

August 20, 2015

Mr. Ken Siong
Technical Director
International Ethics Standards Board for Accountants
545 Fifth Avenue, 14th Floor
New York, NY 10017 USA

Dear Mr. Siong:

Re: May 2015 Exposure Draft, *Responding to Non-Compliance with Laws and Regulations*

I am writing on behalf of the Public Trust Committee (PTC) of the Chartered Professional Accountants of Canada (CPA Canada) in response to your request to comment on the Exposure Draft entitled *Responding to Non-Compliance with Laws and Regulations* (“the Exposure Draft”). CPA Canada together with its partners Chartered Professional Accountants of Bermuda and the Canadian provincial accounting bodies are currently working towards unification of the Canadian accounting profession under the designation “Chartered Professional Accountant”. The Canadian CPA profession represents a membership of more than 190,000 professional accountants in Canada and Bermuda.

CPA Canada conducts research into current business issues and supports the setting of accounting, auditing and assurance standards for business, not-for-profit organizations and government. It issues guidance on control and governance, publishes professional literature, develops continuing education programs and represents the Canadian CPA profession nationally and internationally. The PTC is responsible for overseeing the regulatory structures and processes across provincial jurisdictions in Canada. The PTC’s goals include achieving consistency between provincial CPA bodies in Canada and ensuring that the processes and standards in Canada meet or exceed the international standards.

We thank you for the opportunity to provide our comments on the Exposure Draft. Generally, we support the recommendations made, noting that implementation is likely to be the most challenging aspect because of the variations in existing legislative frameworks between jurisdictions with specific respect to whistleblower protection, if any, and stipulated requirements for confidentiality. Our responses to the General and Specific Matters for input from Respondents as requested in the Exposure Draft are as follows:

Specific 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?*

We agree that the guidance provided supports the implementation and application of the legal or regulatory requirement in those jurisdictions where law or regulation requires the reporting of identified or suspected NOCLAR to an appropriate authority. However, we have concerns regarding the

implementation of the proposals in jurisdictions where NOCLAR relevant whistle-blower legislation and regulations may not exist to protect professional accountants (PAs). We believe these concerns would have implications for clients and PAs, and negatively affect the on-going relationships between them, which could ultimately harm the public interest through erosion of trust.

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?*

Generally, we agree that the proposals would be helpful, noting, however, that jurisdictions such as Canada that do not have legal or regulatory requirements to report NOCLAR also tend to lack effective legislative protection for whistleblowers. As such, the guidance provided with respect to the withdrawal from the professional or employment relationship may be the only resultant action. In considering cases where further action may be required, we believe that PAs may seek greater guidance because of the lack of protection in, for example, advising an appropriate authority without a legal requirement to do so. Without legal requirements to report or protection from reporting, we note that the burden of the Code upon PAs may increase in ways that we are unsure as to the outcome. Examples include:

- the appropriateness and economic implications of an expanding scope of work not agreed to or authorized in an engagement letter,
- the possible effect on the relationship between the PA and the client or employer with respect to the future sharing of potential NOCLAR-related information, and
- the possible legal liability and insurance exposure that could emanate from actual or potential NOCLAR disclosure.

Furthermore, in some jurisdictions, confidentiality by PAs is a requirement, as is the case for example in the Province of Québec, where professional secrecy is provided for under section 9 of the Québec *Charter of Human Rights and Freedoms*. As a result, PAs may not be in a position to follow the guidance provided.

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;*
- (b) *Other PAs in public practice and their clients; and*
- (c) *PAIBs and their employing organizations.*

(a) In general, we identified that the relationships between an auditor and audited entities could be affected by the NOCLAR proposals with potential confusion as to the role of the auditor following the profession's standards for auditing versus the role of an investigative or forensic accountant. We believe that this is an area where there can be an expectation gap between auditors and other stakeholders such that guidance specific to auditors, clients and other stakeholders would be beneficial with these proposals to assist in minimizing the expectation gap.

Another general observation is that the auditor will have more responsibilities, the engagement may become more complex and therefore costly whilst there may be no agreement by the client to incur the costs associated with any additional work required outside of the mandate if there is known or suspected

NOCLAR. There is also the potential for a decreased level of trust within the PA-client relationship and unknown impacts that could occur through legal liability or insurance risks because of actual or potential NOCLAR disclosures.

An interesting question respecting auditors and their clients for consideration is what will the expectation of an auditor be where a NOCLAR matter is suspected or known in an audited entity that has or may affect another of the auditor's clients. Is it possible that the complexity of the auditor's relationships with more than one client could be affected through a single known or suspected NOCLAR?

Beyond the general points raised above, we also noted that the relationship between "proposed auditors" and "existing auditors" is impacted by consequential and conforming amendments proposed to paragraph 210.13, which require that a proposed auditor request the existing auditor (in respect of an audit of financial statements) to provide "known information regarding any facts or circumstances that in the latter's opinion, the former needs to be aware of before deciding whether to accept the engagement". It is not clear, even in jurisdictions where this requirement already exists, whether the existing auditor will provide this information because of the potential for legal action by the client, depending on the situation.

One suggestion is that in circumstances where the existing auditor was unable to continue with or resigned from the audit engagement, the existing auditor shall inform the proposed auditor of the fact of the withdrawal or resignation, as the case may be. The onus is then on the proposed auditor to obtain the necessary information to make an informed decision as to whether to accept the client by requesting such information from the client; or else from the existing auditor, with the client's permission.

(b) The relationship of other PAs in public practice and their clients may be affected by a change in the degree of trust and sharing of sensitive information relevant to NOCLAR and ultimately this may result in some clients seeking professional services from non-PA providers not subject to the same recommended courses of actions to act in the public interest where there is known or suspected NOCLAR.

(c) PAIBs and their employing organization relationships may also be affected by a change in the degree of trust and sharing of sensitive information relevant to NOCLAR. The public interest is protected through the integration of PAs operating within organizations with integrity and contributing to the overall integrity of the organization. We believe that there is a small potential that some organizations will consider the possible implications of the employ of a PA versus a non-PA where, for example, there is potential NOCLAR risk and this result would, of course, be contrary to the public interest if non-PAs were employed instead.

An additional observation concerning PAIBs is in respect of the description of senior PAIBs and whether the wording is potentially too narrow. The descriptor list comprised of influence *and* decision making *and* control could be such that a senior position of CFO, for example, may not meet *all* of the requirements as described and could create an unintended result of not being considered a senior PAIB according to the description.

In addition to the above, we note that the list of relationships in (a), (b) and (c) above does not appear to cover the relationship between PAs who are providing audit services and other PAs in the same public

practice who are providing other services. This may result from the underlying assumptions regarding the recommendations in paragraphs 225.39 and 225.40 having been overly generalized.

Paragraph 225.39 suggests that “if the professional accountant is performing a non-audit service for an audit client of the firm, the professional accountant shall communicate the matter within the firm. This is to enable the engagement partner for the audit to be informed about it and to determine how it should be addressed in accordance with the provisions of this section.” Paragraph 225.40 addresses the scenario where the PA is providing a non-audit service for an audit client of a network firm. The justification for these recommendations is provided in paragraph 77 in section C of the Explanatory Memorandum, which states that “the Board noted that there should generally be no impediments to reporting the matter within a firm where the client is also an audit client of the firm (unless there are specific engagement terms precluding such disclosure)”, although there was recognition that the situation may be more complex if network firms are involved and/or there is more than one jurisdiction.

It may be more prudent to suggest that the PA in public practice providing services other than audits should check to see whether there are any impediments to informing the audit engagement partner, and only inform that partner if none exist (or within allowed parameters). Also, if additional supplementary guidance is prepared in respect of these sections, either within or external to the Code, it would be useful to recommend that wording be included in the engagement letter to allow the PA providing other services to communicate with the audit engagement partner in that firm, or any network firm.

We also suggest that as a best practice, practitioners should separate the provision of non-audit services from audit services, including having separate engagement letters. The engagement letters may not address the cooperation and communication between the PAs in the different areas of the practice when matters such as NOCLAR arise in respect of their common client. As such, the generalization that there should not be impediments to reporting the matter within the firm may be too broad. A scenario where this could arise, for example, is when one area of the firm conducts an audit, and another area is involved in a mergers and acquisition transaction and irregularities that were not material to the audit are uncovered as part of the due diligence for the impending sale.

Specific Matters

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

We agree with the proposed objectives while reiterating the concerns outlined above in response to Questions 1 and 2.

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

We generally agree with the scope of laws and regulations covered by the proposed Sections 225 and 360 while reiterating the concerns outlined above in response to Questions 1 and 2. We identified however, that there could be specific concerns that may result for non-PAs being sought out for consulting in tax-related matters.

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

We found the proposals in respect of the four categories of PAs identified to have been clearly laid out; however, the categories assume that there is commonality in how jurisdictions regulate PAs and such commonality may not be the case. For example, more categories may be required depending upon the definition of “public practice” to recognize the differences in the PAs ability to deal with a situation in the public interest.

Auditors

With respect to auditors, we believe the proposals may impose a heavy investigation and disclosure burden regarding a suspected NOCLAR situation. We are concerned that the auditor would have as much responsibility as a senior PAIB in investigating a suspected NOCLAR. The senior PAIB has an obligation to know what the organization is doing and to ensure that the organization complies with the laws and regulations to which it is subject. Moreover, these laws often provide for legal and potentially criminal liability of the senior officers and directors of organizations found guilty of violations. We suggest that consideration of a distinction between the responsibilities of auditors and senior PAIBs should be made.

PAs in public practice providing services other than audits

Recognizing that the proposals differentiate between auditors and those PAs in public practice providing services other than audits, it is unclear why sections such as 225.22 and 225.27 would not apply to both.

In addition, the duty of confidentiality should apply to all members within the same firm performing different engagements for the same client.

Senior PAIBs

We considered the possible conflicts that may arise for PAs serving as directors in terms of their loyalty to the organization, participation on a board with voting rules and requirements, as well as the potential expectations of a PA versus non-PA director in an instance of suspected NOCLAR. We believe there is the potential for very difficult situations to arise for PA directors.

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?

Generally we agree, however, we reiterate the question raised above as to the reasonableness of the same expectations of inquiry by an auditor who is external to the organization and a senior PAIB within the organization.

(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?

Generally we agree, however, we acknowledge that a better test may be that of a PA placed in the same situation. Our concern is that a reasonable third party does not have the same knowledge or understanding of the practice of the profession - particularly in challenging circumstances.

(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?

Generally we agree, however, we note again the concerns raised above in Questions 1 and 2 with respect to PAs considering possible courses of further action.

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

Generally we agree, however, we note again the concerns raised above in Questions 1 and 2.

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?*

Generally we agree, however, we believe additional clarification may be required. We suggest the PA providing services other than audits will need to assess whether they are able to communicate the matter to the audit engagement partner who is in the network firm. This recommendation is consistent with the proposed wording of paragraph 225.40, which states that “the professional accountant shall consider whether to communicate the matter to the network firm so as to enable the engagement partner for the audit to be informed about it”.

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

We agree with the approach to documentation and suggest that consideration be made for PAs in business to retain such information outside of the business location.

We thank you for the opportunity to comment on the Exposure Draft and we commend IESBA for developing a revised approach to a framework for providing guidance to professional accountants in situations of known or suspected NOCLAR in determining the best way to act in the public’s interest in a variety of possible scenarios.

Yours truly,



Brian Friedrich, FCPA, FCGA
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CPA Canada