

4 September 2015

Submitted electronically to kensiong@ethicsboard.org

Mr K Siong
IESBA Technical Director
International Ethics Standards Board for Accountants (IESBA)
529 Fifth Avenue, 6th Floor
New York, NY 10017, USA

Dear Ken

Comments on the *Proposed Standard on Non-Compliance with Laws and Regulations (NOCLAR)*

The Independent Regulatory Board for Auditors (the IRBA) is the audit regulator and national auditing and ethics standard setter in South Africa. Its statutory Committee for Auditor Ethics (the CFAE) is responsible for prescribing standards of professional competence, ethics and conduct of registered auditors. The IRBA has as its statutory objectives the protection of the public by regulating audits performed by registered auditors, and the promotion of investment and employment in South Africa.

The IRBA adopted Parts A and B of the International Ethics Standards Board for Accountants' (the IESBA) *Code of Ethics for Professional Accountants* (the IESBA Code). It was prescribed in 2010 as the *Code of Professional Conduct for Registered Auditors* (the IRBA Code), in South Africa with certain additional national requirements. The IRBA Code together with its *Rules Regarding Improper Conduct* provides the basis for disciplinary action against registered auditors. Consequently, the IESBA's *Proposed Standard on Non-Compliance with Laws and Regulations* for auditors might result in possible amendments to Parts A and B which is of particular interest to the IRBA.

We appreciate this opportunity to comment on the IESBA's *Proposed Standard on Non-Compliance with Laws and Regulations*.

Our comments are presented in the following sections:

- General comments;
- Request for specific comments and responses; and
- Request for general comments and responses.

If you have any questions or would like to discuss any specific comments, please contact Imran Vanker / Ian Mtegha on +27 87 940 8838 / +27 87 940 8860 or at ivanker@irba.co.za / imtegha@irba.co.za.

Yours faithfully

Signed electronically

Imran Vanker
Director: Standards

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1. General Comments

- 1.1. The proposed amendments to the IESBA *Code of Ethics for Professional Accountants* (the IESBA Code) are drafted in the context of “professional accountants (PAs) in public practice providing professional services to an audit client” and “PAs in business”. Our responses are provided only in the context of requirements that the IESBA Code might seek to impose on PAs in public practice (in South Africa – this applies to registered auditors) appointed to perform audits and provide other professional services to any entity.
- 1.2. Consequently, our specific comments are restricted to the proposed amendments to sections: 100, 140, 150, 210 and 270 and the proposed new section 225 as they pertain to PAs in public practice providing professional services to an audit client. Accordingly we do not comment on the proposed amendments to section 360 of the IESBA Code as it relates to PAs in business. Our more general comments follow.
- 1.3. We would support the inclusion of Appendix 1 and 2 in the Code as it provides a useful summary of the responsibilities of the PAs regarding the reporting of identified or suspected NOCLAR.
- 1.4. We believe the NOCLAR standard should address cross-border non-compliance and include an example of a scenario where an entity operates across several jurisdictions, as the exposure draft currently only anticipates domestic (jurisdictional) non-compliance.
- 1.5. We suggest that the IESBA communicate to the IAASB that the PA’s responsibility regarding NOCLAR be addressed in the PA’s engagement letter with the client.

2. Request for Specific Comments and Responses

General Matters

Question 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?

- 2.1. We believe the guidance in the proposals would support the implementation and application of the legal or regulatory requirement in South Africa (for PAs in public practice). South Africa has legislation requiring the auditor to report a “reportable irregularity” to the IRBA or to the Companies and Intellectual Properties Commission depending on whether the company is subject to an audit or an independent review, respectively. However, in addition to the requirement as per paragraph 225.10, we recommend that paragraphs 225.24 (further action) and 225.27 (reporting to an appropriate authority) should mention that jurisdictions may have more onerous or specific guidance on how to address NOCLAR and the reporting thereof, as is the case with registered auditors’ statutory responsibility to report “reportable irregularities” in South Africa.
- 2.2. Our local legislation (Auditing Profession Act, 2005) defines a “reportable irregularity” as any unlawful act or omission committed by any person responsible for the management of an entity, which –
- (a) has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of his, her or its dealings with that entity; or
 - (b) is fraudulent or amounts to theft; or
 - (c) represents a material breach of any fiduciary duty owed by such person to the entity or any partner, member, shareholder, creditor or investor of the entity under any law applying to the entity or the conduct or management thereof.

Question 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?

- 2.3. We believe the proposals would be helpful in guiding PAs in fulfilling their responsibility to act in the public interest in the circumstances where there is no legal or regulatory requirement to report identified or suspected NOCLAR to an appropriate authority. It must be noted however that the subjective nature of applying thresholds such as “clearly inconsequential” and “substantial harm” or “serious adverse consequences” will create inconsistencies in the application of the guidance. The IESBA may wish to consider providing a range of examples, or principles to apply such thresholds.

Question 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;

- 2.4. As registered auditors in South Africa already have a requirement to report “reportable irregularities” to the IRBA, we do not foresee any further impact on the

relationships between the auditor and the entity. The proposals may have a further positive effect on the relationship with the entity's management where management includes PAIBs. We further acknowledge that additional cost implications might arise from the auditor's responsibility in terms of the proposed section 225.

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

2.5. No comment.

(c) PAIBs and their employing organizations.

2.6. No comment.

Specific Matters

Question 4

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

2.7. We agree with the proposed objectives for all categories of PAs.

Question 5

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

2.8. We agree with the scope of laws and regulations covered by proposed section 225. We have the following additional examples of laws and regulations to be included to the list as per paragraph 225.6 for the Board's consideration:

- *Breach of fiduciary duty*
- *Data protection*

2.9. We also note that the IAASB is in the process of considering consequential changes to ISA 250, *Considerations of laws and regulations in an audit of financial statements* as the proposed section 225 currently expands the obligations of an auditor from an ethical perspective.

Question 6

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

2.10. We agree with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR as the PAs have varying roles and levels of responsibilities. This will ensure that all PAs are bound by the fundamental principles of integrity and professional behaviour.

Question 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?

2.11. We 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. We take note that “substantial harm” or “serious adverse consequences” may be considered subjective in nature when auditors apply their professional judgement to the prevailing circumstances and we therefore would recommend that the IESBA provide guidance on the meaning of these terms to ensure consistency in the application of the Code. Not addressing this would make it difficult for the appropriate authority to regulate or enforce the Code.

(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?

2.12. We agree with the imposition of the third party test relative to the determination of the need for, and nature and extent of, further action as it is a well understood concept within the auditing practice.

(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?

2.13. We agree with the examples of possible courses of action listed in paragraph 225.24 and 225.43. We recommend the need to consider the impact of the non-compliance on the audit/assurance report as other possible courses of further action that the auditor could take for example, where the non-compliance affects the financial statements of the entity being audited. Our recommendation is in addition to the third bullet point under paragraph 225.19(b).

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

2.14. We support the list of factors to consider in determining whether to disclose the matter to an appropriate authority as listed in paragraph 225.27.

2.15. Paragraphs 225.29 and 225.45 indicate that if the PA determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, the PA shall also consider whether it is appropriate to inform the

client of the PA's intentions before disclosing the matter. It is our view and our long experience that the PA should inform those charged with governance, rather than the *client*, of the disclosure of the matter to an appropriate authority.

Question 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?

- 2.16. We 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. However, the requirement that the matter always be reported to the audit engagement partner (see paragraph 225.39) should only be in the circumstances where the engagement does not preclude the PA from doing so. For example, there may be circumstances where the terms of engagement preclude the disclosure of information beyond the engagement team, such as the PA is performing a due diligence review for an audit client who intends on acquiring an entity, and the acquisition is sensitive.

Question 9

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

- 2.17. We agree with the approach to documentation with respect to the four categories of PAs.

3. Request for General Comments and Responses

(a) PAIBs working in the public sector

- 3.1. No comment.

(b) Developing Nations

- 3.2. We believe that it remains important to highlight the necessity to consider the legislative environment in the country in which the PA resides. We believe that this consideration could be strengthened in the guidance by including "consider whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation" in sections which list factors to consider when determining whether to report instances of identified or suspected NOCLAR to an appropriate authority and also to sections which list factors to consider when determining whether additional actions should be taken.

(c) Translations

3.3. No comment.