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Responding to Non-Compliance with Laws and Regulations

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1. Effective date

This pronouncement is effective July 15, 2017.

2. Definitions

- PAIB – Public Accountant in Business
- PA – Public Accountants
- NOCLAR - Non compliance with Laws and Regulations

3. Key Elements of the Response Framework and Key Intended Outcomes



a. What is NOCLAR under the framework?

Any act of omission or commission, intentional or unintentional, committed by a client or employer, or by those charged with governance (TCWG), by management or by other individuals working for or under the direction of a client or employer which is contrary to the prevailing laws or regulations.



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b. What are the key intended outcomes?

Key intended outcomes in the public interest include:

- Ensuring that PAs respond in a timely way to identified or suspected NOCLAR;
- Rectifying, remediating, or mitigating the adverse consequences of identified or suspected NOCLAR to stakeholders and the general public;
- Deterring the commission of NOCLAR; and
- Stimulating increased reporting of identified or suspected NOCLAR where required by law or regulation, or where determined appropriate under the Code in the public interest.



c. What is the scope of laws and regulations covered?

Laws and regulations that have a nexus to PAs' professional training and expertise, i.e.:

- Laws and regulations that have a direct effect on the determination of material amounts and disclosures in the financial statements; and
- Other laws and regulations, compliance with which may be fundamental to the entity's business and operations, or to avoid material penalties.



d. What is not in the scope?

- Matters that are clearly inconsequential;
- Personal misconduct unrelated to the business activities of the client or employer; and
- Non-compliance other than by the client or employer, or TCWG, management or other individuals working for or under the direction of the client or employer.



e. What is Required of Auditors under the Framework?

i. Raise the identified or suspected NOCLAR with management/TCWG

- To clarify their understanding of the matter, to substantiate/dispel their concerns, and to enable management/TCWG to investigate it;
- To advise management/TCWG to:
 - Address the consequences
 - Deter the NOCLAR; and
- Disclose the matter to an appropriate authority where required by law or regulation or where necessary in the public interest

ii. Fulfill professional responsibilities

- Understand and comply with applicable laws and regulations, including requirements regarding reporting to an appropriate authority and prohibitions against "tipping off";
- Comply with applicable auditing standards; and
- Communicate the matter appropriately in the context of a group.

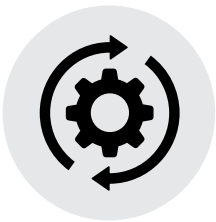
iii. Determine if further action is needed

- Assess appropriateness of the response of management/TCWG;
- In light of that response, determine objectively if further action needed in the public interest;
- The nature and extent of further action needed will depend on various factors, e.g:
 - Credible evidence of substantial harm to the entity or stakeholders;
 - Any law prohibiting disclosure of confidential information to an outside party;

- Courses of further action may include:
 - Disclosing the matter to an appropriate authority even if not required by law;
 - Withdrawing from the engagement and client relationship. If withdrawing, inform proposed successor of the NOCLAR;

iv. Imminent breach

- In exceptional circumstances, may immediately disclose the matter to an appropriate authority:
 - If imminent breach of a law or regulation that would cause substantial harm to stakeholders; and
 - Document, among other matters, courses of action considered, judgments made, and decisions taken.



f. What is Required of Senior-Level PAIBs under the Framework?

i. Overarching expectations

- Set the right tone at the top within the organization; and
- Establish appropriate policies and procedures to prevent NOCLAR, including whistleblowing procedures as a necessary part of good internal governance.

ii. Fulfill professional responsibilities

Take appropriate steps to:

- Raise the identified or suspected NOCLAR with a superior/TCWG;
- Understand and comply with applicable laws and regulations, including requirements to report the matter to an appropriate authority;
- Rectify, remediate, or mitigate consequences;
- Reduce the risk of re-occurrence;
- Seek to deter the NOCLAR; and
- Determine whether disclosure to the external auditor, if any, is needed.

iii. Determine if further action is needed

- Assess appropriateness of the response of superiors, if any, and TCWG;
- In light of that response, determine objectively if further action needed in the public interest;
- The nature and extent of further action needed will depend on various factors, e.g.:
 - Credible evidence of substantial harm to the organization or stakeholders;
 - Any law prohibiting disclosure of confidential information to an outside party;
- Courses of further action may include:
 - Informing management of the parent entity in the case of a member of a group;
 - Disclosing the matter to an appropriate authority even if not required by law;
 - Resigning from the employment relationship;

iv. Imminent breach

- In exceptional circumstances, may immediately disclose the matter to an appropriate authority if imminent breach of a law or regulation that would cause substantial harm to stakeholders; and
- Documentation is encouraged.





g. What is Required of Other PAs in Public Practice and Other PAIBs under the Framework?

i. PAs in public practice other than auditors

- Discuss the identified or suspected NOCLAR with management and, if they have access to them and where appropriate, TCWG;
- If the client is also an audit client of the firm, or a component of an audit client of the firm, communicate the matter within the firm so that the audit engagement partner is informed about it;
- If the client is an audit client of a network firm, or a component of an audit client of a network firm, consider communicating the matter to the network firm so that the audit engagement partner is informed about it;
- For any other client, consider communicating the matter to the firm that is the external auditor, if any;
- Consider whether further action is needed in the public interest;
 - Courses of further action may include:
- Disclosing the matter to an appropriate authority even if not required by law;
- Withdrawing from the engagement and client relationship;
- The nature and extent of further action will depend on various factors:

ii. Imminent breach

- In exceptional circumstances, may immediately disclose the matter to an appropriate authority if imminent breach of a law or regulation that would cause substantial harm to stakeholders;
- PAIBs who are not senior PAIBs:
 - Escalate the identified or suspected NOCLAR to the immediate superior or next higher level of authority; or;
 - Use established internal whistle-blowing mechanism; and
- Documentation is encouraged for both PAs in public practice other than auditors, and PAIBs who are not senior PAIBs



h. What are the Strengths of the Framework?

i. A holistic and balanced model:

- It focuses on the desired outcomes in the public interest;
- It places appropriate and necessary emphasis on the actions of auditors and other PAs vis-à-vis the responsibilities of management and TCWG; and
- It balances in a robust way the need for PAs to act in the public interest against considerations of global operability.

ii. A proportionate approach:

- It recognizes the different capacities and spheres of influence, and the different levels of public expectations, for the different categories of PAs, and scales the responsibilities accordingly

iii. A renewed emphasis on tone at the top

- It emphasizes the importance of senior-level PAIBs promoting a culture of compliance with laws and regulations and prevention of NOCLAR within their organizations.

iv. Expanded auditors' "toolkit"

- It provides a pathway to disclosure of serious identified or suspected NOCLAR to an appropriate authority in the appropriate circumstances, without the ethical duty of confidentiality standing in the way; and
- If an auditor has chosen to resign from the client relationship as a result of taking this course of action in following the framework, the predecessor auditor, on being approached by a proposed successor auditor, is required to communicate information concerning the identified or suspected NOCLAR to the proposed successor without needing to obtain client consent.

v. Complementing laws and regulations

- It fills a gap where laws and regulations do not address PAs' responsibilities regarding responding to NOCLAR; and in jurisdictions that do, it may well complement the legal and regulatory framework by providing necessary guidance to PAs in complying with the legal or regulatory requirements.



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