



National Association of State Boards of Accountancy

◆ 150 Fourth Avenue, North ◆ Suite 700 ◆ Nashville, TN 37219-2417 ◆ Tel 615.880-4201 ◆ Fax 615.880.4291 ◆ www.nasba.org ◆

August 19, 2015

International Ethics Standards Board for Accountants
International Federation of Accountants
529 Fifth Avenue, 6th Floor
New York, New York 10017

KenSiong@ethicsboard.org

Attention: Ken Siong, IESBA Technical Director

Re: May 2015 Exposure Draft on Responding to Non-Compliance with Laws and Regulations

Dear Members and Staff of the International Ethics Standards Board for Accountants (IESBA):

The National Association of State Boards of Accountancy (NASBA) appreciates the opportunity to offer comments on the May 2015 Exposure Draft from the International Ethics Standards Board for Accountants on *Responding to Non-Compliance with Laws and Regulations (NOCLAR)*. The National Association of State Boards of Accountancy's (NASBA) mission is to enhance the effectiveness and advance the common interests of the Boards of Accountancy that regulate all certified public accountants and their firms in the United States and its territories. In furtherance of that objective, we offer the following comments on the Exposure Draft. We offer one overall comment related to the exposure draft, as well as a few comments related to specific parts of the exposure draft.

OVERALL COMMENT

NASBA believes that the current exposure draft dated May 2015 on *Responding to Non-Compliance with Laws and Regulations* is a significant improvement over the last exposure draft (August 2012) that IESBA issued on this subject. We are supportive of the four categories of professional accountants (Professional Accountants Performing Audits of Financial Statements, Professional Accountants in Public Practice Providing Professional Services Other than Audits of Financial Statements, Senior Professional Accountants in Business, and Other Professional Accountants in Business) that are discussed in this exposure draft, and we believe that IESBA has thoughtfully addressed the responsibilities of each of these groups. We generally believe that appropriate guidance has been given to professional accountants who become aware of potential non-compliance with laws and regulations and we are generally supportive of the thought process that leads a professional accountant in each group to consider whether it is appropriate to make disclosures to regulatory authorities, and whether those disclosures would not be considered a breach of the duty of confidentiality under Section 140 of the IESBA Code.

We believe that the International Ethics Standards Board for Accountants should address whether it is appropriate for a professional accountant in public practice to accept a bounty, reward, or any other kind of remuneration as a result of reporting non-compliance with laws or regulations in accordance with paragraphs 225.29, 225.45, 360.28 and 360.34 of the exposure draft. In our opinion, it should be unethical and it is intrinsically wrong for a professional accountant to accept a bounty, reward, or other kind of remuneration for reporting a client's non-compliance with laws or regulations to authorities, when the responsibility is an intrinsic aspect of the professional accountant's responsibilities. Currently in the United States¹ the following individuals do not qualify for whistleblower rewards:

- Public accountants working on SEC-required engagements;
- Company officers or directors who learn about violations in connection with internal compliance processes; and
- Company employees who obtain their information in connection with their roles in audit or compliance functions.

Nevertheless, we recognize that prohibiting a bounty or reward would undermine the purpose for which the law was established. This is a key issue that is currently unaddressed in the exposure draft. In our opinion, this needs significant debate, and we would encourage IESBA to support the position that it is unethical for a professional accountant in public practice to accept a bounty, reward or other compensation for violating the rule on confidential client information and reporting a client to a regulatory authority in accordance with either proposed paragraphs 225.29, 225.45, 360.28 or 360.34.

The following comments represent specific comments that we believe would add clarity to the exposure draft.

Professional Accountants in Public Practice

We are supportive of the clarity in paragraph 225.39 that if a professional accountant in public practice becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulation, that the professional accountant shall communicate the matter within the firm, to allow the engagement partner to be informed about it and to determine how it should be addressed. However, we believe the same clarity should be included in the section related to Professional Accountants Performing Audits of Financial Statements (paragraphs 225.10 – 225.32). When an auditor becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulation, it is his or her obligation to escalate the discussion within the accounting firm. As we noted in our prior comment letter on this subject, we believe that as long as the individual accountant does not subordinate his or her judgment to the firm, we believe the standard should recognize that the disclosure obligation rests with the engagement partner and the firm, not the individual professional accountant.

¹ See 17 CFR §240.21F-4 and 15 USCS §78u-6.

Finally, as part of obtaining an understanding of the matter, paragraphs 225.11 and 225.34, the professional accountant in public practice should also determine the identity of the “appropriate authority” to which items might be disclosed under paragraphs 225.27-29 and 225.43 - 46. Disclosure of noncompliance with laws and regulations might be ineffective if disclosure is made to an incorrect authority.

Responsibilities of Other Professional Accountants in Business

We believe that additional clarity is needed between paragraphs 360.33 and 360.34. After following the steps outlined in 360.33 we believe that another professional accountant in business should take steps to follow up and determine if management has acted upon the information obtained from the professional accountant. Hence, we believe that the professional accountant in business, in determining the nature and extent of any further action to be taken, should take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted in the public interest (360.24). Other professional accountants in business should consider the guidance in both 360.24 and 360.26 in determining whether to make disclosure to an appropriate authority. Only then would it be appropriate to consider that a disclosure to a regulatory authority would not be a breach of the duty of confidentiality under Section 140 of the IESBA Code.

Finally, while we believe that there is a greater expectation of action by a senior member in business in response to a NOCLAR, it should be clear that all accountants in business have certain obligations. It might be helpful to state in paragraph 360.13 that the obligations of other professional accountants in business are set forth in paragraphs 360.30 – 360.35.

* * *

Thank you for the opportunity to comment on the May 2015 Exposure Draft on Responding to Non-Compliance with Laws and Regulations.

Sincerely,



Walter C. Davenport, CPA
NASBA Chair



Ken L. Bishop
NASBA President and CEO