of significance of a breach and how the group auditor would respond to each. Ms. Lee explained that the Task Force was still exploring how best to distinguish among the three levels of breaches and that the Code would set out guidance in that regard, including the reporting expectations.
- Ms. Landell-Mills wondered whether the Task Force had data about the frequency of reporting of breaches at CA level and how often that led to the CAs being replaced. Ms. Lee responded that the Task Force did not have such data. However, in her experience, breaches at network firms are reported to those charged with governance of the group.

#### PIOB OBSERVER'S REMARKS

Mr. Kashiwagi thanked the Task Force for its hard work. He acknowledged the strong coordination with the IAASB. He also supported the overall direction of the proposals and conveyed his appreciation of the complexity of the requirements being proposed.

In this regard, he suggested that the requirements need to be clear and understandable in the public interest. He recommended focusing on principles-based provisions in the Code. Nevertheless, he also encouraged consideration of non-authoritative guidance as a way forward to address some of the complexities.

#### WAY FORWARD

Ms. Lee thanked the Representatives for their valuable input and informed the CAG that the IESBA will consider the Task Force's proposals and the CAG's feedback at its June 2021 meeting.

#### **D. Closing Remarks**

Mr. Hansen thanked the CAG participants for their contributions and closed the meeting.