

18 August 2015

Mr Ken Siong,  
Technical Director,  
International Ethics Standards Board for Accountants,  
529 Fifth Avenue, 6<sup>th</sup> Floor,  
New York,  
NY 10017,  
USA.

Dear Mr Siong

### ***Comment Letter Responding to Non-Compliance with Laws and Regulations***

Crowe Horwath International is delighted to present a comment letter on the Exposure Draft *Responding to Non-Compliance with Laws and Regulations*. Crowe Horwath International is a leading global network of audit and advisory firms, with members in some 125 countries.

We welcome the Exposure Draft presented by IESBA and acknowledge the efforts that IESBA is making to address the issue of non-compliance with laws and regulations (NOCLAR). IESBA has engaged in active discussion and consultation about NOCLAR since the publication of the previous Exposure Draft in 2012. The proposals now have substantially the “right balance”. They appropriately reflect the fundamental principles and the duty to uphold the public interest.

IESBA notes under the relationship with ISA 250 that the proposals “are intended to complement the ISAs”. However, IESBA go on to comment “where the proposed pronouncement goes beyond ISA 250...”. The Explanatory Memorandum does go on to comment about IESBA’s engagement with the IAASB. It is important that this engagement continues. Before IESBA’s proposals are finalised, IAASB needs to specify whether any revisions to ISA 250 are required. The effective date of IESBA’s final pronouncement has to be aligned with the effective date of any consequential amendments to ISA 250.

We address below the specific matters detailed in the IESBA’s request for comments.

#### ***General Matters***

*1. Where law or regulation requires the reporting of identified or suspected NOCLAR to an appropriate authority, do respondents believe the guidance in the proposals would support the implementation and application of the legal or regulatory requirement?*

The proposals contain a clear response framework, which should assist all parties subject to the Code with addressing legal or regulatory duties to report identified or suspected NOCLAR to an appropriate authority.

In paragraph 108 headed “Stimulating Increased Reporting Under Law or Regulation”, IESBA comments about anecdotal evidence suggesting that professional accountants are not reporting instances of NOCLAR or suspected NOCLAR. Statistics are given about reporting under EU anti money laundering legislation. For the final pronouncements to be effective in practice and to increase reporting where law or regulation requires reporting, IESBA has to address the communication of the pronouncements to professional accountants. IESBA should look to work with professional bodies to communicate the pronouncements and develop training resources. Appropriate engagement by IESBA with national professional bodies is essential for the successful implementation of the final pronouncements.

We noted above the importance of collaboration between IESBA and IAASB over consequential amendments to ISA 250. However, the proposals will help auditors apply existing legal and regulatory duties to report to appropriate authorities.

*2. Where there is no legal or regulatory requirement to report identified or suspected NOCLAR to an appropriate authority, do respondents believe the proposals would be helpful in guiding PAs in fulfilling their responsibility to act in the public interest in the circumstances?*

The proposals will assist professional accountants with fulfilling their responsibility to act in the public interest. Again, communication and training, in collaboration with professional bodies will be vital.

*3. The Board invites comments from preparers (including TCWG), users of financial statements (including regulators and investors) and other respondents on the practical aspects of the proposals, particularly their impact on the relationships between:*

*(a) Auditors and audited entities;*

The proposals present a relationship between auditors and audited entities that reflects the public interest obligations of the auditor. We have commented above about collaboration between IESBA and IAASB, and the consequential revision of ISA 250. However, most aspects of the proposals refine the relationship between the auditor and the audited entity, and remind the auditor of duties that they currently have under ISAs.

*(b) Other PAs in public practice and their clients; and*

The proposals arguably formalise a duty to act that would already be required by the fundamental principles, and by membership obligations of many professional bodies. In addition, practitioners in certain jurisdictions, such as European Union Member States, have existing reporting obligations under anti-money laundering legislation that the proposals will reinforce.

In practice, communication and education will be important, particularly where the practitioner does not have an audit connection with the client. Practitioners will need to understand the implications of the proposals, including for fundamental matters such as engagement terms. As with our previous comments, collaboration with professional bodies will be vital for presenting the pronouncements to practitioners, particularly where those practitioners who are not from firms that deliver audit services or from firms that not subject to regulation or external oversight.

*(c) PAIBs and their employing organizations.*

The proposals present a response framework for “senior PAIBs” that generally appears appropriate for the holders of senior and responsible positions. In some jurisdictions, the proposals will complement existing obligations imposed on directors by law, regulation or corporate governance best practice.

The approach for “other PAIBs” reflects common sense and is proportionate. It is sensible to highlight “whistleblowing” and other existing reporting arrangements.

IESBA will have to work with professional bodies to successfully implement the pronouncements that relate to PAIBs. PAIBs may not be subject to continuing professional education requirements and may have limited continuing obligations to their professional body.

### **Specific Matters**

*4. Do respondents agree with the proposed objectives for all categories of PAs?*

Subject to our comments above, the proposed objectives are appropriate and reflect the fundamental principles and the public interest.

*5. Do respondents agree with the scope of laws and regulations covered by the proposed Sections 225 and 360?*

The scope of laws and regulations is appropriate. We agree with IESBA’s adoption of the approach taken by ISA 250, as this approach is established and can be adapted for the wider categories of accountants subject to this pronouncement.

*6. Do respondents agree with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR?*

The differential approach is an appropriate solution. We comment under general matters question 3 about the relationships between each of the categories and the organisation that they work with.

The illustrations of the application of the framework for auditors, senior PAIBs and practitioners is helpful. Although the framework for other PAIBs is much simpler, it would also be sensible to present this in a chart.

*7. With respect to auditors and senior PAIBs:*

*(a) Do respondents agree with the factors to consider in determining the need for, and the nature and extent of, further action, including the threshold of credible evidence of substantial harm as one of those factors?*

IESBA has given careful consideration to the factors. Adopting the term based on “substantial injury” as applied by the US SEC is appropriate and sets an appropriately high hurdle.

*(b) Do respondents agree with the imposition of the third party test relative to the determination of the need for, and nature and extent of, further action?*

We agree with the third party test.

*(c) Do respondents agree with the examples of possible courses of further action? Are there*

*other possible courses of further action respondents believe should be specified?*

We agree with the examples of possible courses of further action. The examples for an auditor should include notifying the parent company where the audit client is a subsidiary.

*(d) Do respondents support the list of factors to consider in determining whether to disclose the matter to an appropriate authority?*

We agree with the list given.

*8. For PAs in public practice providing services other than audits, do respondents agree with the proposed level of obligation with respect to communicating the matter to a network firm where the client is also an audit client of the network firm?*

IESBA has provided a detailed discussion about the issues relating to reporting to a network that is the auditor of a common client. Whilst IESBA's solution appears reasonable, as it takes into account matters such as materiality, reporting restrictions and the nature of the engagement, IESBA's solution could be challenged on public interest grounds because a closely connected firm holds the responsible position of auditor. We disagree with IESBA's decision not to prepare guidance. There is an area where further guidance is needed to help networks and their member firms with the application of the pronouncement.

*9. Do respondents agree with the approach to documentation with respect to the four categories of PAs?*

We agree with the approach to documentation. Auditors are familiar with the importance of documentation and are subject to obligations under ISAs to document their work. As noted by IESBA, the proposals do not modify or detract from the documentation requirements in ISAs.

The encouragement for members of the other categories to prepare documentation is appropriate and proportionate. However, IESBA may wish to consider whether a higher standard might be expected in certain cases. For example, if a senior PAIB holds a position of director, and law or regulation defines the duties of director, there should be a higher expectation about documentation by that senior PAIB.

We trust that our comments assist the IESBA in their completion of this project. As noted above, we consider collaboration between IESBA and IAASB to be particularly important, with a shared aim that the effective date of these pronouncements is aligned with the effective date of any consequential amendments to ISA 250. We also encourage IESBA to prepare guidance on the application of the proposed pronouncements by network firms. We shall be pleased to discuss our comments further with you.

Kind regards

Yours sincerely



David Chitty  
International Accounting and Audit Director