

Meeting: IESBA
Meeting Location: New York
Meeting Date: December 12-15, 2016

Agenda Item

7

NOCLAR

Objectives of Agenda Item

1. To:
 - (a) Consider with a view to approval for exposure revised drafts of the restructured texts of Sections 225 and 360 addressing responding to non-compliance with laws and regulations (NOCLAR); and
 - (b) Provide further feedback on revised drafts of the IESBA Staff Questions & Answers (Q&A) publications.

Task Force for Restructuring Work Stream

2. Members:
 - Richard Fleck, Chair, IESBA Deputy Chair
 - Helene Agélii, IESBA Member
 - Atsushi Kato, IESBA Member

Implementation Working Group (IWG)

3. Members:
 - Richard Fleck, Chair, IESBA Deputy Chair
 - Atsushi Kato, IESBA Member
 - Denise Canavan, IESBA Technical Advisor
 - Dr. Eva Tsahuridu, IESBA Technical Advisor

Activities since Last Board Discussion

Restructuring Work Stream

4. The Task Force liaised via email to develop the revised drafts of the restructured texts, taking into account the input received at the September 2016 IESBA meeting. In developing the revised drafts, the Task Force liaised with, and received further input from, the Structure Task Force.

IESBA Staff Q&A Publications

5. The IWG met via teleconference at the end of October 2016 to consider the input received from the Board in September as well as input from the IFAC member bodies in Germany (IDW and WPK)

and the IFAC PAIB Committee. Input was also received from the IAASB's NOCLAR and Group Audits representatives in the latter part of November. The IWG subsequently liaised via email to finalize the revised Q&As for presentation at this Board meeting.

Matters for Board Noting

Conforming Amendments with Respect to Safeguards

6. The Safeguards Task Force has previously reviewed the draft restructured texts and indicated that no conforming amendments are needed to align the NOCLAR provisions with the proposed changes to the Code arising from the Safeguards project.

Changes to the Draft Restructured Texts

7. In addition to editorial changes and changes to ensure consistency with the structure drafting conventions, changes have been made to the following paragraphs in proposed Section 360 in response to input received at the September 2016 Board meeting:
 - 360.2 – to address a concern that the previous wording seemed to suggest that the association of the professional accountant (PA) is with the commission of the NOCLAR (vs. knowledge of the NOCLAR).
 - 360.14 A1 – This paragraph in the previous draft has been deleted in response to a comment that it was not adding anything substantive to the text.
 - R360.22 and 360.22 A1 – To revert to the extant wording as the proposed wording was less clear.
8. Conforming changes have been made to proposed Section 260.

IESBA Staff Q&A Publications

Comments Received at the September 2016 IESBA Meeting

9. In addition to editorial changes, refinements have been made to the Q&As in response to Board input in September. The main comments received from the Board and the IWG's responses are set out in the Appendix.

Comments Received from the IFAC PAIB Committee

10. The IFAC PAIB Committee had no substantive comments on the September 2016 draft Q&As for PAIBs. In relation to Q24, however, it discussed whether it would be necessary to disclose a reason for resigning from the employing organization. It therefore wondered whether it would be helpful to provide clarity in this regard.
11. The IWG noted that extant Section 360 does not address this question. It felt that this matter is broader than NOCLAR as the question applies to any circumstances where a PAIB decides to resign from the employment relationship. Accordingly, the IWG did not believe that this is a matter that could be addressed in the Q&As.

Comments Received from IDW and WPK

12. The main refinements to the Q&As in response to feedback received from representatives of IDW and WPK include the following:
- Q3-4: adding a specific reference to paragraph 225.33 in the response to each question to clarify the respective authorities of national law and the Code where confidentiality law would prohibit disclosure of NOCLAR or suspected NOCLAR under the Code.
 - Q6: providing an example to clarify the distinction between “the scope of laws and regulations addressed by Section 225” and “the scope of laws and regulations addressed by the applicable engagement standards.”
 - Q22: to make clear that paragraph 225.12 of the Code requires the auditor to obtain an understanding of the matter regardless of how the auditor became aware of it, and not through having been specifically approached by a concerned party.
 - Q29 in September 2016 draft: Q&A deleted, as in reality it is unlikely that a component auditor would disclose the matter to a public authority without at the same time also disclosing it to the group engagement partner.
 - Q33: quoting the statement in paragraph 225.30 that specifies that withdrawal from an audit engagement is not a substitute for taking other actions that may be needed under the NOCLAR provisions.
 - Q36 in September 2016 draft: Q&A deleted as it was over-simplifying the complexity involved and high degree of professional judgment required in distinguishing between tax evasion and tax minimization.

Comments Received from IAASB NOCLAR and Group Audits Representatives

13. In addition to matters of clarification and consistency with IAASB standards, the main refinements to the Q&As in response to substantive comments received from IAASB NOCLAR and Group Audits representatives include the following:
- Q26-27: deleting the references to potential discussion with group or component management to avoid setting an expectation that the PA would always discuss the matter with them.
 - Q42: deleting the sentence stating that such an audit is not an audit of financial statements as this statement was not considered true from the perspective of the ISAs.

Material Presented

Agenda Item 7-A	Proposed Section 360 (Mark-up from September 2016 Text)
Agenda Item 7-B	Proposed Section 360 (Mark-up from Extant Code)
Agenda Item 7-C	Proposed Section 360 (Clean)
Agenda Item 7-D	Proposed Section 260 (Mark-up from September 2016 Text)

Agenda Item 7-E	Proposed Section 260 (Mark-up from Extant Code)
Agenda Item 7-F	Proposed Section 260 (Clean)
Agenda Item 7-G	Draft Staff Q&As – PAPPs (Clean)
Agenda Item 7-H	Draft Staff Q&As – PAPPs (Mark-up from September 2016 Draft)
Agenda Item 7-I	Draft Staff Q&As – PAIBs (Clean)
Agenda Item 7-J	Draft Staff Q&As – PAIBs (Mark-up from September 2016 Draft)

Drafts to be Discussed at the Meeting

Restructured Texts

14. The Task Force proposes that the mark-up versions of the restructured texts be discussed at the meeting (**Agenda Items 7-A and 7-D**).

Staff Q&As

15. The IWG proposes that the clean versions of the drafts be discussed at the meeting (**Agenda Items 7-G and 7-I**).

Action Requested

16. The IESBA is asked to:
 - (a) Approve the restructured NOCLAR provisions presented in **Agenda Items 7-A and 7-D** for public comment on the restructuring only; and
 - (b) Provide any further comments on **Agenda Items 7-G and 7-I** for purposes of enabling staff to finalize the Q&As for issuance in January 2017.

APPENDIX

Comments Received at September 2016 IESBA Meeting

Question ¹	Comments/Suggestions	IWG Disposition
Q1	S225 is about an obligation to respond and not about consultation.	Point accepted. The reference to a PA consulting extant Section 225 for guidance has been deleted.
Q2	Extant Section 225 also applies to individuals not providing professional services.	The question was intended to focus on individuals providing professional services who are not PAs. This has now been clarified. Individuals in firms who are not providing professional services would be covered by extant Section 360 by virtue of their employment relationship with their firms.
Q20	Whether this Q&A was needed as many jurisdictions do not have statutory audits.	The Q&A is helpful because some stakeholders had argued that the NOCLAR provisions should be less rigorous for voluntary or contractual audits vs. statutory audits on the grounds that users of the auditor's report in the case of the former are generally far fewer in number than in the case of the latter.
Q21	To make it clearer that the NOCLAR provisions in the Code have nothing to do with the performance of an audit.	Point accepted.
Q24 (September draft)	Whether the question was needed or whether it could be combined with the immediately preceding question.	Point accepted. The question has been deleted as it is similar in substance to Q23.
Q24	An unwillingness by management or those charged with governance (TCWG) to speak with the auditor raises wider, fundamental relationship issues. Consideration should instead be given to a situation where they are unwilling to address the matter.	Point accepted.

¹ Question numbers refer to Agenda Item 7-H unless otherwise stated.

NOCLAR (Cover Note)
IESBA Meeting (December 2016)

Question ¹	Comments/Suggestions	IWG Disposition
Q33	Withdrawal from the client relationship might be prohibited by law or regulation. This should be made clear.	Point accepted.
Q35 (September draft)	Consideration should be given to merging this question on the reasonable and informed third party test with the question addressing disclosure to an appropriate authority.	Point accepted. See Q31.
Q44	If the PA has been engaged to undertake a forensic engagement, it would not be necessary to deploy the full response process under extant Section 225 given that the PA would already be performing many of the actions required under that section.	Point accepted.
Q44	Consideration should be given to adding a fourth bullet, i.e., whether the terms of the engagement specifically disclose that an act of NOCLAR has occurred.	Point not accepted as the terms of engagement are unlikely to be public information. In addition, the Board has determined that if management/TCWG have not appropriately addressed the matter, the PA should not be precluded from disclosing the matter to an appropriate authority if the PA has determined that it would be appropriate to do so in the public interest.