

Meeting: IESBA CAG

Meeting Location: New York

Meeting Date: September 14, 2015

Agenda Item

C

Review of Part C of the Code

Objective of Agenda Item

1. To obtain CAG Representatives' views on significant matters arising from responses to the Exposure Draft (ED), [Proposed Changes to Part C of the Code Addressing Presentation of Information and Pressure to Breach the Fundamental Principles](#), and related Task Force proposals.

Project Status and Timeline

2. At its meeting in March 2013, the IESBA approved the project to review Part C of the Code, including that priority attention be given to the following topic areas:
 - Pressure by superiors and others to engage in unethical or illegal acts (Pressure);
 - The responsibility of professional accountants in business (PAIBs) to produce financial reports that are faithful representations of the economics of transactions, and associated matters (Faithful Representation); and
 - Facilitation payments and bribes (Inducements), and the applicability of Part C to professional accountants in public practice (PAPPs).
3. This project is divided into two phases:
 - Phase I reviews Sections 300,¹ 310,² 320,³ 330⁴ and 340⁵ of the Code and, in particular, addresses the topics of Pressure and Faithful Representation.
 - Phase II addresses Section 350 which is related to the topic of Inducements, and the applicability of Part C to PAPPs.
4. The IESBA issued the ED for Phase I in November 2014 with a deadline for comments of April 15, 2015.
5. At its June/July 2015 meeting, the IESBA considered significant comments received on proposed Section 320 and a number of other matters raised by respondents. At its September 2015 meeting,

¹ Section 300, *Introduction*

² Section 310, *Conflicts of Interest*

³ Section 320, *Preparation and Reporting of Information*

⁴ Section 330, *Acting with Sufficient Expertise*

⁵ Section 340, *Financial Interests*

the IESBA will consider significant comments received on the proposed Section 370⁶. The Task Force is aiming to present the final text of the proposed Sections 320 and 370 at the November/December 2015 IESBA meeting with a view to final IESBA approval under the current structure and drafting conventions ("close-off document"). The Task Force will then present the close-off document, restructured and redrafted under the proposed new structure and drafting conventions for the Code, for IESBA consideration in the first half of 2016.

6. The Appendix to this paper provides a project history.
7. For the CAG's reference, the detailed summaries of significant comments from respondents to the ED, as presented for the June/July and September 2015 IESBA meetings, are included in Agenda Items C-1 and C-2.

I. Report Back from September 2014 CAG meeting

8. Below are extracts from the minutes of the September 2014 CAG meeting relating to Section 370, and an indication of how the project Task Force and/or IESBA has responded to CAG Representatives' comments. Representatives had no comments on the proposed changes to Section 320.

Matters Raised	Task Force/IESBA Response
<p>Mr. Ahmed wondered whether the guidance regarding the actions the PAIB may follow if the pressure would lead to a breach of the fundamental principles is meant to be treated sequentially.</p> <p>Mr. Gaa noted that the list is not intended to be sequential, nor would all the actions be necessarily relevant in each instance.</p>	<p>On further reflection in the light of Mr. Ahmed's comments, and in response to the feedback received from respondents to the ED, the Task Force has reconsidered the order of guidance provided in Section 370 and where appropriate has made amendments so that the guidance flows more sequentially. See paragraphs 370.4 – 370.6 in Agenda Item C-5.</p>
<p>Ms. Lang noted that she had asked at the previous CAG meeting why the issue of pressure was only being addressed in the context of Part C and not throughout the entire Code. Mr. Waldron supported Ms. Lang's question.</p>	<p>Mr. Gaa noted that the Task Force had raised the matter of the relevance of Part C to PAPPs and that the IESBA had agreed to address the matter during Phase II of the project. He noted that the Code currently contains a brief mention of the matter but does not elaborate on it.</p> <p>A few comments were received from respondents to the Phase I ED noting that guidance in Part C could be applicable to all accountants. The Task Force will consider the applicability of Part C to other parts of the Code,</p>

⁶ Proposed Section 370, *Pressure to Breach the Fundamental Principles*

Matters Raised	Task Force/IESBA Response
	and make recommendations to the IESBA, as part of Phase II of the project.
<p>Ms. Molyneux thought that the examples of pressure that could result in a breach of the fundamental principles seemed to be overly focused on financial matters. She noted that from her experience with companies issuing financial reports, the issue often concerns the commentary or narratives to make the message more acceptable to investors.</p> <p>Mr. Waldron supported the examples and thought that they set the tone of this section is addressing.</p>	<p>The Task Force notes that the examples in paragraph 370.4 (Agenda Item C-5) cover more than financial matters.</p>
<p>Mr. Koktvedgaard asked Representatives if they concurred with the proposed Section 370 not being drafted in the language of threats and safeguards. Ms. Molyneux believed that the concept of threats and safeguards is not widely understood outside practice. Mr. Hansen was of the view that the concept of threats and safeguards does not work in the same way for PAIBs as for firms. This is because individual PAIBs are impacted in a different way. Accordingly, he agreed that the approach taken to this section was appropriate.</p>	<p>Support noted.</p>
<p>Ms. Blomme asked how the proposed changes would align with the proposals under the Structure of the Code project.</p>	<p>The intention is to “close-off” the text under the current structure and drafting conventions by December 2015, restructure the close-off document under the new structure and drafting conventions in the first half of 2016 and re-expose for comment only on the restructuring.</p>
<p>Mr. Koktvedgaard suggested ensuring that the proposed guidance regarding escalation be consistent with the approach taken under the proposals in the NOCLAR project.</p>	<p>Point noted.</p> <p>Comments from respondents on the ED and IESBA members were received supporting consideration of alignment of guidance on escalation with the NOCLAR proposals. This is discussed below in the subsection dealing with differentiating between senior PAIBs and other PAIBs below.</p>

II. Significant Matters Arising on Exposure of proposed Section 320 and Matters Common to Both Sections 320 and 370 (Including Follow up from June/July 2015 IESBA meeting)

9. At the June/July 2015 IESBA Meeting, Mr. Gaa outlined the significant comments received on the Part C Phase I ED and the Task Force's preliminary proposals in response to comments relating to, in particular:
 - (a) Proposed Revised Section 320
 - (b) Matters Common to proposed Sections 320 and 370
10. Key comments from respondents relating to (a) and (b) above and the significant Board feedback to related Task Force proposals are summarized below:

"FAIR and HONEST" PRINCIPLE

11. The Code requires PAIBs to prepare information "fairly and honestly." However, there is little guidance on the meaning of this principle. The ED therefore proposed guidance to assist PAIBs in better understanding and adhering to the spirit of the principle.
12. While the majority of respondents were supportive of the proposals in the ED, some concerns and suggestions about aspects of the guidance were received. The main concern related to the need for clarity on how the concept of "fair and honest" is linked to the five fundamental principles, a concern supported by a few IESBA members. For details of the significant comments received from respondents on this matter, see paragraph 12 in Agenda Item C-1.
13. In order to avoid confusion as to how the "fair and honest" principle is linked to the fundamental principles, the Task Force is proposing to delete the term "fair and honest" from the proposed wording and to focus the guidance more directly on compliance with the fundamental principles.

MISUSE OF DISCRETION

14. The ED proposed enhanced guidance in Section 320 on addressing the misuse of discretion in preparing or presenting financial information. The proposed guidance was intended to enable PAIBs to better recognize and deal with the issue of misuse of discretion and thereby assist them to fulfil their responsibility to prepare or present information in compliance with the fundamental principles.
15. Agenda Item C-1, paragraph 14 details the significant comments received from respondents on this matter, and the Task Force's related proposals as presented at the June/July 2015 IESBA meeting.
16. In generally supporting the Task Force's proposals, IESBA participants raised some matters relating to clarification of certain examples and changes to the proposed wording in paragraph 320.3, notably a suggestion to align it to ISA 540.⁷
17. The Task Force has considered the Board feedback received and is proposing changes to the wording in paragraph 320.3 accordingly (see Agenda Item C-3).

⁷ ISA 540, *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures*

INFORMATION PREPARED IN THE ABSENCE OF A REPORTING FRAMEWORK

18. The ED proposed revised guidance as to what PAIBs are expected to do when preparing or presenting information that does not have to comply with a relevant reporting framework. The proposed guidance emphasized three important considerations with respect to the information being prepared: the purpose of and context for the information, and the audience.
19. Many respondents were supportive of the proposed guidance, though some noted that it was unclear that the guidance related to instances where compliance with a reporting framework is not necessary. For details of the significant comments received from respondents on this matter and the related Task Force proposals, see paragraphs 16 and 17 in Agenda Item C-1.
20. Other than editorial suggestions, IESBA members suggested the need for additional guidance on how a PAIB could ensure that a user of the information is made aware of the purpose of and context for the information, and the audience.
21. The Task Force has considered the Board feedback received and proposes changes in the wording accordingly (see paragraph 320.4 in Agenda Item C-3).

REASONABLE STEPS

22. Section 320.3 of the extant Code requires PAIBs to take “reasonable steps” to maintain information for which the PAIB is responsible in a manner that is appropriate⁸. The ED proposed that PAIBs should also be required to take “reasonable steps” to satisfy themselves that, when relying on work performed by others, the PAIB is able to fulfill the obligations that flow from the “fair and honest” principle.
23. While many respondents were supportive of the proposal, some suggested that additional clarity is needed regarding actions that would constitute “reasonable steps” along with possible examples of these steps. For details of the significant comments received from respondents on this matter and the related Task Force proposals, see paragraphs 19-24 in Agenda Item C-1.
24. In response to these comments, the Task Force proposed at the June/July 2015 IESBA meeting that the term “reasonable steps” be replaced with “professional judgment.” IESBA members were generally against this change. An IESBA member suggested that consideration could be given to taking a middle ground in terms of exercising professional judgment to determine what steps to take.
25. After considering all the suggestions received, the Task Force is proposing to revise the wording of paragraph 320.5 to incorporate the middle ground suggestion and also include a number of factors the PAIB may consider in determining whether reliance on others is reasonable (see Agenda Item C-3).

⁸ 320.3 A professional accountant in business shall take reasonable steps to maintain information for which the professional accountant in business is responsible in a manner that:

- (a) Describes clearly the true nature of business transactions, assets, or liabilities;
- (b) Classifies and records information in a timely and proper manner; and
- (c) Represents the facts accurately and completely in all material respects.

DIFFERENTIATING BETWEEN “SENIOR PAIBS” AND “OTHER” PAIBS

26. Some respondents were concerned that the ED did not provide separate guidance according to the PAIB’s level of seniority, relating especially to steps to resolve the matter where the PAIB has reason to believe information is misleading. For details of the significant comments received from respondents on this matter and the related Task Force proposals, see paragraphs 27-28 and 37-40 in Agenda Item C-1.
27. At the June/July 2015 IESBA meeting, an IESBA member noted that the re-ED on responding to non-compliance with laws and regulations (NOCLAR) differentiates between “senior” and “other” PAIBs and the same approach could be used for proposed Sections 320 and 370 for consistency. Another IESBA member maintained that while the distinction between “senior” and “other” PAIBs is appropriate for proposed Section 360, it is not suitable for other sections of Part C.
28. The Task Force noted that, other than in the NOCLAR proposals, there is no distinction between “senior” and “other” PAIBs as distinct categories in the Code. It also reviewed the logic for the differentiation and believes that the NOCLAR proposals are notably different from the guidance in proposed Sections 320 and 370 in that an act of NOCLAR is a situation which has a significant public interest element and in which the PAIB is not directly involved, but rather has identified a potential act of NOCLAR by another party.
29. Paragraph 300.5 (see Agenda Item C-7) includes a higher expectation for more senior PAIBs with regard to the actions they take (as they have a greater ability to access and influence others, notably senior staff). The Task Force concluded that, in view of the variety of organizational structures and the place of PAIBs within them, differentiating between “senior” and “other” PAIBs as distinct categories in other sections of Part C would involve great complexity and may generate the “wrong” answers for particular situations.

III. Significant Comments on Section 370

30. At the September 2015 IESBA meeting, the Task Force will present its preliminary proposals in response to comments on the ED relating to:
 - (a) Proposed Revised Section 370
 - (b) Matters Common to Sections 320 and 370
31. Key comments and Task Force proposals relating to items (a) and (b) above are summarized below:

OVERARCHING REQUIREMENTS IN 370.1 AND 370.2

32. The ED proposed to establish two new overarching principles in Section 370:
 - i. A requirement for the PAIB not to allow pressure to result in a breach of the fundamental principles.
 - ii. A requirement for the PAIB not to place pressure on others that would result in a breach of the fundamental principles.
33. Many respondents supported the proposals in the ED with a number of suggestions to improve the clarity of the wording and structure of the paragraphs. For details of the significant comments received

from respondents on this matter and the related Task Force proposals, see paragraph 8 in Agenda Item C-2.

34. Based on the suggestions from respondents, the Task Force has added an introductory paragraph to Section 370 to provide a context to the section and revised the guidance in paragraph 370.2 to clarify that the PAIB should not place pressure on others that would result in a breach of the fundamental principles (see Agenda Item C-5).

TYPES OF PRESSURE

35. The ED proposed to provide a specific description of pressure that could result in a breach of the fundamental principles. The ED also proposed a number of examples to illustrate the variety of situations in which such pressure may arise along with guidance for the PAIB to follow when faced with pressure to breach the fundamental principles.
36. The majority of respondents agreed with the examples provided, with several respondents indicating that the examples could be improved in certain areas with additional clarification. For details of the significant comments received from respondents on this matter and the related Task Force proposals, see paragraphs 10-11 in Agenda Item C-2.
37. The Task Force has considered the feedback received and proposes some changes to the proposed wording accordingly (see paragraph 370.4 in Agenda Item C-5).

PRESSURE TO BREACH THE FUNDAMENTAL PRINCIPLES VS ROUTINE PRESSURE

38. The proposed paragraph 370 would apply to all situations in which pressure from a superior or others threatens compliance with the fundamental principles. The ED focuses on pressure to breach the fundamental principles and the relevance of routine pressure faced by a PAIB within a work place environment.
39. Respondent's views were mixed on the guidance on how to distinguish between pressure to breach the fundamental principles and routine pressure faced by a PAIB. For details of the significant comments received from respondents on this matter and the related Task Force proposals, see paragraph 14 in Agenda Item C-2.
40. After consideration of respondent's comments, the Task Force has concluded that this distinction was not beneficial and should be deleted. The revised guidance focuses on factors to determine whether or not pressure, whether or not it is "routine," could result in breach of the fundamental principles and how to deal with such pressure (see paragraph 370.5 in Agenda Item C-5).

RESPONDING TO PRESSURE TO BREACH THE FUNDAMENTAL PRINCIPLES

41. The ED proposed guidance that set out a number of actions the PAIB may wish to consider after the PAIB has determined that the pressure would lead to a breach of the fundamental principles.
42. Respondents generally agreed with the guidance, with many of them providing suggestions on how the clarity and structure of the suggested wording could be improved. For details of the significant comments received from respondents on this matter and the related Task Force proposals, see paragraph 19 in Agenda Item C-2.

43. The Task Force considered the feedback received and made enhancements to the proposed provisions (see paragraph 370.6 in Agenda Item C-5).

DEFINITION OF PRESSURE

44. A regulatory respondent expressed a view that the proposed Section 370 needs to define “pressure” in order to assist a PAIB understand and address the threat that pressure may lead to a breach of the fundamental principles. The Task Force felt that there is little benefit in defining “pressure.” Instead, consistent with other sections in Part C (e.g. Sections 220 and 310), the Task Force provided examples of the ways in which inappropriate pressure may arise.

Matters for Consideration

1. Representatives are asked for their views on the Task Force’s proposals above in response to comments received on the ED and feedback from IESBA members.

Material Presented – CAG Reference Papers

Agenda Item C-1	June/July 2015 IESBA Agenda Paper – Summary of Significant ED Comments on Section 320 and Related Matters, and Task Force Proposals
Agenda Item C-2	September 2015 IESBA Agenda Paper – Summary of Significant ED Comments on Section 370 and Related Matters, and Task Force Proposals
Agenda Item C-3	Proposed Changes to Section 320 (Mark-Up)
Agenda Item C-4	Proposed Changes to Section 320 (Clean)
Agenda Item C-5	Proposed Changes to Section 370 (Mark-Up)
Agenda Item C-6	Proposed Changes to Section 370 (Clean)
Agenda Item C-7	Proposed Changes to Section 300 (Mark-Up)

Appendix

Project History

Project: Part C, Phase I

Summary

	CAG Meeting	IESBA Meeting
Project commencement		March 2013
Development of proposed international pronouncement (up to exposure)	April 2013 September 2013 March 2014 September 2014	June 2013 September 2013 December 2013 April 2014 July 2014 October 2014
Exposure	November 2014 – April 2015	
Consideration of respondents' comments on exposure and development of revised proposals		June/July 2015 September 2015