



Agenda Item 2C

Convergence — NOCLAR

Convergence with IAASB NOCLAR Project

Background

Changes to IESBA Code of Ethics and ISA 250

The IAASB's NOCLAR (Noncompliance with Laws and Regulations) project was undertaken in response to revisions by the International Ethics Standards Board for Accountants (IESBA) to its Code of Ethics for Professional Accountants. IESBA revised the Code of Ethics to give the professional accountant the right to disclose an identified or suspected NOCLAR to an appropriate authority if the professional accountant determines that such disclosure is an appropriate course of action in the circumstances. If the professional accountant determines that such a disclosure is appropriate, this will not be considered a breach of the duty of confidentiality under Section 140 of the IESBA Code. The professional accountant is required to assess whether such disclosure is necessary for the public interest.

The IAASB made revisions to ISA 250 to address actual or perceived inconsistencies of the approach to identifying and dealing with instances of NOCLAR or suspected NOCLAR in complying with ISA 250 and other International Standards, including the scope of laws and regulations to be considered, when the IESBA Code also applies.

In summary, the significant changes to ISA 250 (Revised) included in the final pronouncement are intended to:

- Align aspects of ISA 250 (Revised) to the NOCLAR provisions in the IESBA Code, particularly the definition of non-compliance and the examples of laws and regulations within the scope of ISA 250 (Revised) (see paragraphs 12, A6 and A9–A10 of ISA 250 (Revised)).
- Clarify the requirement regarding the auditor's determination of whether to report identified or suspected NOCLAR to an appropriate authority outside the entity and the auditor's duty of confidentiality, in order to recognize the different provisions of laws, regulations, or relevant ethical requirements (see paragraphs 29 and A28–A34 of ISA 250 (Revised)).

- Highlight that the auditor may have additional responsibilities under law, regulation, or relevant ethical requirements regarding identified or suspected NOCLAR. This also includes additional emphasis of the possible documentation requirements contained in law, regulation or relevant ethical requirements (see paragraph 9 of ISA 250 (Revised)).
- Highlight the implications of identified or suspected NOCLAR on the audit, for example, the reliability of management’s representations, the implications for the auditor’s report, and the consideration of whether to withdraw from the engagement (see paragraphs 22 and A23–A27 of ISA 250 (Revised)).
- Emphasize the requirements in the IESBA Code relating to the communication of identified or suspected NOCLAR to a group engagement partner or an auditor at a component (see paragraph A8 of ISA 250 (Revised)).
- Draw attention to the fact that, in certain cases, communication with management or those charged with governance may be restricted or prohibited by law or regulation, 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 (see paragraphs 20, 23 and A21 of ISA 250 (Revised)).

Proposed Amendments to AICPA Code of Professional Conduct

PEEC has exposed for comment two new 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), applicable to members in public practice and in business, respectively. The proposed interpretations were developed in consideration of IESBA’s new sections entitled *Responding to Non-Compliance with Laws and Regulations*.

Although many of the proposed requirements are consistent with that of the IESBA Code of Ethics for Professional Accountants (IESBA code), certain provisions were not included in the AICPA proposals as they would be incompatible with most state laws and regulations on client and employer confidentiality.

Most state boards of accountancy have laws or regulations that would prohibit the disclosure of confidential client or employer information without the client or employer’s consent unless required by law or regulation to make such disclosure. Accordingly, the proposed Interpretations do not include the provisions of the IESBA standards relevant to disclosure by the member to an appropriate authority or external auditor (except for a senior professional accountant when dealing with the employing organization’s auditor). The IESBA recognizes that some jurisdictions would not permit a professional accountant to disclose confidential client or employer information and thus, the IESBA standards specifically state, “Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or

regulation.¹” This provision is the basis for considering that the IESBA Code and the AICPA Code are converged without the inclusion of the omitted provisions.

The IESBA standard has a provision that would require a professional accountant in public practice who has withdrawn from a professional relationship, upon request from the successor accountant, to disclose a NOCLAR to the successor accountant. Due to state laws and regulations on confidentiality noted previously, the AICPA proposed interpretation does not contain a similar provision regarding disclosure to a successor accountant. The member would need to obtain the client’s permission to discuss the matter with the successor. If the client refuses to permit the member to discuss all matters with the successor, the successor should be mindful of a potential issue. The AICPA code addresses this situation in the “Disclosing Information from Previous Engagements” interpretation (ET sec. 1.700.020).”

The PEEC exposure draft has a comment period ending on May 12, 2017.

Timing of ASB Project

The impetus for the ISA project was the change to the IESBA Code. Similarly, the revisions to AU-C section 250 have to align with the interpretations to the AICPA Code of Professional Conduct proposed by PEEC. Accordingly, the Convergence Task Force believes it prudent to wait to see if changes to the proposed PEEC amendments result from exposure before bringing proposed amendments to AU-C section 250 to the ASB.

Additional Resources

<https://www.ifac.org/system/files/publications/files/IAASB-NOCLAR-ISA-250-Revised-and-Related-Conforming-Amendments-Oct-2016.pdf> - ISA 250 (Revised), *Consideration of Law and Regulations in an Audit of Financial Statements, Including Related Conforming Amendments*

<http://www.aicpa.org/InterestAreas/ProfessionalEthics/Community/ExposureDrafts/DownloadableDocuments/2017/2017March10NOCLARExposureDraft.pdf> - Proposed Interpretations “Responding to Non-Compliance With Laws and Regulations”

¹ See section 225.33 of the IESBA Code