

October 21, 2015

Kathleen Healy — Technical Director
International Auditing and Assurance Standards Board
International Federation of Accountants
529 Fifth Avenue, 6th Floor
New York, NY 10017

Dear Ms. Healy,

Deloitte Touche Tohmatsu Limited (DTTL) is pleased to have the opportunity to provide comments on the Exposure Draft, Proposed Amendments to the International Standards on Auditing (ISAs), *Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations* (“the Proposal”)¹ issued by the International Auditing and Assurance Standards Board (“IAASB” or the “Board”) in July 2015.

EXECUTIVE SUMMARY

DTTL recognizes the efforts of the IAASB in releasing the Proposal concurrently with, and in response to, the Re-Exposure Draft of the International Ethics Standards Board for Accountants (“IESBA”), *Responding to Non-Compliance with Laws and Regulations* (the “IESBA Re-ED”). This approach permitted DTTL the opportunity to review both exposure drafts concurrently and thereby address any perceived inconsistencies between them.

DTTL concurs with the intent of the Board to conform and align the wording between the Proposal and the IESBA Re-ED, as this approach will provide the auditor with the clarity needed to operationalize the amendments to the ISAs. Further, DTTL agrees that the Proposal should not potentially undermine the efforts of the IESBA. DTTL’s recommendations as described below have been formulated with this underlying concept in mind.

One overriding observation is that while the IESBA Re-ED specifically references the ISAs, there is not a corresponding direct, and more prominent, cross-reference to the IESBA *Code of Ethics for Professional Accountants* (the “IESBA Code”) in ISA 250. While DTTL understands that adopting the IESBA Code is not a requirement, when performing an audit in accordance with the ISAs, the fundamental concepts included in Proposed Section 225 *Responding to Non-Compliance with Laws and Regulations*, of the IESBA Re-ED underpin the requirements of ISA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements* (“ISA 250”). DTTL believes that the Proposal

¹ The Proposed Amendments are to the following ISAs: ISA 220, *Quality Control for an Audit of Financial Statements*; ISA 240, *The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements*; *Consideration of Laws and Regulations in an Audit of Financial Statements* ISA 260 (Revised), ISA 250, *Communication with Those Charged with Governance*; ISA 450, *Evaluation of Misstatements Identified during the Audit*; ISQC 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*; ISRE 2400 (Revised), *Engagements to Review Historical Financial Statements*; and ISAE 3402, *Assurance Reports on Controls at a Service Organization*.

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should more strongly draw a connection between the interrelationship of the IESBA Code and ISA 250 by including additional language in a guidance paragraph to ISA 250.

This matter is addressed further in Appendix 1, along with DTTL's responses to the questions posed by the IAASB relating specifically to the Proposal, and more broadly to ISA 250. Other recommendations of a more editorial nature are noted in Appendix 2.

DTTL appreciates the opportunity to provide perspectives on the Proposal and would be pleased to discuss this letter with the staff at your convenience. If you have any questions, please contact me via email (cbuss@deloitte.ca) or at +1 416 874 3969.

Very truly yours,



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APPENDIX 1

RESPONSE TO REQUESTS FOR SPECIFIC COMMENTS ON THE PROPOSAL & INVITATION FOR ADDITIONAL INPUT RELATED TO ISA 250

DTTL's responses to the detailed questions included in the IAASB's EM accompanying the Proposal are set forth in this appendix. These responses provide additional context for DTTL's perspectives contained in the Executive Summary and include more specific and detailed observations related to the various aspects of the IAASB's Proposal.

Specific comments on the Proposal

1. Whether respondents believe the proposed limited amendments are sufficient to resolve actual or perceived inconsistencies of approach or to clarify and emphasize key aspects of the NOCLAR proposals in the IAASB's International Standards.

DTTL agrees that the limited amendments in the Proposal are sufficient to clarify and emphasize key aspects drawn from the IESBA Re-ED.

As described in the Executive Summary, DTTL recognizes that jurisdictions may adopt differing ethical codes; however, DTTL believes that ISA 250 should more directly emphasize the relevant content contained within the IESBA Code. DTTL therefore recommends including the following proposed paragraph in the Application and Other Explanatory Material to ISA 250.

ISA 200 [Footnote 1] explains that relevant ethical requirements ordinarily comprise Parts A and B of the IESBA Code [Footnote 2] related to an audit of financial statements together with national requirements that are more restrictive. The IESBA Code contains ethical requirements that address responding to non-compliance or suspected non-compliance with laws and regulations [Footnote 3].

Footnote 1: ISA 200, Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing, paragraph A14

Footnote 2: International Ethics Standards Board for Accountants' Code of Ethics for Professional Accountants (IESBA Code)

Footnote 3: See Part B Section 225 of the IESBA Code

2. The impact, if any, of the proposed limited amendments in jurisdictions that have not adopted, or do not plan to adopt, the IESBA Code. For example, would any of the changes to the IAASB's International Standards be deemed incompatible with the relevant ethical requirements that would apply in those jurisdictions?

DTTL is aware that in certain jurisdictions where the ISAs are used to perform audits, the jurisdictions may not adopt the IESBA Code, or the related amendments, on a timely basis, or at all. These situations should, however, in no way impede the IAASB from moving ahead with finalizing the changes to the ISAs and other international standards included in the Proposal.

Paragraph 8a of ISA 250 indicates that the auditor may have additional responsibilities under the relevant ethical requirements regarding an entity's non-compliance with laws and regulations. Further, the requirement in paragraph 28 of ISA 250 states that where the auditor has identified or suspects non-compliance with laws or regulations to determine "whether the auditor has a legal or ethical duty or right to report the identified or suspected non-compliance to parties outside the entity." DTTL believes

that paragraph 28 provides sufficient flexibility to allow the auditor to report identified or suspected non-compliance to parties outside the entity in accordance with the laws or regulations of a particular jurisdiction, where the IESBA Code has not, or may not be adopted.

Additional input related to ISA 250

DTTL acknowledges the invitation for additional input pertaining to ISA 250, as well as, the related questions in paragraph 16 of the EM. DTTL concurs with the views expressed by the IAASB in the EM that it is not “necessary at this time to further explore these areas or to undertake a more fulsome revision of ISA 250.” DTTL believes that the IAASB’s *Work Plan for 2015-2016: Enhancing Audit Quality and Preparing for the Future* is comprehensive and that the current agenda requires the immediate and full attention of the Board. DTTL believes that the Board should consider all the feedback received from the respondents to this Proposal when making decisions about whether or not to include ISA 250 in any future work plans.

DTTL is aware that IESBA, in developing the IESBA Re-ED, went to great lengths to ensure that the proposed changes to the IESBA Code did not inappropriately expand the scope and objectives of ISA 250. Therefore, DTTL believes it is important to realize that any future proposed revisions to ISA 250 (other than those addressed in the Proposal) may have unintended consequences to the IESBA Code as well. Accordingly, any proposed revisions to ISA 250 by the IAASB would need to be carefully coordinated with the IESBA Board so as to ensure continued consistency between the IESBA Code and the ISAs.

DTTL does not believe it is appropriate to expand the scope of ISA 250 at this time. If the IAASB does consider adding ISA 250 to a future work plan, DTTL cautions the Board to consider whether further extending the auditor’s responsibility relating to NOCLAR would be appropriate and what the benefits would be to the quality of the audit engagement as a whole relative to the incremental costs to address the expanded requirements. As currently described in paragraph 4 to ISA 250, “... the auditor is not responsible for preventing non-compliance and cannot be expected to detect non-compliance with all laws and regulations” (emphasis added). DTTL is concerned that any expansion to the auditor’s responsibilities would be contrary to this underlying premise, and could result in expectations of the auditor that would not be possible of being accomplished, or at least not at reasonable cost. Further, while additional work effort by the auditor may in theory result in actual or suspected NOCLAR being identified, the auditor may ultimately be perceived in such circumstances as merely as a “whistleblower.” Imposing more requirements on auditors may also have a negative impact on the “free-flow of information” between the auditor and the client, which could ultimately damage the quality of the audit engagement.

APPENDIX 2

DETAILED COMMENTS AND RECOMMENDATIONS

DTTL has other detailed comments and recommendations with respect to the Proposal as enumerated below. In these comments, recommended additional text is shown using **bold underline**; recommended deletions to the text are shown using double ~~striketrough~~.

ISA 240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements* and ISA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*

DTTL identified in the amendments to ISA 240 and ISA 250 of the Proposal that there are references to reporting non-compliance to “regulatory and enforcement authorities” or in some instances “authorities,” while the IESBA Re-ED refers to an “appropriate authority.” DTTL recommends that the phrase used in the IESBA Re-ED be used, so as to ensure consistency between the two exposure drafts. The wording in the following paragraphs (including the headings immediately preceding the paragraphs referred to below) should be amended accordingly:

ISA 240: Paragraphs 43 and A65

ISA 250: Paragraphs 28 and A19

ISA 240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements*, ISA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*, and ISRE 2400 (Revised), *Engagements to Review Historical Financial Statements*

It was noted in the Proposal, that the phrase “party[ies] outside the entity” has been used. DTTL understands that this refers to regulatory or enforcement authorities outside the entity as described elsewhere in the exposure draft. However, in an effort to ensure consistency of terminology used both in the Proposal and in the IESBA Re-ED, DTTL recommends that the phrase be amended to “appropriate authority[ies] outside the entity.” The wording in the following paragraphs should be amended:

ISA 240: Paragraphs 43 and A65 (see edits below)

ISA 250: Paragraphs 28, 29, A19 and A21

ISRE 2400: Paragraph 52 and A92

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

Paragraph A12a

While DTTL understands that the intent of paragraph A12a of ISA 250 is to provide further guidance in situations where the auditor has become aware of NOCLAR outside of the audit procedures performed, DTTL believes that the example provided does not provide the clarity needed in order for the auditor to understand a situation in which this may occur. It was also noted that paragraph 18 of ISA 250 does not contain a cross-reference to proposed paragraph A12a. See the following suggested edits to the application material:

A12a. The auditor may become aware of information about non-compliance with laws or regulations ~~(for example, in responding to matters that the auditor is required to address~~

~~under relevant ethical requirements)~~ other than as a result of performing the **audit** procedures in paragraphs 12-16.

Paragraph A15

The proposed wording in paragraph A15 of ISA 250 does not appear to address instances where the “tipping-off” extends to legislation other than anti-money laundering. DTTL recommends that the following edits be made to the paragraph:

A15. The auditor may discuss the findings with those charged with governance where they may be able to provide additional audit evidence. For example, the auditor may confirm that those charged with governance have the same understanding of the facts and circumstances relevant to transactions or events that have led to the possibility of non-compliance with laws and regulations. However, ~~in some jurisdictions,~~ laws or regulations **in some jurisdictions** may prohibit alerting (“tipping-off”) the entity when, ~~for example,~~ the auditor is required to report the non-compliance to an appropriate authority, **for example,** pursuant to anti-money laundering legislation.

DTTL has similar recommendations for paragraph A59a of ISA 240, paragraph 7 of ISA 260, and paragraph A8 of ISA 450.

Paragraph A16

Paragraph A16 of ISA 250 appears to indicate that the possibility of fraud is a possible legal consequence. DTTL believes that is not the intent of the guidance paragraph as currently drafted. DTTL acknowledges that the proposed edits to extant ISA 250, are not necessarily the subject of the changes as contemplated by the Board when conforming and aligning the language between the Proposal and the IESBA Re-ED, however the proposed edits would further clarify the intent and meaning of paragraph A16.

A16. If management or, as appropriate, those charged with governance do not provide sufficient information to the auditor that the entity is in fact in compliance with laws and regulations, the auditor may consider it appropriate to consult with the entity’s in-house or external legal counsel about the application of the laws and regulations to the circumstances, including the possibility of fraud, and the possible effects on the financial statements. If it is not considered appropriate to consult with the entity’s legal counsel or if the auditor is not satisfied with the legal counsel’s opinion, the auditor may consider it appropriate to consult on a confidential basis with others within the firm, a network firm, a relevant professional body, or with the auditor’s legal counsel as to whether a contravention of a law or regulation is involved, **including the possibility of fraud,** the possible legal consequences, ~~including the possibility of fraud,~~ and what further action, if any, the auditor would take.

ISA 240, The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements

It was noted that the terminology in paragraph A65 of ISA 240 was not consistent with that in paragraph A19 (second bullet) of ISA 250 of the Proposal. DTTL also has additional edits to paragraph A65 of ISA 240 to further clarify the proposed language. The amended wording is as follows:

A65. The auditor’s professional duty to maintain the confidentiality of client information, **or to abide by laws and regulations of certain jurisdictions,** may preclude reporting fraud or other identified or suspected non-compliance with laws or regulations to **an appropriate authority** ~~party~~ outside the entity. However, the auditor’s legal responsibilities vary by

~~country~~ **jurisdiction** and, in certain circumstances, the duty of confidentiality may be overridden by laws or regulations. Law, regulation, or relevant ethical requirements may include a duty or right to report **the matter** to an appropriate authority. In some ~~countries~~ **jurisdictions**, the auditor of a financial institution has a statutory duty to report the occurrence of fraud to supervisory authorities. Also, in some ~~countries~~ **jurisdictions** the auditor has a duty to report misstatements to **appropriate** authorities in those cases where management and, **where applicable**, those charged with governance fail to take corrective action. In certain circumstances, the auditor may have the right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality.

DTTL observed that the word “country[ies]” is also used in paragraphs A19 and A56 of ISA 240. These should be amended to use the word “jurisdiction[s]”, so as to ensure the consistent use of terminology throughout the ISA.

ISRE 2400 (Revised), *Engagements to Review Historical Financial Statements*, and ISAE 3402, *Assurance Reports on Controls at a Service Organization*

ISRE 2400 (Revised) and ISAE 3402 do not include guidance related to ensuring that the auditor or service auditor, as the case may be, remains aware of the issues surrounding alerting (“tipping-off”) the entity. DTTL believes that application material should be added to the aforementioned ISAs to address this omission.

ISAE 3402, *Assurance Reports on Controls at a Service Organization*

The following edit should be made to paragraph A53 of ISAE 3402 to ensure the consistent use of terminology:

- A53. Appropriate actions to respond to the circumstances identified in paragraph 56 may include:
- ...
 - ...
 - Communicating with third parties (for example, a regulator) when the **service** auditor has a duty or right to do so.
 - ...
 - ...