

**Draft Minutes of the Meeting of the
INTERNATIONAL ETHICS STANDARDS BOARD FOR ACCOUNTANTS
Held on March 11-13, 2013 in New York, USA**

Voting Members

Present: Jörgen Holmquist (Chair)
Isabelle Sapet (Deputy Chair)
Helene Agélii
Brian Caswell
Robert Franchini
James Gaa
Caroline Gardner
Gary Hannaford
Peter Hughes
Claire Ighodaro
Chishala Kateka
Wui San Kwok
Stefano Marchese
Alice McCleary
Reyaz Mihular
Marisa Orbea
Kate Spargo
Don Thomson

Technical Advisors

Tony Bromell (Ms. Gardiner)
Jean-Luc Doyle (Ms. Sapet)
Kim Gibson (Mr. Thomson)
Liesbet Haustermans (Ms. Orbea)
Tone Maren Sakshaug (Ms. Agélii)
Andrew Pinkney (Mr. Kwok)
Lisa Snyder (Mr. Caswell)
Eva Tsahuridu (Ms. McCleary)

Apologies:

Elbano de Nuccio (Mr. Marchese)
Sylvie Soulier (Mr. Franchini)
Patrick Wanjelani (Ms. Kateka)

Non-Voting Observers

Present: Richard Fleck (IESBA Consultative Advisory Group (CAG) Chair), and Seiya Fukushima
Apology: Juan Maria Arteagoitia

Public Interest Oversight Board (PIOB) Observer

Present: Chandu Bhave

IESBA Technical Staff

Present: Ken Siong (Technical Director), Chris Jackson and Karlene Mulraine

1. **Opening Remarks and Minutes**

WELCOME AND INTRODUCTIONS

Mr. Holmquist welcomed the participants and public observers to the meeting. He welcomed, in particular, Mr. Bhave, observing on behalf of the PIOB, and Ms. Ighodaro and Mr. Mihular, attending their first meeting as new IESBA members. Apologies were received from Ms. Soulier and Messrs. Arteagoitia, de Nuccio, and Wanjelani.

MEMBER ROTATIONS, APPOINTMENTS AND RE-APPOINTMENTS

Mr. Holmquist noted the appointment of Ms. Ighodaro and Messrs. Caswell and Mihular to the Board from January 2013. In addition, he congratulated Mss. Gardner, Orbea and Spargo, and Messrs. Gaa, Hughes, Kwok and Thomson on their re-appointment to the Board, and Ms. Sapet on her appointment as Deputy Chair for 2013.

MEETING AGENDA

Mr. Holmquist noted that he had invited Mr. Hannaford to chair a new working group to be established to advise the Board on emerging issues and outreach. Mr. Holmquist invited expressions of interest from Board members and technical advisors to join this WG.

PLANNING COMMITTEE UPDATE

Mr. Holmquist reported briefly on the January 2013 Planning Committee teleconference. Amongst other matters, the Planning Committee had considered an initial analysis of the significant comments received on the Suspected Illegal Acts exposure draft (ED), the draft strategy survey, and how to enhance the Board's interactions with the International Organization of Securities Commissions (IOSCO).

RECENT PRESENTATIONS AND OUTREACH

Mr. Holmquist provided a brief report-back on recent outreach activities that he and other IESBA representatives had undertaken since the previous Board meeting, noting that details of these activities are included in the schedule of recent and upcoming outreach and related activities that has been distributed as part of the agenda material.

RECENT DEVELOPMENTS

Mr. Holmquist announced that at its meeting at the end of February 2013, the PIOB confirmed due process for the three pronouncements the IESBA had approved in December 2012 and January 2013, i.e.:

- Breach of a requirement of the Code
- Conflicts of interest
- Revised definition of engagement team

The final pronouncements were expected to be released shortly.

MINUTES OF THE PREVIOUS MEETINGS

The minutes of the December 2012 IESBA meeting and January 2013 IESBA teleconference were approved as presented.

2. Responding to a Suspected Illegal Act (SIA)

Mr. Franchini introduced the topic, briefing the IESBA on the recent activities of the Task Force. He then outlined the significant comments received on the exposure draft (ED), *Responding to a Suspected Illegal Act*, highlighting the pivotal issues. He also outlined the significant comments raised by IOSCO on the ED.

GENERAL COMMENTS

Mr. Holmquist believed that this was the most difficult project the IESBA has undertaken. He highlighted the importance of care in considering the ED responses to avoid reacting too far the other way.

Given the significant concerns from respondents, IESBA members agreed that there would be merit in reflecting on how the ED was developed.

TO CONTINUE OR NOT TO CONTINUE?

IESBA members strongly supported continuing the project despite the significant issues raised on exposure. Amongst other matters, IESBA members commented as follows:

- One of the ways forward is to coordinate more closely with the International Auditing and Assurance Standards Board (IAASB) to align the ISAs with any proposed changes to the Code.
- A code of ethics cannot avoid the need to address SIAs. It would be important to note that auditors are accountable to a wider range of stakeholders than professional accountants (PAs) providing non-assurance services (NAS) to non-audit clients.
- PAs deserve guidance on responding to SIAs as many of the ED responses have urged. However, PAs cannot be placed at risk of breaching national laws and regulations.
- SIAs are an important issue. However, careful consideration is needed regarding imposing an external reporting requirement without a proper legal framework to support it.
- There is a need for a “thought leadership” response in the Code. While some might see the ED as extreme, the responses have been helpful. The aim should be to make the Code the first port of call if a PA has a dilemma when finding out about a SIA. Also, a focus on encouragement and guidance for professional accountants in business (PAIBs) would be especially helpful, particularly junior PAIBs, given past history of corporate failures.
- There is a need to find the right balance because confidentiality should not be absolute. Regarding comments about increasing the expectations gap, the public does expect PAs to report SIAs in some circumstances.
- It would not reflect well on the Board to stop the project. At a minimum, the project should continue in order to address the concerns raised. The IESBA should really be the institution to which PAs turn for guidance, and this is a good opportunity to provide guidance in this area.
- The ED responses illustrate the value of consultation. Stakeholders have shown how important the issues are to them. It would be disappointing if the Board were seen to be pulling back from the difficult issues. Consideration should be given to unbundling the issues so that practical guidance can be provided.

Mr. Fleck expressed the view that the positive outcome from the project is that it has helped raise the IESBA's visibility. He felt that the benefit in the IESBA having taken a strong position in the ED is reflected in the high level and quality of the responses.

REQUIREMENT TO DISCLOSE TO AN APPROPRIATE AUTHORITY

Noting respondents' significant concerns regarding this proposal, IESBA members commented as follows:

- The potential for different interpretations of the meaning of the public interest is a matter of concern, and this may mean that the Board has not sufficiently narrowed down the scope of reported SIAs. The matter of dueling professional standards in the context of PAs who are members of other professions is also a valid issue.
- The requirement could place small and medium practices (SMPs) at significant risk and could not be supported without more specific guidance regarding to whom to report.
- Consideration should be given to rethinking whether a suspicion of an illegal act is an appropriate starting point, and whether a threshold between a suspicion and clear evidence would not be more appropriate.
- A right may not need as much guidance as a duty. Also, even where there are legal protections, whistle-blowers suffer consequences. Nevertheless, legal protection is a critical issue if the requirement were retained.
- Whatever the threshold for action might be, professional judgment will be needed. Taking legal advice would help a PA deal with a SIA, and privilege would attach to that advice. The PA also needs to be encouraged.
- The relationship of trust with the client is important, and the impact of the proposed requirement on that relationship should be taken into account.
- Guidance should be provided to PAs to assist them in dealing with SIAs. A suggestion would be to consider how anti-money laundering legislation deals with the reporting of SIAs. At the same time, consideration should be given to working with the International Organization of Securities Commissions (IOSCO) to stimulate the development of appropriate legal and regulatory frameworks to facilitate the reporting of SIAs.
- Until the Board is satisfied that globally there are legal frameworks addressing whistle-blowing, it may not be appropriate at this time to impose a requirement. The key issue is the fear of reprisal. Accordingly, it may be better to develop guidance.
- The right solution is not for the PA to hide behind confidentiality. Also, confidentiality should not be an impediment to the PA's duty or right to act.
- There is an opportunity for IFAC to take a position or be active in this area. Also, care should be taken in using the term "right" as many stakeholders are attributing this to a legal right, which is not what the Board intended.
- Consideration should be given to developing guidance as to the circumstances in which confidentiality can be overridden.

Mr. Fleck was of the view that a focus on principles and judgment would be important. He added that the more prescriptive the approach, the more difficult the application would be, given the variety of contexts around the world.

Mr. Fukushima believed that the balance between the public interest and confidentiality is important. He was of the view that the Task Force's proposed alternative approach of not imposing a requirement would not seem to be a balanced way. He felt in particular that for auditors, it would be important to retain a requirement for disclosure.

In the light of this discussion, the IESBA asked the Task Force to explore alternative proposals, considering the prerequisites and practicalities of each, and having regard to what would best serve the public interest.

DISCLOSURE TO AN EXTERNAL AUDITOR

While a few IESBA members felt inclined to retain a requirement to disclose to an external auditor, others were of the view that broader guidance offering various options for action should be explored, one of which could be disclosure to the external auditor. It was also suggested that consideration be given to what management may communicate to the auditor.

A few IESBA members wondered whether greater clarity was needed as to what would be expected of the auditor once he or she receives the information. In this regard, it was noted that ISA 250¹ already provides guidance as to what an auditor's response should be when the auditor becomes aware of a SIA.

It was suggested that the Task Force coordinate with the IAASB in exploring the options. In this regard, a few IESBA members cautioned that the IAASB's remit is the financial statements and focusing on financial statements may be too narrow a scope. Mr. Fleck expressed support for a broader approach to the scope, noting that auditors are already required to address contingent liabilities. He also noted that many SIAs may in fact indirectly affect the financial statements.

RIGHT WITH EXPECTATION TO DISCLOSE TO AN APPROPRIATE AUTHORITY

An IESBA member expressed the view that if a right is already provided in the Code, the PA should be allowed to use judgment in exercising that right. Accordingly, linking the right with an expectation would be confusing. Another IESBA member noted that it was not the Board's original intention to impose an obligation through the "right with expectation" construct as the Board could otherwise have simply proposed a requirement. It was, however, pointed out that a court of law may interpret the construct as a requirement as it appears to bind the PA to a strong obligation. It was suggested that a distinction could be made between a breach of a statutory obligation and a breach of a contractual duty. It was also noted that the override of confidentiality is in the context of the Code and not a breach of a legal requirement. IESBA members agreed that a legal right was not what the Board had intended and that there would be merit in clarifying that the right is attached to the Code.

After further deliberation, the IESBA asked the Task Force to explore guidance that would support and encourage PAs if there were a right in the Code for them to override confidentiality and disclose a SIA to an appropriate authority.

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

TYPES OF SIAS TO DISCLOSE

The IESBA discussed the types of SIAs that would be subject to disclosure. A view was expressed that it would not seem right for the Code to grant PAs a permission to override confidentiality and disclose a SIA within his or her expertise but not on an issue of public interest outside of that expertise. In this regard, it was argued that PAs should be allowed to make their own judgments. It was, however, noted that while PAs should be good citizens, the Code is dealing specifically with the profession. Accordingly, it is necessary to link the SIAs to the PA's expertise. It was also noted that the Code defines "professional services" as not being limited to accounting services.

An IESBA member suggested that attempting to define "expertise" would over-complicate the proposed standard. Instead, the focus should be on providing guidance to assist the PA in evaluating the matter.

Mr. Fleck cautioned against trying to categorize the matter by reference exclusively to expertise, as consideration should be given to how the PA came across it, for example, whether the PA encountered it in the course of the PA's duty without the PA necessarily having expertise in the subject matter of the SIA.

The IESBA asked the Task Force to reflect on the matter further.

THE PUBLIC INTEREST FILTER

An IESBA member expressed the view that the public interest filter is a critical issue to be addressed going forward. In particular, it was felt that even if there were no longer a requirement, guidance would still be needed as to what this filter means. A few IESBA members, however, were of the view that the need to define what is in the public interest would become less relevant if the Board were to lean more towards a permission than a requirement to disclose.

A few IESBA members expressed support for the public interest filter, noting that it is used in many contexts. It was also noted that the concept of "public interest" is well recognized in many countries. Accordingly, it was suggested that the filter should be retained provided the Board is able to explain what it means. Another IESBA member expressed caution against seeking to develop a definition of "public interest," noting the potential for such a task to delay this project. It was noted that the Code is principles-based and PAs should exercise appropriate professional judgment. Nevertheless, it was suggested that consideration could be given to developing illustrating examples.

It was also suggested that consideration be given to using an objective test (i.e., what an independent third party would believe is sufficient) for the reporting as opposed to a subjective test (i.e., what the individual PA believes to the best of his or her knowledge and ability), as the former would better ensure that PAs exercise as much care as possible.

Mr. Fukushima expressed support for limiting the scope of the requirement to auditors and using materiality as the filter. A few IESBA members, however, did not believe materiality would be the appropriate filter.

PIOB Observer's Remarks

Mr. Bhave commented that the Board discussion reflects the complexity of the issue. He was of the view that at a minimum, the Code should make clear what is expected of the PA. He observed that if the Code were to merely enumerate the rights of the PA, it would become simply a bill of rights instead of a Code. He felt that the Board could be conveying the wrong signal if it went only with rights. Accordingly, he urged the board to consider this matter carefully.

STRAW MAN

The IESBA considered an outline of a straw man of an alternative approach to the key proposals in the ED. In generally supporting the Task Force in exploring this alternative, IESBA members commented as follows:

- The concept of an encouragement should be explored as opposed to just a right.
- Consideration should be given to seeking a liaison person from the IAASB to be on the Task Force.
- Consideration should be given to encouraging complementary action at the broader policy level via the G-20, the Organization for Economic Cooperation and Development (OECD), etc., to achieve a more holistic package.
- Legal advice on any revised proposals could be useful.
- Consideration should be given to the impact of any revised proposals on PAIBs, including those in the public sector, given that the consequences for employees in business are generally more severe.

Mr. Fleck highlighted the need to clearly articulate the provision that would empower the PA to override confidentiality.

OTHER MATTERS

IESBA members also commented on other matters as follows:

- Consideration should be given to clarifying who the appropriate authorities are to minimize inconsistency in practice.
- It may not be practical to expect a junior accountant to undertake all the investigative process.
- There may be a moral obligation or an expectation in some circumstances that confidentiality will be overridden.
- There would be merit in retaining the threshold of a suspicion given that it is consistent with the approach taken in ISA 250. Nevertheless, consideration should be given to using two different thresholds: a “suspected” threshold for early escalation, and a higher threshold for reporting.
- The guidance in ISA 250 on how to confirm or dispel a suspicion appears to be more helpful than the prescriptive approach in the ED.

WAY FORWARD

The IESBA asked the Task Force to explore options for the way forward on the various issues in the light of the Board discussion and present preliminary recommendations for consideration at the June 2013 IESBA meeting.

3. Presentation from Chair of IOSCO Committee 1

Ms. Julie Erhardt, Chair of IOSCO’s Committee 1 (C1), presented an overview of IOSCO and C1. She outlined, in particular, the composition of the IOSCO board of directors, which determines the work streams for its various committees; the range of subject areas in which IOSCO provides regulatory input, including standard-setting in the areas of audit and ethics standards; the general nature of C1’s agenda; and its approach to developing consensus views on issues it considers.

In general dialogue with IESBA members, Ms. Erhardt commented as follows:

- Given the periodic changes to committee compositions, IOSCO aims for consistency in its responses to exposure drafts and consultation papers over time. It does so by referring to earlier responses on the same topics and its institutional memory.
- IOSCO will submit a written response to the IESBA strategy survey. Given its remit, it will likely be commenting on issues that affect capital markets.
- What the public interest means is challenging. If the public interest is to be used as a filter in the Code as proposed in the Suspected Illegal Act ED, it would merit further attention.
- With respect to the Long Association project, consideration should be given to whether the period of long association of an audit team member with a client should be timed from that individual's first encounter with a client rather than from the time he or she becomes a partner.
- The late submission of C1's comment letters on the Board's exposure drafts is acknowledged as it is a challenge to coordinate responses amongst its members. However, IOSCO would welcome suggestions as to how to improve the process. C1 in particular would welcome dialogue on any of its comment letters once the IESBA receives it. Also, IESBA representatives would be welcome to seek regulatory perspectives from C1 via teleconference at an early stage of a project. In addition, IOSCO has the opportunity to provide input via its participation on the IESBA CAG.

Mr. Holmquist expressed support for the suggestion for IESBA task forces to consider reaching out to IOSCO early for regulatory perspectives on significant issues.

RESPONDING TO A SUSPECTED ILLEGAL ACT

Ms. Erhardt then shared some insights into IOSCO's comment letter on the Suspected Illegal Acts ED. Amongst other matters, she shared the following:

- IOSCO's main comment is that the pendulum has swung too far compared with what it had originally proposed in its 2004 and 2007 comment letters. It intentionally did not indicate where the pendulum should stop, but left room for the IESBA to deliberate the issues and decide what the solutions should be.
- The project is important and should go forward but not as currently proposed.
- The debate is about what should be expected of PAs, especially auditors, when they encounter SIAs and what their responsibilities should be with respect to communicating the matter to management, engaging with management on it, monitoring management's response, and forming a view as to the appropriateness of that response.
- It may be false comfort to compel PAs to disclose SIAs to a regulator if the regulatory framework is not prepared to intake and process what it receives. Also, it would be unrealistic to expect uniform treatment by all regulators given that how regulators are set up to deal with such matters and how much authority they have to address them vary around the world.
- The practical question is what the appropriate filters should be for disclosure to an appropriate authority to avoid reporting inconsequential matters. There is a trade-off with respect to filters as there are those with which auditors are familiar and those with which they are not.

- The guidance should be clear about what the PA is expected to do. The proposals would fall short of expectations if the end result were to be just a series of “consider” points, which in effect would provide the PA with the opportunity to do nothing. So a balance needs to be struck.
- It would not be appropriate to design the standard on the basis that the auditor’s only role is as an information handler. The auditor should be a thinker. While regulators would want to know about the significant issues, it would not be appropriate to rely on what they might be able to do to diminish what the auditor does.
- While auditors use materiality all the time, it is unclear how often they would pause and think about an issue using the public interest filter. It is also unclear whether that filter is sufficiently common that auditors would be experienced in applying it. In addition, while regulators use that filter, they may not necessarily want auditors to use it given that it is not common tool. Nevertheless, regardless of what the filter might be, it would be important to be clear as to its function and which SIAs it is intended to isolate.
- The ED seemed to suggest that the PA’s response should only be when a SIA has been committed. However, it would also be important to also address a SIA in the process of being committed, for example, where the entity’s minutes indicate that those charged with governance have authorized a bribe but no payment has yet been made.

IESBA members commented as follows:

- The issue is also about how PAs will be seen as acting in the public interest, which provides the necessary perspective.
- Without a regulatory framework such as anti-money laundering legislation that would apply for the securities markets, the proposed standard would be sub-optimal. Ms. Erhardt noted that IOSCO had no plan to establish such a framework amongst its members. From a practical perspective, an ethical standard that depends on the law would not work. However, rather than aspiring to be regulation, such a standard could provide good guidance for the sole practitioner.
- Materiality is a difficult concept to apply for SIAs, as the risk is that it would result in the reporting of matters that are material to the financial statements but immaterial to society. So it may not be the solution. Ms. Erhardt raised the question as to whether materiality could be used as a first filter to trigger action given the advantage that auditors are already familiar with it. However, she acknowledged that it is a blunt instrument. She noted the trade-off with a filter that may be more appropriate but with which auditors may not be familiar and that may require more explanation from the IESBA.
- Given that the first provision in the Code is that the profession accepts its responsibility to act in the public interest, one would expect the public interest concept to apply to any situation, including the reporting of SIAs. The challenge is seeking to define the public interest beyond its application to simply the audit, and it would seem to be an impossible task to craft a definition that would cover all the responsibilities a PA could hold. Ms. Erhardt agreed, noting that a regulator would appreciate that with this filter it may not see all SIAs. However, she highlighted the regulatory concern as to whether auditors would have a regulator’s mindset and therefore report issues that are truly in the public interest. Thus, aside from the practical issue of how auditors would apply such a filter, the concern amongst some at IOSCO is whether PAs will think like regulators and apply the filter in the same manner.

Mr. Fleck expressed the following views:

- The scope of the proposals is broader than the capital markets. Further, the fact that a regulator may not be ready to process a report of a SIA is, from the perspective of the profession's best interests, not a reason not to report to the regulator.
- While there has been a concern that the ED will generate an abundance of disclosures, the opposite is likely to be the case, and this has been the experience in the UK for many years. This is because once a PA reports an issue to senior management, management's normal reaction will be to address it. The right solution should be to generate this type of response, leaving only the bad cases to be reported to the regulator. Ms. Erhardt agreed but questioned how a PA should react if the SIA involves senior management or management disagrees that there is an issue. She was of the view that the Code should help the PA navigate the situation.
- The project had been discussed a number of times with the IESBA CAG. While there was not a unanimous view at the CAG, a majority of the CAG representatives had leaned towards the line taken in the ED. It would be important to reflect on the lessons from this project and whether the Board had received the right guidance from the CAG. This matter will also be considered at the next CAG meeting. Ms. Erhardt acknowledged the practical challenge of reaching consensus views on every issue, noting that there is imperfection in the process in that regard.
- The threshold for reporting should be a high one involving an egregious situation such that the PA cannot simply stand by. Providing illustrations may help stakeholders better understand the thrust of the issue.

Mr. Holmquist thanked Ms. Erhardt for her informative and constructive dialogue with the IESBA. He emphasized that the relationship with IOSCO is important to IESBA.

4. Emerging Issues and Outreach

Mr. Hannaford briefed the IESBA on the proposed establishment of a working group to advise the Board in relation to emerging issues and outreach. He outlined a number of key matters for the working group's consideration, including the process for identifying and filtering emerging issues and international developments for the IESBA's consideration, and approaches to outreach.

In supporting the establishment of the working group, IESBA members variously commented as follows:

- The IFAC member bodies and associates constitute a valuable resource that the IESBA could leverage.
- Consideration should be given to establishing a mechanism for IESBA participants to identify emerging issues and developments for the Board's consideration.
- There would be merit in reaching out to the academic world, not only in seeking to leverage academic research of relevance to the IESBA's work but also in raising awareness of the IESBA and its work amongst academics.
- It would be important to be clear about the objectives of the working group. A challenge for the Board is to achieve leadership on ethical issues. In this regard, the Board should maintain contact with key policy makers who have views on emerging issues and developments.

- The initiative should have regard to the limitations on staff resources. Also, to make sure there is clear action beyond Board consideration of the emerging issues and developments, links should be made to the Board's strategy and work program, and the Planning Committee.
- In relation to outreach, consideration should be given to reaching out to developing countries where there is a need to raise awareness of the Code beyond efforts at promoting adoption.
- Consideration should be given to exploring with the IAASB the feasibility of having the Code explicitly referred to in the auditor's report, at least in term of establishing a minimum benchmark for ethical standards.

WORKING GROUP COMPOSITION

The following IESBA members expressed interest in, and were appointed to, the working group:

- Gary Hannaford, Chair;
- Jim Gaa;
- Chishala Kateka;
- Reyaz Mihular; and
- Kate Spargo.

OTHER MATTER

An IESBA member noted that the International Forum of Independent Audit Regulators (IFIAR) had recently released an inspection report summary that includes a statistical analysis of IFIAR members' inspections. The IESBA asked that staff circulate a link to the document to IESBA participants.

WAY FORWARD

The IESBA asked the working group to develop draft terms of reference for consideration at the June 2013 IESBA meeting.

5. The Definition of Those Charged with Governance

Ms. Spargo introduced the topic, noting the context within which the project arose and the background to the ED, *Proposed Change to the Definition of "Those Charged with Governance."* She then outlined the main issues arising from the significant comments received on the ED.

Except as outlined below, the IESBA agreed the recommendations of the Task Force as set out in the agenda material.

DEFINITION OF MANAGEMENT

While not disagreeing with the Task Force's view that developing a definition of the term "management" for the Code would be outside the scope of this project, an IESBA member wondered whether a definition of the term "management" was not needed. Accordingly, she suggested that the Board consider the matter at a future meeting. Ms. Spargo agreed, noting that the Task Force did not evaluate the definition of "management" in the ISAs to determine whether it would work for the Code.

REFERENCES TO "OR A SUB-GROUP THEREOF"

IESBA members generally expressed support for the Task Force's proposal to remove the addition of the phrase "or a sub-group thereof" in the various places noted in the ED. However, some IESBA members questioned the appropriateness of adding the following proposed text to the end of the revised definition of "those charged with governance:"

(In communicating with those charged with governance, a professional accountant may appropriately communicate with a subgroup thereof, such as an audit committee or even an individual who may be charged with specific tasks to assist the governing body in meeting its responsibilities.)

It was noted that incorporating this explanatory material into the definition might limit the Board's flexibility in future, for example, if it were determined that communication with a subgroup would not be appropriate. It was therefore suggested that this clarifying item would be best placed elsewhere within the Code, rather than within the definition itself.

Other IESBA members, however, felt that it would be preferable to delete this addition but retain the additions to paragraphs 290.28 and 291.29 as noted in the agenda material, on the grounds that extending the "sub-group" concept throughout the Code would be problematical. In this regard, an IESBA member noted that this concept should apply only to communication with those charged with governance and not to every occurrence of the term "those charged with governance" in the Code. Another IESBA member highlighted the original objective of the project, noting that while adding the explanatory material to the definition would not be ideal, there is some precedent in the Code for this approach, specifically as relates to the definition of the term "assurance engagement." It was noted that modifying the Code in a more limited manner could suggest that a different definition of "those charged with governance" would apply in parts of the Code where no references are made to the "subgroup" concept.

It was questioned whether the Board's intent was for the definition to be applicable throughout the Code, or within the more limited context of the Breaches project. Ms. Spargo responded that clarifying the relevance of the "subgroup" concept within the more limited context of the Breaches project was appropriate, given that the change to the definition was intended to clarify an issue that arose within the context of that project. However, she noted that the changes made in the ED with respect to the phrase "or a subgroup thereof" may not have been consistent with the original intention in that the ED proposed to add that phrase throughout the Code in all instances in which the term "those charged with governance" is used.

After further deliberation, the IESBA agreed the following in principle, subject to consultation with the IESBA CAG:

- Deleting the following text that the Task Force had proposed to add to the end of the revised definition of "those charged with governance:"

(In communicating with those charged with governance, a professional accountant may appropriately communicate with a subgroup thereof, such as an audit committee or even an individual who may be charged with specific tasks to assist the governing body in meeting its responsibilities.)

- Adding the following clarifying text to Section 100² so that the principles would be applicable to the entire Code:

Communicating with Those Charged with Governance

100.25 When communicating with those charged with governance in accordance with the provisions of this Code, the professional accountant or firm shall determine, having regard to the nature and importance of the particular circumstances and matter to be communicated, the appropriate person(s) within the entity's governance structure with whom to communicate. If the firm communicates with a subgroup of those charged with governance, for example, an audit committee or an individual, the professional accountant or firm shall determine whether communication with all of those charged with governance is also necessary so that they are adequately informed.

- Retaining the text added to paragraph 290.28 in the ED, but aligning that text with the new paragraph 100.25:

290.28 Even when not required by the Code, applicable auditing standards, law or regulation, regular communication is encouraged between the firm and those charged with governance of the audit client regarding relationships and other matters that might, in the firm's opinion, reasonably bear on independence. Such communication enables those charged with governance to:

- (a) Consider the firm's judgments in identifying and evaluating threats to independence,
- (b) Consider the appropriateness of safeguards applied to eliminate them or reduce them to an acceptable level, and
- (c) Take appropriate action.

Such an approach can be particularly helpful with respect to intimidation and familiarity threats.

In complying with requirements in this section to communicate with those charged with governance, the firm shall determine, having regard to the nature and importance of the particular circumstances and matter to be communicated, the appropriate person(s) within the entity's governance structure with whom to communicate. If the firm communicates with a subgroup of those charged with governance, for example, an audit committee or an individual, the firm shall determine whether communication with all of those charged with governance is also necessary so that they are adequately informed.

NEED FOR ADDITIONAL GUIDANCE ON THE MEANING OF THOSE CHARGED WITH GOVERNANCE

IESBA members agreed with the Task Force's recommendation not to include more detailed guidance, or to incorporate by reference the guidance in ISA 260,³ regarding the meaning of "those charged with governance." The IESBA also decided not to amend Section 291⁴ through the addition of paragraph 291.29 as proposed by the Task Force.

² Section 100, *Introduction and Fundamental Principles*

³ ISA 260, *Communication with Those Charged with Governance*

⁴ Section 291, *Independence – Other Assurance Engagements*

WAY FORWARD

The IESBA deferred voting on the changes to the Code pending consultation with the IESBA CAG on the significant comments received on the ED and the Board's proposed responses thereto. The IESBA asked staff to schedule the discussion with the CAG at the earliest opportunity.

6. **Structure of the Code**

Mr. Thomson introduced the topic, summarizing the outcome of the initial discussions of the Working Group (WG) examining the structure of the Code. He then outlined the draft terms of reference for the WG.

IESBA members commented as follows:

TERMS OF REFERENCE

- Consideration should be given to whether there is a title for the initiative that would better reflect the subject matter.
- The WG could refer to the Terms of Reference relating to the 2007 Drafting Conventions project to avoid unnecessary duplication of effort.
- The objective and approach in the Terms of Reference could be clearer as to whether the initiative is intended to encompass research with a broad or limited remit, or both.

RESEARCH

- The project should research barriers to adoption and whether IFAC member bodies prefer the Code to be based on rules or principles. It was noted that one jurisdiction has been unable to adopt the Code without change because it does not segregate rules from guidance, which is understood to be at least one regulator's preference.
- Mr. Fukushima suggested including audit oversight bodies in the research. He added that providing examples of the proposals to these oversight bodies would be helpful to avoid misunderstandings regarding any changes that may be envisaged.
- The case for change would need to be demonstrated by the research and take into consideration the urgency and importance of each recommendation. It was noted that the WG's recommendations would focus on the usability of the Code while minimizing the demands on adopters and translators, at least in the short and medium term.

KEY ELEMENTS

- Section 290⁵ does not, in most cases, assign responsibility for actions related to independence to specific individuals within the firm. Making the Code more specific in that regard could mean substantive changes to the Code and therefore could necessitate a separate project.
- An electronic Code could eventually take precedence over the printed Handbook and may require different language but hyperlinks could be a short term solution.

⁵ Section 290, *Independence – Audit and Review Engagements*

- Linking requirements and prohibitions to the fundamental principles may be helpful, although the WG thought that this may not be aligned with the way people use the Code.
- It may be worth exploring the option of engaging professional drafters for the Code. In addition, there should be a focus on using plain English for the Code.
- Although reference is made in Board discussions to the IESBA drafting conventions, exposed in 2007 and approved in April 2009, some of those who had joined the Board since then were not familiar with them.
- There appears to be more than one potential project that could emanate from the research. Some initiatives may be matters that do not require a project proposal and could be undertaken by the WG. Also, some may result in potential changes to the Code that require project proposals in the short term, while others may result in potential changes to the Code that may entail projects in the longer term, possibly as part of a periodic comprehensive revision of the Code. It may be appropriate to identify a longer term vision, but to be more specific about a shorter term strategy.
- Concerns amongst users resulting from potential longer term changes that are hard to envisage may require careful explanation.

TIMELINE

- It was suggested that the WG present the research in such a way that stakeholders understand that there may be short term presentation and navigation changes, and also that the research would inform the Board's short term and long term planning with respect to this initiative. It was suggested that comprehensive changes to the Code should not occur in the short to medium term.
- The timeline will need to take into consideration the responses to the 2014-2016 Strategy and Work Plan survey.
- Consideration should be given to whether the timeline could be compressed, such as by undertaking actions in parallel.
- A long term proposal could become a significant project and it would be necessary to ensure that the benefits outweigh the costs.

WAY FORWARD

The IESBA asked the WG to continue work on the initiative, taking into account the Board comments, and present a revised draft of the Terms of Reference with a view to approval at the June 2013 IESBA meeting.

7. Review of Part C

Mr. Gaa introduced the topic, summarizing the background to, and objectives of, the review of Part C and the Board discussions to date on the topic. He then outlined the main elements of the project proposal.

SCOPE

The project proposal noted that the definition of a PAIB could be interpreted to include professional accountants in public practice (PAPPs) given that accounting firms are commercial enterprises providing services. Accordingly, it included consideration of whether Part C could be combined with Part A to apply to all professional accountants, with Part B to apply to PAPPs in their relationships with clients. IESBA

members did not support this proposal on the grounds that Part A is focused on the fundamental principles whereas Parts B and C address the specific circumstances for the two different categories of PAs (PAPPs and PAIBs, respectively). In addition, it was argued that the Code is more likely to be seen as relevant to PAIBs if it contained a separate part addressing their specific circumstances. It was suggested, instead, that consideration be given to identifying those paragraphs in Part C which are relevant to PAPPs and including them in Part B.

It was noted that while the definition of a PAIB appears to encompass all professional accountants, there is a general perception that Part C applies only to PAs performing accounting functions within business. Accordingly, it was suggested that it may be helpful to address this misunderstanding and to reconsider the definition of a PAIB and the title of Part C.

It was also noted that Part C only applies to *professional* accountants. Unlike in accounting firms, PAIBs are likely to form a small minority within a business, and within SMEs they are often the only “professionals.” Colleagues, subordinates and those to whom the PAIB reports will often not be professional accountants and therefore not subject to the Code. It was noted that in October 2011, the IESBA had considered an IFAC paper which reviewed the definition of a PA. In the context of that paper, the IESBA had considered whether the Code should apply to accountants who are not members of IFAC member bodies. It was suggested that although no conclusion has been reached by IFAC on the definition of a PA, the project Task Force may wish to consider the matter when reviewing the scope of Part C, the definition of a PAIB, and the responsibility of PAIBs in the context of a collective decision-making process.

REGULATION OF PAIBS

The IESBA considered the statement in the project proposal that PAIBs are not generally regulated. Although there was some support for this statement, it was noted that PAIBs working in the financial services sector are regulated in some jurisdictions and company law may include legislation that applies specifically to PAIBs. It was suggested that the project Task Force consider whether there are regulators who may wish to be consulted on any proposed changes to Part C.

OTHER MATTERS

IESBA members commented on other matters as follows:

- Prohibitions and requirements may not necessarily be the solution. The Code can provide guidance to PAIBs. It can also be used to support their position if facing inappropriate pressure.
- With regard to Section 320,⁶ consideration should be given to:
 - Those areas most prone to manipulation, for example, government debt;
 - Whether it is possible or desirable to allocate responsibility to PAIBs in the financial reporting supply chain; and
 - How a PAIB's accounting skills can be misused in the preparation of financial statements.

⁶ Section 320, *Preparing and Reporting of Information*

- With regard to Section 300,⁷ consideration should be given to:
 - Providing guidance on how to deal with the fear of reprisals, such as the circumstances described in paragraph 300.12; and
 - Whether further guidance can be provided to the PAIB in reconciling the tension between advocacy and objectivity as covered in paragraph 300.4.
- To avoid duplication, consideration should be given to the relationship between Section 350⁸ and the proposed Section 360 on responding to a suspected illegal act.
- The proposed timeline appears too long. Accordingly, consideration should be given to accelerating the project.
- Process-wise with respect to Section 320, consideration should be given to liaison with the International Accounting Standards Board (IASB).

WAY FORWARD

Except for the proposal to combine Parts C and A, the IESBA unanimously approved the project proposal, noting that the work on Part C is an important part of its remit and equally of importance to a large constituency for the Board. The project Task Force will be chaired by Mr. Gaa and comprise the other members of the Working Group.

8. Long Association

Ms. Orbea introduced the topic, noting that the Task Force had commenced a benchmarking exercise to gather information regarding jurisdictional requirements pertaining to long association. She noted that close to 90 jurisdictions had responded to the benchmarking survey and that some responses were quite complex. The Task Force planned to consider the responses in the coming few months. She added that the Task Force was of the view that the IESBA should not consider the issues until responses from all stakeholder groups have been received and the Task Force has had an opportunity to consider them.

She then outlined the audit committee survey the Task Force planned to undertake as part of the research.

AUDIT COMMITTEE SURVEY

IESBA members commented on the draft Audit Committee survey as follows:

- The draft questions appear to focus primarily on partner rotation provisions. However, an underlying objective of the survey is to understand the factors that audit committees consider in evaluating the independence of the external auditor as these relate to “long association.” Accordingly, the survey should better address this underlying objective.
- The draft survey comes across as quite auditor-centric and seems to assume that audit committee members have a greater knowledge of partner rotation requirements than may be the case. It would be helpful to provide more context, consider a more conversational tone, and re-orientate the

⁷ Section 300, *Introduction*

⁸ Section 350, *Inducements*

questions more towards the perspectives of audit committees. Also, consideration should be given to providing descriptions of technical terms and better explaining the concepts of “client relationship” or “client service” partner.

- Consideration should be given to asking the respondents who they understand to be “key audit partners.” Also, it was questioned whether non-assurance partners would be included in that concept if they are not involved in the audit.
- Consideration should be given to covering in the survey the relationship between incoming and outgoing partners, and the familiarity threat from the long association of an engagement team member with a client before that individual becomes a partner.
- The Task Force could review typical terms of reference of audit committees to understand how they address long association.
- There would be benefit in seeking a broad international spread of responses to the survey to avoid a bias to any particular jurisdiction. The list of respondents could form the basis of a database that could be used in future surveys of audit committees. SMEs may not have audit committees and consideration should be given to ways to reaching out to that constituency and not limiting the survey to PIEs given the potential impact of any changes on the broader constituency outside of PIEs. Potential organizations that could provide input include the European, Asian and North American Federations of Financial Executives (FEI) represented on the IESBA CAG, as well as the Institute of Corporate Directors.
- It may be helpful to extend the survey to include investors, although this is a disparate group with few representative bodies. The CFA Institute is represented on the IESBA CAG and may provide input. Investor groups such as the Investment Management Association in the UK may be prepared to comment or the survey could be adapted to be relevant to wider groups than audit committees.
- The definition of a “key audit partner” may be problematical in a number of jurisdictions, particularly where English is not the first language. The views of the regulatory community would be important in that regard.
- Consideration should be given to family-owned large entities as the perspectives and attitudes within that constituency are very different and may be important to take into account.

The IESBA asked the Task Force to draft the survey in such a way that any stakeholder could complete it. For purposes of refining the survey, the IESBA invited the Task Force to consult with Board members who hold audit committee responsibilities. The IESBA also asked the Task Force to circulate the revised survey for any further comments before it is finalized.

PIOB Observer’s Remarks

Mr. Bhave commented that to avoid giving the impression that the IESBA has already decided that partner rotation is the answer to long association, it would be more important to understand the views of audit committees regarding the problems associated with long association and what the options might be other than partner rotation.

OTHER MATTERS

IESBA members commented on other matters as follows:

- It should not be a foregone conclusion that an exposure draft of changes to the Code will be issued. It would be important for the Board to carefully consider the case for change in the light of the research findings.
- Consideration should be given to what a partner would be allowed to do in the “time out period” after they have rotated off an engagement.
- The Task Force should review the guidance relating to question 4 included in the Staff Questions and Answers (Q&A) publication⁹ issued in November 2012 as this guidance does not seem to flow directly from the provisions in the Code.
- To avoid re-treading grounds that the Board has already been through, there would be benefit in reviewing the Board material relating to the Independence I project, including the related Basis for Conclusions, to understand the rationale for the current Code provisions addressing long association.
- Consideration should be given to whether there are special considerations in the Investment Funds industry where threats to audit independence might arise through the relationship of an audit partner with an investment manager in respect of the audit of the funds it manages and which the existing provisions in the Code do not directly address.
- Consideration should be given to undertaking a more comprehensive impact analysis upfront, particularly regarding the potential impact of changes to the Code on specific groups of stakeholders.

WAY FORWARD

The IESBA asked the Task Force to present an update on the research work at the June 2013 Board meeting.

9. Non-Assurance Services

Ms. Gardner introduced the topic, providing an update on the work of the Task Force to date and the approach to the survey on non-assurance services that the Task Force had developed, taking into account comments received from IESBA members at the December 2012 meeting. She noted that the survey had been circulated to a number of jurisdictions, primarily those in the G-20, leveraging the contacts of a number of IESBA members and technical advisors as well as the Board’s contacts with its national standard setter (NSS) liaison group.

GENERAL COMMENTS ON NAS SURVEY

An IESBA member commended the Task Force for not limiting the survey to existing jurisdictional requirements concerning NAS but broadening it to cover current and upcoming developments in the selected jurisdictions.

⁹ Staff Q&A, *Implementing the IESBA Code of Ethics for Professional Accountants – Part II*

Another IESBA member commented that it was unclear why the survey covered taxation services and internal audit-related services given that the IESBA had considered these areas as part of the Independence projects a few years ago. In response, Ms. Gardner noted the growing regulatory concerns around taxation services in a number of jurisdictions and the related interactions with audits. So, the aim was more to understand the relevant developments. The impetus for looking at the area of internal audit services was more the recent discussions in the project addressing the definition of “engagement team,” which led the Task Force to not exclude matters related to internal audit services at this point. She emphasized that the fact that an item is covered in the survey was not intended to imply that changes to the Code will be made in the relevant area. Rather, the aim was to gather relevant information in those areas of non-assurance services to help frame the scope of the project.

A few IESBA members expressed concern about the messages this work could convey in terms of potential changes to the Code and its stability, especially given that the IESBA had consulted quite extensively in the NAS area in the more recent past. It was felt that the effort in this project could detract from a focus on convergence. It was suggested that the IESBA should, instead, focus its efforts on understanding barriers to adoption and whether stakeholders are finding the Board’s implementation support efforts, such as the November 2012 Staff Q&A publication on implementing the Code, constructive. It was also suggested that the overarching message should be that there have been many discussions in this area and the Board therefore intends to stay in tune with the developments.

An IESBA member emphasized the importance of making clear that the Board is not prejudging that amendments to the Code will be required in the areas surveyed. It was also suggested that the matter of convergence be discussed at a future IESBA meeting.

OTHER MATTERS

IESBA members also commented as follows:

- It may be worth considering surveying smaller jurisdictions in sub-Saharan Africa, Latin America or Asia in the research.
- Consideration should be given to the latest developments regarding the audit reform proposals in the European Union as these relate to the NAS area.
- It would be important to manage Board communications wisely to avoid undermining the Board’s reputation.
- Given the number of surveys currently being undertaken in the Board’s various work streams and the potential for stakeholder survey fatigue, staff should consider ways in which synergies could be achieved with respect to surveys, including coordination amongst the different work streams and seeking input from IFAC member bodies and NSS on what the best approach would be. Staff was also encouraged to liaise with Ms. Tsahuridu, who has significant experience with conducting surveys in the Australian context.
- There is a need for a broader discussion at the Board regarding evidence-based standard setting, including what it means and how to approach it.

WAY FORWARD

The IESBA asked the Task Force to present the findings of the research at the June 2013 IESBA meeting.

10. **IFAC SMP Committee Liaison**

Mr. Thompson provided a brief report-back regarding his and Mr. Holmquist's participation at the February 2013 IFAC SMP Committee (SMPC) meeting. He noted the SMPC's support for the Structure of the Code initiative, particularly given that understandability of the Code remains a primary issue for the SMP constituency. He then outlined a draft set of working procedures intended to govern the process for the SMPC's input to the IESBA's projects. Mr. Siong noted that these proposed working procedures were developed based on an existing protocol the SMPC has in place with the IAASB.

The IESBA expressed support for liaison with the SMPC. Amongst other matters, IESBA members noted the following:

- With this draft protocol, the SMPC could be perceived as having privileged access to the IESBA. It was questioned whether other groups, such as PAIBs, should be provided with a similar ability to input early to the IESBA's proposals.
- The opportunity for the SMPC to provide input to the IESBA in this manner is welcome, particularly given that it is challenging to obtain input from the SMP constituency. Accordingly, there is benefit in obtaining their input early in the process.
- Consideration should be given to whether it is appropriate to grant the SMPC a right to a final review after the IESBA has decided on its proposals. However, it was noted that the protocol has worked well for the IAASB. Nevertheless, the focus should be on seeking early input from the SMPC.
- Consideration should be given to simplifying the working procedures and making them less formal, as imposing such detailed requirements could open the Board to criticism for failure to comply with due process if a step in the protocol was not followed. It was noted that in some instances, it may be better to invite SMPC representatives to observe the relevant Board discussions.

WAY FORWARD

Mr. Holmquist emphasized the need for both he and Mr. Siong to discuss this matter with the SMPC to ensure that it understands the IESBA's rationale for wanting to simplify the proposed working procedures.

The IESBA asked staff to present a revised set of working procedures for its consideration in due course.

11. **Context and Issues in Australia**

Ms. Spargo briefed the IESBA on Australian developments and the agenda of the Accounting Professional and Ethical Standards Board (APESB). Amongst other matters, she outlined the Australian framework and regulatory regime, the role and responsibilities of the APESB and its relationship with the Australian accounting bodies, the APESB's code of ethics and its amendments to the IESBA Code for the Australian context, recent auditor independence developments, APESB's suite of professional pronouncements, APESB's guidance regarding the meaning of a PIE in the Australian context, and financial advice reforms in Australia. She also gave a brief presentation of Sydney as the meeting location for the September 2013 IESBA meeting.

Mr. Holmquist thanked Ms. Spargo for the informative presentation.

12. PIOB Observer's Remarks

Mr. Bhave briefly remarked that the Board discussions were lively. He noted the challenge created by the need to address issues while at the same time following the right processes. However, he emphasized the importance of adhering to due process, noting that the requirement of due process applies not only to this Board but also to others. Finally, he encouraged the Board to continue to maintain a focus on the public interest.

13. Next Meeting

The next meeting of the IESBA is scheduled for June 10-12, 2013 in New York, USA.

14. Closing Remarks

Mr. Holmquist thanked the participants for their contributions. He then closed the meeting.