



28 September 2015

Submitted electronically to StavrosThomadakis@ethicsboard.org

Dr Thomadakis

Chairman

International Ethics Standards Board for Accountants

529 Fifth Avenue

New York, NY 10017 USA

COMMENTS ON THE IESBA EXPOSURE DRAFT, "RESPONDING TO NON-COMPLIANCE WITH LAWS AND REGULATIONS"

Dear Dr Thomadakis,

The International Forum of Independent Audit Regulators ("IFIAR") appreciates the opportunity to comment on International Ethics Standards Board for Accountants' ("IESBA") Exposure Draft "*Responding to Non-Compliance with Laws and Regulations*". As an international organization of independent audit oversight regulators that share the common goal of serving the public interest and enhancing investor protection, IFIAR is committed to improving audit quality globally through the promotion of high quality auditing and professional standards, and other pronouncements and statements.

IFIAR's more specific objectives are as follows:

- Sharing knowledge of the audit market environment and practical experience of independent audit regulatory activity, with a focus on inspections of auditors and audit firms;
- Promoting collaboration and consistency in regulatory activity;
- Initiating and leading dialogue with other policy-makers and organizations that have an interest in audit quality; and
- Forming common and consistent views or positions on matters of importance to its Members, taking into account the legal mandates and missions of individual members.

The comments we have provided in this letter reflect the views expressed by many, but not necessarily all, of the Members of IFIAR. They are not intended to include, or reflect, all of the comments or views that might be provided by individual Members on behalf of their respective organisations.

Where we did not comment on certain specific matters, this should not be interpreted as either approval or disapproval by IFIAR of the proposals.

The IESBA Code of Ethics is used by some IFIAR members, but not by all of them. Even for those jurisdictions that do not use it, IFIAR sees a clear interest in enhancing the Code, as it is used as a basis for certain benchmarks at the international level. Moreover, a number of audit firms and networks have voluntarily committed to complying with the Code.

We draw the IESBA's attention to the fact that, in line with our mandates as independent audit regulators, we have commented only on those proposals of the exposure draft that relate to auditors and not those that relate to other categories of accountants.

Overall comment

We appreciate that the proposals recognize that national laws and regulations take precedence over the requirements of the Code.¹ Nevertheless, as set out below, we believe that the IESBA should strive for more stringent requirements than those currently set out in the exposure draft which are not, in our view, sufficient to drive appropriate behaviour from the auditor vis-à-vis instances of NOCLAR or suspected NOCLAR. A number of jurisdictions around the world already have more robust requirements in place regarding the action required to be taken by an auditor in relation to NOCLAR.

Communicating the matter to management and those charged with governance

Unless prohibited by national law, we believe that the auditor should inform management and those charged with governance when NOCLAR or suspected NOCLAR has been identified and invite them to take appropriate and timely action. The proposals require the auditor to prompt management or those charged with governance to take appropriate and timely actions "*if management or those charged with governance agree that NOCLAR has taken or may take place.*"² We suggest that the IESBA revises this wording, as the current drafting could lead to misunderstanding. We are also of the view that the term "*prompt*" could be read to imply that the auditor is assuming managerial responsibilities. Accordingly, we suggest that alternative wording, such as "*invite*" or "*request*" for example, be considered by the IESBA.

Determination of further action

The current proposals refer to the objectives to be achieved when determining whether further action is needed.³ In our view, the reference to these objectives, as well as the link between the objectives and the other factors to consider when determining whether further action is needed,⁴ should be clarified for purposes of driving consistency in application.

¹ Including ED §225 .19, .21, .24, .27 ...

² ED §225.17

³ ED §225.20

⁴ ED §225.21, .22, .23

Lack of clear obligation for the auditor to monitor and assess the entity's response

The exposure draft indirectly points to the need for the auditor to monitor and assess the entity's response to NOCLAR.⁵ In our view, the auditor should monitor and assess the appropriateness and timeliness of the entity's response before determining whether further steps are necessary. We suggest that the IESBA integrates this step in the Code as an additional mandatory action for the auditor to perform, as opposed to referring to it as an option for the auditor to consider when determining what further action is needed.

Lack of obligation to report

The proposals allow for the auditor to report NOCLAR to an appropriate authority rather than imposing an obligation to do so.⁶ In our view, the auditor should be required to report NOCLAR to an appropriate authority able to receive the information, determined in accordance with national law, when management and those charged with governance fail to satisfy legal or regulatory requirements to report such information to external parties or fail to take timely and appropriate steps to respond to known or likely NOCLAR, after having confirmed that it is in the public interest for the auditor to do so. We believe that the auditor should have the obligation to report NOCLAR to an appropriate authority, unless it would be incompatible with national legal provisions, for instance with regards to confidentiality and protection of the liability, and of the safety of the auditor.⁷

Link with international auditing standards

We note that the proposals seek to complement the requirements of the auditing standards in as far as the auditor's response to NOCLAR is concerned.⁸ We share the view that certain aspects of the proposals would require further alignment between auditing and ethics provisions.⁹ In particular, we believe that further consideration should be given, within the Code or the ISAs, to the communication of NOCLAR in a group audit situation, especially between group and component auditors, regardless of whether all of the auditors involved belong to the same network or not.¹⁰

Timing of the project

The potential benefit to the public interest that would be achieved by having requirements included in the Code with regards to NOCLAR is such that we encourage the IESBA, subject to our comments, to seek to finalise the project in the near future.

⁵ ED §225.21 second bullet

⁶ ED §225.24

⁷ see factors described in ED §225.27

⁸ ED Explanatory Memorandum §121 and 122

⁹ Please note that this letter does not include any consideration related to the IAASB proposals to amend the ISAs on NOCLAR that were published on July 23, 2015, since this letter was prepared before that date.

¹⁰ ED §225.19(b)

Should you wish to discuss any of our comments, please do not hesitate to contact me or Marjolein Doblado, Chair of the IFIAR Standards Coordination Working Group.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'J. van Diggelen', with a long horizontal flourish extending to the right.

Janine van Diggelen
IFIAR Chair