

July 31, 2007

Mr. James Sylph
 Technical Director, IAASB
 International Federation of Accountants
 545 Fifth Avenue, 14th Floor
 New York, NY 10017

Re: Exposure Draft: *Proposed Redrafted International Standard on Auditing (ISA) 250, The Auditor's Responsibilities Relating to Laws and Regulations in an Audit of Financial Statements.*

Dear Mr. Sylph:

The American Institute of Certified Public Accountants (AICPA) is pleased to comment on the above referenced exposure draft. We commend the International Auditing and Assurance Standards Board (IAASB) on its proposed revisions to International Standard on Auditing (ISA) 250, which would redraft the ISA in accordance with the new clarity conventions.

Responses to Questions for Respondents

Q1. *Are the objectives to be achieved by the auditor, stated in the proposed redrafted ISA, appropriate?*

We believe that the objectives as stated in paragraph 8 are appropriate.

Q2. *Have the criteria identified by the IAASB for determining whether a requirement should be specified been applied appropriately and consistently, such that the resulting requirements promote consistency in performance and the use of professional judgment by auditors?²*

We believe that the criteria for determining whether a requirement should be specified have been applied appropriately and consistently.

The following are recommended changes to the ISA related to substantive issues, and an appendix containing other recommendations.

² The IAASB has identified the following criteria for determining the requirements of a Standard:

- The requirement is necessary to achieve the objective stated in the Standard;
- The requirement is expected to be applicable in virtually all engagements to which the Standard is relevant; and
- The objective stated in the Standard is unlikely to have been met by the requirements of other Standards.

In determining the requirements of a Standard, the IAASB will consider whether the requirements are proportionate to the importance of the subject matter of the Standard in relation to the overall objective of the engagement. The criteria, which are intended only to assist the IAASB in appropriately and consistently determining requirements, may be refined as further experience is gained.

Recommended Changes Related to Substantive Issues

1. We believe that all of the paragraphs in the section of the ED entitled “The Auditor’s Consideration of Compliance with Laws and Regulations,” with the exception of paragraph 11, apply to both category 6a and 6b regulations. Paragraph 11 applies only to category 6a laws and regulations. The procedures included in paragraph 12 (inquiries of management and inspection of correspondence), which the ISA states are intended to help the auditor identify instances of non-compliance with “other” (i.e., category 6b) laws and regulations, ordinarily would be encompassed in the procedures the auditor would perform to obtain sufficient appropriate audit evidence regarding compliance with category 6a laws and regulations. Those inquiry and inspection procedures should not appear to be limited to category 6b laws and regulations.

Accordingly, we recommend that paragraphs 11 through 15 be reordered and revised to clarify that:

- Paragraphs 10, 12, 13, 14, and 15 are applicable to both category 6(a) and 6b laws and regulations
- For category 6a laws and regulations, the auditor must also perform the procedure identified in paragraph 12 (obtain sufficient appropriate audit evidence...)

We believe that presenting current paragraph 12 after those paragraphs that apply to both categories will better indicate the incremental nature of the procedures applicable to the auditor’s objectives and responsibilities for category 6a laws and regulations. Thus, we suggest that current paragraph 12 be reordered as paragraph 14.

The following are our recommended changes to paragraphs 11 through 15.

~~1211. In addition,~~ **11** The auditor shall perform the following audit procedures to help identify instances of non-compliance with ~~other~~ laws and regulations that may have a material effect on the financial statements:

- (a) Inquiring of management and, where appropriate, those charged with governance, as to whether the entity is in compliance with such laws and regulations; and
- (b) Inspecting correspondence with the relevant licensing or regulatory authorities. (Ref: Para A9)

~~1312.~~ **12** During the audit, the auditor shall be alert to the possibility that other audit procedures applied may bring instances of possible non-compliance with laws and regulations to the auditor’s attention. (Ref: Para. A10)

~~1413.~~ **13** The auditor shall request management, and where appropriate, those charged with governance, to provide written representations that all known actual or possible noncompliance with laws and regulations whose effects should be considered when preparing financial statements have been disclosed to the auditor. (Ref: Para. A11)

~~1114. After obtaining the above general understanding,~~ **14** *In addition*, the auditor shall **perform additional audit procedures to** obtain sufficient appropriate audit evidence ~~regarding~~ **about** compliance with those laws and

regulations generally recognized by the auditor to have a direct effect on the determination of material amounts and disclosures in the financial statements.

15. In the absence of identified or suspected non-compliance, the auditor is not required to perform audit procedures regarding the entity's compliance with laws and regulations, other than those set out in paragraphs 10 to 14.

2. We believe that the section of the ED entitled "Responsibility of the Auditor," does not clearly articulate or distinguish the auditor's *responsibilities* in relation to compliance with the two different categories of laws and regulations. Although the objectives indicate the different responsibilities, they are not clearly set forth in the "Responsibility of the Auditor" section. Consistent with our understanding of extant ISA 250, we believe that the redrafted ISA should clarify that the auditor's responsibility to detect misstatements resulting from noncompliance with category 6a laws and regulations is the same as it is for misstatements caused by error or fraud, as described in [proposed] ISA 200 (Revised and Redrafted), *Overall Objectives of the Independent Auditor, and the Conduct of an Audit in Accordance with International Standards on Auditing*; whereas, the auditor's responsibility for category 6b laws and regulations is principally reactive. We recommend that the following changes be made to the ED.

Responsibility of the Auditor

6. Owing to the difficulties referred to above, this ISA **identifies** ~~distinguishes the auditor's responsibilities in relation to compliance with different~~ **the following** two categories of laws and regulations as follows:

- (a) Those laws and regulations generally recognized by the auditor to have a direct effect on the determination of material amounts and disclosures in the financial statements; such laws and regulations include income tax and pensions law and regulations (see paragraphs 11 and A7); and
- (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements, but compliance with which may be fundamental to an entity's ability to continue its business or to avoid material penalties (for example, the terms of an operating license or compliance with regulatory solvency requirements); non-compliance with such laws and regulations may therefore have a material effect on the financial statements (see paragraphs 12 and A8).

~~Specific, but differing requirements are specified for each category of laws and regulations. The following is moved to new paragraph 8. The auditor is also required to remain alert to the possibility that other audit procedures applied for the purpose of forming an opinion on financial statements may bring instances of possible non-compliance to the auditor's attention (see paragraph 13). Maintaining an attitude of professional skepticism throughout the audit, as required by [proposed] ISA 200 (Revised and Redrafted), is important in this context, given the extent of laws and regulations that affect the operations of an entity. (Ref: Para. A3-A5)~~

~~5.—New paragraph 7. **The auditor's responsibility for detecting misstatements resulting from noncompliance with direct effect laws**~~

and regulations is the same as it is for misstatements caused by error or fraud, whereas the auditor's responsibility for other laws and regulations is to perform the specified procedures in paragraph 11 [current ED paragraph 12] to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements:

The following would be moved from paragraph 6 to create new paragraph 8.

8. The auditor is also required to remain alert to the possibility that other audit procedures applied for the purpose of forming an opinion on financial statements may bring instances of possible non-compliance to the auditor's attention (see paragraph 13). Maintaining an attitude of professional skepticism throughout the audit, as required by [proposed] ISA 200 (Revised and Redrafted), is important in this context, given the extent of laws and regulations that affect the operations of an entity. (Ref: Para. A3-A5)

Thank you for the opportunity to comment on this exposure draft. If you have any questions regarding the comments in this letter, please contact Judith Sherinsky at +1-212-596-6031, jsherinsky@aicpa.org or Sharon Walker at +1-212-596-6026, swalker@aicpa.org.

Respectfully submitted,



/s/ Harold Monk, Jr.
Chair, Auditing Standards Board

Other Recommendations

1. We recommend the following revision to paragraph 5 because the phrase “has regard to” is not sufficiently specific.

In conducting an audit of financial statements, the auditor ~~has regard to~~ **is cognizant of** the applicable legal and regulatory framework.

2. We recommend that the word *ordinarily* be restored in the last sentence in paragraph 5 of the ED, as follows:

Generally, the further removed non-compliance is from the events and transactions **ordinarily** reflected in the financial statements, the less likely the auditor is to become aware of it or to recognize the possible non-compliance.

This would restore the language in the seventh sentence of paragraph 5 of extant ISA 250, and would encompass events and transactions that should be reflected in the financial statements but have not yet been. (For example, unrecorded liabilities and undisclosed contingencies are not reflected in the financial statements until the management or the auditor becomes aware of the need to record or disclose them.)

3. In addition to our previous recommendation related to paragraph 6(a), we suggest that the following change be made to that paragraph to prevent readers from concluding that the standard intends to limit their concern to only tax and pension law and regulations.

(a) Those laws and regulations generally recognized by the auditor to have a direct effect on the determination of material amounts and disclosures in the financial statements; such laws and regulations include, **but are not limited to**, income tax and pensions law and regulations (see paragraphs 11 and A7); and

4. We recommend the following editorial changes to paragraph 27.

If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether ~~the auditor there is~~ **has** a responsibility to report the identified or suspected non-compliance to a party outside the entity. Although the auditor’s professional duty to maintain the confidentiality of client information may ordinarily preclude such reporting, the auditor’s legal responsibilities may override the duty of confidentiality in some circumstances. (Ref: Para. A19-A21)

5. We recommend the following editorial changes to the second and fifth bullets of paragraph A2 of the ED.

A2. The following policies and procedures, among others, may assist those charged with governance and management in discharging their responsibilities for the prevention and detection of non-compliance: •

Instituting and operating appropriate internal control **over compliance with laws and regulations.** • Monitoring compliance with the ~~company’s~~ **entity’s** code of conduct and acting appropriately to discipline employees who fail to comply with it.