

NOCLAR—Issues and Task Force Proposals**I. Background***Most Recent IESBA Discussion*

1. At the November/December 2015 meeting, the Board considered significant comments received on the [May 2015 Exposure Draft](#) (ED) and related Task Force responses. The Board also considered a revised draft of Sections 225¹ and 360² and related consequential and conforming amendments.
2. The Board broadly supported the Task Force’s proposals in response to the significant ED comments on the various elements of the proposed NOCLAR response framework. In particular, the Board tentatively agreed to the following with respect to Section 225 (with corresponding changes to Section 360 where applicable):
 - To adjust the wording of the third objective to: “To take such further action as appropriate in the public interest” (paragraph 225.4(c)); and the wording of the requirement to determine the need for further action to: “to determine if further action is needed *in the public interest*” (paragraph 225.24)³ This was to address a perceived circularity between this objective and the proposed ED requirement to determine if further action is needed to achieve the objectives under the section. Consequential changes have been made to the documentation provisions (last bullets of paragraphs 225.37 and 225.52).
 - To move the provision regarding the obligation of professional accountants (PAs) to comply with applicable laws and regulations upfront, including recognition of the need to comply with any applicable legal or regulatory reporting requirement (paragraph 225.3). The provision now also duly acknowledges the fact that there may be laws and regulations that may be more stringent than the Code with respect to responding to NOCLAR, and that laws and regulations may prohibit “tipping off” the client.
 - Not to include guidance similar to that contained in the International Standards on Auditing (ISAs) regarding emphasizing the inherent limitations regarding auditors’ ability to detect NOCLAR, as the objectives of the proposals are very different from the objectives of the ISAs.
 - To refine the description of NOCLAR to cover acts committed by parties (other than employees) who work for, or under the direction of, the organization, such as non-executive directors and agents (paragraph 225.2).
 - To clarify that forensic-type engagements are out of scope insofar as the provisions regarding disclosure to an appropriate authority are concerned (paragraph 225.49).
 - To retain the differential approach to responding to NOCLAR for different categories of PAs, and in particular: not to differentiate on the basis of PAs’ “expected level of understanding” of laws and regulations; not to exempt (a) PAs in public practice other than auditors, and (b) professional accountants in business (PAIBs) other than senior PAIBs from responding to

¹ Proposed Section 225, *Responding to Non-Compliance with Laws and Regulations*

² Proposed Section 360, *Responding to Non-Compliance with Laws and Regulations*

³ Paragraph numbers refer to Agenda Item 2-B unless otherwise stated.

NOCLAR or suspected NOCLAR on the argument that their access to information is constrained; and not subjecting PAs in public practice other than auditors to the same response framework as auditors.

- To retain the third party test (paragraph 225.27) regarding the determination of the need for, and the nature and extent of, further action. In particular, the Board agreed that this test is not intended to be read narrowly as creating a de facto requirement to disclose in all or certain circumstances. Whether disclosure would be called for will depend on an objective assessment of the specific facts and circumstances at the time.
 - With respect to auditors in particular, to retain the balanced approach regarding determining whether or not to disclose an instance of NOCLAR or suspected NOCLAR to an appropriate authority (paragraphs 225.24-28 and 225.33-34). For the reasons set out in the explanatory memorandum (EM) to the ED, the Board reaffirmed that this approach is robust in that it establishes a responsibility on the auditor to objectively determine, as a possible course of further action, whether disclosure would be called for in the circumstances, consistent with the auditor's responsibility to act in the public interest. The proposal, however, does not mandate disclosure, recognizing that such an approach would not be operable globally for the reasons outlined in the EM.
 - To give greater prominence to the statement that disclosure would be precluded if doing so would be contrary to law or regulation (paragraph 225.32).
 - On balance, retaining the approach to documentation.
3. At the November/December meeting, the Board also was briefed on the response from IOSCO⁴ Committee 1 (C1) to the ED which was received after the close of the comment period. The Board considered preliminary Task Force reactions to the significant matters raised by C1 and provided directional feedback to the Task Force.
4. Based on the Board discussion and editorial comments received from Board members offline, the Task Force has refined the draft Sections 225 and 360 as shown in Agenda Item 2-B. The Task Force's responses to the significant matters raised by C1 are set out in Section II.A below. Changes to the text have generally been made first to proposed Section 225, with corresponding changes to proposed Section 360 where appropriate. In Section II.B, the Task Force has set out its responses to comments received during the December 2015 Board discussion regarding other matters.

Comments from IFAC SMP Committee (SMPC)

5. On November 27, 2015, the SMPC submitted a comment letter to the Task Force on the November/December 2015 IESBA agenda material relating to the project. Given the timing of the letter, the Task Force did not have an opportunity to fully consider the comments before that Board meeting. Based on the Task Force's subsequent consideration of the SMPC's comments, the Task Force has set out its responses to the main matters raised by the SMPC in Section II.C.

⁴ IOSCO is one of the seven members of the [Monitoring Group](#) of international financial institutions and regulatory bodies.

II. Significant Matters

A. Significant Matters Raised by C1

DISCLOSING NOCLAR TO AN APPROPRIATE AUTHORITY WITHOUT FOLLOWING SPECIFIED RESPONSE PROCESS

6. In its comment letter, C1 raised the matter of whether PAs would be free to take relief from the duty of confidentiality under the Code and legitimately report an instance of NOCLAR to an appropriate authority without completing the response process set out in the Code.
7. During the Board discussion, some IESBA members noted the importance of following due process given that there can be differences of views regarding the significance of a particular NOCLAR matter. Other IESBA members, however, expressed support for allowing PAs not to be constrained by process in serious and exceptional circumstances (“force majeure” situations) where adhering to the specified process would in fact lead to an outcome that would not be in the public interest. It was felt that such “exemption” from following the process should be permissible where, in the PA’s judgment, the breach of a law or regulation is imminent and such a breach could have far-reaching consequences for stakeholders. In those circumstances, it was argued that the Code should not preclude an immediate response from the PA in terms of disclosing the matter directly to an appropriate authority. The Board supported addressing the issue on those grounds.
8. In the light of this discussion, the Task Force has developed proposed guidance on the matter as follows with respect to PAs performing audits of financial statements (see paragraph 225.35):

Where the professional accountant becomes aware of actual or intended conduct that the professional accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public, the professional accountant may exercise professional judgment and immediately disclose the matter to an appropriate authority. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.
9. The proposed guidance makes it clear that the PA must have *reason to believe* that the matter would constitute an imminent breach of a law or regulation that would cause substantial harm to stakeholders. The “reason to believe” threshold addresses concerns at the Board that the Code should not provide an unfettered right for the PA to disclose NOCLAR or suspected NOCLAR to an appropriate authority without a proper understanding of the issue.
10. The Task Force believes that a similar provision should be available to PAs in public practice other than auditors, and senior PAIBs (see paragraphs 225.51 and 360.30). The Task Force did not believe that PAIBs other than senior PAIBs should be expected to take such action. This is not only because these other PAIBs have more limited access to information, but also because their response in such circumstances should reasonably be to immediately escalate the matter to their superior, consistent with the response framework.

Matter for Consideration

1. Do IESBA members agree with the Task Force’s proposals?

SCOPE

11. Paragraph 225.5 in the ED described the scope of laws and regulations covered by Section 225 as encompassing:
 - (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client’s financial statements; and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client’s financial statements, but compliance with which may be fundamental to the operating aspects of the client’s business, to its ability to continue its business, or to avoid material penalties.
12. C1 commented that the proposed section appeared to indicate that NOCLAR matters that are “material” or “fundamental” in nature are the starting point for the scope of the section. Accordingly, it wondered about the purpose of paragraph 225.8 in the ED which scoped out matters that are “clearly inconsequential.” C1 therefore suggested that the Board re-examine the interactions of the scoping distinctions.
13. The Task Force noted that paragraph 225.5 specifies the *types of laws and regulations* that are covered by Section 225. The starting point of the section is therefore not acts of non-compliance that are of a material or fundamental nature. Indeed, part of the response framework is focused on directing the PA to obtain an understanding of the matter, including the nature of the matter and its potential consequences. Some matters that the PA may encounter or be informed about might be clearly inconsequential. The section therefore scopes out such matters.
14. To make this clearer, the Task Force proposes to make the following changes to Section 225:
 - (a) Rewording the lead-in to paragraph 225.5 to state that the section “sets out the approach to be taken by a professional accountant who comes across or is made aware of non-compliance or suspected non-compliance with” laws and regulations in the categories of laws and regulations described in subparagraphs 225.5(a) and (b);
 - (b) Moving to a separate paragraph the statement that a PA who comes across or is made aware of matters that are clearly inconsequential is not required to comply with the section (see paragraph 225.8); and
 - (c) Deleting the original scope-out provision regarding clearly inconsequential matters (see marked-up paragraph 225.9).

Matter for Consideration

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| <ol style="list-style-type: none">2. Do IESBA members agree with the Task Force’s proposals? |
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COMMUNICATION WITH RESPECT TO GROUP AUDITS

15. In its response, C1 suggested that the Code should clearly articulate that the lead audit engagement team should be notified in all cases when an act of NOCLAR arises in any jurisdiction during the performance of an audit or a non-audit service (NAS) at a component. C1 also suggested that it would be helpful to enhance the focus on the difficulties arising for auditors when faced with a group audit situation, whether all of the auditors involved belong to the same network or not.

16. Related, in its discussions, the IAASB NOCLAR Task Force has sought clarification regarding whether the IESBA intends its proposals regarding communication with respect to group audits to apply to:
- (a) All components in a group, including those for which work other than an audit is undertaken by the auditors of the components for group audit purposes (for example, a review or agreed-upon procedures); and
 - (b) An act of NOCLAR or suspected NOCLAR identified by the auditor of a component in the course of an audit that is not undertaken for group audit purposes (for example, a statutory audit of a component's financial information).
17. The Task Force believes that the Code should address both of the above for the following two reasons:
- The non-compliance may have significant implications for the group as a whole (irrespective of the size of the component), whether in terms of the integrity of management or those charged with governance (TCWG) where the matter is pervasive to the group, or in terms of the potential adverse impact on the financial statements of the group.
 - It is possible that other components may be implicated, for example, in money laundering and other non-compliance that could involve other parties within the group as counter-parties.
18. Accordingly, the Task Force proposes that paragraph 225.20 be amended to read:
- Where the professional accountant is the auditor of a component of a group, the professional accountant may be requested by the group engagement team to perform an audit of the component's financial information for group audit purposes. The professional accountant may also be engaged by the component to perform an audit of the component's financial information for purposes other than the group audit, for example, a statutory audit. Where the professional accountant becomes aware of non-compliance or suspected non-compliance in relation to the component in either situation, the professional accountant shall, in addition to responding to the matter in accordance with the provisions of this section, communicate it to the group engagement partner unless prohibited from doing so by law or regulation. This is to enable the group engagement partner to be informed about the matter and to determine how it should be addressed in accordance with the provisions in this section.
19. Equally, to ensure that there is appropriate downstream communication from the group engagement team to the auditors of components where the matter is deemed relevant to the particular components, the Task Force proposes to add the following provision in paragraph 225.21:
- Where the group engagement partner becomes aware of non-compliance or suspected non-compliance in the course of the audit of the parent entity in a group audit, or is informed of it by the auditor of a component in the group in relation to that component, the group engagement partner shall consider whether the matter is relevant to each component whose financial information is subject to an audit or other work for group audit purposes. If so, the group engagement partner shall take steps to have the matter communicated to the auditors of the relevant components, unless prohibited from doing so by law or regulation. This is to enable the audit engagement partners for the relevant components to be informed about the non-compliance or suspected non-compliance and to determine how it should be addressed in accordance with the provisions in this section.

20. Finally, the Task Force agreed to the point raised by C1 regarding circumstances where the matter is identified during the provision of an NAS to a component in a group. The Task Force proposes that this be addressed in separate two respects:
- (a) The NAS is a non-audit service that is not provided for group audit purposes (for example, a consulting service); and
 - (b) The NAS is non-audit work performed on a component's financial information for group audit purposes (for example, a review or an audit of only certain account balances).
21. In the first case, the Task Force proposes that paragraph 225.43 be amended as follows to scope in a component of an audit client of the firm or a network firm:

If the professional accountant is performing a non-audit service for an audit client, or a component of an audit client, of the firm or a network firm, the professional accountant shall consider whether to communicate the ~~matter non-compliance or suspected non-compliance~~ within the firm or to the network firm (including the network firm responsible for the group audit engagement as applicable) in accordance with the firm's or the network's protocols or procedures, ~~or, in the absence of such protocols and procedures, the professional accountant shall consider whether to communicate the matter directly to~~ the audit engagement partner or group engagement partner, as applicable. If the client is not an audit client, or a component of an audit client, of the firm or a network firm, the professional accountant shall consider whether to communicate the matter to the firm that is the external auditor, if any. In all cases, the communication is to enable the engagement partner for the audit or the group engagement partner, as applicable, to be informed about the matter and to determine how it should be addressed in accordance with the provisions of this section.

This makes the communication subject to consideration of the factors set out in paragraph 225.44.

22. In the second case, the Task Force proposes that the PA be required to bring the matter to the attention of the group engagement partner as the NAS is being performed specifically for group audit purposes (paragraph 225.45):

For purposes of a group audit engagement, the professional accountant may be requested by the group engagement team to perform work on a component's financial information that is not an audit of that component's financial information (for example, a review, an audit of only certain account balances, classes of transactions or disclosures, or specified audit procedures). Where the professional accountant becomes aware of non-compliance or suspected non-compliance in relation to the component in such a situation, the professional accountant shall communicate the matter to the group engagement partner unless prohibited from doing so by law or regulation. This is to enable the group engagement partner to be informed about the matter and to determine how it should be addressed in accordance with the provisions in this section.

23. The Task Force has made a corresponding refinement to the last bullet of paragraph 225.44 to read:

The likely materiality of the matter to the audit of the client's financial statements or, where the matter relates to a component of a group, its likely materiality to the audit of the group financial statements.

Matter for Consideration

3. Do IESBA members agree with the Task Force's proposals?

DOCUMENTATION BY PAS OTHER THAN AUDITORS

24. C1 suggested that it would be prudent for PAs who are not auditors to have as strong a provision to document appropriate NOCLAR matters as auditors. It was of the view that a significant NOCLAR matter could be subject to legal proceedings and therefore a well-documented account of the matter could help establish the key decisions and positions taken by the PA.
25. The Task Force noted that the Board had considered at length whether to impose documentation requirements on PAs other than auditors, a position that was taken in the first Exposure Draft. The Board noted that many respondents then were opposed to this proposal. This was not only because of concerns that the resulting documentation could be legally discoverable but also because of concerns that such an approach would diverge from the Code's current position of generally advocating documentation in the PA's interests but not requiring it.
26. Having reflected on the matter further, the Task Force recommends that the Board continue to retain a differential approach to documentation, i.e., a documentation requirement for auditors commensurate with the higher public expectations of their role, and an encouragement for other PAs. Such an approach would ensure a more proportionate treatment by avoiding an unreasonable burden on these other PAs, recognizing their different roles compared with auditors. This would also be more consistent with one of the key aims of the project, which is to provide guidance to PAs in responding to NOCLAR.

Matter for Consideration

4. Do IESBA members agree with the Task Force's response?

COMMUNICATION BETWEEN EXISTING AND PROPOSED AUDITORS

27. Regarding circumstances where there is a change of auditors as a result of a NOCLAR matter, C1 expressed a concern that instead of requiring the existing auditor to communicate the matter to the proposed auditor, paragraphs 210.11⁵ and 210.13⁶ in the ED allowed confidentiality to be used as a reason to restrict the communication of such a matter between the existing and proposed auditors. C1 argued that confidentiality should not be a mechanism to restrict the existing auditor's public-interest obligation to inform a proposed auditor of known facts and circumstances concerning a NOCLAR. C1 further expressed the view that prior to the existing auditor discussing the matter with

⁵ Paragraph 210.11 in the ED stated the following: "An existing accountant is bound by confidentiality. Whether that professional accountant is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on: (a) whether the client's permission to do so has been obtained; or (b) the legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction."

⁶ Paragraph 210.13 in the ED stated the following: "In the case of an audit of financial statements, a professional accountant shall request the existing accountant to provide known information regarding any facts or circumstances that, in the existing accountant's opinion, the proposed accountant needs to be aware of before deciding whether to accept the engagement. If the client consents to the existing accountant disclosing any such facts or circumstances to the proposed accountant, the existing accountant shall provide the information honestly and unambiguously. If the client fails or refuses to grant the existing accountant permission to discuss the client's affairs with the proposed accountant, the existing accountant shall disclose this fact to the proposed accountant, who shall carefully consider such failure or refusal when determining whether or not to accept the appointment."

the proposed auditor, it would be appropriate for the existing auditor to inform the client of the intention to discuss the matter rather than needing the client's permission to do so.

28. During the December Board discussion, there was a concern about removing client consent from Section 210⁷ as a precondition to the communication between the existing and proposed auditors. It was felt that this could lead to the communication of matters unrelated to NOCLAR. In particular, unlike in NOCLAR circumstances, the Code would provide no criteria for overriding confidentiality in those other situations. It was therefore argued that removing consent in such a way would extend beyond what the Board had originally intended in relation to NOCLAR. On the other hand, there was also a view that it would be important for the proposed auditor to clearly understand the circumstances surrounding the change of appointment. It was therefore felt that it may not be appropriate to limit the exception to client consent to NOCLAR situations only. It was noted, for example, that if the existing auditor disagrees with management on a particular accounting treatment, management could simply justify the change in auditors on “good governance grounds” rather than provide the real reasons.
29. It was also noted during the Board discussion that in practice, consent generally comes with a “hold harmless” commitment from the client. Accordingly, if the communication requirement is to be effective, it should come with some protection for the existing auditor. It was noted, however, that if such protection cannot be guaranteed, it may be appropriate to seek client consent. It was noted also that in any event, if consent is not obtained this would be a “red flag” for the proposed auditor.
30. In the light of this discussion, the Task Force proposes to retain the general requirement to obtain client consent but to allow an exception regarding communication of relevant information to the proposed auditor in the case of NOCLAR even if such consent is not obtained (see paragraphs 210.13 and 225.30).
31. In its response, C1 also commented that the ED was silent regarding circumstances where the existing auditor does not, or refuses to, provide information regarding any facts or circumstances concerning the NOCLAR matter, even after having obtained the client's consent. C1 therefore suggested that the Code should provide guidance regarding such situations.
32. The Task Force noted that extant paragraph 210.12 already requires that, if the proposed accountant is unable to communicate with the existing accountant (despite the latter having obtain client consent), the proposed accountant take reasonable steps to obtain information about any possible threats by other means. Such means include inquiries of third parties or background investigations of senior management or TCWG. Acknowledging C1's concern, the Task Force proposes that a similar provision be added to paragraph 225.30.

Matter for Consideration

5. Do IESBA members agree with the Task Force's proposals?

⁷ Extant Section 210, *Professional Appointment*

B. Other Feedback from November/December 2015 Board Meeting

33. The main other comments received during the November/December 2015 Board meeting and the Task Force’s responses are as follows:

#	Matters Raised	Task Force Responses
<i>In relation to Section 225:</i>		
1.	Regarding the Task Force’s proposal to scope in an act of NOCLAR committed by individuals working under “the direction or oversight” of the client, there should not be a reference to individuals under the client’s oversight as this could mean those under the client’s control and therefore scope in many people, including those providing routine services.	Point accepted. See paragraph 225.2.
2.	In response to input from the European Audit Inspection Group (EAIG), it should be made clear that laws and regulations that govern how PAs should address NOCLAR may specify requirements that differ from or go beyond the provisions in the Code.	Point accepted. See paragraph 225.3.
3.	With respect to PAs in public practice, whether guidance should be provided for junior members of engagement teams to escalate the matter within the firm.	The Task Force noted that the Code has not adopted this level of granularity regarding how matters pertaining to ethics, including independence, should be addressed within a firm. Generally, engagement teams will be subject to the requirements of ISQC 1, including those pertaining to engagement performance such as in relation to supervision, review and consultation.
4.	With respect to the proposed requirement for the PA to communicate the matter with the group engagement team in the case of a group audit, whether there was a risk that the matter would simply be elevated to the group level and not addressed at the component level.	The Task Force agreed to clarify that escalation of the matter by a component auditor to the group auditor would be in addition to the component auditor responding to it in accordance with the provisions of Section 225 (see paragraph 225.20).
5.	With respect to PAs in public practice other than auditors, whether it is appropriate to refer to “tipping off” as an example of restrictions about disclosure imposed by a regulatory agency or prosecutor when considering whether to communicate the matter to	Point accepted. See paragraph 225.44.

#	Matters Raised	Task Force Responses
	the entity’s external auditor, as tipping off would not be relevant in those circumstances.	
6.	<p>Regarding relevant factors for PAs in public practice other than auditors to take into account when considering whether to disclose the matter outside the client:</p> <ul style="list-style-type: none"> • Making clear to which parties outside the client the PA would be making such disclosure. 	The Task Force agreed to clarify that this was intended to refer to disclosure to an appropriate authority. See paragraph 225.49.
7.	<ul style="list-style-type: none"> • Regarding consideration of whether the purpose of the engagement is to investigate potential NOCLAR within the entity to enable it to take appropriate action, clarifying whether or not this means the disclosure can be made, as articulating this factor neutrally leaves it open to misinterpretation. 	The Task Force believes that this should remain a factor for the PA’s judgment, as the alternative would be to introduce a prohibition on disclosure in this situation. As a prohibition would be absolute, the Task Force believes that this would rule out circumstances where the PA and the client might agree that it would be appropriate for the PA to disclose the matter directly to an appropriate authority.
<i>In relation to Section 360:</i>		
8.	Regarding disclosure of the matter by a senior PAIB to the employing organization’s external auditor, whether there should be a requirement to disclose to the auditor in all circumstances or whether the PAIB should be required to evaluate the need to disclose; and making it clear that such disclosure would not be a substitute for complying with the rest of the section.	Points accepted. The Task Force proposes that the Code require senior PAIBs to determine whether disclosure to the external auditor (if any) is needed (see paragraph 360.17). The Task Force also proposes that paragraph 360.17 be amended to make clear that disclosure to the external auditor would be in addition to responding to the matter in accordance with the provisions of the section.
9.	Reconsidering the use of the term “professional activities” in referring to circumstances where the PAIB may come across or be made aware of NOCLAR, as this could limit the scope of the section, especially on translation.	The Task Force noted that the term “professional activity” is a defined term in the Code. Accordingly, the Task Force proposes no change.
10.	In relation to the escalation process for senior PAIBs, making clear that the next higher level of authority within the employing organization for senior PAIBs can include TCWG.	The Task Force noted that paragraph 360.16 already requires the senior PAIB to take appropriate steps to have the matter communicated with TCWG.

Matter for Consideration

6. IESBA members are asked whether they agree with the Task Force's responses.

C. Significant Comments from the SMPC

34. The significant comments received from the SMPC on the December 2015 Board agenda material and the Task Force's responses are as follows (comments are in relation to proposed Section 225 unless otherwise noted):

#	Matters Raised	Task Force Responses
1.	The SMPC expressed continuing concern regarding the potential impact of uncertainty on audit quality and on demand for PAs' services resulting from the potential disclosure of NOCLAR to an appropriate authority. The SMPC based its concern on its view that the third party test can create a de-facto requirement in certain circumstances, thereby giving rise to the same issues that were flagged by the legal advice the board received in connection with the disclosure requirements proposed in the first Exposure Draft.	As noted in the Background section above, the Board has not intended the third party test to be read narrowly as creating a de facto requirement to disclose in all or certain circumstances. This is because whether disclosure would be called for will depend on an objective assessment of the particular facts and circumstances at the time. The third party test is intended to bring a degree of objective rigor to the PA's assessment, and not to force the PA to disclose regardless of the particular facts and circumstances at the time. However, where those facts and circumstances would justify such a disclosure, the Task Force believes that PAs should not abdicate their responsibility to act in the public interest.
2.	The SMPC urged the Board to address the issue of potential loss of trust in the relationship between a PA and the PA's client as a result of the proposals becoming into force.	The Task Force was not persuaded that an override of confidentiality <i>under the Code</i> would result in management/TCWG no longer being forthright with information that is needed for the engagement. If overriding confidentiality did adversely impact trust and information flow from management/TCWG to the PA in practice, this would already be the case where L&R themselves permit confidentiality to be set aside in specific circumstances (as is the case, for example, where L&R require auditors to disclose criminal acts and money laundering in France, "reportable irregularities" in South Africa, and money

#	Matters Raised	Task Force Responses
		<p>laundering and terrorist financing in the UK). That has not been the experience.</p> <p>Importantly, in the vast majority of cases, there is no question about the integrity of management/TCWG. The concern about the adverse impact on trust and information flow really only becomes relevant if they have something to hide. If that were the case, it is highly unlikely that management/TCWG would be forthcoming with information that might compromise them.</p> <p>The Task Force also noted that other respondents to the re-ED took the opposite view, arguing that the proposals would likely have no significant or further impact on the PA-client relationship, particularly where integrity is not an issue. They also noted that the proposals would clarify the responsibilities of each party and enhance the relevance of auditors' and other PAs' services.</p>
3.	<p>The SMPC commented that if the Board were to retain the proposed guidance regarding factors to consider in determining whether further action is needed (paragraph 225.26), it should recognize potential practicalities with respect to the SME sector and be clear that the threshold “Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees or the general public” would only apply to certain entities (e.g. public interest entities (PIEs)).</p> <p>The SMPC further noted its view that the proposals do not adequately recognize that there may be varying degrees of public interest inherent in the engagements performed by PAs. It felt that a course of action leading to disclosure to an appropriate authority would likely apply in relation to the audit of financial statements of PIEs, as opposed to other audits and other services performed by PAs. It therefore suggested that the provisions be made</p>	<p>The Task Force noted that the Board had considered but rejected making a distinction between PIEs and entities that are not PIEs. This is because a significant NOCLAR issue can arise in a PIE just as well as in an entity that is not a PIE. Were the scope of the provisions limited to PIEs as suggested by the SMPC, the Task Force noted that an act of NOCLAR such as the Bernard Madoff Ponzi scheme in the U.S., which led to major financial losses for a wide range of investors, would not be addressed by the Code.</p> <p>To emphasize this point, the Task Force has added the following sentence to paragraph 225.1: “This section applies regardless of the nature of the client, including whether or not it is a public interest entity.”</p>

#	Matters Raised	Task Force Responses
	applicable in a manner proportional to the size and public interest of the client.	
4.	The SMPC noted that PAs may well be advised to reach agreement with their clients in the engagement letters that the PAs reserve the right to disclose a NOCLAR matter to an appropriate authority in accordance with the requirements of the Code, notwithstanding that there is no legal or regulatory requirement to do so. The SMPC felt that this would most likely prompt clients to ask for details about the precise laws and regulations covered as well as the circumstances in which such a disclosure might occur. Accordingly, to limit the uncertainty from the clients' perspectives, the SMPC suggested that the provision setting out examples of laws and regulations covered (paragraph 225.6) be reworded to state: "This section addresses the following laws and regulations: ..."	The Task Force did not believe this would be appropriate as making this change would effectively limit the scope of laws and regulations covered to just those listed as examples.
5.	The SMPC also suggested that the Code provide further examples of laws and regulations covered to provide certainty in this area.	The Task Force believes that providing too many examples would lead to a departure from a principles-based Code, resulting in a very detailed and prescriptive Code that would leave little room for appropriate professional judgment. Further, no list, however long, can ever provide certainty.
6.	The SMPC noted that paragraph 225.1 indicates that the PA may be made aware of the matter by another party. The SMPC suggested that this should only cover situations where another accountant informs the auditor. The SMPC was concerned that without limiting the ways in which the PA could be informed of the matter, this could lead to misuse of the auditor (for example, by parties who might have a grievance to air). The SMPC agreed that while it may be appropriate for the auditor to be made aware of instances of NOCLAR by another PA, it would not be appropriate for the auditor to have to follow up every possible matter.	The Task Force acknowledged that there will be effort incurred by the auditor to obtain an understanding of the matter, regardless of the source of the information. However, placing a limitation on the source would be inconsistent with the principle of "not turning a blind eye" to non-compliance, which in some instances might turn out to be significant. The Task Force noted that in practice, most NOCLAR issues will be duly investigated by management and, therefore, much of the investigative effort will rest with management.
7.	The SMPC continued to express concern regarding the lack of a clear definition and common	The Task Force noted that guidance had already been provided regarding the

#	Matters Raised	Task Force Responses
	<p>understanding of the concepts of “public interest” and “substantial harm. In particular, it felt that interpreting what acting in the public interest means would likely prove highly subjective and could result in PAs compromising the duty of confidentiality in a wide range of situations, including anti-bribery, environmental protections and taxation matters.</p>	<p>concepts of “public interest” and “substantial harm” (see paragraphs 225.7, 225.25 (last bullet) and 225.33).</p> <p>The Task Force noted that as with any professional standard, the exercise of appropriate professional judgment will be essential. A balance needs to be struck in not making the guidance so prescriptive that it would act as a disincentive for PAs to exercise such judgment. This could in turn lead them to justify their conduct on the basis that the particular fact pattern was not described in the Code. Nonetheless, the Task Force agreed to add two further examples of NOCLAR that may justify disclosure to an appropriate authority (see paragraph 225.33).</p>
	<p>The SMPC also reiterated its concerns about the proposals going beyond ISA 250⁸ in terms of calling for auditors and other PAs to have regard to the wider public interest implications of the matter. The SMPC believes that this aspect introduces uncertainty as to the scope of NOCLAR and could create unrealistic expectations regarding the auditor’s responsibility. In addition, it felt that the threshold of “serious adverse consequences” is unclear and would impose significant additional judgement requirements. It was of the view that the proposals could adversely impact SMPs who might not have all the tools and support needed to make such judgments.</p>	<p>With respect to the SMPC’s concerns about the proposals going beyond ISA 250, the Task Force noted that the Code has different objectives than the ISAs, a point that was emphasized in the explanatory memorandum to the re-ED.</p>
8.	<p>The SMPC disagreed that no acknowledgement should be made in the Code regarding the inherent limitations of PAs in detecting NOCLAR, and the risk-based approach under the ISAs. The SMPC believes that recognizing such inherent limitations would help avoid unrealistic public expectations as to what auditors and other PAs are able to do with respect to NOCLAR.</p>	<p>The Task Force does not share those views because the basic premise for the provisions is to enable the PA to appropriately <i>respond</i> to information suggesting an act of NOCLAR. Unlike the ISAs, there is no intention that the Code require PAs to search for instances of NOCLAR. Accordingly, recognizing such</p>

⁸ ISA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*

#	Matters Raised	Task Force Responses
		inherent limitations would be inconsistent with the premise underlying the provisions.

Matter for Consideration

7. IESBA members are asked whether they agree with the Task Force's responses.

D. Proposed Effective Date

35. At the November/December 2015 meeting, the Board supported the Planning Committee's recommendation that the final provisions be issued under the current structure and drafting conventions, without waiting for them to be restructured. There was broad acknowledgement of the urgency in releasing the final provisions given that they had taken over six years to be developed, and stakeholders were awaiting their issuance.
36. Accordingly, subject to final Board approval of the provisions and PIOB approval of due process by Q2 2016, the Task Force recommends that the provisions be made effective as follows:
- For auditors, effective for audits of financial statements for periods commencing on or after July 15, 2017.
 - For other PAs in public practice and PAIBs, as of July 15, 2017.

Matter for Consideration

8. Do IESBA members agree with the Task Force's proposal?