

RESPONDING TO NON-COMPLIANCE WITH LAWS AND REGULATIONS

Professional Accountants in Public Practice

This Questions and Answers (Q&A) publication is issued by the Staff of the International Ethics Standards Board for Accountants® (IESBA®). It is intended to assist national standards setters, IFAC member bodies and professional accountants (PAs) in public practice (including firms) as they adopt and implement the provisions in Section 225¹ of the IESBA *Code of Ethics for Professional Accountants*[™] (the Code) addressing PAs' responsibility to respond to non-compliance with laws and regulations (NOCLAR). The IESBA issued its [NOCLAR pronouncement](#) in July 2016.

This publication is designed to highlight, illustrate or explain aspects of the new NOCLAR-related provisions in the Code, and thereby assist in their proper application. The purpose of these provisions is to promote a response to NOCLAR or suspected NOCLAR in the public interest.

The Q&As in Section II of this publication are directed to auditors. While Section III includes Q&As directed to other PAs in public practice, these PAs might find it helpful to also consider Q&As in Section II where these might be relevant to their particular circumstances.

This publication does not amend or override the Code, the text of which alone is authoritative. Reading the Q&As is not a substitute for reading the Code. The Q&As are not intended to be exhaustive and reference to the Code itself should always be made.² This publication does not constitute an authoritative or official pronouncement of the IESBA.

A related IESBA Staff Q&A publication, *Responding to Non-Compliance with Laws and Regulations – Professional Accountants in Business* covers the NOCLAR provisions in Section 360³ of the Code applicable to professional accountants in business (PAIBs).

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

² References to the Code in this publication are to the Code extant as of the date of this publication. The Code can be accessed at www.ethicsboard.org/iesba-code.

³ Section 360, *Responding to Non-Compliance with Laws and Regulations*

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I. General

Nature of Section 225

- Q1.** Is Section 225 only general guidance or does it impose any obligation on the PA in circumstances where the PA becomes aware of NOCLAR or suspected NOCLAR?
- A.** Section 225 contains a number of requirements with which the PA must comply. These requirements (designated by the word “shall”) vary depending on whether the PA is performing an audit of financial statements or providing another professional service. Where the matter is within the scope of Section 225, an overriding obligation under the Code is for the PA to respond to it.

Applicability in Firms

- Q2.** Does Section 225 apply to individuals providing professional services in firms who are not PAs as defined by the Code, for example, consultants, lawyers, other accountants, etc. who are not themselves members of an IFAC member body?
- A.** Yes. The Code applies to all PAs in public practice, which the Code defines to include firms. Firms are expected to ensure that all individuals within the firm providing professional services to their clients comply with the applicable provisions in the Code, including with respect to NOCLAR, regardless of whether the individuals are PAs.
- Q3.** Does Section 225 apply to individuals in firms who are not PAs and who are not providing professional services to clients, for example, personnel working in IT support, clerical support, and facilities management?
- A.** No. As these individuals are not PAs in public practice as defined by the Code and do not have client responsibilities or direct contact with clients, Section 225 does not apply to them. (These individuals are also not PAIBs as defined by the Code, so Section 360 also does not apply to them.)

Interaction with Laws and Regulations

- Q4.** In jurisdiction X, there are legal provisions governing how PAs should address certain types of NOCLAR, including a requirement to report NOCLAR or suspected NOCLAR to designated public authorities. If a PA has complied with these provisions with respect to NOCLAR or suspected NOCLAR within the scope of Section 225, does this mean that the PA need not comply with the rest of Section 225?
- A.** No. Reporting of NOCLAR or suspected NOCLAR to an appropriate authority is only one aspect of Section 225, and it is subject to any confidentiality laws that may exist in the particular jurisdiction (see paragraph 225.33 of the Code). Section 225 contains other provisions that would apply if not already required by law or regulation, or if law or regulation does not prohibit them. These include, for example, provisions addressing escalation of the matter within the entity; in the case of an audit of group financial statements, communication with relevant PAs involved in the group audit; advice to management or those charged with governance (TCWG) regarding mitigation or remediation of the consequences of NOCLAR or the deterrence of NOCLAR; and determination of the need for further action (including withdrawal from the client relationship) in appropriate circumstances.

In addition, the Preface to the Code states that some jurisdictions may have legal, regulatory or professional requirements and guidance that differ from those contained in this Code. It emphasizes that PAs in those jurisdictions need to be aware of those differences and comply with whichever are the more stringent requirements and guidance, unless prohibited from doing so by law or regulation.

Q5. Jurisdiction X has confidentiality laws that prohibit firms from disclosing NOCLAR or suspected NOCLAR to an appropriate authority. Does this mean that the NOCLAR provisions in the Code have limited applicability or relevance in that jurisdiction?

A. First and foremost, firms must comply with all applicable laws and regulations, including laws prohibiting the disclosure of confidential information. However, the Preface to the Code makes clear that if a firm is prohibited from complying with certain parts of the Code by law or regulation, it must comply with all other parts of the Code. Accordingly, all the other NOCLAR provisions in the Code would still apply to the extent that compliance with them is not prohibited by law or regulation. See also Q4.

Further, in the case of groups with components in other parts of the world, application of the NOCLAR provisions of the Code in the jurisdictions where those components are based might have implications and relevance in jurisdiction X. For example, there might be implications for the parent entity arising from the disclosure of NOCLAR or suspected NOCLAR by the auditor of a component to a public authority in another jurisdiction. See also Q29-34 addressing the topic of communication with respect to groups.

Contractually Negotiated Confidentiality Clause

Q6. How should PAs resolve the interactions between a contractually negotiated confidentiality clause in contracts for professional services and clauses in such contracts that require compliance with applicable laws and regulations and professional standards when providing the services? In particular, would there be legal protection in the event a PA overrides a contractually negotiated confidentiality clause in order to disclose an actual or suspected instance of NOCLAR to an appropriate authority pursuant to Section 225?

A. Where PAs are required to maintain confidentiality under law or regulation, they must comply with the legal or regulatory requirement. A PA may decide to breach a contractually negotiated confidentiality clause in order to make a disclosure pursuant to Section 225 to satisfy the applicable professional standards, including relevant ethical requirements that may apply to the particular engagement.⁴ However, whether there would be legal protection in the event a PA overrides a contractually negotiated confidentiality clause in such circumstances is a matter of law in the particular jurisdiction. The PA should seek appropriate legal advice before doing so.

PAs should in any event discuss their professional obligation to abide by the Code with their clients, including the obligation to respond to NOCLAR or suspected NOCLAR. If there is a contractually negotiated confidentiality clause (as opposed to confidentiality imposed by law or regulation), it would be advisable to include a clause making it clear that such a confidentiality clause would be subject to

⁴ Paragraph A1 of International Standard on Auditing (ISA) 210, *Agreeing the Terms of Audit Engagements*, for example, notes that assurance engagements, which include audit engagements, may only be accepted when the practitioner considers that relevant ethical requirements will be satisfied.

the PA's obligation to comply with the Code. For existing contracts signed before the NOCLAR provisions come into effect, PAs should consider whether amendments are advisable or practicable.

Implementation in Firm Policies and Methodologies

Q7. To what extent is the process of responding to NOCLAR or suspected NOCLAR under Section 225 expected to be explicitly addressed in firm policies and methodologies as opposed to guidance?

A. Approaches to implementation of the Code (and changes to it) vary among firms and no single prescription will suit all firms equally. For clarity and consistency, however, firms may find it useful to articulate in their policies and methodologies the approach to specific elements of the NOCLAR response process such as:

- Compliance with applicable laws and regulations, including laws prohibiting “tipping-off.”
- The escalation process within an engagement team and within the firm, including when to escalate the matter and to which level within the engagement team and within the firm.
- When to consult with legal counsel or other external parties.
- Who within the firm should be involved in discussions with management and TCWG.
- The protocols for communication within a group engagement team, with a network firm and, if not within the firm or a network, with the external auditor of a client.
- Determination of the need for further action, including disclosure to an appropriate authority and withdrawal from the engagement and client relationship.

Regardless of the approach or extent to which the NOCLAR response process is embedded in firm policies and methodologies, firms are required to apply no less stringent requirements than those stated in the Code.

Scope

Laws and Regulations Addressed

Q8. What is the relationship between the laws and regulations addressed by Section 225 of the Code and the laws and regulations addressed by ISAs and other professional standards?

A. Engagements governed by ISAs or other professional standards may establish the types of laws and regulations of which a PA must have knowledge in order to perform the engagement. For example, an engagement to provide assurance on an entity's compliance with environmental reporting obligations can only be performed if the specific environmental regulations are identified. Nothing in Section 225 of the Code increases the range of laws and regulations of which a PA must have knowledge for purposes of performing the engagement. However, if a PA becomes aware of NOCLAR or suspected NOCLAR that is within the scope of laws and regulations addressed by Section 225, the Code requires the PA to respond to it in accordance with Section 225, regardless of whether the matter falls within the scope of laws and regulations addressed by the applicable professional standards.

NOCLAR Committed by Parties Other than the Client or Employees of the Client

Q9. A PA becomes aware of a breach of a law by an entity that is not the PA's client. Does the PA have

any responsibility to respond to the matter under Section 225 of the Code?

- A.** No. As the PA has no professional relationship with the entity, Section 225 does not apply. The PA would be in the same position as an ordinary good citizen in those circumstances.
- Q10.** Does the Code require PAs to respond to acts of NOCLAR committed by contractors or agents working for the client, or by non-executive directors of the client?
- A.** Yes. Paragraph 225.2 of the Code defines NOCLAR to include acts committed by individuals working for or under the direction of a client which are contrary to prevailing laws or regulations. Contractors, agents and non-executive directors are examples of parties who work for or under the direction of a client. In the context of responding to NOCLAR under the Code, it is not necessary that there be a formal employment relationship between the party that has committed the act of NOCLAR and the client, as might be established through an employment contract.

Clearly Inconsequential Matters

- Q11.** Why does paragraph 225.8 scope out clearly inconsequential matters when paragraph 225.5 already indicates that laws and regulations covered are those that directly affect the determination of *material* amounts and disclosures in the financial statements, and those in respect of which compliance may be *fundamental* to the client's business?
- A.** The phrases "*material* amounts and disclosures" and "*fundamental* to the operating aspects of the business" used to describe the laws and regulations within the scope of Section 225 refer to the kind of laws and regulations this Section is concerned about (see paragraph 225.6 for examples). These phrases do not refer to actual instances of NOCLAR or suspected NOCLAR. For example, laws and regulations addressing corporate taxation are within the scope of Section 225. However, if an entity were to narrowly miss a deadline for filing its tax return, this could be a clearly inconsequential matter which the PA need not pursue under the Code.

Responsibility for Identifying NOCLAR

- Q12.** Does the Code require PAs to detect acts of NOCLAR at their clients?
- A.** No. The Code does not require PAs to perform procedures to identify acts of NOCLAR at their clients when providing professional services to the clients. The Code instead requires a response from PAs in accordance with its NOCLAR provisions when they become aware of NOCLAR or suspected NOCLAR at their clients. However, PAs performing audits of financial statements have a responsibility under ISA 250 (Revised)⁵ to (a) obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements; and (b) perform specified audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements.
- Q13.** Paragraph 225.1 indicates that a PA may encounter or be made aware of NOCLAR or suspected NOCLAR in the course of providing a professional service to a client. What is the significance of distinguishing between encountering NOCLAR or suspected NOCLAR and being made aware of it?

⁵ ISA 250 (Revised), *Consideration of Laws and Regulations in an Audit of Financial Statements*, paragraph 11(a) and (b)

A. The Code recognizes that a PA may encounter (i.e., come upon unexpectedly) NOCLAR or suspected NOCLAR while performing an audit engagement or providing a professional service. It also recognizes that another party may bring the matter to the PA's attention, for example, another PA or an employee of the client. Section 225 covers both circumstances.

Q14. Is there any expectation under the Code for a PA to be able to identify non-compliance with laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements, for example, in relation to food safety or vehicle emissions requirements?

A. There is no expectation under the Code for a PA to have a level of knowledge of laws and regulations greater than that which is required to undertake a given engagement. PAs who specialize in a particular field (for example, corporate taxation or greenhouse gas emissions) need an understanding of laws and regulations relevant to that particular field to an extent sufficient to competently undertake engagements relating to subject matter in that field. In those circumstances, PAs are expected to be able to recognize NOCLAR or suspected NOCLAR related to their subject matter expertise if information concerning the matter comes to their attention. For example, if a PA has been engaged to provide an assurance report regarding a food manufacturer's controls relating to compliance with licensing regulations, the PA is expected to be able to recognize non-compliance with those regulations. The PA is not expected to recognize NOCLAR or suspected NOCLAR in areas beyond those in which the PA is trained or for which the PA has been engaged to apply specialized skills. See also Q15 and Q16.

However, acts of NOCLAR might be concealed. The Code does not require PAs to search for NOCLAR.

Q15. Paragraph 225.5(b) states that Section 225 sets out the approach to be taken by a PA who encounters or is made aware of non-compliance or suspected non-compliance with 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. What are some types of NOCLAR that are envisaged in this regard?

A. Some laws and regulations in this category may be fundamental to the operations of all or virtually all entities in a particular jurisdiction even if they do not have a direct effect on the determination of material amounts and disclosures in the entities' financial statements. Examples include laws against fraud, corruption and bribery. By virtue of their professional training and expertise, and their knowledge of and experience with the entity through providing professional services, PAs are expected to recognize and respond to NOCLAR or suspected NOCLAR in relation to those laws and regulations if they became aware of it.

Other laws and regulations in this category might be relevant to only certain types of entity because of the nature of their business. Examples include environmental protection regulations for an entity operating in the mining industry, regulatory capital requirements for a bank, laws and regulations against money laundering and terrorist financing for a financial institution, vehicle emissions regulations for a car manufacturer, and licensing regulations for a pharmaceutical company or a food manufacturer. PAs who provide professional services that require an understanding of those laws and regulations to an extent sufficient to competently perform the engagements are expected to be

able to recognize NOCLAR or suspected NOCLAR in relation to those laws and regulations, and respond to the matter accordingly. See also Q14.

- Q16.** A PA has been engaged to perform an assurance engagement in accordance with International Standard on Assurance Engagement (ISAE) 3000 (Revised)⁶ with respect to subject matter information that is not historical financial information. Is the PA as likely to recognize NOCLAR or suspected NOCLAR that has a direct effect on the entity's financial statements as a PA engaged to perform an audit of the entity's financial statements?
- A.** In most instances, no. The likelihood of the PA recognizing NOCLAR that directly affects the entity's financial statements depends on how close the subject matter of the assurance engagement is to the financial statements. Some subject matters (for example, controls over financial reporting) can be closer to the financial statements than others (for example, sustainability data).
- Q17.** Is a PA expected under the Code to have specialized legal knowledge and skills unrelated to the engagement?
- A.** No. A PA is only expected under the Code to have a level of knowledge of laws and regulations necessary for the professional service for which the PA was engaged.

Effective Date

- Q18.** The NOCLAR provisions in the Code become effective on July 15, 2017. If a PA was already aware of an act or suspected act of NOCLAR prior to that time, is there any obligation under the Code for the PA to address it?
- A.** No. The PA is not required to respond in accordance with Section 225 to any NOCLAR or suspected NOCLAR of which the PA becomes aware until on or after July 15, 2017. However, as early adoption is permitted, the provisions may be applied with respect to any NOCLAR or suspected NOCLAR of which the PA was aware prior to that date.
- Q19.** The NOCLAR provisions in the Code become effective on July 15, 2017. If a client had committed an act of NOCLAR before then and the PA only became aware of it on November 15, 2017, is there any obligation under the Code for the PA to address it?
- A.** Yes. The Code requires a response from the PA to any NOCLAR or suspected NOCLAR of which the PA becomes aware on or after July 15, 2017. Therefore, in this case, the PA is required to respond to the matter in accordance with Section 225.
- Q20.** The NOCLAR provisions in the Code become effective on July 15, 2017. However, the NOCLAR-related changes to ISA 250 (Revised) become effective for audits of financial statements for periods beginning on or after December 15, 2017. Why are the effective dates different and what are the implications of that difference?
- A.** The IAASB determined that the most appropriate effective date for the changes to ISA 250 would be for audits of financial statements for periods beginning on or after December 15, 2017, with early adoption permitted. The IAASB noted that the changes to ISA 250 (Revised) do not alter the auditor's

⁶ ISAE 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*

work effort compared with the extant ISA 250, given that the auditor would still have an obligation to consider the appropriate action to take in accordance with the relevant ethical requirements. Accordingly, the absence of alignment between the two effective dates would, in practice, have no effect. See paragraphs 80-84 of the IAASB Staff-prepared [Basis for Conclusions](#) which further explain the IAASB's rationale for the effective date for ISA 250 (Revised) and how that relates to the effective date of the NOCLAR provisions in the Code.

II. Audits of Financial Statements

Relationship with ISA 250 (Revised)

Q21. Does Section 225 of the Code in any way extend auditors' obligations *under* ISA 250 (Revised) and other ISAs with respect to the performance of the audit?

A. No. Nothing in Section 225 is intended to modify or interpret ISA 250 (Revised) or other ISAs. However, Section 225 does impose requirements on auditors *beyond* the ISAs for purposes of fulfilling their *ethical obligations* under the Code. See response to Q22.

Q22. An auditor has been engaged to perform an audit of an entity's financial statements. If during the audit, the auditor becomes aware of an act of NOCLAR committed by the entity, will complying with ISA 250 (Revised) be sufficient for the auditor to fulfill the auditor's obligations under Section 225 of the Code in these circumstances?

A. No. While the scope of laws and regulations covered by Section 225 is the same as in ISA 250 (Revised), the application of Section 225 differs from the application of ISA 250 (Revised) in the context of the different objectives of the Code and the ISAs. Specifically, under ISA 250 (Revised), auditors are concerned with the consequences of identified or suspected NOCLAR in terms of whether it has a material effect on the financial statements. This concern will apply equally for purposes of the Code given the need for auditors to have regard to the consequences for the entity. However, where Section 225 goes beyond ISA 250 (Revised) is to call for auditors to have regard to the *wider public interest implications* of the matter in terms of potentially substantial harm to stakeholders, whether in financial or non-financial terms. This includes determining the need for further action beyond what is required by ISA 250 (Revised) for purposes of the audit. That broader consideration is consistent with auditors' responsibility to act in the public interest as set out in the Code. Paragraph 225.7 explains this important distinction and provides examples of NOCLAR that illustrate this point.

Further, throughout ISA 250 (Revised), there is emphasis that the auditor may have additional responsibilities under law, regulation or relevant ethical requirements regarding NOCLAR, which may differ from or go beyond the ISAs.⁷

Audits of Financial Statements for other than Statutory Purposes

Q23. Do the different circumstances that give rise to an audit of financial statements (for example, voluntary, contractual or to meet a statutory requirement) affect the responsibilities applicable to audits of financial statements under Section 225 for a PA engaged to perform such an audit?

⁷ See, for example, paragraphs 9, 29 and A8 of ISA 250 (Revised).

- A. No. The provisions in Section 225 that address audits of financial statements apply regardless of the circumstances giving rise to the audit engagement. The overriding focus of Section 225 is on the potential adverse consequences of NOCLAR or suspected NOCLAR not only to the entity but also to its stakeholders (including the general public), not on the nature or number of users of the auditor's report.

Timing of the NOCLAR Information

- Q24.** An auditor becomes aware of an instance of NOCLAR shortly before the auditor was expected to sign the auditor's report on the entity's financial statements. How does the timing of finalization of the auditor's report affect the auditor's responsibilities under Section 225?
- A. The auditor's responsibilities under Section 225 are separate and distinct from the auditor's responsibilities under applicable auditing standards as these relate to the performance of an audit. The timing of finalization of the auditor's report therefore does not affect the auditor's responsibilities under Section 225. The auditor must still respond to the NOCLAR in accordance with the provisions of Section 225. This includes complying with applicable auditing standards, which may stipulate specific audit procedures with respect to finalization of the auditor's report in these circumstances. Applicable auditing standards may, in particular, require the auditor to consider any implications for the financial statements or the auditor's report.

Obtaining an Understanding of the Matter

- Q25.** If an auditor becomes aware of NOCLAR or suspected NOCLAR committed by a client in circumstances other than through performing audit procedures on the engagement (for example, by coming across the matter on the internet or hearing about it from someone at a social event), is the auditor required to discuss the matter with management or TCWG?
- A. Yes. Paragraph 225.12 of the Code requires the auditor to obtain an understanding of the matter (assuming it is not clearly inconsequential), including discussing it with management and, where appropriate, TCWG, regardless of the source of the information or how the PA became aware of it. However, Section 225 reminds the auditor to be aware of and comply with any legal or regulatory requirement regarding "tipping off" (paragraph 225.3).
- Q26.** During the audit of an entity's financial statements, an auditor becomes aware of suspected NOCLAR committed by the entity. Management, however, disagrees with the auditor regarding the evidence concerning the matter. Does this mean that the auditor need not pursue the matter further under the Code?
- A. No. The fact that management disagrees with the auditor regarding the evidence concerning the matter is not sufficient grounds for the auditor to automatically stop pursuing the matter. The auditor needs to be satisfied that management's explanations adequately dispel the auditor's suspicion. If they do not, the auditor may consider other courses of action, which will depend on the complexity of the matter and extent of judgment involved. These courses of action include, for example, consulting with others within the firm, obtaining advice from the auditor's legal counsel, consulting on a confidential basis with a regulator or professional body, or escalating the matter to TCWG.

Addressing the Matter

- Q27.** If management and TCWG are unwilling to address the identified or suspected NOCLAR, does this mean that the PA has no further responsibilities with respect to the matter under the Code?
- A.** No. Part of the response framework under Section 225 involves assessing the appropriateness of the response of management and, where applicable, TCWG to the matter. If management and TCWG do not address the matter, this would be grounds for the auditor to conclude that their response is not appropriate. In these circumstances, paragraph 225.25 requires the auditor to determine if further action is needed in the public interest. Paragraph 225.26 sets out various factors for the auditor to consider in making this determination, including the nature and extent of any such further action.
- Q28.** Does the Code impose any responsibility on the auditor to rectify, remediate or mitigate the adverse consequences of identified or suspected NOCLAR or to deter the commission of NOCLAR?
- A.** No. Rectifying, remediating or mitigating the adverse consequences of identified or suspected NOCLAR or deterring the commission of NOCLAR are the sole responsibility of management, with oversight from TCWG. Paragraph 225.18 of the Code only requires the auditor to advise them to take appropriate and timely actions in that regard, if they have not already done so.

Communication with Respect to Groups

- Q29.** Is the group engagement partner required under the Code to always take action to address any identified or suspected NOCLAR communicated by those performing work at components for purposes of the audit of the group financial statements, including in circumstances where the components are based in another jurisdiction?
- A.** Yes. Section 225 always requires a response from the group engagement partner consistent with the concept of not “turning a blind eye” to NOCLAR or suspected NOCLAR. This response includes, at a minimum, obtaining an understanding of the matter. However, if the matter is clearly confined to, and is being addressed at, a particular component or components and it has no other implications for the group and its stakeholders, the group engagement partner need not take any further action.
- Q30.** Is a PA performing work at a component expected under the Code to always take action to address any identified or suspected NOCLAR communicated by the group engagement partner, including in circumstances where the group engagement partner is based in another jurisdiction?
- A.** Section 225 always requires a response from the PA performing work at the component. This response includes, at a minimum, obtaining an understanding of the matter. However, if the matter clearly has no implications for the component and its stakeholders, the PA need not take any further action to address it.
- Q31.** A PA has been engaged to perform an audit of the financial statements of a component for statutory purposes but has not been engaged to perform work for purposes of the group audit. During the performance of the statutory audit, the PA becomes aware of an instance of NOCLAR at the component. Paragraph 225.21 of the Code requires the PA to communicate the matter to the group

engagement partner in these circumstances, unless prohibited by law or regulation. What is expected of the PA under the Code if the identity of the group engagement partner is not known to the PA?

- A.** The PA might obtain information regarding the identity of the group engagement partner by requesting it from component management or requesting that component management obtain the information from group management. Appropriate inquiries might also be made from publicly available sources of information.
- Q32.** A PA performing work at a component for purposes of the audit of the group financial statements becomes aware of an instance of NOCLAR at the component. Does the Code require the group engagement partner to first be informed of the matter before the PA performing work at the component can disclose the matter to an appropriate authority?
- A.** No. Assuming that the PA determines that disclosure of the matter to an appropriate authority is an appropriate course of further action in the circumstances, the Code does not preclude the PA from making that disclosure first before informing the group engagement partner about the matter. Whether to disclose the matter to an appropriate authority depends on a number of factors, including the urgency of the situation. Accordingly, the PA might determine to disclose the matter to an appropriate authority without delay before taking steps to have the matter communicated to the group engagement partner. In practice, the communication to both parties might happen more or less at the same time.
- Q33.** A group engagement partner has become aware of an instance of NOCLAR at a component during an audit of group financial statements. In considering whether to communicate the matter to those performing work at other components where the matter may be relevant, is the group engagement partner expected to assess the possible impact of the NOCLAR on such components?
- A.** No. Paragraph 225.22 of the Code only requires the group engagement partner to take steps to have the matter communicated to those performing work at components where the matter may be relevant, unless prohibited by law or regulation from doing so. Responsibility for assessing the possible impact of the NOCLAR on the components rests with the PAs performing work at those components.
- Q34.** If a PA performing work at a component for purposes of the audit of the group financial statements identifies an instance of NOCLAR at the component and component management has reported the matter up the group structure, is the PA still expected to communicate the matter to the group engagement partner under the Code?
- A.** Yes. Paragraph 225.21 of the Code requires the PA to communicate the matter to the group engagement partner regardless of whether management at the component has reported it up the group structure, unless the communication to the group engagement partner is prohibited by law or regulation. Communication of the matter by the component management within the group does not guarantee that the matter will be brought to the attention of the group engagement partner.

Disclosure of NOCLAR to an Appropriate Authority

- Q35.** Does the Code require disclosure of NOCLAR or suspected NOCLAR to an appropriate authority if management and TCWG have not appropriately addressed the matter?
- A.** No. The Code does not require disclosure. The Code, however, sets out factors for an auditor to

consider in deciding whether disclosure of the matter to an appropriate authority would be an appropriate course of further action. This decision will depend on an objective assessment of the facts and circumstances at the time, taking into account the factors set out in paragraphs 225.26 and 225.34 of the Code, and applying the reasonable and informed third party test in paragraph 225.28. The reasonable and informed third party test is intended to bring an essential element of objectivity to the auditor's determination of the need for, and nature and extent of, further action.

Where law or regulation already requires reporting of NOCLAR or suspected NOCLAR to an appropriate authority, the auditor must comply with the legal or regulatory requirement.

- Q36.** Is there an expectation under the Code for an auditor to disclose *any* identified or suspected NOCLAR to an appropriate authority if management and TCWG have not appropriately addressed the matter?
- A.** No. The provisions in the Code that address disclosure to an appropriate authority (paragraphs 225.33-35) apply to instances of NOCLAR or suspected NOCLAR where there is credible evidence of actual or potential *substantial harm* to the entity or its stakeholders, including the general public (paragraph 225.26). In other words, such disclosure only becomes a consideration in cases that the auditor determines, based on the particular facts and circumstances at the time and applying appropriate professional judgment, are “serious.”

- Q37.** Can an auditor resign from the audit engagement as a result of identified or suspected NOCLAR without disclosing the matter to an appropriate authority?
- A.** First, as a point of emphasis, paragraph 225.30 explains that withdrawing from the engagement and the professional relationship is not a substitute for taking other actions that may be needed to achieve the auditor's objectives under Section 225.

Where resignation from the audit engagement is not prohibited by law or regulation, it is a course of action that can be taken independently from disclosure of the matter to an appropriate authority under paragraph 225.29 of the Code. In some circumstances, the auditor might determine that both actions are necessary.

- Q38.** Paragraph 225.36 explains that in exceptional circumstances where an auditor has reason to believe an imminent breach of a law or regulation would cause substantial harm to investors, creditors, employees or the general public, the auditor may immediately disclose the matter to an appropriate authority. Does the auditor need to follow the response process set out in Section 225 to the end before deciding to make such disclosure?
- A.** No, the auditor need not go through the whole response process in these circumstances. However, paragraph 225.35 requires the auditor to act in good faith.

Documentation

- Q39.** What is the purpose of the documentation requirement in Section 225?
- A.** Documentation provides a number of general benefits, including facilitating review of engagement team members' work, enhancing the quality of the professional judgments made through documentation of the thought process, and retaining a record of matters of continuing significance to future engagements. Importantly, the requirement to document the matters set out in paragraph

225.37 helps the PA to demonstrate compliance with Section 225, including retaining a record of the professional judgments made and actions taken given the information available to the PA at the time.

Change of Audit Appointment

- Q40.** Where an auditor has withdrawn from the client relationship as a result of identified or suspected NOCLAR, is there an expectation under the Code for the predecessor auditor to identify who the proposed auditor is in order to communicate information about the NOCLAR?
- A.** No, the predecessor auditor is not expected to seek out the proposed auditor in order to provide this information.
- Q41.** Where there is a change of audit appointment as a result of an identified or suspected NOCLAR matter, does the Code require the predecessor auditor to obtain client consent before the predecessor auditor can share information concerning the NOCLAR with a proposed auditor?
- A.** No. In these circumstances, paragraph 225.31 allows the predecessor auditor to share information concerning the NOCLAR with the proposed auditor without the need to obtain client consent. The sharing of such information is subject to the disclosure of confidential client information not being prohibited by law or regulation. This does not eliminate the need for the proposed auditor to obtain the client's permission to initiate discussion with the predecessor auditor, in accordance with paragraph 210.13.
- Q42.** If there is a change of auditor as a result of an audit tender or mandatory firm rotation but the predecessor auditor is aware of an act or suspected act of NOCLAR that has not yet been addressed, does the Code require the predecessor auditor to communicate information concerning the NOCLAR to a proposed auditor?
- A.** In this particular circumstance, no, as the auditor has not withdrawn from the client relationship as a result of a NOCLAR matter. However, under paragraph 210.14 of the Code, the predecessor auditor may decide that it would be appropriate to share information concerning the identified or suspected NOCLAR with the proposed auditor if the client has consented to the communication, provided that disclosure of confidential client information is not prohibited by law or regulation.
- Q43.** Does a predecessor auditor have an ongoing obligation under the Code in relation to NOCLAR or suspected NOCLAR encountered while appointed as auditor but not pursued to the end of the response process under Section 225 of the Code by the time the successor auditor has been appointed?
- A.** No. However, see paragraph 225.31 regarding communication of information concerning the matter from the predecessor auditor to a proposed auditor if the withdrawal from the client relationship is as a result of the matter. Client consent to the communication is not needed in these circumstances. In other circumstances, paragraph 210.14 of the Code allows communication of such information from the predecessor auditor to the proposed auditor if client consent has been obtained.

III. Professional Services Other than Audits of Financial Statements

Different Responsibilities Compared with Auditors

- Q44.** Does a PA who is engaged to provide a professional service other than an audit of an entity's financial statements have the same level of responsibility to address identified or suspected NOCLAR under the Code as a PA who is engaged to perform an audit of the entity's financial statements?
- A.** No. The extent of effort in responding to identified or suspected NOCLAR that is expected of a PA engaged to provide a service other than an audit of financial statements is significantly less than that expected of a PA engaged to perform an audit of financial statements. For example, paragraph 225.39 only requires the former to *seek* to obtain an understanding of the matter, i.e., to make an attempt at gathering such an understanding, recognizing that limitations on access to information may preclude obtaining that understanding. In contrast, paragraph 225.12 requires the latter to *obtain* an understanding of the matter. The different extent of effort recognizes that there is a greater public expectation of auditors compared with non-auditors, and that auditors have greater access to information compared with non-auditors.
- Q45.** If a PA who is engaged to provide a professional service other than an audit of the entity's financial statements becomes aware of a suspected NOCLAR within the entity but is unable to substantiate the suspicion, does this mean that the PA has not complied with the Code?
- A.** No. The Code recognizes that for PAs providing services other than audits of financial statements, there may be limitations on access to information. The PA will have fulfilled the PA's responsibilities under the Code if the PA has made an attempt at obtaining relevant information to substantiate the suspicion.

Audits of Specific Items of a Financial Statement

- Q46.** A PA has been engaged to perform an audit of specific items of a financial statement of an entity. Will the PA need to respond to NOCLAR or suspected NOCLAR identified during the engagement in accordance with the requirements of Section 225 applicable to PAs performing audits of financial statements?
- A.** No. Under the Code, an engagement to audit specific items of a financial statement falls within the subsection "Professional Services Other than Audits of Financial Statements" in Section 225. Accordingly, the provisions in Section 225 that apply with respect to professional services other than audits of financial statements (paragraphs 225.1-11 and 225.39-56) apply.

Component of an Audit Client of a Network Firm

- Q47.** A PA is providing a non-audit service to Component A, which is not an audit client of the firm. Component A is a subsidiary of entity B, which is audited by a network firm. Entity B is itself an intermediate holding company, being wholly owned by Ultimate Holding Company C. The PA becomes aware of an instance of NOCLAR at Component A. If, pursuant to paragraph 225.45 of the Code, the PA decides to communicate information concerning the NOCLAR to the network firm, does the network firm have any responsibility to further communicate the matter to the group engagement partner for Ultimate Holding Company C?

- A. Yes. Paragraph 225.21 of the Code requires the network firm to communicate the matter to the group engagement partner for Ultimate Holding Company C, whether C is an audit client of a network firm or another firm. The communication is precluded if law or regulation prohibits disclosure of confidential client information.

Forensic Engagements

Q48. A PA has been engaged as a forensic accountant to investigate wrongdoing at a client. If the PA becomes aware of NOCLAR or suspected NOCLAR during the engagement, would the PA need to apply the full response process under Section 225 of the Code?

- A. No, it would not be necessary to apply the full response process as it is likely that the PA would already be performing many of the actions required under Section 225, given the purpose of the engagement. However, the Code does not preclude the possibility that disclosure of the matter to an appropriate authority by the PA might be an appropriate course of further action *in the public interest* despite the nature of the engagement, unless there is a legal or regulatory basis to preclude disclosure, such as:
- Where there are confidentiality requirements in law or regulation.
 - Where legal privilege exists that applies to the PA.
 - Where there are restrictions imposed by a regulatory authority or prosecutor in relation to its investigation into the matter.

Where legal privilege applies to the PA in the context of other professional services, disclosure would also be precluded.

Documentation

Q49. Section 225 establishes documentation requirements for PAs performing audits of financial statements. In contrast, for PAs providing professional services other than audits of financial statements, Section 225 encourages documentation. Why does Section 225 make this distinction?

- A. Section 225 recognizes that auditors are generally subject to greater regulatory oversight than other PAs in public practice. Accordingly, documentation is necessary to enable them to demonstrate compliance with Section 225 to the appropriate regulatory authorities. By contrast, PAs in public practice other than auditors are not subject to the same extent of regulatory oversight as auditors. For this reason, the IESBA determined it more appropriate that Section 225 only encourage documentation for these other PAs rather than require it (paragraph 225.56). However, the absence of a documentation requirement for these other PAs does not diminish the need for them to comply with the provisions of Section 225 that are applicable to them.

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