

Hunter College Graduate Program
Economics Department
Advanced Auditing
Professor Joseph A. Maffia, CPA

**Proposed Amendments to the IAASB's International Standards:
Responding to Non-compliance or Suspected Non-compliance with Laws and Regulations**

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Principal Drafters:

Imtiaz Chowdhury
Steven Cruz
Carl Johnson
Ripan Paul
Yafa Zavlanova

Other Contributors:

Christine Chen
David Dellavecchia
Jessica Derosa
Predrag Dimitrijevic
Chelsea Feder
Serenia Jackson
Muhammad Karim
Jenna Lore
Jennifer Noski
Jennifer Pena
Raita Sato
Wen Song
Jonguk Sung
Salvatore Ubaldini
Qiongqiong Wang
Li Ping Xu
Catherine Yen

Comment Letter - Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations

The Advanced Auditing class at Hunter College has reviewed the International Standard on Auditing (ISA) 250 (revised), and offers the following comments for consideration by the International Auditing & Assurance Standards Board (IAASB). Our responses are based in part of the request for specific comments from respondents. We have also expressed our general comments within the letter. We begin with our responses to questions asked by the IAASB in its request for specific comments.

Request for Comments Section:

Comment on Item 13(b) Developing Nations

We agree with the IAASB's request for comments from developing nations. We believe that the proposed amendments to the IAASB's International Standards can be reasonably implemented in developing countries. Most developing countries currently adhere to IAASB standards; therefore, the proposed amendments can be applied in a timely fashion.

Comment on Item 13(d) Effective Date

We agree that the effective date of the proposed IAASB amendments should be aligned with the Non-compliance with Laws and Regulations (NOCLAR) standards. We believe that this will promote uniformity and efficient convergence between the two bodies.

Comment on Item 16 in the Invitation for Additional Input Section:

We agree with the proposal in paragraph 16(b) that ISA 250 should address making inquiries of management or, when appropriate, those charged with governance (TCWG), regarding NOCLAR that may occur. If management does not follow or violate applicable laws and regulations, the auditor should identify the reason behind it. It is the responsibility of management and/or TCWG to ensure that the entity has followed or complied with laws and regulations.

We are also supportive with the proposal in paragraph 16(c) that ISA 250 should include a requirement to obtain an understanding of how management identifies and addresses known or suspected NOCLAR as an essential component in obtaining an understanding of the entity and its environment. Auditor should understand how management maintains an organizational structure and policies/procedures regarding compliance with laws and regulations.

Furthermore, we believe that this understanding is critical and necessary to the overall risk assessment of the entity and its environment. Additionally, we also recommend that if an entity lacks a proper policy for dealing with NOCLAR, basic guidelines should be recommended by the auditor, where applicable.

International Standard on Auditing (ISA) 250:

Comment on ISA 250 Paragraph 5 - Responsibility of auditor

As stated in the exposure draft, audit procedures are designed to “identify material misstatements of the financial statements due to non-compliance with all laws and regulations.” The auditors are not responsible for preventing non-compliance and the audit procedures cannot be expected to detect non-compliance with all laws and regulations.

We agree with the proposed modification stating that an act that constitutes non-compliance is ultimately determined legally by **an appropriate legal or adjudicative body** in place of **“a court of law”**.

This proposed change will further emphasize the widening scope of the inherent limitations faced by the auditors when addressing the issues of defining and identifying the actual existence of an act of non-compliance, which are strongly rooted in the crux of the exposure draft.

Comment on Paragraph A5a: Categories of Laws and Regulations

We agree with the categories of laws and regulations provided in paragraph A5a of the “Application and Other Explanatory Material” section. The list of categories shows the generally recognized areas of laws and regulations that have a direct effect on the determination of material amounts and disclosures in the financial statements. In addition, we agree with the statement that appropriate test steps should be included in the audit plan to obtain reasonable assurance in regards to the compliance with these laws and regulations.

However, we believe that the list should be more inclusive in nature and include industry specific laws and regulations (i.e., casino, lottery, utilities).

Comment on Paragraph A12a: Audit Procedures When Non-Compliance is Identified or Suspected

We agree with the additional paragraph of A12a, in regards to an auditor's ability to become aware of information about NOCLAR. This statement also refers procedures that were previously mentioned in paragraph 12-16, which in our opinion can cause some confusion due to the fact that a reader would have to glance back a several paragraphs in order to understand the comparison that the opening statement quotes. Creating a footnote in order to remind the reader of that specific reference would alleviate any potential confusion, and allow for better transition of topics as it informs readers of additional indicators that auditors may become aware while conducting audits.

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 procedures in paragraph 12-16¹

¹ *Procedures in paragraph 12-16: The auditor shall obtain a general understanding and sufficient appropriate audit evidence regarding the legal and regulatory framework applicable to the entity and the industry or sector in which the entity operates, compliance with the provisions of those laws and regulation generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statement.*

- *Comments on proposed changes: We agree with further clarification on their references by adding footnote notes that references paragraph 12-16. Although these paragraphs are lengthy, we believe summarizing all three requirements gives sufficient clarity for readers to fully understand and allows better transition. Overall the bold section should be included.*

Furthermore, this opening statement was informative as it introduces several indicators of non-compliance with the laws and regulations that are common in current economy. Overall, additional affirmation in regards to these indicators alleviates any potential confusion and allows for a better comprehension of the causes and effects that businesses and shareholders experience through unethical transitions.

Comment on Paragraph A15: Audit Procedures

We agree with the amendment to the audit procedures section which recognizes that discussing suspicion or evidence of non-compliance with top executives is not permitted by law in some jurisdictions. The given example of anti-money laundering laws reflects an extreme situation and in such a circumstance, the public interest must be protected above all. This change is sufficient since the auditors need to be aware of regulations in their jurisdiction that overrule the customary professional duty that the auditors owe to their client. Unless barred by laws or regulations, the legal and ethical duty to maintain client confidentiality should take priority. As we understand, no further revision is necessary since the amendment acknowledges exceptions to the general rule that exist in other jurisdictions.

Comment on Paragraph A16: Audit Procedures

We consider this amendment to audit procedures to be sufficient in resolving actual or perceived inconsistencies of approach. Most significantly, the proposed change adds that the auditor is consulting on a confidential basis. Also, we find this proposed amendment to be sufficient as it specifically states the source of legal counsel for auditors.

We do suggest including a legal specialist on an audit committee, if one exists on the auditor's case, to broaden the goal of this amendment. The board of directors or those charged with governance should consider appointing a legal specialist in the committee. This addition, as illustrated below, will provide another option to the auditor for seeking legal guidance.

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, a legal specialist on the audit committee, or with the auditor's legal counsel as to whether a contravention of a law or regulation is involved, the possible legal consequences, including the possibility of fraud, and what further action, if any, the auditor would take.

Comment on Paragraph A17: Evaluating the Implications of Non-Compliance

The amendment to Paragraph A17 creates a conceptual connection and organizational consistency between the requirements set forth in paragraph 21 and the amendment of paragraph 8a. Thus, further revisions to this paragraph are not necessary.

Comment on Paragraph A18: Evaluating the Implications of Non-Compliance

We agree that withdrawal from engagement should be an option for the auditor, even when noncompliance is not material to financial statements. If the auditor is not fully convinced that management is taking appropriate measures to comply, then the auditor should have the option to withdraw from providing services/opinion or reach out to appropriate authorities to address these issues.

Comment on Paragraph A19: Reporting Non-Compliance to Regulatory and Enforcement Authorities

We agree with IAASB's new ruling which allows the auditor to obtain legal advice in a situation where he/she determines that there has been noncompliance. However, to fully assess the auditor ethical duties, a legal opinion would be helpful to all the parties involved. It would allow the auditor to be forming an opinion independently, without breaching any legal boundaries and staying clear of ethical dilemma.

We agree with Paragraph A19, but we recommend that the phrase "the auditor shall consider the need to obtain legal advice" be expanded to "obtain legal and other professional advice."

If the auditor has identified or suspects non-compliance with laws or regulations, the auditor may consider obtaining legal and other professional advice to determine whether the auditor has a legal or ethical duty or right to report to parties outside the entity and, when applicable, the appropriate course of action in light of such duty or right.

It would also empower the auditor to consult with other regulatory bodies relevant to each jurisdiction, such as The Institute of Chartered Accountants in England and Wales (ICAEW), International Standards on Auditing (UK and Ireland), American Institute of Certified Public Accountants (AICPA) or other professionals, pension experts, actuaries, etc.

Comment on Paragraph 28: Reporting Non-Compliance to Regulatory and Enforcement Authorities

We recommend that the amendment of "legal or ethical duty or right" be further expanded to include a definition or basic explanation of ethical duty or ethical right of the auditor. Legal duties are comparatively self-explanatory; while ethical obligations can be perceived or defined differently by parties in different contexts. Including a standard definition provides uniformity for the jurisdictions adhering to the IAASB international standards. Moreover, including a standard definition can serve as an initial foundation in identifying ethical issues if the auditor needs guidance. Likewise, the term "ethical right" should be expanded upon to provide more clarity on IAASB's belief on ethical right.

The addition of the terms "legal or ethical duty or right" would not have a major impact in jurisdictions that have not adopted, or do not plan to adopt the IESBA Code. This particular change

merely functions to acknowledge and emphasize the specific types of responsibilities (legal and ethical) of the auditor when reporting non-compliance of their clients to regulatory and enforcement authorities.

General Comment: On a larger scale, uniformity in ethical standards will not exist among participating jurisdictions and incompatibility with relevant ethical requirements may arise because these jurisdictions will implement ethical requirements based on their respective definition of ethics. Therefore, when the auditor needs to determine whether an ethical duty or right to reported on identified or suspected non-compliance, the perception of ethics and determination on the course of action will be based on auditor's own jurisdiction's ethical requirements. Essentially, we would support an endeavor to implement convergence of ethical standards.