

Part C Phase 1—Task Force Responses to June/July 2015 Board Feedback on Proposed Section 320

1. At the June/July 2015 IESBA meeting, the Task Force presented significant comments received from respondents on proposed Section 320, matters respondents raised that are common to the entire exposure draft (ED), and other matters they raised not related to the ED, and related Task Force proposals. The Task Force's responses to the feedback received from the Board and proposed additional changes to Sections 320 and 300 are detailed below.
2. This agenda paper is structured as follows:
 - I. Proposed Revised Section 320
 - A. "Fair and Honest" principle
 - B. Misuse of discretion
 - C. Information prepared in the absence of a reporting framework
 - D. Reasonable steps
 - E. Differentiating between "Senior PAIBs" and "Other" PAIBs
 - II. Other Matters

I. Proposed Revised Section 320

A. "Fair and Honest" Principle

The Code requires PAIBs to prepare information "fairly and honestly." However, there is little guidance on the meaning of this principle. The ED therefore proposed guidance to assist PAIBs in better understanding and adhering to the spirit of the principle.

3. The main Board comments received and related Task Force responses/proposals are as follows:

	Feedback Received	TF Responses/Proposals
1.	Consideration should be given to making compliance with the fundamental principles explicit rather than implicit to be consistent with the aims of the Structure Task Force.	The introductory wording of paragraph 320.2 clearly states that compliance with the fundamental principles is necessary.
2.	Consideration should be given to clarifying the linkage between the "fair and honest" principle and the fundamental principles.	The term "fair and honest" has been deleted in proposed Section 320 to focus the guidance on compliance with the fundamental principles.
3.	If the term "fair and honest" is deleted from paragraph 320.2, as	The term "fair and honest" has

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	proposed by the Task Force in the agenda paper presented at the June/July IESBA meeting, it should also be deleted from paragraph 320.3 for consistency and to leave the guidance focusing on complying with the fundamental principles.	been deleted from paragraph 320.3

Matter for Consideration

1. IESBA members are asked whether they agree with the TF's proposals above.

B. Misuse of Discretion

The ED proposed enhanced guidance in Section 320 on addressing the misuse of discretion in preparing or presenting financial information. Discretion under an applicable financial reporting framework may be misused to misrepresent an entity's financial performance, financial position, or cash flows while still complying with the framework. The proposed guidance was intended to enable PAIBs to better recognize and deal with the issue of misuse of discretion and thereby assist them to fulfil their responsibility to prepare or present information fairly and honestly.

4. The main Board comments received and related Task Force responses/proposals are as follows:

	Feedback Received	TF Responses/Proposals
1.	Consideration should be given to aligning the guidance on misuse of discretion with related guidance in International Standard on Auditing (ISA) 540 ¹ dealing with management bias.	An example of fair value estimates from ISA 540 has been incorporated into paragraph 320.3.
2.	The meaning of the phrase "to influence contractual or regulatory outcomes" that the Task Force proposed to add to paragraph 320.3 needs to be clarified. In addition, consideration needs to be given to whether this wording dilutes the requirement not to use discretion to mislead.	An example to provide clarity to the phrase "to influence contractual or regulatory outcomes" has been added.
3.	With respect to the example pertaining to misuse of discretion from manipulating the timing of revenue transactions to manipulating the timing of the sale of an asset (third bullet in para. 320.3):	
	i. Reconsider the decision to change this example as it seems to have made the guidance more ambiguous.	The Task Force agrees that it may be difficult for a PAIB to

¹ ISA 540, *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures*

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		differentiate between legitimate transactions timed to enhance short term profits and transactions timed with the intention to mislead (such as those often performed shortly before an IPO).
	ii. Clarify that the unethical action is the decision to sell the asset and not the accounting of the transaction, as the financial statements will only record the effects of the decision.	The proposed wording has been changed to clarify that the example relates to an intention to present misleading information via the timing of the transaction, and not whether the subsequent accounting for the transaction is in accordance with an appropriate reporting framework.
	iii. It should be clarified that commercial decisions should not be second guessed with the benefit of hindsight, as this could result in accusations of unacceptable behavior.	Changing “misrepresent” to “mislead” in the proposed wording addresses this concern, as the guidance is now only applicable when there is an intention to mislead.
4.	With respect to the example pertaining to the determination of estimates (first bullet in para. 320.3), consideration could be given to referring to ISA 540 for an example of manipulating fair value estimates.	The Task Force proposes incorporating an example of fair value estimates in ISA 540 in paragraph 320.3.
5.	Manipulation of information does not necessarily breach the fundamental principles, hence what is the reason behind the decision to change the term “manipulate” to “misrepresent” in paragraph 320.3?	<p>The Task Force had changed “manipulate” to “misrepresent” in paragraph 320.3 for clarity and consistency with the other parts of the Code.</p> <p>The Task Force proposes replacing the term “misrepresent” with “mislead” where appropriate in the examples.</p>

Matter for Consideration

2. IESBA members are asked whether they agree with the TF's proposals above.

C. Information prepared in the absence of a reporting framework

The ED proposed revised guidance as to what PAIBs are expected to do ethically in order to prepare or present fairly and honestly information that does not have to comply with a relevant reporting framework. The proposed guidance emphasized three important considerations with respect to the information being prepared: the purpose of and context for the information, and the audience.

5. The main Board comments received and related Task Force responses/proposals are as follows:

	Feedback Received	TF Responses/Proposals
1.	The proposed guidance could suggest that PAIBs add disclaimers concerning the purpose, context and audience, much in the way of a safeguard.	The Task Force is of the view that a principles-based Code should not suggest a disclaimer. However, the Task Force proposes adding in paragraph 320.4 a recommendation to consider clarifying the purpose, audience and context of the information.
2.	Consideration should be given to clarifying the extent of due diligence a PAIB should perform to determine the purpose, context and audience.	Providing specific guidance on the extent of due diligence is beyond the remit of a principles-based Code. It would also be difficult to indicate the extent of due diligence needed as this would vary by job function. In addition, the additional guidance on clarification of the intended audience, context and purpose would require due diligence to be performed.
3.	Consideration should be given to changing the wording "relevant, necessary estimates ..." to "relevant estimates ... assumptions, where appropriate, ..."	The Task Force has proposed changes to the wording.

Matter for Consideration

3. IESBA members are asked whether they agree with the TF's proposals above.

D. Reasonable Steps

The Code currently requires PAIBs to take “reasonable steps” to maintain information for which the PAIB is responsible in a manner that is appropriate. The ED proposed that PAIBs should also be required to take “reasonable steps” to satisfy themselves that, when relying on work performed by others, the PAIB is able to fulfil the obligations that flow from the “fair and honest” principle.

Given the variety of possible situations, providing guidance on what constitutes “reasonable steps” would be too detailed and potentially incomplete. In the June/July 2015 agenda material, the Task Force thus proposed that “reasonable steps” be replaced by “professional judgment.”

6. The main Board comments received and related Task Force responses/proposals are as follows:

	Feedback Received	TF Responses/Proposals
1.	There is a need for clarity regarding actions that would constitute “reasonable steps” along with possible examples of these steps.	The term “reasonable steps” has been removed and guidance over “steps” that may be considered added in paragraph 320.5.
2.	Consideration could be given to employing a 3 rd party test in gauging the nature and extent of actions that would be appropriate in the circumstances.	The changes made to paragraph 320.5 removed the need to have a third party test.
3.	It is unclear what it means to “use professional judgment to be satisfied...” and why it is necessary to make this change as the concept of professional judgment is already embedded in the term “reasonable.”	The revised wording does not include the phrase “use professional judgment to be satisfied...”.
4.	Reliance on external experts does create significant threats. Accordingly, one would expect to see a process of reasonable steps in this situation. For colleagues, however, having an elaborate process would be overkill.	The revised wording includes steps to take. In addition, the phrase “external and internal” has been added to account for the fact that information may come from within the organization. As relates to internal information, the phrase “if any” has been added to indicate that no steps may be needed in some circumstances when relying on internal sources.
5.	Many CFOs use external valuation specialists and it is critical	The revised wording has

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	matter as to what steps they should take with respect to these external parties, particularly when audit inspection reports regularly emphasize findings concerning fair value estimates.	added steps that may be applicable to both internal and external sources.
6.	Professional judgment is a given in the Code so the proposed change is not adding anything substantive. It is therefore important to clarify what the guidance is intended to cover.	The guidance has been revised to clarify that “professional judgment” must be applied to “steps” that are being considered along with possible steps.
7.	Consideration could be given to taking a middle ground in terms of exercising professional judgment to determine what steps to take.	The guidance in paragraph 320.5 has been revised to accommodate this suggestion. The revised guidance is based on paragraphs 130.5 and 210.8 of the Code.
8.	The term “others” should be clarified. If “others” includes a PAIB’s colleagues, they will be subject to the entity’s internal control system. However, some colleagues may not be accessible to the PAIB, for example, very senior colleagues from the perspective of more junior employees.	The phrase “external and internal” has been added in acknowledgement that information may be received from a colleague. In addition, the phrase “if any” has been added to indicate that no steps may be appropriate in some cases when relying on internal sources.

Matter for Consideration

4. IESBA members are asked whether they agree with the Task Force’s proposals above.

E. Differentiating Between “Senior PAIBs” and “Other” PAIBs

7. Some respondents indicated concern that the ED did not distinguish the guidance according to the PAIB’s level of seniority.
8. The main Board comments received and related Task Force responses/proposals are as follows:

	Feedback Received	TF Responses/Proposals
1.	<p>The same approach as the re-ED on NOCLAR, which differentiates between “senior” and “other” PAIBs, should be used for proposed Section 320 for consistency. Doing this would also help explain steps that should be taken by the different categories of PAIBs.</p> <p>Consideration should be given to whether it would be sufficient to simply rely on the guidance in paragraph 300.5 as this only addresses an ethics-based culture as opposed to specific steps.</p>	<p>Other than within the proposed NOCLAR standard, there is no distinction between “senior” and “other” PAIBs in the Code. Hence, the need to distinguish between the two could be a broader issue.</p> <p>The proposed NOCLAR standard is notably different from proposed Section 320 in that an act of NOCLAR is a situation which has a significant public interest element in which the PAIB is not directly involved, but rather has identified a potential NOCLAR by another party.</p> <p>While an acknowledgement is needed within Part C that “senior” PAIBs have a greater expectation in the actions that they take (as they have a greater ability to access and influence others, notably senior staff), the Task Force believes that there is no need to differentiate between “senior” and “other” PAIBs.</p> <p>The Task Force believes that enhancing the guidance in paragraph 300.5 (agenda paper 4-G), indicating that more is expected of a more “senior” PAIB, would thus be sufficient.</p>
2.	<p>Consideration should be given to the distinction between “senior” PAIB and “other” PAIBs in the context of</p>	<p>The Task Force noted that paragraph 110.2² does not</p>

² 110.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information furnished recklessly; or

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	disassociation from the information.	differentiate between “senior” and “other” PAIBs. The proposed wording on the process of disassociating from misleading information has been revised to account for the seniority of the PAIB, but without a distinction between “senior” and “other” PAIBs.
3.	Consideration should be given to whether the guidance on association with misleading information should follow the same approach for all levels of PAIBs or whether the proposed guidance should include an appropriate distinction between “senior” PAIBs and “other” PAIBs. Consideration should be given to whether a reminder could be added that the Code expects more of senior PAIBs.	The issue of seniority has been addressed by enhancing the guidance in paragraph 300.5.
4.	Consider whether the respondent’s view concerning the matter of professional skepticism is about finding the opportunity to message the fundamental principle of due care, especially in the context of the guidance on relying on the work of others.	Specific steps have been added for the PAIB to consider when relying on the work of others.

Matter for Consideration

5. IESBA members are asked whether they agree with the TF’s proposals above.

II. Other Matters

9. The main Board comments received on other matters and related Task Force responses/proposals are as follows:

	Feedback Received	TF Responses/Proposals
1.	Part C should apply to unintentional errors resulting in misleading information as these situations would be relevant to the fundamental principle of professional competence and due care.	The Task Force notes that unintentional errors are not within the scope of Section 320 but are covered by Section 330 (competence and

(c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

When a professional accountant becomes aware that the accountant has been associated with such information, the accountant shall take steps to be disassociated from that information.

	Feedback Received	TF Responses/Proposals
		<p>due care).</p> <p>A PAIB should attempt to have an unintentional error changed. If no remedial action is taken, then it becomes an intentional error which would bring the matter within the scope of Section 320.</p>
2.	Reconsider whether it is appropriate to change the level of obligation from “shall consider” to “may consider” with respect to actions to take when the PAIB determines that appropriate action has not been taken and believes the information is still misleading. Consider whether the change would be a reasonable standard for all levels of PAIBs.	The change has been maintained in the proposed wording.
3.	Clarification is needed over a possible inconsistency in the guidance, which refers to the matter being “resolved” although the information would still be misleading.	The Task Force proposes changing the word “resolved” to “addressed” in paragraph 320.8 in Agenda Item 4-E.
4.	There is a need to clarify that Part C is applicable to professional accountants in government and education.	<p>Paragraphs 300.3 has been enhanced due to continued misunderstanding as to what constitutes a PAIB.</p> <p>The Task Force has included additional types of employing organization.</p> <p>The Task Force has also added reference to a contractor to account for external employees.</p> <p>The Task Force proposes deleting the word “salaried” to make clear non-executive directors are included.</p>
5.	Ensure that the guidance on resignation is consistent with that in other sections of Part C.	The Task Force has proposed amendments to the guidance on documentation in paragraph 320.9 to ensure that it is consistent with guidance

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		on documentation elsewhere in the Code.
6.	<p>To assist with translation and understandability for non-English speakers consider adding:</p> <ul style="list-style-type: none"> • In the 1st bullet point of paragraph 320.6 the phrase “whistle-blowing procedure” just after “an ethics policy”. • In paragraph 300.5: “Ethics policies and whistle-blowing procedures that have been communicated to all employees may be useful to achieve the objective of establishing and maintaining an ethics-based culture.” 	<p>It is possible to have a whistleblowing policy without an ethics policy. Hence, the Task Force proposes amending paragraph 320.6 to accommodate the suggested change.</p> <p>Paragraph 300.5 is a high level statement. The Task Force believes that it should not include detailed procedures and practicalities such as those suggested.</p>