

Meeting: IAASB Consultative Advisory Group
Meeting Location: New York, USA
Meeting Date: September 14–15, 2015

Agenda Item E

Responding to Non-Compliance with Laws and Regulations (NOCLAR) – Report Back

Objectives of Agenda Item

1. To provide a report back on comments of the CAG Representatives and Observers on this project as discussed at the June 2015 CAG teleconference.

Project Status and Timeline

2. The IAASB approved the Exposure Draft (ED), [Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations](#), at its June 2015 meeting. The comment period is open until October 21, 2015. The ED is in response to the recent ED issued by the International Ethics Standards Board for Accountants (IESBA), [Responding to Non-Compliance with Laws and Regulations](#).
3. Appendix 1 to this paper provides a history of previous discussions with the CAG on this topic including links to the relevant CAG documentation.

June 2015 CAG Discussion¹

4. Extracts from the draft minutes of the June 2015 CAG teleconference, as well as an indication of how the Working Group (WG) or IAASB has responded to the Representatives' and Observers' comments are included in the table below.

Representatives' and Observers' Comments	Working Group/IAASB Response
FEEDBACK ON THE PROJECT PROPOSAL AND THE NEED FOR THE SUGGESTED AMENDMENTS	
Messrs. Asmelash, Fukushima, Hansen, Hines, Kuyers, Michel, Stewart and White and Mmes. Elliott, McGeachy, Miller, Molyneux and Singh expressed support for the project proposal and the proposed limited amendments, citing the need for having consistency between the IESBA's NOCLAR	Support noted. The IAASB believes that prioritization of this project will be an efficient and effective use of the IAASB's resources as stakeholders will have the opportunity to consider both the IESBA's and the IAASB's proposals at the same time.

¹ The minutes of the June 2015 teleconference will be approved at the September 2015 IAASB CAG meeting.

Representatives' and Observers' Comments	Working Group/IAASB Response
standards and the International Standards. Ms. Molyneux in particular supported the need for consideration of any potential inconsistencies between the NOCLAR proposals and ISQC 1. ² Notwithstanding his support for the WG's suggested amendments, Mr. Fukushima cautioned the IAASB should be mindful of its limited resources in moving forward with the ED and considering a move away from limited amendments. In his personal view, he noted that the IAASB should largely be focusing its efforts on other important ongoing projects, such as Group Audits and Quality Control.	
While acknowledging the need for having consistency between the IESBA's proposals and the IAASB's International Standards, Mr. Thomson questioned whether the proposed changes were necessary at this time. In particular, he expressed the view that ISA 250 and the IESBA's NOCLAR proposals would not be inconsistent even without the proposed amendments, and making relatively minor changes would potentially result in significant implementation challenges for accounting firms and others who need to keep up with those changes. Mmes. Lang, McGeachy and Robert agreed, noting the costs to translate and implement the changes needed to be taken into account.	Point taken into account. With respect to questions raised about whether ISA 250 would be consistent with the IESBA's NOCLAR proposals if not amended, Mr. Murtagh noted that the WG was of the view that the suggested changes would usefully provide greater clarity about the interaction between the standards, thereby enhancing the consistency between them. He also noted that the WG believes that the proposed changes would not result in undue audit costs or present any negative impact in terms of implementation, as the suggested changes are not intended to significantly alter requirements within the International Standards, but instead provide additional guidance. Ms. Healy agreed with Mr. Murtagh, and further explained that with respect to implementation, the IAASB is planning to align the effective dates of the IESBA's NOCLAR standard and the amendments to the International Standards to minimize the implementation efforts needed related to the IAASB's changes.
Ms. Robert cautioned that there are some jurisdictions that use the IAASB's International Standards, but not the IESBA Code.	Point accepted. The ED includes a question about the effect of the proposed limited amendments in jurisdictions that

² International Standard on Quality Control (ISQC) 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*

Representatives' and Observers' Comments	Working Group/IAASB Response
	have not adopted, or do not plan to adopt, the IESBA Code.
<p>With respect to the accelerated timing for the project, Mr. Thompson cautioned against this approach, noting that the IESBA's NOCLAR proposals are still subject to further revisions, and suggested that it would therefore be preferable to propose amendments based on the IESBA's finalized NOCLAR standards. Ms. Lang and Mr. Asmelash agreed, and Mr. Michel noted it would be important to allow time for the IAASB to consider any further implications of changes arising from the IESBA finalizing the NOCLAR proposals. Mr. Fukushima suggested that project proposal should more clearly and prominently articulate the reason why the accelerated approach is necessary and appropriate.</p> <p>Ms. Miller noted the IIA intends to respond formally to the IESBA ED to point out what the IIA believes are some ambiguities in the proposed language that could create challenges for its members in practice. Like others, she noted that finalizing the IAASB's amendments would need to take into account changes to the IESBA's proposals as a result of feedback on exposure.</p>	<p>Points taken into account.</p> <p>The IAASB noted that the project has been conducted expeditiously in light of the limited nature of the proposed amendments and the benefit to respondents of being able to comment on both the IESBA and IAASB NOCLAR EDs at the same time. The final amendments to the IAASB's International Standards will take into account the final changes to the IESBA Code. Coordination with the IESBA as it first considers how to respond to feedback on its ED is planned, so that the IAASB considers its feedback and related amendments at the appropriate time in order to be mindful of resources.</p>
<p>Mr. Hines questioned whether the WG considered the possibility of using other means, rather than amendments to the standards, to address the matter of consistency between the IESBA's NOCLAR proposals and International Standards. Mr. Asmelash agreed, and suggested that the IAASB consider a practice alert or similar mechanism to "sign post" the actual or perceived inconsistencies.</p>	<p>Point taken into account.</p> <p>Mr. Murtagh responded that, while other mechanisms may be used, following consideration of those options the WG was of the view that it was necessary to acknowledge the interaction in the standards themselves. The IAASB supported this view.</p>
FEEDBACK ON THE SUGGESTED IMPROVEMENTS	
<p>Mr. White pointed out that the only reference in extant ISA 250 that pointed out the auditor's right to report a NOCLAR to the appropriate authority even when it is not required by law or regulation to do so was in paragraph A19 of extant ISA 250. He suggested that the requirement in paragraph 28 of</p>	<p>Point accepted.</p> <p>[See paragraph 28 of the Exposure Draft.]</p>

Representatives' and Observers' Comments	Working Group/IAASB Response
<p>the proposed ED should be amended to also refer to the ethical right, as this is, in his view, one of the more substantive changes in the IESBA's NOCLAR proposals. Messrs. Fukushima and Greene and Ms. Elliott agreed.</p>	
<p>Mr. Fukushima added that his interpretation of the IESBA's NOCLAR proposal is that if the professional accountant identifies a NOCLAR, there is a responsibility to disclose something if it is determined to be in the public interest to do so, even if it goes beyond what is required by the law or regulation, rather than "a right" to disclose. He suggested that the IAASB should reassess the amendments to ISA 250 to better align them with this aspect of the IESBA's NOCLAR proposal. Mr. Greene agreed, and suggested that a new requirement should also be established to refer to the circumstances where law or regulation requires disclosure of NOCLAR, to reiterate that this is a requirement rather than an option.</p>	<p>Point accepted.</p> <p>The proposed amendment to paragraph 28 of ISA 250 states "If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a responsibility legal or ethical duty or right to report the identified or suspected non-compliance to parties outside the entity." This puts a responsibility on the auditor to determine if there is a legal or ethical duty or right to disclose but also recognizes that this right or duty does not arise from the IAASB's International Standards, but rather from law, regulation, or relevant ethical requirements.</p> <p>[See paragraph 28 of the Exposure Draft.]</p>
<p>Mr. Fukushima noted that there are other opportunities for the proposed ED to be further aligned to the IESBA's NOCLAR proposals to achieve consistency to the International Standards. For example, he suggested that the WG review the scope of the NOCLAR proposals and compare it to paragraphs 6 and 8(a) of ISA 250. He believed the scope of the laws and regulations covered by the IESBA proposals is consistent with paragraph 6 of extant ISA 250. However, the phrase "including laws and regulations other than those described in paragraph 6" in the first sentence of proposed new paragraph 8(a) of ISA 250 would now introduce an inconsistency with the IESBA's proposals.</p>	<p>Point accepted.</p> <p>Mr. Siong clarified that it is not the IESBA's intention to introduce a difference in scope relative to the laws and regulations that are covered by the NOCLAR proposals. The IESBA's intent is that the scope of the laws and regulations covered under the NOCLAR proposals would be the same as the scope of laws and regulations covered under ISA 250.</p>
<p>Messrs. Greene and Stewart asked for clarification about the plans for the items in Category 2 (additional guidance material that may be considered useful, but were not considered to be of sufficient importance by the WG to warrant their inclusion in the ED as proposed amendments). Mr. Stewart asked about whether those matters would</p>	<p>Mr. Murtagh explained that Category 2 items are for the IAASB's consideration and that the IAASB's deliberations at its June 2015 would consider whether some or all of those items are of sufficient importance to be included in the ED.</p> <p>The IAASB decided that items in Category 2 should not be included in the ED nor in the Explanatory</p>

Representatives' and Observers' Comments	Working Group/IAASB Response
be included in the Explanatory Memorandum that accompanies the ED (as is contemplated in relation to Category 3.	Memorandum to the ED as they were not of sufficient importance.
Mr. Stewart questioned the WG's rationale for not including new guidance in the ED about how incidents of NOCLAR are communicated to the group engagement team.	Point taken into account, Mr. Murtagh explained that the WG was of the view that, in the context of NOCLAR, the extant guidance was sufficient, and that the issue would be better dealt with the IAASB's broader work on the topic of Group Audits and potential revisions to ISA 600.
Mr. Hansen suggested there may be a need for more fundamental issues in ISA 250 to be considered. For example, he noted a potential issue may arise when accounting firms identify uncertainties as it relates to legal matters with respect to NOCLAR and conclude there is no NOCLAR, but there may be implications for the financial statements or the disclosures therein. Ms. Robert also suggested the need for a more holistic approach that included a full review of ISA 250, as part of a future Work Plan.	Point accepted. The IAASB decided that ISA 250 did not warrant immediate revision, as consultations undertaken as part of developing the IAASB's current Strategy and Work Plan, particularly in light of other projects that the IAASB was asked to prioritize in the public interest. However, 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). Accordingly, an "Invitation for Additional Input" has been included in the ED. [See paragraphs 14–18 of the Exposure Draft].
EXPOSURE PERIOD	
Messrs. Hansen, Hines, White and Mmes. Molyneux and Singh expressed support for having a 90-day exposure period.	Support noted.
However, Mr. Greene suggested the need for more time to appropriately consider the amendments being suggested. Ms. McGeachy suggested a 90-day exposure period is not sufficient for small and medium practices. Mr. Stewart added that the timing of the proposed shortened exposure period could be an issue in light of summer holidays in the Northern Hemisphere.	Point not accepted. The IAASB noted these concerns but concluded that 90 days was appropriate in light of the limited nature of the amendments and that the exposure period would end in approximately mid-October, which would allow adequate time for Northern Hemisphere stakeholders to respond.

Matters for CAG Consideration

5. The Representatives and Observers are asked to note the Report Back above, in particular the changes made as a result of the Representatives' and Observers' comments.

Project History

Project: Responding to Non-Compliance with Laws and Regulations (NOCLAR)

Summary

	CAG Meeting	IAASB Meeting
Project Commencement		March 2015
Project Proposal	June 2015	June 2015
Exposure Draft	June 2015	June 2015

CAG Discussions: Detailed References

Project Proposal	<u>June 2015</u> See IAASB CAG meeting material: http://www.iaasb.org/system/files/meetings/files/20150610-iaasb-cag-agenda_item_a1_noclar-pp-final.pdf
Exposure Draft	<u>June 2015</u> See IAASB CAG meeting material: http://www.iaasb.org/system/files/meetings/files/20150610-iaasb-cag-agenda_item_a_noclar-final.pdf http://www.iaasb.org/system/files/meetings/files/20150610-iaasb-cag-agenda_item_a2_noclar_draft_ed-final.pdf