



May 26, 2017

Lisa A. Snyder
Senior Director, AICPA Professional Ethics Division
AICPA Professional Ethics Executive Committee
1211 Avenue of the Americas
New York, NY 10036-8775

Re: AICPA Professional Ethics Division, Proposed Interpretations, *Responding to Non-Compliance With Laws and Regulations*

Dear Ms. Snyder:

PricewaterhouseCoopers LLP appreciates the opportunity to provide comments on the AICPA Professional Ethics Executive Committee's (PEEC or "Committee") proposed interpretations, each entitled "Responding to Non-Compliance With Laws and Regulations" (ET sec. 1.170.010 and 2.170.010), under the "Integrity and Objectivity Rule" (ET sec. 1.100.001 and 2.100.001) of the AICPA *Code of Professional Conduct* ("Code of Conduct").

In this letter, we provide our comments and suggestions with respect to ET sec. 1.170.010, which applies to members in public practice (hereinafter referred to as the "proposed NOCLAR interpretation" or "proposal"). We note that the proposed NOCLAR interpretation is based on the response framework established in the International Ethics Standards Board for Accountants' ("IESBA" or "Board") April 2016 pronouncement, *Responding to Non-compliance with Laws and Regulations* (the "IESBA NOCLAR standard").

We support the PEEC's efforts to adopt amendments to the Code of Conduct that enhance the role of AICPA members in protecting the public interest by requiring them to take certain actions to help address violations of laws and regulations. However, as described below, we urge the PEEC to reconsider, and align with, the IESBA's rationale for adopting a differential approach for professional accountants in public practice (hereinafter referred to as "PAs") who perform professional services other than audits of financial statements. We question the departure from the IESBA's differential approach, particularly in light of the difficulties of complying with the PEEC's more expansive and demanding auditor response framework in the context of non-audit services as well as the potential for negative unintended consequences.

Principal comments and recommendations

The proposed NOCLAR interpretation, as described in paragraph .01, sets out the responsibilities of members in public practice when they encounter or are made aware of non-compliance or suspected non-compliance with laws and regulations ("NOCLAR") in the course of providing a professional service to a client.

In adopting its NOCLAR standard in April 2016, the IESBA was deliberate in establishing a more expansive response framework for auditors, believing that audits of financial statements are the engagements with the highest public interest and should, therefore, be held to the most stringent requirements. This is in contrast to the narrower scope of the response required by the IESBA NOCLAR standard from PAs who perform professional services other than audits of financial statements. This



narrowed scope appropriately recognizes the inherently limited nature of such services and the fact that they do not carry the same level of public interest as audits of financial statements. We believe the IESBA's differential approach appropriately balances the public interest nature of financial statement audits with the practical challenges that implementing the IESBA NOCLAR standard would bring for PAs who perform other professional services. We do not believe the PEEC has put forth a compelling rationale for significantly increasing the already robust obligations imposed by the IESBA NOCLAR standard on PAs who perform services other than audits of financial statements, other than to say in the exposure draft's "Explanation For the New Interpretations 'Responding to Non-Compliance With Laws and Regulations'" that "the ... provisions [of the IESBA NOCLAR standard applicable to auditors] were deemed appropriate for auditors and non-auditors alike."

Accordingly, our overarching recommendation is for the PEEC to adopt an interpretation that follows the same approach adopted by the IESBA for members who perform audits of financial statements. With regard to members in public practice who perform attestation, review, compilation or other non-audit (i.e., consulting) services (hereinafter globally referred to as "non-audit services"), the PEEC should adopt the more limited response framework specified in the IESBA NOCLAR standard for PAs who perform professional services other than audits of financial statements.

Our detailed comments and recommendations are included in Appendix 1 and expand upon (1) the primary concerns described above, (2) the interaction of the PEEC's proposals with current auditing/attestation standards, and (3) the considerations pertaining to the inadvertent unauthorized practice of law and the need for more guidance to clarify the nature and extent of procedures expected to be undertaken by members to demonstrate compliance with the NOCLAR interpretation.

Appendix 1 also includes our specific responses to the supplementary questions that the PEEC has raised in the exposure draft.

* * * * *

We would be pleased to discuss our comments and to answer any questions that you or the PEEC may have. If you have any questions, please contact George Dietz at (201) 521-3055.

Sincerely,

A handwritten signature in cursive script that reads "PricewaterhouseCoopers LLP".

PricewaterhouseCoopers LLP



Detailed comments and recommendations

1. PEEC's response framework for members in public practice who perform non-audit services

IESBA rationale for adopting different requirements for different categories of services performed by professional accountants in public practice

The IESBA NOCLAR standard generally includes separate provisions for audits of financial statements versus other types of services that professional accountants in public practice may provide. It sets forth a different, more stringent approach to responding to NOCLAR for PAs who perform financial statement audits, as compared with PAs who perform other types of services (including other types of assurance services) for a client. The scope of the actions required to be taken by the latter category of PAs is significantly narrower than the extent of the required response for PAs who perform financial statement audits.

In its May 2015 exposure draft, *Responding to Non-Compliance with Laws and Regulations*, the IESBA explicitly acknowledged the “generally narrower mandates” of PAs who perform non-audit services and “the lower level of public reliance on the[se] services,” explaining that the “Board has been careful not to replicate all the detailed guidance applicable to auditors in the section addressing other PAs in public practice to avoid conveying the impression that the latter have the same level of responsibility to respond to NOCLAR or suspected NOCLAR as the former.”

Similarly, in its *Basis for Conclusions: Responding to Non-Compliance with Laws and Regulations* publication, the IESBA reiterates its belief that it is appropriate to require a different, less extensive level of effort from PAs who perform non-audit services, in part because these engagements are limited in scope, and it is often impractical to access relevant information outside of the engagement. Due to these limitations, the IESBA only requires PAs providing non-audit services “to seek to obtain an understanding of the matter, recognizing that constraints on their access to information may preclude them from obtaining such an understanding.”¹

In developing its NOCLAR standard and after an extensive consultative process, the IESBA recognized that there is a different level of public expectation of PAs who perform non-audit services and that, compared with auditors, these PAs also have more limited access to information at the client.² Accordingly, the IESBA adopted a NOCLAR standard that strikes an appropriate balance, imposing an obligation not to ignore specific information indicating possible illegal activity, but not requiring PAs performing non-audit services to undertake the same procedures expected of auditors.

Significant differences in the nature and extent of the requirements of the IESBA NOCLAR standard applicable to auditors versus non-auditors

The IESBA NOCLAR standard requires auditors to obtain an understanding of the matter if they encounter an instance of NOCLAR at a financial statement audit client (IESBA Code, paragraph 225.12). In contrast, as described above, when performing non-audit services, PAs are only required to seek to obtain an understanding of the matter (IESBA Code, paragraph 225.39).

¹ IESBA Basis for Conclusions (July 2016), paragraphs 62–64.

² IESBA Staff Questions & Answers, *Responding to Non-Compliance with Laws and Regulations – Professional Accountants in Public Practice* (February 2017), Section III, Q&A 44.



In discussing the non-compliance with client management or those charged with governance (“TCWG”), PAs providing non-audit services are also not required to advise the client to take appropriate and timely actions, if they have not already done so, to:

- a) Rectify, remediate or mitigate the consequences of the non-compliance;
- b) Deter the commission of the non-compliance where it has not yet occurred; or
- c) Disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest. (IESBA Code, paragraph 225.18)

Pursuant to the IESBA NOCLAR standard, the requirement to address the matter as specified above applies only to financial statement auditors.

Similarly, while the IESBA NOCLAR standard also requires auditors to subsequently consider whether the financial statement audit client’s management and TCWG understand their legal or regulatory responsibilities with respect to the non-compliance (IESBA Code, paragraph 225.19), PAs who perform non-audit services for a client are under no such obligation to perform an assessment of the understanding of the parties at the client to whom the matter has been disclosed. Instead, the IESBA NOCLAR standard establishes a different level of responsibility for such professional accountants, requiring them to discuss the matter with the appropriate level of management (and TCWG, if the PA has access to them and where appropriate) and to consider whether further action is necessary in the public interest (such as withdrawal from the engagement) (IESBA Code, paragraphs 225.41 and 225.49).

However, the PEEC’s proposal expands the application of that framework such that members who perform non-audit services would have to undertake the same actions and procedures (such as those described above) required of auditors, rather than allowing for the differentiated approach in the IESBA NOCLAR standard.

For a more detailed look at the nature of the differences between the PEEC’s proposed NOCLAR interpretation and the IESBA NOCLAR standard, we have included in Appendix 2 a flowchart that illustrates the sequence of individual actions required to be undertaken by non-auditors under the proposal as compared with the course of action required of non-auditors by the IESBA’s response framework.

PEEC should adopt IESBA’s practical approach of differentiating the response framework for auditors versus non-auditors

We strongly recommend the PEEC follow the IESBA’s more practical approach of differentiating the requirements applicable to members in public practice by limiting the application of the response framework set out in the proposed NOCLAR interpretation to members who perform audits of financial statements. With regard to members in public practice who perform non-audit services (including attestation and compilation services), the PEEC should adopt the more limited response framework specified in the IESBA NOCLAR standard for PAs performing professional services other than audits of financial statements (with the necessary modifications that would prohibit disclosure of the NOCLAR to outside parties consistent with US state laws and regulations and the PEEC’s own ethics rules on confidentiality of client information).

Considerable operational challenges arise from expanding on the IESBA approach

Many of the same considerations regarding operability and practical constraints to compliance that were taken into account by the IESBA during its own standard-setting process also apply with respect to the PEEC’s proposal. We believe there is a potential for a number of practical challenges in applying



the proposed NOCLAR interpretation to non-audit services, and that, depending on the individual facts and circumstances, aspects of the interpretation would even be unworkable.

While a PA performing non-audit services will have fulfilled the relevant obligations under the IESBA NOCLAR standard if the PA makes an *attempt* at obtaining relevant information to substantiate a suspicion that NOCLAR has or may occur at the client, the PEEC's proposed NOCLAR interpretation would impose an additional responsibility on members to obtain an understanding of the matter, including the nature of the act of non-compliance and the circumstances in which it has occurred or may occur, and then advise the client to take certain actions. However, in order to obtain an understanding of the matter and determine whether non-compliance has indeed occurred, a member would usually have to wait for the client to perform an investigation (i.e., the assessment doesn't happen on "Day 1" of the engagement). This can take an extended period of time (sometimes several years), potentially much longer than the duration of a typical non-audit services engagement. The engagement, along with any contract that the member entered into with the client for the performance of non-audit services, may have long expired before the client even begins to take action on any NOCLAR uncovered in the client's investigation.

In the context of an audit of financial statements, the auditor's consent or opinion is often required by external stakeholders, including regulators, investors and lenders. Because the audit deliverable (e.g., the audit opinion) is typically mandatory, the audit client has a strong incentive to cooperate with the auditor and provide the auditor with the access and information necessary to "address the matter." However, a member performing non-audit services is typically in a very different situation. The deliverables of non-audit services engagements are rarely required by external stakeholders and, consequently, the client does not have the same incentive to cooperate with the member. This, combined with the other practical issues described in this letter, makes it more difficult for non-auditors to comply with the more expansive and demanding auditor response framework. In fact, if the PEEC adopts the proposed NOCLAR interpretation as exposed, we recommend that the Committee develop additional guidance to clarify the scope of the actions expected to be undertaken by a member performing non-audit services to demonstrate compliance with the interpretation in those circumstances in which the engagement has concluded and/or the client ceases to cooperate with the member.

It is also important to note that engagements to perform non-audit services are often limited in scope and undertaken on a one-off basis. This has implications for the nature and extent of the actions that a member in public practice can reasonably be expected to take if the member encounters an instance of NOCLAR. Depending on the type of non-audit service that a member has been engaged to perform, which can and do vary widely, the member may not have the same level of access as an auditor to their client's management and TCWG. It is likely that a member performing, for example, a strategy assessment for a single division at a client would not have relationships with the client's audit committee or senior management and, therefore, may not be in a position to effectively communicate about NOCLAR with those parties as required by the PEEC's proposed NOCLAR interpretation.

Similarly, it may also not be practical or even feasible for a member in public practice performing non-audit services to access the necessary information outside of the engagement in order to obtain a further understanding of the matter or to advise their client's management or TCWG to take appropriate or timely actions. Pursuant to the IESBA NOCLAR standard, a PA only has to *seek to* obtain an understanding of the matter and then discuss the matter with the client. This is a more limited and practical approach to responding to non-compliance that recognizes the inherent limitations regarding access to information.

The exposure draft explains that, in developing the proposed NOCLAR interpretation, the "PEEC believed it was unnecessary to bifurcate the guidance since it did not incorporate the IESBA provisions



relevant to disclosure to an appropriate authority and the other provisions were deemed appropriate for auditors and non-auditors alike” (page 7 of the exposure draft). Notwithstanding the fact that the PEEC’s proposal does not require reporting to outside parties, the response framework being proposed by the PEEC (see Appendix 2) would still pose a burden that would be a significant change in practice for non-auditors. They would be required to demonstrate compliance with the response framework and document how the member, for example, obtained an understanding of the matter, assessed the client’s understanding, etc. The lack of an external reporting obligation would not mitigate the practical challenges that would inevitably arise in carrying out those steps in the context of a non-audit services engagement.

Significant incremental costs may arise by expanding on the IESBA approach

A member in public practice performing non-audit services who encounters NOCLAR during the course of the engagement will incur additional costs that go beyond the fee structure agreed to with the client. The additional procedures required of the member, which are as extensive as those required of auditors, would not be scoped into the contract for the engagement and, therefore, the client may very well object to paying the incremental fees associated with the extra time and effort expended by the member. Because of the requirement to obtain a further understanding of the NOCLAR (versus the IESBA’s “seek to” obtain an understanding), incremental costs would also arise should the member be called upon to testify as a fact witness or be subjected to document subpoenas.

Potential marketplace disruption

The practical difficulties described above are also likely to be exacerbated by the fact that, although members in public practice would be subject to the PEEC’s proposed NOCLAR interpretation, other providers of professional (non-audit) services would be under no such obligation, leading to the public being drawn away from CPAs to non-CPA providers. This situation could dissuade companies from engaging CPAs in favor of other providers so as to avoid the potential for the services becoming subject to a stringent “audit-level” ethics standard that will result in additional costs not agreed to at the outset of the engagement.

Legal privilege

In addition, the communications required to be undertaken with a client’s management or TCWG could be non-privileged communications. Clients may not deem it appropriate that a member in public practice who has only been engaged to perform non-audit services is under obligation by the profession’s standards to provide non-privileged communications about the client’s legal non-compliance. If adopted by the PEEC as exposed, the requirement for members performing non-audit services to document certain aspects of the NOCLAR, including their discussions with management and TCWG, could likely also raise concerns for the member’s clients as the documentation may impact the client’s defenses against action concerning the non-compliance and could be viewed as a waiver of the attorney-client privilege.

2. Interaction of the PEEC’s NOCLAR interpretation with AU-C Section 250 and the related implications for the AICPA auditing, attestation, and consulting standards

With respect to the application of the PEEC’s response framework to members in public practice who perform financial statement audits, we note that aspects of the proposed NOCLAR interpretation do not appear to be entirely consistent with AU-C Section 250, *Consideration of Laws and Regulations in an Audit of Financial Statements* (“AU-C 250”). Pursuant to AU-C 250, an auditor can rely, as part of the audit procedures, on the conclusions of legal counsel for purposes of determining, for example, whether the audit client has committed an illegal act. Specifically, AU-C 250 provides that an auditor



may consult with the audit client's in-house or external legal counsel about the application of laws and regulations to the circumstances, including the possibility of fraud, and the possible effects on the financial statements (AU-C 250.A23). AU-C 250 (and AU-C Section 500, *Audit Evidence*) permits an auditor to consult with and rely on the representations of the audit client's legal counsel if management or TCWG do not provide sufficient information to the auditor that the entity is in compliance with laws and regulations. However, the PEEC's proposal appears to broaden the auditor mandate by requiring members to, for example, perform an assessment of the understanding of management and TCWG regarding their own legal or regulatory responsibilities as well as advise the client to take appropriate and timely actions to rectify, remediate, or mitigate the consequences of the client's non-compliance. This proposed approach is inconsistent with the observation in AU-C 250 that "[w]hether an act constitutes noncompliance with laws and regulations is a matter for legal determination, which ordinarily is beyond the auditor's professional competence to determine" (AU-C 250.A5).

If it is necessary, due to convergence obligations, for the PEEC to issue a separate ethics standard applicable to auditors on the topic of considering laws and regulations, we encourage the Committee to work closely with the Auditing Standards Board (ASB) and the Accounting and Review Services Committee to determine whether changes may be needed to AU-C 250 and other auditing, attestation, or compilation standards to appropriately highlight the incremental ethics requirements (for example, relating to documentation, the public interest test) in the PEEC's NOCLAR interpretation, similar to the changes made by the International Auditing and Assurance Standards Board to its International Standards on Auditing and other international standards when the IESBA NOCLAR standard was finalized and adopted.

In this regard, we also note that the ASB's Standards for Consulting Services do not establish any requirements for members to inquire about or otherwise address a client's non-compliance with laws or regulations. We believe that it would be useful to draw attention to the PEEC's NOCLAR interpretation in these standards as well.

3. Demonstrating compliance with the PEEC's NOCLAR interpretation and the potential for members inadvertently engaging in the unauthorized practice of law

Inadvertent unauthorized practice of law

Under a narrow, strict reading of the requirements in paragraph .19 of the proposed NOCLAR interpretation, a member may simply have an obligation to inform their client's management or TCWG that they have to take appropriate and timely actions to rectify, remediate, or mitigate the consequences of the non-compliance, deter the commission of the non-compliance (if it has not yet occurred), and disclose the matter to an appropriate authority (where appropriate). However, if the member advises their client's management or TCWG regarding, for example, how to undertake these actions (that is, how to rectify the consequences of the non-compliance, how to disclose the matter, etc.), it could cross the line into the kind of advice that attorneys typically provide. Each state defines what constitutes the unauthorized practice of law differently, sometimes only through case law, and members should not be placed in a position of being required to provide advice that could potentially be viewed as the unauthorized practice of law. We also note that a member's provision of advice to an audit or attestation client regarding laws and regulations (beyond the scope of what is required by the applicable auditing and attestation standards) may also be inconsistent with the PEEC's and the SEC's independence rules.



Although the above requirements, as well as the mandate to consider the client's understanding of its own legal or regulatory responsibilities,³ originate in and are consistent with the IESBA NOCLAR standard, the latter also incorporates general caveats⁴ allowing for a professional accountant to defer to local laws and regulations in his or her jurisdiction when those laws and regulations differ from the provisions of the IESBA NOCLAR standard. We believe that the jurisdictional implications of these requirements are different for the United States because the definitions and tests used to delineate what attorneys do in the course of their professional work, versus what professional accountants do, are different and also vary from state to state. There are matters that are viewed as the exclusive province of attorneys, and professional accountants are not permitted to advise on those areas. As previously discussed, AU-C 250 provides the appropriate framework in terms of defining the role of the auditor vis-à-vis the role of legal counsel in determining whether non-compliance with laws and regulations has occurred at the client and what further actions are necessary.

Should this interpretation be adopted as proposed, we recommend that the PEEC develop more detailed guidance to clarify the nature and extent of the advice expected to be provided by a member pursuant to paragraph .19 of the proposed NOCLAR interpretation. The PEEC should also provide guidance regarding the procedures expected to be performed by the member pursuant to paragraph .20 to consider the client's understanding of its legal or regulatory responsibilities (page 15 of the exposure draft).

Additional guidance necessary to clarify the nature/extent of member's procedures to demonstrate compliance with the proposed NOCLAR interpretation

We also recommend that the PEEC develop more detailed guidance to clarify the nature and extent of procedures expected to be undertaken by a member to demonstrate compliance with the proposed requirement in paragraph .24 to "assess the appropriateness of the response of management and, if applicable, those charged with governance" (page 16 of the exposure draft). Indeed, the requirement for members in public practice to assess the appropriateness of the client's response to the non-compliance is another area in which the proposed NOCLAR interpretation appears to differ from AU-C 250, which imposes an obligation on the auditor to determine whether the client's financial statements are materially misstated due to non-compliance with laws and regulations, rather than whether the response of management or TCWG to the non-compliance is appropriate. This could be interpreted to mean that the auditor and other members in public practice actually have a responsibility under the PEEC's NOCLAR interpretation to assess whether the client's response is adequate. While the guidance in paragraph .25 provides some assistance to members in this respect, we are concerned that the member could be viewed as signing off on, for example, the client's response from a legal perspective, despite the position of the IESBA and PEEC that the member is not expected to have a level of knowledge of laws and regulations greater than that required to undertake the engagement.

³ As set forth in paragraph .20 of the proposed NOCLAR interpretation (page 15 of the exposure draft).

⁴ For example, paragraph 225.3 of the IESBA NOCLAR standard incorporates an explicit recognition that, in some jurisdictions, there may be legal or regulatory provisions that may differ from or go beyond the standard and that professional accountants have a responsibility to comply with those provisions. See also paragraphs 225.29–.31 of the IESBA NOCLAR standard.



Responses to the supplementary questions posed by the PEEC in the exposure draft

1. *Should members in public practice who provide only nonattest services to a client be required to document certain aspects of the NOCLAR? Or, rather, should they be encouraged to document certain aspects of the NOCLAR?*

Our comments and recommendations above implicitly address this question, but we reiterate here, more explicitly, that the PEEC's NOCLAR interpretation for members in public practice should converge fully with the IESBA NOCLAR standard, including with respect to documentation. In other words, members in public practice who perform services other than financial statement audits should be encouraged (rather than required) to document the matters specified in paragraph .35 of the proposed NOCLAR interpretation (page 18 of the exposure draft). We believe that, like the remainder of the response framework for members who perform services other than audits of financial statements, there should be a proportionate approach to documentation that is founded on the level of public interest associated with these services and also recognizes the practical challenges that members in public practice performing such services may face in complying with the same documentation requirements as auditors. Imposing a requirement to document on members performing audits of financial statements is appropriate given the higher public expectations associated with the auditor's role. As for other members in public practice, we agree with the IESBA's current approach of generally advocating documentation in the professional accountant's interests, but not requiring it.⁵

In addition, as previously noted, the requirement for members performing non-audit services to document certain aspects of the NOCLAR, including their discussions with management and TCWG, could likely also raise concerns for the member's clients as the documentation may impact the client's defenses against action concerning the non-compliance and attorney-client privilege.

2. *Is a one year transition period for the effective date appropriate? If not, what is an appropriate time period and why?*

When the PEEC makes other than insignificant revisions to the Code of Conduct, the standard practice should be to allow for a transition period before members are required to comply with a revised or new ethics interpretation in order to allow members sufficient time to develop or modify policies and procedures, implement relevant controls, develop and deliver training, issue appropriate firm-wide and client communications, and the like.

If the PEEC adopts a NOCLAR interpretation that converges fully with the IESBA NOCLAR standard and follows the same approach of bifurcating the requirements applicable to members in public practice, we believe that it would be appropriate and reasonable to provide a one year transition period before the new interpretation takes effect.

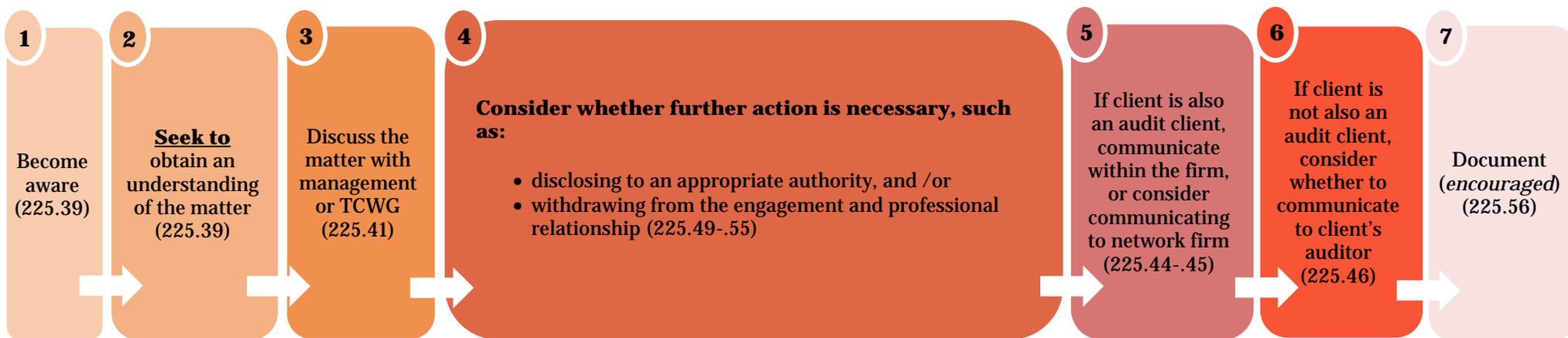
If the NOCLAR interpretation is adopted by the PEEC as exposed, with the response framework for auditors also being extended to members in public practice who perform other types of professional services, those members will require ample time to modify their policies and procedures to address the requirements that are incremental to the IESBA NOCLAR standard (which takes effect in July 2017). The need for this incremental effort, coupled with the implementation challenges that members would encounter (as described in this letter), calls for a transition period longer than one year.

⁵ IESBA Basis for Conclusions (July 2016), paragraph 133.

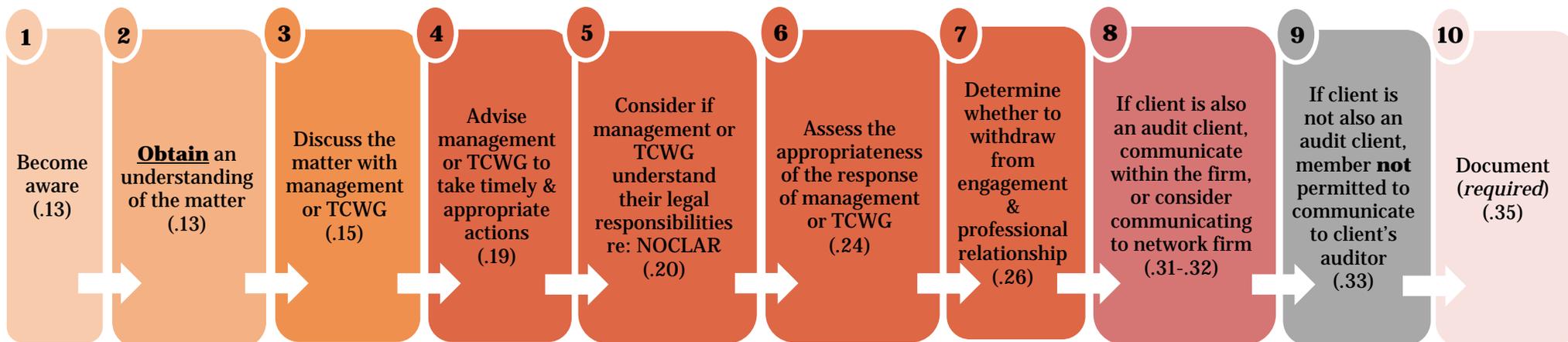
IESBA AND PEEC NOCLAR STANDARDS: A COMPARISON ACTIONS REQUIRED TO BE UNDERTAKEN BY NON-AUDITORS

The flow chart below illustrates the sequence of individual actions required to be undertaken by members who perform non-audit services when responding to NOCLAR pursuant to the PEEC’s proposal as compared with the course of action required by the IESBA’s NOCLAR standard.

IESBA NOCLAR STANDARD



PEEC NOCLAR INTERPRETATION





Explanation of the differences in the actions required of non-auditors by the IESBA’s NOCLAR standard vis-à-vis the PEEC’s proposal:

- **STEP 2:** The professional accountant has to “seek to obtain an understanding” versus “obtain an understanding” of the NOCLAR
- **STEP 4:** The professional accountant has to “consider whether further action is necessary in the public interest” versus **1)** advise the client to take timely/appropriate actions to address, deter, disclose the NOCLAR, **2)** consider whether the client understands its legal/regulatory responsibilities, **3)** assess the appropriateness of the client’s response to the NOCLAR, and **4)** determine whether to withdraw from the engagement/professional relationship
- **STEP 7:** The professional accountant is “encouraged to document” the NOCLAR, discussions with the client, etc. versus “required to document”