

Agenda Item

J1-B1

Responding to Non-Compliance or Suspected Non-Compliance with Laws or Regulations — Issues and IAASB Task Force Recommendations

Objective of Agenda Item

The objective of this Agenda Item is to provide a summary of responses to the July 2015 Exposure Draft (ED), *Responding to Non-Compliance or Suspected Non-Compliance with Laws or Regulations* (NOCLAR), to highlight the issues identified in the responses, and to seek Representatives' and Observers' views on the Task Force's recommendations.

Background

IAASB NOCLAR ED

1. The International Auditing and Assurance Standards Board (IAASB) NOCLAR ED was released for public exposure in July 2015 and the comment period closed on October 20th, 2015. The IAASB NOCLAR ED comprised proposed amendments to ISA 250¹, and other of the IAASB International Standards² (henceforth "International Standards") to address actual or perceived inconsistencies of the approach to responding to identified or suspected NOCLAR between the International Standards and the International Ethics Standards Board for Accountants (IESBA) Re-Exposure Draft, [Responding to Non-Compliance with Laws and Regulations](#) (IESBA NOCLAR ED), which was released in May 2015.
2. Forty-three (43) comment letters were received during the exposure period. A list of respondents is included in Appendix 2, and all responses can be accessed from the IAASB's [website](#).
3. Comment letters were received from the following stakeholder groups:

Stakeholder Group	Number	Percentage
Regulators and Oversight Authorities	3	7%
National Auditing Standard Setters	10	23%
Accounting Firms	5	12%
Public Sector Organizations	3	7%
Member Bodies and Other Professional Organizations	20	47%

¹ ISA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*

² The IAASB's International Standards comprise the International Standards on Auditing™ (ISAs™), International Standards on Review Engagements™ (ISREs™), International Standards on Assurance Engagements™ (ISAEs™), International Standards on Related Services™ (ISRSs™), and International Standards on Quality Control™ (ISQCs™).

Academics	1	2%
Individuals and Others	1	2%
Total	43	100%

4. The geographic coverage of responses is shown below:

Geographic Region	Number	Percentage
Organizations with a Global Mandate	7	16%
Asia Pacific	11	26%
Europe	13	30%
Middle East/Africa	6	14%
North America	5	12%
South America	1	2%
Total	43	100%

5. For the purposes of this paper, and when considered necessary to provide context to the magnitude of responses, the following descriptive terms have been used:
- A few respondents = 2-3;
 - Some respondents = 4-6;
 - Several respondents = 7-11;
 - Many respondents = 12-21; and
 - A majority of respondents = 22 or more.

Overall Comments Received

6. Overall, respondents³ were supportive of the IAASB's efforts to address actual or perceived inconsistencies of the approach to responding to identified or suspected NOCLAR between the International Standards and the IESBA NOCLAR ED. A few respondents⁴ expressed particular support for the IAASB's approach in proposing limited amendments to the International Standards that do not explicitly duplicate in detail all of the specific requirements in the IESBA NOCLAR ED, allowing flexibility when other ethical codes are applied and to minimize the amount of material that would be incorporated into ISA 250 and other of the International Standards.

³ *Regulators and Oversight Bodies:* UKFRC, IFIAR, IRBA; *National Auditing Standard Setters:* ASB, AUASB, CAASB, JICPA, NZAuASB; *Accounting Firms:* BDO, EYG; *Public Sector Organizations:* AGC, CIPFA, GAO; *Member Bodies and Other Professional Organizations:* CAANZ, CPAA, ICPAK, ISCA, SAICA, SMPC, WPK; *Individuals and Others:* CBarnard

⁴ *Accounting Firms:* BDO; *Member Bodies and Other Professional Organizations:* FEE, ICAS

7. The matters highlighted in this Issues Paper are focused on the comments raised by respondents who suggested amendments or improvements to the International Standards. It is noted that many respondents were supportive of the IAASB NOCLAR ED, and these comments have not been elaborated in this Issues Paper.

Monitoring Group Response

8. Only one monitoring group⁵ member responded to the IAASB's NOCLAR ED. IFIAR expressed support for the IAASB's and IESBA's efforts to coordinate their work on the NOCLAR project, as they see a benefit in aligning the standards on auditing and ethics applied by auditors. They urged the IAASB to ensure that the final outcome of the IESBA NOCLAR project is taken into consideration as they see a risk of inconsistent outcomes if the latest IESBA developments are not incorporated equally on the IAASB side. They noted that the IAASB should continue monitoring the IESBA NOCLAR project through to finalization before closing out its revision of the International Standards.

Level of Alignment between the International Standards and the IESBA NOCLAR ED

9. Some respondents⁶ requested more alignment between the IESBA NOCLAR ED and the International Standards, for example the inclusion of the work effort requirements from the IESBA NOCLAR ED in the International Standards⁷, or an enhanced link to the IESBA NOCLAR ED.⁸ One respondent⁹ had requested less alignment. Respondents¹⁰ supporting the inclusion of the procedures set out in the IESBA NOCLAR ED believed that a significant number of firms would be complying with both the IESBA *Code of Ethics for Professional Accountants* (the IESBA Code) and the International Standards, and accordingly the incorporation of the procedures from the IESBA NOCLAR ED in the International Standards would facilitate more effective compliance with the IESBA Code and the International Standards.
10. The Task Force believed that, consistent with the IAASB NOCLAR ED, the intent was not to repeat the requirements of the IESBA NOCLAR ED in the International Standards, as doing so could place additional requirements on auditors who are bound by ethical codes other than the IESBA Code and it could be impracticable for such auditors to comply with the International Standards. Furthermore, not all of the procedures contemplated by the IESBA NOCLAR ED are designed for the purpose of providing sufficient appropriate evidence to support an opinion on the financial statements and are instead intended to

⁵ The Monitoring Group comprises the following organizations: Financial Stability Board, International Forum of Independent Audit Regulators (IFIAR), International Organization of Securities Commissions, Basel Committee on Banking Supervision, International Association of Insurance Supervisors and The World Bank Group.

⁶ *Regulators and Oversight Bodies:* IRBA; *National Auditing Standard Setters:* HKICPA; *Accounting Firms:* EYG, PWC; *Member Bodies and Other Professional Organizations:* FEE, SAICA

⁷ *Accounting Firms:* PWC

⁸ *Accounting Firms:* DTT

⁹ *Member Bodies and Other Professional Organizations:* KICPA

¹⁰ *Accounting Firms:* PWC

support the auditor in fulfilling their ethical obligations by responding to non-compliance that the auditor comes across or of which the auditor is made aware.

Interactions with Comments on the IESBA NOCLAR ED

11. Several respondents¹¹ emphasized their concerns and comments previously expressed in respect of the IESBA NOCLAR ED, with a few¹² highlighting the direct impact of such concerns on the International Standards, and one respondent¹³ expressing their lack of support for the changes to the International Standards as a result. One respondent¹⁴ believed that the IAASB did not do enough to challenge the IESBA NOCLAR proposals with respect to the impact on the audit. That respondent and two others¹⁵ also raised concern that reporting NOCLAR to authorities could be to the detriment of audit quality as it was argued that it could impair the relationship and transparency between the entity and the auditor.
12. The Task Force considered these views and noted that there was no evidence to suggest that there would be a negative impact on audit quality, as there are already a few jurisdictions where the reporting of NOCLAR is required, with no reported negative impact on audit quality in those jurisdictions. In recognizing the importance of close co-operation between the Boards, the respective IAASB and IESBA Task Forces both have representatives from each other's Task Forces, and the IAASB and IESBA staff discuss relevant matters as they arise. It is also noted that the IESBA NOCLAR ED proposed new interactions between the auditor and the entity that may enhance audit quality.
13. Many respondents¹⁶ expressed concern that the IAASB may not take into account, or publically expose changes to the International Standards that may result from the impact of any fundamental changes to the IESBA NOCLAR ED that are made subsequent to the IAASB NOCLAR ED being issued. Some respondents¹⁷ expressed concerns about updating the International Standards for minor amendments as these require effort in translation and updates to firms' methodologies, at a time when there are more significant changes to deal with, such as auditor reporting. On the other hand, as discussed in paragraph 6, many respondents supported the efforts of the IAASB and the concurrent alignment of the International Standards with the IESBA NOCLAR ED.
14. The Task Force notes that issuing the IAASB NOCLAR ED shortly after the IESBA NOCLAR ED allowed respondents to comment on both at the same time. This enabled

¹¹ *Regulators and Oversight Bodies:* IFIAR; *National Auditing Standard Setters:* IDW, NZAuASB; *Member Bodies and Other Professional Organizations:* ASSIREVI, CAI, FEE, FSR, IBR-IRE, ICPAK, SMPC, WPK

¹² *Regulators and Oversight Bodies:* IFIAR; *Member Bodies and Other Professional Organizations:* CAI

¹³ *Member Bodies and Other Professional Organizations:* SMPC

¹⁴ *National Auditing Standard Setters:* IDW

¹⁵ *Member Bodies and Other Professional Organizations:* SMPC, WPK

¹⁶ *Regulators and Oversight Bodies:* IFIAR, IRBA; *National Auditing Standard Setters:* CNCC; *Accounting Firms:* BDO, MAZARS; *Member Bodies and Other Professional Organizations:* CAI, CPAA, FEE, IBR-IRE, ICAS, SAICA, SMPC

¹⁷ *National Auditing Standard Setters:* CNCC; *Accounting Firms:* MAZARS; *Member Bodies and Other Professional Organizations:* FEE, ICAS

respondents to consider whether the IAASB's proposed amendments removed inconsistencies between the International Standards and the IESBA NOCLAR ED. The Task Force also notes that, in accordance with the [Due Process and Working Procedures](#), the IAASB will be required to vote on whether there has been substantial change to the exposed document such that re-exposure is necessary.

Updated IESBA NOCLAR Proposals¹⁸

15. The IESBA has been working on amendments to the IESBA NOCLAR proposals in response to comments received on the IESBA NOCLAR ED. The Task Force's consideration of the impact on the International Standards of the key changes to section 225 of the IESBA NOCLAR ED, as contained in the updated IESBA NOCLAR proposals, are summarized in Appendix 1.

Areas of Focus

16. The paper below summarizes the feedback from respondents that is more significant in nature, and requires the attention of Representatives and Observers. The matters set out below are considered to be more significant due to the extent of discussion and debate that took place at the Task Force meeting in respect of such matters, the degree of changes to the IAASB NOCLAR ED which the Task Force recommends in response to such matters, or the potential impact of such matters on future IAASB projects.
 - [Legal or Ethical Duty or Right to Report NOCLAR and Complying with the Duty of Confidentiality](#) (See Item A below)
 - [Consistency between the IESBA NOCLAR ED and the International Standards Other Than ISAs](#) (See Item B below)
 - [Definition of "Non-compliance"](#) (See Item C below)
 - [Implications of NOCLAR for the Auditor's Report](#) (See Item D below)
 - [Group Audits](#) (See Item E below)
 - [The Impact in Jurisdictions Who do not Adopt, or Plan to Adopt, the IESBA Code](#) (See Item F below)
 - [More Fulsome Review of ISA 250](#) (See Item G below)
17. The IAASB will discuss a range of less significant issues at its March 2016 meeting that may warrant further consideration and reflection prior to finalization of the changes to the IAASB's International Standards. These matters are highlighted in Item H below.
18. The Task Force will consider the outcome of the IESBA Board Meeting to be held in March 2016 and the impact, if any, on the International Standards. The Task Force intends to present the final changes to the International Standards to the IAASB for approval at its June 2016 meeting.

¹⁸ Updated IESBA NOCLAR Proposals means the IESBA NOCLAR Proposals as contained in the March 2016 IESBA Board Papers

Significant Issues and Task Force Recommendations

A. Legal or Ethical Duty or Right to Report NOCLAR and Complying with the Duty of Confidentiality

Background and Respondents' Comments

19. In drawing attention to the auditor's responsibilities to respond to NOCLAR, the IAASB NOCLAR ED made reference to the auditor having a "legal or ethical duty or right to report" NOCLAR, for example as set out in paragraph 28 of ISA 250. The amendments were included in order to recognize and reflect the changes to the auditor's duty of confidentiality, particularly the "legal or ethical duty or right to report" NOCLAR to an appropriate authority reflected in the IESBA's NOCLAR ED and to give appropriate emphasis to the proposed change in the IESBA NOCLAR ED. In addition, application material was included in paragraph A19 of ISA 250 to provide guidance to auditors on the considerations that the auditor would apply in reporting non-compliance to appropriate authorities, including the auditor's duty of confidentiality.
28. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a ~~responsibility~~ legal or ethical duty or right to report the identified or suspected non-compliance to parties outside the entity. (Ref: Para. A19–A20)
- A19. If the auditor has identified or suspects non-compliance with laws or regulations, the auditor may consider obtaining legal advice to determine whether the auditor has a legal or ethical duty or right to report to parties outside the entity and, when applicable, the appropriate course of action in light of such duty or right. For example~~The auditor's professional duty to maintain the confidentiality of client information may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity. However,~~
- The duty of confidentiality may not apply or may be overridden by statute, the law or courts of law~~laws or regulations~~. In some jurisdictions, the auditor of a financial institution has a statutory duty to report the occurrence, or suspected occurrence, of non-compliance with laws and regulations to supervisory authorities. Also, in some jurisdictions, the auditor has a duty to report misstatements to authorities in those cases where management and, where applicable, those charged with governance fail to take corrective action.
 - The auditor may have the right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality.¹⁹
 - The auditor's legal or ethical duties to maintain confidentiality may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity.

¹⁹ See, for example, Section 225.29 of the IESBA Code

20. Several respondents²⁰ had reservations with the use of the term “legal or ethical duty or right”. Some respondents²¹ believed that the term is ambiguous and unclear, particularly where laws or regulations prohibit the breach of confidentiality and the auditor is not able to report the NOCLAR outside of the entity i.e. that in such cases the auditor's right to report NOCLAR conflicts with the legal prohibition to report the NOCLAR. Two respondents²² were concerned that ISA 250 does not sufficiently emphasize the need for the auditor to be cognizant of jurisdictional laws or regulations which would normally take precedence over the IESBA NOCLAR ED in governing the need for reporting of NOCLAR to an appropriate authority. A respondent²³ argued that the term “right” does not reflect the underlying decision-making process and evaluation that would take place before exercising this “right” and that the use of the term “ethical right” does not make it clear that it is an ethical responsibility to report the NOCLAR. Another respondent²⁴ pointed out that the IESBA NOCLAR ED does not refer within its proposals related to NOCLAR to the auditor having a “right” to report NOCLAR.
21. The IAASB NOCLAR ED indicated that in reporting NOCLAR to an appropriate authority, the duty of confidentiality may not apply or may be overridden by laws or regulations. Some respondents²⁵ were concerned with this phrasing and indicated that the duty of confidentiality always applies, but may be overridden.
22. A few comments²⁶ were also made on the auditor obtaining legal advice, as set out in paragraph A19, including that this should support obtaining other forms of advice and that paragraph A19 seems to focus on obtaining legal advice rather than determining whether the auditor should report the NOCLAR to an appropriate authority. Furthermore, a respondent²⁷ noted that obtaining of legal advice would add to the cost of the audit, and possibly be unhelpful in determining ethical requirements beyond law or regulation.
23. Some suggestions for improvements to the International Standards were provided. Notably, a respondent²⁸ had proposed the use of the term “legal or ethical duty or right” be amended to “legal duty to report, or ethical responsibility to determine whether to report”, which better describes the work effort and considerations the auditor would apply in the circumstances. Another suggestion was that more prominence should be brought to the possible preclusion of reporting to an appropriate authority, and accordingly should be

²⁰ *National Auditing Standard Setters: IDW; Accounting Firms: EYG, PWC; Member Bodies and Other Professional Organizations: FEE, FSR, ICAS, ICPAK, SMPC*

²¹ *National Auditing Standard Setters: IDW; Member Bodies and Other Professional Organizations: FEE, FSR, ICAS, SMPC*

²² *Member Bodies and Other Professional Organizations: ICPAK, SMPC*

²³ *Accounting Firms: EYG*

²⁴ *Accounting Firms: PWC*

²⁵ *National Auditing Standard Setters: NZAuASB; Accounting Firms: EYG, PWC; Member Bodies and Other Professional Organizations: CPAA*

²⁶ *Regulators and Oversight Bodies: IRBA; Member Bodies and Other Professional Organizations: SAICA; Academics: HC*

²⁷ *Member Bodies and Other Professional Organizations: SMPC*

²⁸ *Accounting Firms: EYG*

mentioned in paragraph 28.²⁹ Additionally, three respondents³⁰ recommended that guidance be included in ISA 250 regarding the legal and other risks that the auditor should consider when determining whether to report NOCLAR to an appropriate authority. These legal and other risks are set out in section 225.33 of the updated IESBA NOCLAR proposals. Similarly, another respondent³¹ recommended the inclusion of application material addressing the auditor's consideration of the public interest in their determination of whether to report NOCLAR to an appropriate authority.

Task Force Recommendations

24. The Task Force notes that section 140.1 of the IESBA Code refers to the principle of confidentiality applying in all circumstances, unless proper and specific authority has been provided to disclose the confidential information or there is a *legal or professional right or duty to disclose* confidential information, with similar provisions contained in section 140.7. The Task Force recognizes the difficulty of aligning the International Standards and the IESBA Code where there are differences in terminology.
25. The Task Force agrees that the use of the term “legal or ethical duty or right” could be further clarified. Furthermore, the Task Force believes that the International Standards should be drafted to accommodate various ethical requirements and laws or regulations, with a link to the IESBA Code as appropriate to reflect examples of possible requirements. The Task Force has determined that there are four possible scenarios in responding to NOCLAR that should be recognized in ISA 250:
 - Prohibition on reporting NOCLAR to an appropriate authority due to jurisdictional laws or regulations, as may be the case in some jurisdictions.
 - A legal or ethical requirement to report NOCLAR to an appropriate authority. It was noted that an ethical requirement to report NOCLAR to an appropriate authority may for example arise from the incorporation of a legal requirement into an ethical code.
 - An ethical responsibility to determine whether to report, or other circumstances where the auditor may report (without breaching the duty of confidentiality), NOCLAR to an appropriate authority, where not prohibited by laws or regulations, such as the IESBA NOCLAR ED
 - No legal or ethical requirement to report, or to determine whether to report NOCLAR.
26. Furthermore, the Task Force notes that since the IESBA NOCLAR ED was issued, the IESBA has given stronger emphasis to the possibility that legal or regulatory provisions may exist, and that the professional accountant has a responsibility to understand such legal or regulatory requirements, with the inclusion of section 225.3 in the updated IESBA NOCLAR proposals. In addition, section 225.32 has been added to indicate that disclosure

²⁹ Member Bodies and Other Professional Organizations: WPK

³⁰ National Auditing Standard Setters: HKICPA, IDW; Member Bodies and Other Professional Organizations: SMPC

³¹ Regulators and Oversight Bodies: UKFRC

of NOCLAR to an appropriate authority would be precluded if it is contrary to law or regulation.

27. Accordingly, the Task Force recommends a revision of paragraph 28 to bring emphasis to the above possible scenarios, including scenarios where there is a legal prohibition on reporting NOCLAR to an appropriate authority. Furthermore, the Task Force has found that the application material in paragraph A19 could be streamlined and should reflect the scenarios identified in paragraph 28. In response to respondent's comments, the Task Force also recommends that paragraph A19 be improved by:
- Giving greater emphasis to the possible legal prohibition on reporting NOCLAR to an appropriate authority related to a duty of confidentiality; and
 - Addressing other possible scenarios, such as a legal right to report NOCLAR to an appropriate authority and other circumstances where the auditor is required to consider whether to report or may otherwise report NOCLAR, without breaching the duty of confidentiality.
28. The Task Force also agrees with respondents that the expression that “the duty of confidentiality may not apply” could be difficult to interpret in some jurisdictions, and accordingly recommends that this is changed to indicate that reporting to an appropriate authority is not considered to be a breach of confidentiality under some ethical requirements.
29. The Task Force also notes that the updated IESBA NOCLAR proposals refer to “disclosing” the matter to an appropriate authority, unlike the International Standards which mostly refer to “reporting” to an appropriate authority. The Task Force is of the view that the use of the term “reporting” is well understood by auditors, and using the term “disclosing” in the ISAs would be confused with “disclosure”, which has a different connotation in the ISAs i.e. disclosure in the financial statements. Accordingly, the Task Force concurred that the use of the term “reporting” is appropriate, albeit that it is different from the current IESBA NOCLAR proposals.
30. Furthermore, the Task Force believes that the International Standards need to be clear that an appropriate authority is one outside of the entity, as it could be misinterpreted that an appropriate authority is one within the entity, for example those charged with governance, and accordingly reference should be made in the International Standards to “an appropriate authority outside the entity”.

Proposed changes to ISA 250

Requirements

28. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a: (Ref: Para. A19-A20)
- (a) A legal or ethical duty or right to report;
 - (b) An ethical requirement to report; or
 - (c) An ethical responsibility to determine whether to report, or may otherwise

report;

the identified or suspected non-compliance to ~~parties~~an appropriate authority outside the entity, without breaching the duty of confidentiality. (Ref: Para. A19-A20)

Application and Other Explanatory Material

A19. Obtaining legal advice may assist in making the determination required by paragraph 28. ~~If the auditor has identified or suspects non-compliance with laws or regulations, t~~ The auditor may also consider consulting, on a confidential basis with others within the firm, a network firm or a professional body, unless prohibited by law or regulation or unless doing so would breach the duty of confidentiality, ~~obtaining legal advice to determine whether the auditor has a legal or ethical duty or right to report to parties outside the entity and, when applicable, the appropriate course of action in light of such duty or right. For example~~

A19a. In some cases, law or regulation may impose a legal duty on the auditor to report identified or suspected non-compliance with laws and regulations. For example, The duty of confidentiality may not apply or may be overridden by laws or regulations. ~~t~~ In some jurisdictions, the auditor of a financial institution has a statutory duty to report the occurrence, or suspected occurrence, of non-compliance with laws and regulations to supervisory authorities. Also, in some jurisdictions, the auditor may have a duty to report misstatements to authorities in those cases where management and where applicable or those charged with governance fail to take corrective action. In other cases, laws and regulations may give t ~~The auditor may have the right, but not the duty, to report~~ disclose identified or suspected non-compliance with laws or regulations to an appropriate authority outside the entity without breaching the duty of confidentiality. For example, when dealing with financial institutions such as banks and insurers, the auditor may have the right under law or regulation to discuss matters with a financial institution's supervisor. However, in other cases t ~~The auditor's legal or ethical duties~~ duty to maintain confidentiality under law or regulation may preclude the auditor from reporting identified or suspected non-compliance with laws and regulations to an appropriate authority ~~a party~~ outside the entity.

A19b. When not precluded from reporting to an appropriate authority outside the entity by law or regulation, under the relevant ethical requirements the auditor may have a duty to report, a responsibility to determine whether to report, or may otherwise report, identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity, without breaching the duty of confidentiality. For example, under some ethical requirements the auditor may have an obligation to determine if further action is needed in response to identified or suspected non-compliance. This further action could include disclosing the matter to an appropriate authority outside the entity even when there is no legal or regulatory requirement to do so,¹³ without breaching the duty of confidentiality.¹⁴ However, under other relevant ethical requirements, the auditor's ethical duty to maintain confidentiality may preclude reporting identified or suspected non-

compliance with laws and regulations to an appropriate authority outside the entity, even when not precluded from doing so under law or regulation.

13 See, for example, Section 225.28 and Sections 225.32 to 225.35 of the IESBA Code.

14 See, for example, Section 140.7 and Section 225.34 of the IESBA Code.

31. Similar amendments addressing the above matters have been made to the following standards:

- Paragraph A56 of ISQC1.³²
- Paragraph 43 of ISA 240.³³
- Paragraphs 52(d), A92, A92b and A92c of ISRE 2400 (Revised).³⁴
- Paragraph A192b of ISAE 3000 (Revised).³⁵
- Paragraph A21a of ISRS 4410 (Revised).³⁶

32. However, due to the extent of supplementation required to paragraph 43 and A65 of ISA 240 to explain the context surrounding the reporting to an appropriate authority, including the auditor's duty of confidentiality and possible preclusions on reporting to an appropriate authority, the Task Force recommends that paragraph A65 of ISA 240 instead have a cross reference to paragraphs A19-A19b of ISA 250.

Matter for IAASB CAG Consideration

1. Do Representatives and Observers agree that the proposed amendments to paragraphs 28 and A19-A19b provide better clarity on the possible scenarios encountered in practice in responding to NOCLAR and that the changes are sufficiently responsive to comments received on the IAASB NOCLAR ED?

B. Consistency Between the IESBA NOCLAR ED and the International Standards Other Than ISAs

Background and Respondents' Comments

33. The IESBA NOCLAR ED requires a response to NOCLAR by a professional accountant providing professional services other than an audit of financial statements, for example when performing review engagements, other assurance engagements, compilation engagements and engagements to perform agreed-upon procedures. In terms of the IESBA NOCLAR ED, the laws and regulations that a professional accountant must respond to if the professional accountant is made aware of non-compliance or suspected

³² ISQC 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*

³³ ISA 240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements*

³⁴ ISRE 2400, (Revised), *Engagements to Review Historical Financial Statements*

³⁵ ISAE 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*

³⁶ ISRS 4410 (Revised), *Compilation Engagements*

non-compliance are the same as the laws and regulations covered by paragraph 6(a) and 6(b) of ISA 250 (i.e. laws and regulations that have a direct effect on the determination of material amounts and disclosures in the financial statements or are fundamental to the operating aspects of the entity's business, to its ability to continue as a going concern or to avoid material penalties).

34. A few respondents³⁷ had reservations about the scope of laws and regulations in the IESBA NOCLAR ED insofar as they apply to non-audit services, since they are inconsistent with the scope of the laws and regulations contemplated by the respective International Standards, such as ISRE 2400 (Revised) and ISAE 3000 (Revised).³⁸ Furthermore, it was indicated that the laws and regulations which the IESBA NOCLAR ED requires a response to are different than ISA 250, since the IESBA NOCLAR ED requires the auditor to respond to NOCLAR that *may* occur and the IESBA NOCLAR ED does not require the auditor to investigate matters which are clearly inconsequential, with ISA 250 adopting a risk-based approach.
35. Three respondents³⁹ raised concern with the inconsistency in work effort between the International Standards and the IESBA NOCLAR ED, indicating that the IESBA NOCLAR ED imposes an obligation on an auditor, and professional accountant performing non-audit engagements, beyond the requirements of the International Standards. It was suggested that such inconsistencies could create an expectations gap as to the extent of work performed by the professional accountant. For example, a professional accountant performing a limited assurance engagement would typically perform very limited procedures with regards to NOCLAR under ISAE 3000 (Revised), and the scope of such laws or regulations considered by the professional accountant under ISAE 3000 (Revised) is limited to those related to the subject matter information. However, under the IESBA NOCLAR ED the scope of the laws or regulations to which the professional accountant would respond would not be limited to those related to the subject matter information, and the investigative and responsive procedures expected of the professional accountant would require additional work effort typically not performed for the purposes of expressing a conclusion on the subject matter.
36. A few respondents⁴⁰ questioned whether the conforming amendments to the International Standards were adequate, as no amendments were proposed in the IAASB NOCLAR ED to some of the International Standards, for example paragraph 45(a) of ISAE 3000 (Revised) which addresses NOCLAR, and accordingly suggested additional alignment of the work effort between the IESBA NOCLAR ED and the International Standards.

³⁷ *National Auditing Standard Setters: IDW, NZAuASB*

³⁸ Paragraph 45(a) of ISAE 3000 (Revised) states "The practitioner shall make inquiries of the appropriate party(ies) regarding: (a) Whether they have knowledge of any actual, suspected or alleged intentional misstatement or non-compliance with laws and regulations affecting the subject matter information".

³⁹ *National Auditing Standard Setters: IDW; Member Bodies and Other Professional Organizations: FEE SMPC*

⁴⁰ *Regulators and Oversight Bodies: IRBA; Member Bodies and Other Professional Organizations: FEE, SAICA*

Task Force Recommendations

37. The Task Force discussed the overarching comments regarding the perceived inconsistencies between the scope of the laws and regulations covered by the IESBA NOCLAR ED, and the scope (if any) contemplated in the International Standards other than the ISAs, as well as the work effort incorporated in these standards when NOCLAR is identified. It was re-iterated that the IESBA NOCLAR ED does not establish a responsibility for the professional accountant to identify NOCLAR, but instead requires the professional accountant to respond to NOCLAR when it comes to their attention.
38. The Task Force did not support any amendments to ISRE 2410⁴¹, on the basis that this standard is still in pre-clarity format and has not been recently amended to reflect conforming amendments in respect of other IAASB projects. Similarly, the Task Force notes that ISRS 4400⁴² is the subject of a current IAASB project, and changes to the ISRS can be considered by that Task Force.

Impact of Differing Scope of Laws and Regulations

39. The Task Force noted that IESBA's decision to use the same set of laws and regulations for both auditors of financial statements and other professional accountants may be particularly challenging for practitioners who have little or no experience in audits of financial statements. The Task Force noted that this may be a case in some applications of the ISAEs (many of which permit application by practitioners other than professional accountants) and the ISRSs. After discussing the matter, the Task Force concluded that this was ultimately a matter for IESBA's determination as IESBA have considered this point in their deliberations, as summarized in the [Explanatory Memorandum](#) to the IESBA NOCLAR ED:
22. *As auditors are already expected to have a working knowledge of those two categories of laws and regulations relevant to their particular client, the Board believes that these should also appropriately circumscribe the scope of their responsibilities under the Code. The Board further believes that those same categories of laws and regulations should also establish an appropriate scope for all other categories of PA. This is because it would be reasonable to expect them, by virtue of their professional training and expertise, and their knowledge of and experience with the entity (either through the provision of non-audit services to the entity or through an employment relationship), to recognize an act of NOCLAR or suspected NOCLAR in those two categories of laws and regulations if they came across it. This expectation would hold regardless of these other PAs' roles and levels of seniority. (See paragraphs 225.5 and 360.5.)*
40. Accordingly, and recognizing that IESBA's goals in setting ethical standards are not the same as the IAASB in setting assurance standards, the Task Force did not believe that the second category of laws and regulations set out in paragraph 6(b) of ISA 250 should be incorporated into ISRE 2400 (Revised), as there is no inconsistency between ISRE

⁴¹ ISRE 2410, *Review of Interim Financial Information Performed by the Independent Auditor of the Entity*

⁴² ISRS 4400, *Engagements to Perform Agreed-upon Procedures Regarding Financial Information*

2400 (Revised) and the IESBA NOCLAR ED as the procedures required to be performed under each in response to NOCLAR are to achieve a different purpose i.e. to express a conclusion on the financial statements versus complying with an ethical responsibility. However, the Task Force agreed that additional application material was warranted in ISRE 2400 (Revised) to highlight that additional responsibilities may exist under relevant ethical requirements.

Proposed changes to ISRE 2400 (Revised)

Application and Other Explanatory Material

Performing the Engagement

Designing and Performing Procedures (Ref: Para. 47, 55)

Inquiry (Ref: Para. 46–48)

A87a. The practitioner may have additional responsibilities under relevant ethical requirements regarding an entity's identified or suspected non-compliance with laws and regulations, including fraud, such as requirements to respond to identified or suspected instances of non-compliance with laws and regulations that may differ from or go beyond this ISRE. Complying with those additional responsibilities may provide further information that is relevant to the practitioner's work in accordance with this ISRE (for example, regarding the integrity of management or, where appropriate, those charged with governance).

Procedures to Address Specific Circumstances

Fraud and non-compliance with laws and regulations (Ref: Para. 52(a) and (d))

A92. Under this ISRE, if the practitioner has identified or suspects fraud or ~~illegal acts~~ non-compliance with laws and regulations, the practitioner is required to determine whether there is a legal duty or right to report, an ethical requirement to report, or an ethical responsibility to ~~report the occurrence or suspicion to a party~~ determine whether to report to an appropriate authority outside the entity. If the practitioner has identified or suspects fraud or non-compliance with laws and regulations, the practitioner may consider obtaining legal advice and, when applicable, the appropriate course of action in light of such duty or responsibility. The practitioner may also consider consulting, on a confidential basis and when permitted by law or regulation, with others within the firm, a network firm, or a professional body.

A92b. The practitioner's ethical, legal, and regulatory responsibilities vary by jurisdiction and, in certain circumstances, the duty of confidentiality may not apply, be overridden by laws or regulations or law, regulation, or relevant ethical requirements. In some cases, law or regulation may impose include a legal duty on the practitioner to report an identified or suspected fraud or non-compliance with laws and regulations or right to

~~report to an appropriate authority outside the entity. In other cases, certain circumstances, law or regulation may give the practitioner may have the legal or ethical the right, but not the duty, to disclose identified or suspected non-compliance with laws or regulations to report to an appropriate authority outside the entity without breaching the duty of confidentiality.~~²² However, in ~~some other~~ cases, the practitioner's legal or ethical duties to maintain confidentiality under law or regulation may preclude ~~the practitioner from~~ reporting identified or suspected fraud or non-compliance with laws and regulations to ~~an appropriate authority outside a party outside~~ the entity.

A92c. When not precluded from reporting to an appropriate authority outside the entity by law or regulation, under the relevant ethical requirements the practitioner may have a duty to report, a responsibility to determine whether to report, or may otherwise report, identified or suspected fraud or non-compliance with laws and regulations to an appropriate authority outside the entity, without breaching the duty of confidentiality. For example, under some ethical requirements the practitioner may have an obligation to determine if further action is needed in response to identified or suspected non-compliance with laws and regulations, including fraud. This further action could include reporting the matter to an appropriate authority outside the entity even when there is no legal or regulatory requirement to do so,²³ without breaching the duty of confidentiality.²⁴ However, under other relevant ethical requirements, the practitioner's ethical duty to maintain confidentiality may preclude reporting to an appropriate authority outside the entity, even when not precluded from doing so under law or regulation.

²³ See, for example, Section 225.4 to 225.51 of the IESBA Code.

²⁴ See, for example, Section 140.7 and Section 225.50 of the IESBA Code.

41. The Task Force debated the impact of the IESBA NOCLAR ED on ISAE 3000 (Revised), and considered whether there were inconsistencies that needed to be addressed. Some Task Force members were concerned that a professional accountant, or other professional applying ISAE 3000 (Revised),⁴³ may not have the level of knowledge sufficient to be able to identify NOCLAR with respect to the scope of laws and regulations contemplated by the IESBA NOCLAR ED as they would not have sufficient skills and experience to be able to know which laws and regulations are generally recognized to have a direct effect on the determination of material amounts and disclosures in the entity's financial statements. However, other Task Force members thought that NOCLAR related to the laws and regulations covered by the IESBA NOCLAR ED would be apparent to any professional accountant by virtue of their training, their ability to readily acquire that competence, including through interactions with the accounting profession, and due to the

⁴³ ISAE 3000 (Revised) can be applied by practitioners other than professional accountants, such as engineers.

extent of severity of non-compliance required to trigger the provisions of the IESBA NOCLAR ED. Section 225.39 of the updated IESBA NOCLAR proposals states:

225.39 The professional accountant is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the firm, a network firm, a professional body, or legal counsel.

The Task Force understands that IESBA Staff will recommend to the IESBA that it commission the development of implementation support resources for the updated IESBA NOCLAR proposals once these are finalized, and that one of the matters that will be covered is the expected level of understanding of the laws and regulations within the scope of the updated IESBA NOCLAR proposals for professional accountants who are not performing the audit of the financial statements.

42. An issue was also raised with regards to laws or regulations related to the subject matter information that the professional accountant would be required to address under paragraph 45(a) of ISAE 3000 (Revised) (which requires the auditor to perform a specified procedure regarding identification of non-compliance with laws and regulations related to the subject matter information). In cases where there is non-compliance with laws and regulations related to the subject matter information, the non-compliance may not always relate to the laws and regulations included in the scope of the IESBA NOCLAR ED. The Task Force believes that respondents' comments on this matter should be addressed through additional application material in ISAE 3000 (Revised) addressing the fact that the professional accountant may have additional responsibilities regarding NOCLAR.

Proposed changes to ISAE 3000 (Revised)

Application and Other Explanatory Material

Planning and Performing the Engagement

Understanding the Engagement Circumstances (Ref: Para. 45–47R)

A101a. The practitioner may have additional responsibilities under relevant ethical requirements regarding an entity's non-compliance with laws and regulations, such as requirements to respond to identified or suspected instances of non-compliance with laws and regulations that may differ from or go beyond this ISAE. Complying with those additional responsibilities may provide further information that is relevant to the practitioner's work in accordance with this and any other ISAE relevant to the engagement (for example, regarding the integrity of the responsible party or those charged with governance).

Other Communication Responsibilities (Ref: Para. 78)

A192a. Relevant ethical requirements may include a requirement to report identified or suspected non-compliance with laws and regulations to an appropriate level of management or those charged with governance. In some jurisdictions, law or regulation may restrict the practitioner's communication of certain matters with the responsible party, an appropriate level of management or those charged with governance. For example, law or regulation may specifically prohibit a communication, or other action, that might prejudice an investigation by an appropriate authority into an actual, or suspected, illegal act, including alerting the entity, for example, when the practitioner is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation.

A192b. The practitioner may have a legal duty or right to report, an ethical requirement to report, an ethical responsibility to determine whether to report or may otherwise report, identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity, without breaching the duty of confidentiality. This may include identified or suspected non-compliance with laws and regulations that the practitioner comes across or is made aware of when performing the engagement but which may not affect the subject matter information. In some cases, the practitioner's duty to maintain confidentiality under law, regulation, or relevant ethical requirements may preclude the practitioner from reporting identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity. In other cases, under the relevant ethical requirements, the practitioner may have a duty to report, a responsibility to determine whether to report, or may otherwise report, identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity, even when there is no legal or regulatory requirement to do so,²⁵ without breaching the duty of confidentiality.²⁶ The practitioner is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond those affecting the subject matter information. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the practitioner may consult on a confidential basis with others within the firm, a network firm, a professional body, or legal counsel.²⁷

25 See, for example, Section 225.4 to 225.51 of the IESBA Code.

26 See, for example, Section 140.7 and Section 225.50 of the IESBA Code.

27 See, for example, Section 225.39 of the IESBA Code.

43. The Task Force discussed the impact of the IESBA NOCLAR ED on ISAE 3402⁴⁴ and debated to what extent application material should be incorporated, for example whether the tipping off provisions regarding communicating with management and those charged with governance should be included, and additional discussion on reporting NOCLAR to an appropriate authority or the entity's financial statement auditor. The Task Force concluded that the additional application material proposed for ISAE 3000 (Revised) would be adequate as an engagement conducted under ISAE 3402 also must comply with ISAE 3000 (Revised), with minor changes largely to align terminology to ISA 250.
44. With regards to ISRS 4410 (Revised), the Task Force agreed that application material should be incorporated to draw attention to the professional accountant's responsibilities to respond to NOCLAR, similar to that included in ISAE 3000 (Revised).

Matter for IAASB CAG Consideration

2. Do Representatives and Observers believe that the limited revisions to the International Standards other than the ISAs to emphasize to the professional accountant that ethical requirements may require the professional accountant to respond to instances of NOCLAR are appropriate?

C. Definition of “Non-compliance”

Background and Respondents' Comments

45. No changes were proposed to the definition of non-compliance with laws and regulations in ISA 250 in the IAASB NOCLAR ED, which is as follows:
11. Acts of omission or commission by the entity, either intentional or unintentional, which are contrary to the prevailing laws or regulations. Such acts include transactions entered into by, or in the name of, the entity, or on its behalf, by those charged with governance, management or employees. Non-compliance does not include personal misconduct (unrelated to the business activities of the entity) by those charged with governance, management or employees of the entity.
46. However, three respondents⁴⁵ highlighted that the definition of non-compliance was not consistent with the IESBA NOCLAR ED and should include personal misconduct related to the business activities of the entity, as well as include acts on behalf of the entity by individuals not employed by the entity.

Task Force Recommendations

47. The Task Force notes that ISA 250 has a specific definition of non-compliance, while the updated IESBA NOCLAR proposals incorporate the concept in sections 225.2 and 225.9. Some Task Force members were of the view that changing the definition is beyond the scope of the NOCLAR project and such a change would constitute a review of the standard. However, the majority of the Task Force believed that aligning the definition

⁴⁴ ISAE 3402, *Assurance Reports on Controls at a Service Organization*

⁴⁵ *Accounting Firms: EYG, PWC; Member Bodies and Other Professional Organizations: ICAS*

more closely to the respective paragraphs in the updated IESBA NOCLAR proposals would have no impact on the auditor, and would be responsive to comments in this regard.

48. It was also pointed out that section 225.2 of the updated IESBA NOCLAR proposals has been specifically amended since the IESBA NOCLAR ED to include other individuals working for or under the direction of a client, as this is frequently the case that such individuals may also be involved in the non-compliance. Furthermore, the updated IESBA NOCLAR proposals also do not make reference to “transactions”, as is the case in the ISA 250 definition of non-compliance, as this is considered too limiting and it obscures the fact that the non-compliance arises out of an action.
49. The Task Force debated whether the definition of non-compliance explaining non-compliance in terms of what it is not, is appropriate, i.e. “Non-compliance does not include personal misconduct (unrelated to the business activities of the entity) by those charged with governance, management or employees of the entity”. However, the Task Force has agreed to align the wording to section 225.9 of the updated IESBA NOCLAR proposals, which explains non-compliance in the context of what it is not.

Definition

11. For the purposes of this ISA, the following term has the meaning attributed below:

Non-compliance – Acts of omission or commission by the entity, either, intentional or unintentional, ~~which are contrary to the prevailing laws or regulations. Such acts include transactions entered into by, or in the name of, the entity, or on its behalf, committed by the entity, or by those charged with governance, by management or employees, by other individuals working for, or under the direction of the entity, which are contrary to the prevailing law or regulation.~~ Non-compliance does not include:

- (a) ~~P~~personal misconduct (unrelated to the business activities of the entity) by those charged with governance, by management, or employees by other individuals working for, or under the direction of the entity.
- (b) Non-compliance by persons other than the entity or those charged with governance, by management or by other individuals working for, or under the direction of, the entity.

Matter for IAASB CAG Consideration

3. Do the Representative and Observers believe that the proposed amendments to the definition of non-compliance are appropriate and that it does not implicitly extend the scope of ISA 250?

D. Implications of NOCLAR for the Auditor's Report

Background and Respondents' Comments

50. In extant ISA 250, paragraphs 25 to 27 address the considerations for the auditor's opinion where NOCLAR has been identified, and paragraph A18 indicates that the inclusion of an Other Matter paragraph may be appropriate in circumstances where withdrawal from the engagement is not possible.
51. A few respondents⁴⁶ believed that ISA 250 should incorporate more considerations relating to the impact of NOCLAR on the auditor's report, for example key audit matters. It was pointed out that NOCLAR could qualify as a key audit matter, yet, be completed unrelated to the financial statements. Furthermore, communication of NOCLAR in the auditor's report could be highly sensitive or there may be a circumstance where it should not be communicated due to the possibility of tipping-off management, those charged with governance or other external parties.

Task Force Recommendations

52. The Task Force considered the views expressed by respondents and agree that the application material in ISA 250 is inconsistent as it only makes reference to an Other Matter paragraph, in the context of the auditor being unable to withdraw from the engagement. Accordingly, the Task Force recommends the inclusion of additional application material addressing the consideration of key audit matters and other matters.
53. The Task Force discussed the possible preclusion in terms of laws or regulations of communicating certain NOCLAR in the auditor's report, in particular in describing the basis for a modified opinion. It is noted that ISA 701⁴⁷ acknowledges a possible preclusion on including a key audit matter in the auditor's report. In addition, the inclusion of an Other Matter paragraph in the auditor's report is judgmental and accordingly ISA 701 and ISA 706 (Revised)⁴⁸ appropriately deal with such a scenario. However, the Task Force determined that there may be scenarios where the auditor would be unable to describe the basis for modification, and believes that this is important to highlight in the standard.

Application and Other Explanatory Material

⁴⁶ Accounting Firms: EYG; Member Bodies and Other Professional Organizations: SMPC

⁴⁷ ISA 701, *Communicating Key Audit Matters in the Independent Auditor's Report*, paragraph 14

⁴⁸ ISA 706 (Revised), *Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report*

Reporting of Identified or Suspected Non-Compliance

Implications of Identified or Suspected Non-Compliance for the Auditor's Report (Ref: Para. 25–27)

A18a. Law or regulation may preclude public disclosure by either management, those charged with governance or the auditor about a specific matter. For example, law or regulation may specifically prohibit a communication, or other action, that might prejudice an investigation by an appropriate authority into an actual, or suspected, illegal act, including prohibit alerting the entity. When the auditor modifies the opinion on the financial statements in accordance with paragraphs 25–27, such law or regulation may have implications for the auditor's ability to issue the auditor's report. In such cases, the auditor may consider obtaining legal advice to determine the appropriate course of action.

A18b. When a matter related to non-compliance does not give rise to a modified opinion on the financial statements, the auditor may nevertheless communicate the matter in the auditor's report. When ISA 701 applies, a matter related to non-compliance with laws and regulation that is communicated with those charged with governance may be determined to be a key audit matter and communicated in the auditor's report unless paragraph 14 of ISA 701 applies. In other circumstances, the auditor may consider it necessary to describe the non-compliance in an Other Matter paragraph, for example when management or those charged with governance do not take the remedial action that the auditor considers appropriate in the circumstances and withdrawal from the engagement is not possible.

Matter for IAASB CAG Consideration

4. Do Representatives and Observers support the inclusion of additional application material addressing the impact of NOCLAR on the auditor's report?

E. Group Audits

Background and Respondents' Comments

54. One respondent⁴⁹ noted that there are potential loopholes and a lack of guidance within the ISAs (and the IESBA NOCLAR ED) with respect to cross-border situations, including group audits. This respondent specifically mentioned:
 - Strict requirements to preserve confidentiality in certain jurisdictions, which could create conflict in reporting NOCLAR; and
 - Laws and regulations that have an extraterritorial outreach which could also be problematic in reporting NOCLAR.

⁴⁹ Member Bodies and Other Professional Organizations: WPK

55. Some respondents⁵⁰ suggested improvements to ISA 600⁵¹, with one⁵² respondent suggesting that these improvements be considered as part of the IAASB's current project relating to group audits.
56. There was also a request for the development of guidance for group audit scenarios where signs of NOCLAR are evident, especially in cases where the components are operating in jurisdictions that have not adopted the IESBA Code.⁵³

Task Force Recommendations

57. The Task Force noted that amendments are being proposed for approval at the March 2016 IESBA meeting to incorporate, in the IESBA Code, specific provisions related to communication of NOCLAR in a group audit. These provisions are subject to discussions at the IESBA meeting prior to finalization. In summary, the proposed draft amendments require the following:
- Communication of NOCLAR to the group engagement partner by an auditor performing an audit of a component's financial statements, for example a statutory audit, or a component auditor performing an audit of the component's financial information for group audit purposes. (Section 225.20 of the updated IESBA NOCLAR proposals)
 - Communication of NOCLAR by the group engagement partner to auditors of components where the NOCLAR is relevant to the component. This provision applies to all components, including those subject to an audit other than for group audit purposes (for example, a statutory audit) and components where component auditors are performing other work (for example, a review, specified audit procedures or an audit of certain account balances, classes of transactions or disclosures). (Section 225.21 of the updated IESBA NOCLAR proposals)
 - Communication of NOCLAR to the group engagement partner by a professional accountant performing work for group audit purposes, for example, a review, specified audit procedures or an audit of certain account balances, classes of transactions or disclosures. (Section 225.45 of the updated IESBA NOCLAR proposals)
 - Consideration of communication of NOCLAR to the group engagement partner by a professional accountant performing non-audit services for a component of an audit client. If it relates to a component of an audit client of the firm or network firm, the requirement indicates that the reporting would be in accordance with the firm's or network firm's protocols or procedures. (Section 225.43 of the updated IESBA NOCLAR proposals)

⁵⁰ *Regulators and Oversight Bodies: UKFRC; National Auditing Standard Setters: JICPA; Accounting Firms: EYG; Member Bodies and Other Professional Organizations: ICAG*

⁵¹ *ISA 600, Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors)*

⁵² *Accounting Firms: EYG*

⁵³ *National Auditing Standard Setters: JICPA; Member Bodies and Other Professional Organizations: ISCA*

58. The Task Force considered the feedback from respondents and recognizes that there will likely be a need for ISA 600 to more specifically address the updated IESBA proposals, particularly in light of the comments received on exposure. However, recognizing that the IAASB is currently consulting on, and will shortly commence a project to revise, ISA 600, the NOCLAR Task Force does not believe that the comments and likely amendments needed to respond to them warrant the immediate conforming amendments to ISA 600. Rather, the NOCLAR Task Force will liaise with the ISA 600 Working Group about the comments received on the IAASB NOCLAR ED. To this end, the Task Force is in the process of preparing an Issues Paper regarding the impact of NOCLAR on ISA 600, for further consideration by the Group Audits Working Group.

F. The Impact in Jurisdictions Who do not Adopt, or Plan to Adopt, the IESBA Code

Background and Respondents' Comments

59. Overall, the majority of respondents⁵⁴ indicated that there is no conflict between local jurisdictional codes or laws or regulations in jurisdictions that have not adopted, or do not plan to adopt, the IESBA Code, and the proposed amendments to the International Standards.
60. However, two respondents⁵⁵ believed that conflicts would arise between local jurisdictional codes or laws and regulations and the International Standards and three respondents⁵⁶ raised concern that, if the IESBA proposals are reflected in the ISAs, future compliance with the International Standards may be difficult for auditors who do not apply the IESBA Code in their jurisdiction (or do not form part of larger firm networks that have adopted the IESBA Code in their policies and procedures). One respondent⁵⁷ acknowledged that amendments to jurisdictional laws or regulations may be required to be able to disclose non-compliance outside of the entity, although did not indicate that conflicts with the International Standards would arise.
61. A few respondents⁵⁸ questioned how ethical codes applied by professional accountants would be measured to determine their restrictiveness in light of the stringent NOCLAR requirements being included in the IESBA Code, with increasingly divergent national requirements and other proposals being considered by the IESBA (for example long association of senior personnel) adding to the incongruence between jurisdictional ethical requirements and the IESBA Code.

⁵⁴ *Regulators and Oversight Bodies:* UKFRC, IRBA; *National Auditing Standard Setters:* CAASB, CNCC, MAASB, NSA, NZAuASB; *Accounting Firms:* BDO, DTT, EYG, PWC; *Public Sector Organizations:* AGC, GAO; *Member Bodies and Other Professional Organizations:* ANAN, ASSIREVI, CPAA, FACOCE, FSR, ICAZ, ICPAK, KICPA, MICPA, SAICA

⁵⁵ *National Auditing Standard Setters:* IDW; *Member Bodies and Other Professional Organizations:* ICAG

⁵⁶ *National Auditing Standard Setters:* FEE; *Member Bodies and Other Professional Organizations:* ICAP, ICAS

⁵⁷ *National Auditing Standard Setters:* ASB

⁵⁸ *National Auditing Standard Setters:* IDW; *Member Bodies and Other Professional Organizations:* SMPC

Task Force Recommendations

62. The Task Force considered these responses and recognizes that the particular circumstances of some jurisdictions are an important factor in this matter.
63. The Task Force recognized that there are different interpretations of paragraph 14 of ISA 200,⁵⁹ which states that “the auditor shall comply with relevant ethical requirements, including those pertaining to independence, relating to financial statement audit engagements,” and paragraph A14, which indicates that “relevant ethical requirements ordinarily comprise Parts A and B of the [IESBA Code] related to an audit of financial statements together with national requirements that are more restrictive.” Some interpret this to mean that the relevant ethical requirements must be at least as restrictive or demanding as the IESBA Code. However, there are some views that the meaning of ISA 200 is more flexible and allows the auditor to apply the ethical requirements which are relevant in the auditor’s jurisdiction that may, or may not, be aligned to the IESBA Code.
64. The Task Force believes that further consideration of the interpretation of paragraphs 14 and A14 of ISA 200, and similar requirements contained in other International Standards, is required, and will present a recommendation to the IAASB at the June 2016 meeting, in coordination with the IAASB Steering Committee and, as necessary, IESBA leadership and staff.

G. More Fulsome Review of ISA 250

Background and Respondents’ Comments

65. The scope of the IAASB’s project was to propose those amendments that the IAASB determined would be necessary to resolve actual or perceived inconsistencies of approach between the International Standards and the IESBA NOCLAR ED, or to clarify and emphasize key aspects of the IESBA NOCLAR ED, in its International Standards. However, the IAASB recognized that there may be merit in exploring other aspects of ISA 250 where further improvements may be considered in due course, and accordingly requested the views of the respondents in this regard. The intention of soliciting views on other aspects of ISA 250 where further improvements may be considered was for the purpose of consulting on future Work Plans, as the *Work Program 2015–2016* does not contemplate further efforts in relation to ISA 250.
66. Ten respondents⁶⁰ supported a future project to revise ISA 250 or explore its improvement. Some respondents⁶¹ indicated particular support for the IAASB’s suggestions included in the IAASB NOCLAR ED of matters related to ISA 250, or NOCLAR, which may warrant consideration in the future. These respondents expressed support for consideration of the effect on other ISAs, such as when dealing with auditor’s experts, group audits, and going

⁵⁹ ISA 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing*

⁶⁰ *Regulators and Oversight Bodies:* IFIAR, IRBA, UKFRC; *National Auditing Standard Setters:* CAASB, JICPA, MAASB; *Member Bodies and Other Professional Organizations:* ANAN, ICAG, SAICA; *Academics:* HC

⁶¹ *Regulators and Oversight Bodies:* UKFRC; *National Auditing Standard Setters:* JICPA; *Accounting Firms:* EYG; *Member Bodies and Other Professional Organizations:* ICAG

concern, as well as obtaining an understanding of how management identifies and addresses known or suspected NOCLAR as an essential component in obtaining an understanding of the entity and its environment. There was also some support for making inquiries of management or, when appropriate, TCWG, regarding NOCLAR that may occur and the investigation and possible revision of the existing distinction between the types of laws and regulations (see paragraph 6 of ISA 250) and the different levels of work effort applied to each under extant ISA 250.

67. Related to these comments were suggestions of matters the IAASB may consider in any future revision of ISA 250. These included:

- Adopting a risk-based approach to NOCLAR, as ISA 250 is more procedure-based, which is seen by a few respondents to result in auditors performing insufficient work or not sufficiently addressing the risk of material misstatement arising from NOCLAR.⁶² Those in favor of this approach believe that it would also address the difficulties of differentiating in ISA 250 between the laws and regulations that fall within the scope of paragraph 6(a) or 6(b). Furthermore, it was recommended that additional guidance in ISA 250 should be provided to address matters such as the depth and breadth of understanding of relevant laws and regulations required by the auditor.
- Increasing emphasis on considering the effects of NOCLAR, particularly qualitative considerations.⁶³
- Including a requirement that although the financial reporting framework may not require disclosure of NOCLAR, the auditor may determine that such disclosure is necessary to achieve fair presentation, similar to the provisions included in ISA 570 (Revised)⁶⁴ related to close calls.⁶⁵
- Including a requirement to make inquiries of internal audit regarding NOCLAR.⁶⁶

68. There were also requests for additional guidance for small and medium sized practitioners due to the increased risk of non-compliance with laws or regulations in a SME environment,⁶⁷ and guidance for group audits to address several challenges experienced in practice relating to the communication of NOCLAR between the group engagement team and auditors of components.⁶⁸

69. However, six respondents⁶⁹ did not support a more fulsome review of ISA 250 for various reasons, including that there are other projects which require the focus of the IAASB, there

⁶² *Regulators and Oversight Bodies: IRBA, UKFRC; Member Bodies and Other Professional Organizations: SAICA*

⁶³ *Regulators and Oversight Bodies: IRBA; Member Bodies and Other Professional Organizations: SAICA*

⁶⁴ *ISA 570 (Revised), Going concern*

⁶⁵ *Regulators and Oversight Bodies: IRBA; Member Bodies and Other Professional Organizations: SAICA*

⁶⁶ *Regulators and Oversight Bodies: IRBA; Member Bodies and Other Professional Organizations: SAICA*

⁶⁷ *Regulators and Oversight Bodies: IRBA; Member Bodies and Other Professional Organizations: SAICA*

⁶⁸ *Member Bodies and Other Professional Organizations: ISCA*

⁶⁹ *National Auditing Standard Setters: NBA; Accounting Firms: BDO, DTT, EYG, PWC; Member Bodies and Other Professional Organizations: IBR-IRE*

have been no implementation issues experienced, the auditor is not responsible for preventing non-compliance with laws and regulations and an expansion of ISA 250 may increase the expectations of the auditor, thereby unreasonably increasing the cost of the audit. It was also argued that an increase in the auditor's responsibilities could impair the quality of the audit due to a restriction on the "free-flow of information" between the auditor and the client.⁷⁰

Task Force Recommendations

70. As discussed in Item E of this Issues Paper, the Task Force has performed an analysis of the impact of NOCLAR on ISA 600.
71. In view of the balance of the responses received, the Task Force believes that an immediate revision of ISA 250 is not warranted, although the responses will be presented to the IAASB Steering Committee for consideration in setting future work plans of the IAASB.

H. Other Matters to be Discussed with the IAASB

72. The IAASB will discuss a range of less significant issues at its March 2016 meeting that may warrant further consideration and reflection prior to finalization of the changes to the IAASB's International Standards. These issues are briefly summarized below and are not considered to be significant as they require minor amendments to the International Standards, if any, or did not involve extensive discussion and debate by the Task Force. Further details relating to respondent's comments and the Task Force's recommendations on these less significant issues are included in the CAG Reference Papers listed in Agenda Item J1-B:
 - Communication with the predecessor auditor – This issue relates to the application material proposed to be included in paragraph A8a of ISA 220.⁷¹ The concerns raised by respondents have been largely addressed by the IESBA's updated NOCLAR proposals.
 - Examples of laws or regulations within the scope of ISA 250 – this issue relates to the inclusion of examples in paragraph A5a of ISA 250 and how these inter-relate with the existing categories of laws and regulations set out in paragraph 6 of ISA 250.
 - Increased references to "tipping-off" provisions – the comments relate to more references to "tipping-off" provisions in the International Standards when dealing with communications with others or reporting.
 - Withdrawal from the engagement – minor changes to the application material to better align with updated IESBA NOCLAR proposals.

⁷⁰ *Accounting Firms: DTT*

⁷¹ ISA 220, *Quality Control for an Audit of Financial Statements*

- Introduction to ISA 250 – the comments relate to the clarity of paragraph 8a of ISA 250 which discusses the additional responsibilities that may exist under relevant ethical requirements with respect to responding to NOCLAR.
- Other matters relating to the alignment of the International Standards with the IESBA NOCLAR ED – the matters relate to the consistency of terminology between the International Standards and the IESBA NOCLAR ED.

Appendix 1

Summary of Changes to the IESBA NOCLAR ED Since Exposure and Consideration of the Impact of These Changes on the International Standards

Change to the IESBA NOCLAR ED	Section reference in updated IESBA NOCLAR proposals	Impact on the International Standards
The inclusion of “other individuals working for or under the direction of a client” in the scope of non-compliance with laws and regulations, with conforming amendments throughout the updated IESBA NOCLAR proposals to accommodate this change.	225.2	Refer Item C
Stronger emphasis on the possibility that legal or regulatory requirements may govern how the professional accountant addresses non-compliance and on the professional accountant’s responsibility to obtain an understanding of such provisions, with the location of this material, as well as the tipping-off provisions, earlier in the updated IESBA NOCLAR proposals.	225.3	Refer Item A
Removal of the “public interest” considerations in the introductory section of the updated IESBA NOCLAR proposals.	Previously 225.4	No impact
Clarity of circumstances of non-compliance that would not be addressed, for example non-compliance committed by an entity being subject to a due diligence review since in such a case the professional accountant would not be engaged by the entity subject to review.	225.9	No impact
The removal of the requirement that the professional accountant needs to obtain an understanding of the application of the relevant laws and regulations to the circumstances of the non-compliance.	225.11	No impact
The removal of the implication that the professional accountant and management or those charged with governance must agree that non-compliance has occurred or may occur before the professional accountant prompts them to take appropriate action.	225.17	No impact

<p>New requirements addressing the two-way communication of NOCLAR in a group audit as follows:</p> <ul style="list-style-type: none"> ○ The auditor of a component of the group must communicate NOCLAR to the group engagement partner. This relates to a component where an audit of the component's financial information for group audit purposes is required and a component not scoped in for group audit purposes but where an audit of the component's financial information is performed for another purpose, e.g. a statutory audit. ○ The group engagement partner must communicate NOCLAR to each component in the group to which the matter is relevant. 	225.20 and 225.21	Refer Item E
A change in focus that requires the assessment of the appropriateness of management or those charged with governance's response in determining whether further action is needed.	225.22 and 225.24	No impact
The inclusion of a requirement, that when withdrawing from the professional relationship, the auditor shall provide to the successor auditor all such facts and other information concerning NOCLAR that, in the existing auditor's opinion, the successor auditor needs to be aware of before deciding whether to accept the audit appointment, even if client permission has not been obtained, and unless prohibited by laws or regulations There is also an obligation for the successor auditor to take additional steps when the successor auditor is unable to communicate with the existing auditor.	225.30	Refer Agenda Item 7-A , Communication with the predecessor auditor
Emphasis on the possibility that law or regulation may preclude disclosure of non-compliance to an appropriate authority.	225.32	Refer Item A
The inclusion of a requirement that an imminent breach of laws or regulation that comes to the attention of the professional accountant which would cause substantial harm may be disclosed to an appropriate authority immediately.	225.35 and 225.50	No impact
Clarification of the circumstances where a professional accountant performing a non-audit service for an audit client should consider communicating the NOCLAR within the firm or network firm, or to the external auditor, including factors to consider before communicating. The previous requirement to communicate within the firm has been	225.43 and 225.44	No impact

softened to only require the professional accountant to consider this communication.		
Provisions addressing communication to the group engagement partner in respect of professional accountants performing non-audit services for components within a group, such as a review of the component's financial information, or an audit of, or specific procedures relating to, elements, accounts or items of a component's financial information.	225.45	Refer Item E
Linking the further action with the public interest test, in the case of a professional accountant performing non-audit services.	225.46	No impact
Inclusion of withdrawal from the engagement as a further action for a professional accountant performing non-audit services.	225.48	No impact

Appendix 2

List of Respondents to the IAASB's ED on Responding to NOCLAR

Note: Members of the Monitoring Group are shown in bold below

#	Abbrev.	Respondent (43)	Region
Regulators and Oversight Authorities (3)			
1.	IFIAR	International Forum of Independent Audit Regulators	GLOBAL
2.	IRBA	Independent Regulatory Board for Auditors (South Africa)	MEA
3.	UKFRC	Financial Reporting Council (UK)	EU
National Auditing Standard Setters (10)			
4.	ASB	American Institute of Certified Public Accountants' Auditing Standards Board	NA
5.	AUASB	Australian Auditing and Assurance Standards Board	AP
6.	CAASB	Canadian Auditing and Assurance Standards Board	NA
7.	CNCC	Compagnie Nationale des Commissaires aux Comptes	EU
8.	HKICPA	Hong Kong Institute of Certified Public Accountants	AP
9.	IDW	Institut der Wirtschaftsprüfer in Deutschland e.V.	EU
10.	JICPA	Japanese Institute of Certified Public Accountants	AP
11.	MAASB	Malaysian Institute of Accountants	AP
12.	NBA	Nederlandse Beroepsorganisatie van Accountants	EU
13.	NZAUASB	New Zealand Auditing and Assurance Standards Board	AP
Accounting Firms (5)⁷²			
14.	BDO*	BDO International Limited	GLOBAL
15.	DTT*	Deloitte Touche Tohmatsu Limited	GLOBAL
16.	EYG*	Ernst & Young Global Limited	GLOBAL
17.	MAZARS*	MAZARS	GLOBAL
18.	PWC*	PricewaterhouseCoopers International Limited	GLOBAL

⁷² Forum of Firms members are indicated with a *. The Forum of Firms is an association of international networks of accounting firms that perform transnational audits. Members of the Forum have committed to adhere to and promote the consistent application of high-quality audit practices worldwide, and use the ISAs as the basis for their audit methodologies.

Public Sector Organizations (3)			
19.	AGC	Auditor General Canada	NA
20.	CIPFA	Chartered Institute of Public Finance and Accountancy	GLOBAL
21.	GAO	United States Government Accountability Office	NA
Member Bodies and Other Professional Organizations (20)			
22.	ANAN	Association of National Accountants of Nigeria	MEA
23.	ASSIREVI	Associazione Italiana Revisori Contabili (Association of the Italian Auditors)	EU
24.	CAANZ	Chartered Accountants Australia and New Zealand	AP
25.	CAI	Chartered Accountants Ireland	EU
26.	CPAA	CPA Australia	AP
27.	FACPCE	Federacion Argentina de Consejos Profesionales de Ciencias	SA
28.	FEE	Fédération des Experts comptables Européens - Federation of European Accountants	EU
29.	FSR	Foreningen af Statsautoriserede Revisorer (Danish Institute of Accountants)	EU
30.	IBR-IRE	Institut des Réviseurs d'Entreprises/Instituut van de Bedrijfsrevisoren	EU
31.	ICAG	Institute of Chartered Accountants in Ghana	MEA
32.	ICAP	Institute of Chartered Accountants of Pakistan	AP
33.	ICAS	Institute of Chartered Accountants of Scotland	EU
34.	ICAZ	Institute of Chartered Accountants of Zimbabwe	MEA
35.	ICPAK	Institute of Chartered Accountants of Kenya	MEA
36.	ISCA	Institute of Singapore Chartered Accountants	AP
37.	KICPA	Korean Institute of CPAs	AP
38.	MICPA	Malaysian Institute of CPAs	AP
39.	SAICA	South African Institute of Chartered Accountants	MEA
40.	SMPC	IFAC Small and Medium Practices Committee	GLOBAL
41.	WPK	Wirtschaftsprüferkammer (German Public Accountants)	EU
Academics (1)			
42.	HC	Hunter College Graduate Program	NA
Individuals and Others (1)			

43.	CBarnard	Chris Barnard	EU
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