

NOCLAR – Overview

Prepared by Staff of the International Ethics
Standards Board for Accountants

December 2017

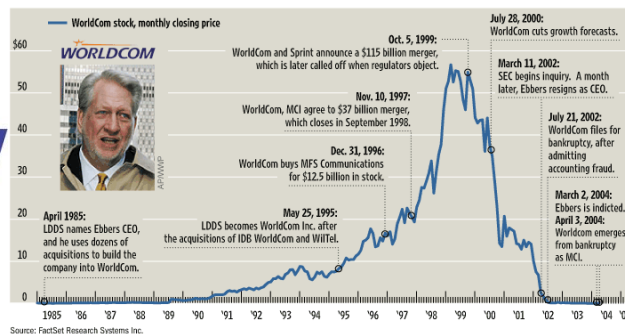
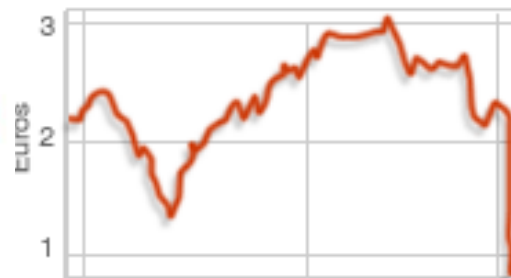
Note

This set of support slides does not amend or override the IESBA Code, the text of which alone is authoritative. Reading the slides is not a substitute for reading the Code. The slides are not intended to be exhaustive and reference to the Code itself should always be made.

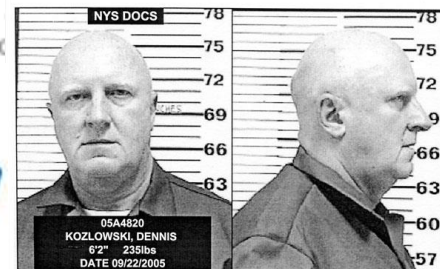
Genesis of the Project



Parmalat share price



Jan 2003 SOURCE



Sex - MALE Race - WHITE Hair - BLD/GY Eyes - BLUE DOB - 11/26/1946
SCAR RS FACE, LT. WRIST

NYSID # - 1959351J ID CARD # - 00086723

Why and Aims



Hiding behind “client confidentiality”?



Easy way out – resign from audit?



Guidance lacking

Why and Aims



Responding vs reporting



Professional accountants vs auditors



Started with fraud, now NOCLAR

Heart of the Debate

- When should a professional accountant (PA) override duty of confidentiality and disclose NOCLAR to an appropriate authority?
- Balances acting in public interest vs. principle of confidentiality
- Debate about disclosure of NOCLAR is about what is reasonable to ask of PAs within their role in the public interest



The Journey



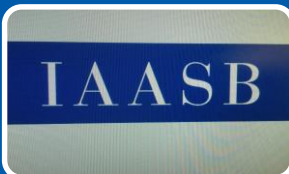
Standard unanimously approved April 2016

- Effective July 15, 2017



Over 6 years in the making

- 3 global roundtables
- 2 Exposure Drafts



Close coordination with IAASB

Key Project Objective

To create framework to guide professional accountants (PAs) in deciding how best to act *in the public interest* when they become aware of NOCLAR or suspected NOCLAR



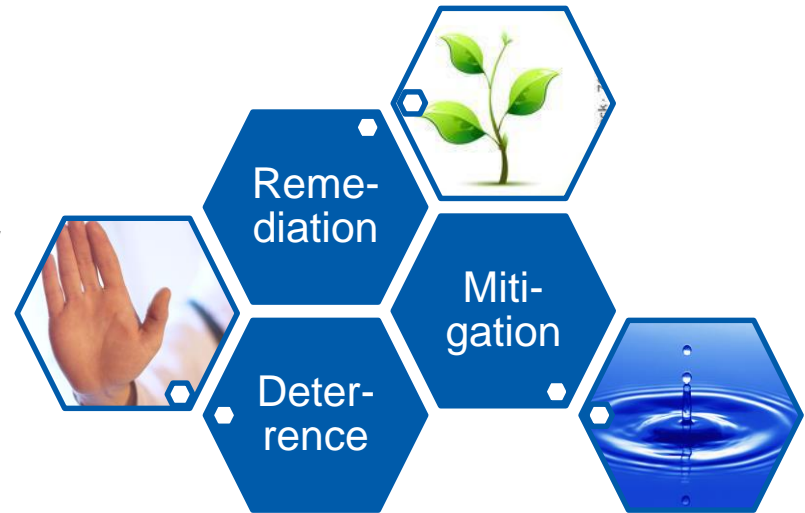
Framework Objectives – All PAs (1)

- Comply with fundamental principles:
 - Integrity
 - Professional behavior



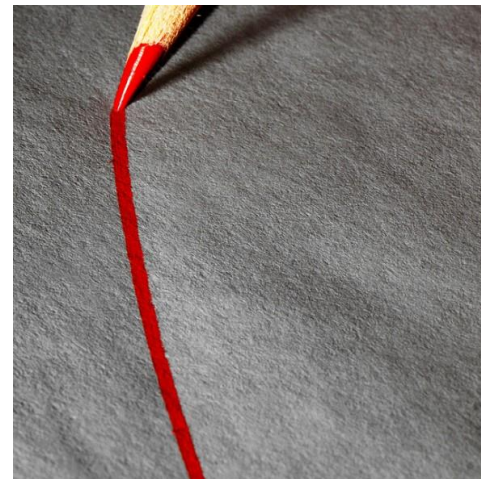
Framework Objectives – All PAs (2)

- Through alerting management/TCWG, seek to:
 - Enable them rectify, remediate or mitigate consequences of NOCLAR; or
 - Deter commission of NOCLAR
- Take such further action as may be appropriate in public interest



Scope – All PAs

- Laws and regulations with direct effect on material amounts/disclosures in the financial statements
- Other laws and regulations that may be fundamental to entity's business and operations
- No distinction between public interest entities (PIEs) and non-PIEs
- Personal misconduct and clearly inconsequential matters excluded



Examples of Laws and Regulations Covered



Examples of Laws and Regulations Covered

Financial
products and
services



Tax laws



Environmental
protection



Public health
and safety



Who Does It Apply To & Framework Expectations?



Auditors – Understanding Legal or Regulatory Obligations

- Upon becoming aware of actual or suspected NOCLAR, establish what legal or regulatory obligations are triggered, if any
- For example:
 - Any reporting requirement?
 - Any prohibition re ‘tipping off’?
 - Any prohibition re disclosing confidential information?



Auditors – Taking Action

- Raise the matter with management/TCWG (escalate within chain of command as needed)
 - Substantiate/dispel
 - Advise them to rectify/remediate/mitigate consequences, stop NOCLAR, or report to appropriate authority
- Fulfill professional responsibilities:
 - Comply with all applicable legal or regulatory requirements
 - Comply with professional standards



Auditors – Group Context

- If become aware of NOCLAR during audit of component (whether for group audit or as standalone audit), communicate it to group engagement partner
- If group engagement partner becomes aware of NOCLAR, communicate it to those performing audit work at components (for group or other purposes) where the matter may be relevant
- Communication precluded if prohibited by law or regulation



Auditors – Assessing Response of Management/TCWG

- Assess appropriateness of response
- Various factors, e.g.
 - Response timely?
 - Matter adequately investigated?
 - Action taken to rectify, remediate or mitigate consequences?
 - Action taken to stop NOCLAR or mitigate risk of re-occurrence?
 - NOCLAR disclosed to appropriate authority?



Auditors – Determining Whether to Take Further Action

- Determine if further action needed in public interest – nature and extent will depend on various factors, e.g.
 - Legal and regulatory framework
 - Urgency and pervasiveness of the matter
 - Credible evidence of substantial harm to stakeholders?
- Must apply third party test
 - Would 3rd party, weighing all specific facts and circumstances at the time, likely conclude that PA has acted appropriately in public interest?



Auditors – Courses of Further Action

- Courses of further action include:
 - Disclose to appropriate authority (even if not required by law or regulation)
 - Withdraw from engagement and client relationship (where permitted by law or regulation)



Auditors – When to Disclose to Appropriate Authority?

- Disclosure to appropriate authority depends in particular on nature and extent of actual/potential harm to stakeholders
- Decision depends also on factors such as:
 - Whether there is an appropriate authority to intake and follow up on the information
 - Availability of legal protection
 - Existence of actual or potential threats to physical safety of PA or others



Auditors – Taking Action without Reporting to Management

- Standard permits making disclosure to appropriate authority without reporting the matter to management only in *exceptional circumstances*
 - Must be *reason to believe imminent breach of law or regulation that would cause substantial harm to stakeholders*



Senior PAIBs

- Directors, officers or senior employees with ability to make decisions about acquisition, deployment and control of entity's resources
- Overarching expectations:
 - Set right tone at the top
 - Establish appropriate framework within entity to prevent NOCLAR



Senior PAIBs – Requirements

- Fulfill professional responsibilities
 - Understand and comply with laws and regulations
 - Raise the matter with superior/TCWG
 - Rectify/remediate/mitigate consequences
 - Seek to deter commission of NOCLAR
 - Determine whether to alert external auditor
- Determine if further action needed in public interest, in light or response of superior/TCWG
 - Nature and extent of further action will depend on various factors



Senior PAIBs – Determination of Further Action

- Must apply third party test
- Courses of further action include:
 - Inform parent entity if applicable
 - Disclose NOCLAR to appropriate authority (even if not required by law or regulation)
 - Resign from employment relationship



PAs in Public Practice Other Than Auditors

- Actions
 - Discuss with management/TCWG
 - If client is an audit client, take steps to communicate NOCLAR to audit engagement partner; otherwise consider informing external auditor
- Stand back
 - Consider whether further action needed in public interest, e.g. disclosing to appropriate authority or resigning from client relationship
 - Will depend on various factors



PAIBs Other Than Senior PAIBs

- Baseline actions
 - Escalate to immediate superior or next higher level of authority; or
 - Use established internal whistle-blowing mechanism



Documentation

- Required for auditors
 - How management/TCWG have responded to the matter
 - Courses of action considered, judgments made and decisions taken
 - How responsibility to act in public interest has been met
- Encouraged for other PAs



Key Desired Outcomes



Protecting and promoting
the public interest

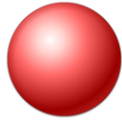


Stimulating greater accountability
within organizations

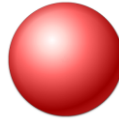


Protecting and strengthening
reputation of the profession

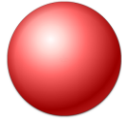
Limits of the Standard



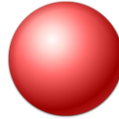
Will not stop all
NOCLAR



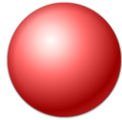
No assurance of
detection



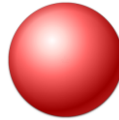
No guarantee of
reporting



Cannot provide legal
protection



Cannot change
nature or scope of
the audit



Cannot compensate
for public authority's
action (or inaction)

Role of Other Players?

- IFAC member organizations
- Governments, legislators, regulators
- Those charged with governance
- National standard setters
- Firms
- Regional and international organizations
- Academic institutions



Implementation Support

- Resources available on IESBA website
 - Fact Sheet
 - Basis for Conclusions
 - Video Q&A series and FAQs
 - PowerPoint slides
 - Other implementation support tools and resources





The Ethics Board

www.ethicsboard.org

Copyright © December 2017 by the International Federation of Accountants (IFAC). All rights reserved. Permission is granted to make copies of this work provided that such copies are for use in academic classrooms or for personal use and are not sold, and provided that each copy bears the following credit line: *"Copyright © December 2017 by the International Federation of Accountants (IFAC). All rights reserved. Used with permission of IFAC."*
