

13 March 2019

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submitted electronically through the IAASB website

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Re.: Exposure Draft: Proposed International Standard on Related Services 4400 (Revised), Agreed-Upon Procedures Engagements

Dear Willie,

We would like to thank you for the opportunity to provide the IAASB with our comments on the Exposure Draft: “Proposed International Standard on Related Services 4400 (Revised), Agreed-Upon Procedures Engagements”, hereinafter referred to as “the draft”.

We have provided our responses to the questions posed in the Explanatory Memorandum in Appendix 1 to this comment letter. Comments on additional issues that we have identified by paragraph are provided in Appendix 2 to this comment letter.

However, we would like to make the following overall observations about the draft.

We would like to congratulate the IAASB on writing a concise and readable draft that practitioners will be able to apply in practice. The IAASB should seek to determine the “lessons learned” about writing such a concise and understandable draft and apply them to other standards setting projects.

We believe that the standard is – with the exceptions we note in our responses and comments in Appendices 1 and 2 – well-written from a technical point of view.

One area of concern is the change in the term “factual findings” to “findings” without having adequate grounds for that change in either the English language or in the current use of the term “findings” in other IAASB pronouncements.

GESCHÄFTSFÜHRENDER VORSTAND:
Prof. Dr. Klaus-Peter Naumann,
WP StB, Sprecher des Vorstands;
Dr. Klaus-Peter Feld, WP StB;
Dr. Daniela Kelm, RA LL.M.;
Melanie Sack, WP StB

Page 2 of 27 to the comment letter to the IAASB dated 13 March 2019

Another area of concern is the view that professional judgment can be applied in actually performing the procedures, which we believe will degrade the meaning of professional judgment. We have some other concerns that are addressed in in the Appendices attached.

We believe that we have strong technical and public interest arguments for the positions we have taken on the main issues that we have identified in the draft. We hope that the IAASB will consider the issues on the technical merits of the arguments provided, rather than just upon a poll of responses. If you are unsure about the meaning of some of the arguments and suggestions we have provided, we would urge the IAASB to revert to us.

We would be pleased to provide you with further information if you have any additional questions about our response and would be pleased to be able to discuss our views with you.

Yours truly,

Melanie Sack
Executive Director

Wolfgang Böhm
Director Assurance Standards,
International Affairs

Appendix 1 to the Comment Letter:

Responses to Questions Posed in the Explanatory Memorandum

Overall Question

Public Interest Issues Addressed in ED-4400

1. Has ED-4400 been appropriately clarified and modernized to respond to the needs of stakeholders and address public interest issues?

We believe that with a few – but important exceptions – the draft as been appropriately clarified and modernized to respond to the needs of stakeholders and address public interest issues. In line with our response to Question 5, we are not convinced that the change from the term “factual findings” to “findings” is in the public interest. As noted in our response to Question 2, we do not believe that extending professional judgment to the actual performance of the procedures is in the public interest.

We also believe that the current requirement in relation to written representations is not aligned with the concept of agreed-upon procedures engagements (see our comment on paragraph 27 in Appendix 2) and that reference should be made in the report when a practitioner’s expert performs the agreed-upon procedures on behalf of the practitioner (see our comment on paragraph 31 in Appendix 2).

Specific Questions

Findings

5. Do you agree with the term “findings” and the related definitions and application material in paragraphs 13(f) and A10-A11 of ED-4400?

We respond to Question 5 posed in the Explanatory Memorandum prior to responding to Question 2, since our response to Question 5 is an important basis for our response to Question 2.

We do not agree with the use of the term “findings” without “factual”. Although we agree with the content provided in the related definitions and application material in paragraphs 13 (f) and A10 of the draft, we do not agree with the split between the definition and the application material. If, nevertheless, the IAASB were to choose to retain the term “findings” and

Page 4 of 27 to the comment letter to the IAASB dated 13 March 2019

its definition and related guidance without change as proposed in the draft, we note that the standard does not require practitioners to be transparent to the engaging parties, and to the other users of the engagement report, on the meaning of “findings”. In this case we believe the guidance in paragraph A11 becomes essential for certain jurisdictions. We will address each of our views in turn below.

Retaining the concept of findings as factual results

The term “factual findings” in extant ISRS 4400 is used to clarify that only those findings that are factual would result from the agreed-upon procedures performed and would be included in an ISRS 4400 report. The nature of the engagement under extant ISRS 4400 is therefore limited to agreed-upon procedures that result in factual findings. While the IAASB could have sought to change the nature of the engagement to one that encompasses findings that are not factual in addition those that are, in its draft the IAASB chose not to do so. We agree with this choice for the following reasons:

- A significant majority of respondents (including the IDW) to the IAASB Discussion Paper was of the view that performing procedures in an AUP engagement should result in objectively verifiable factual findings and not subjective opinions or conclusions.
- Broadening the engagement to include findings other than factual findings would imply that the nature, timing or extent of the procedures agreed upon have not been specified to the degree necessary to yield factual results. This also means that broadening the engagement to include findings other than factual findings would undermine the need to appropriately specify the agreed-upon nature, timing and extent of procedures as required in paragraph 22 (f) of the draft.
- Although we recognize the need for a type of engagement – particularly for regulatory purposes – that contemplates specifying the nature of the procedures, but provides for greater flexibility with regard to the exercise of professional judgment by the practitioner on their timing and extent, we believe that such an engagement would require a separate standard because new issues arise if the timing or extent of procedures is less specified, which leads to findings that are no longer factual. In Germany, we have designed such engagements using special standards for

Page 5 of 27 to the comment letter to the IAASB dated 13 March 2019

regulatory purposes (for lack of a better term, we call them “agreed-upon assurance procedures”), in which the IDW as standard setter agreed the nature of the procedures with the relevant regulator, but the regulator expects the practitioners to exercise professional judgment in determining the timing and extent of those procedures.

- We also recognize the need for an engagement involving practitioners issuing reports about the application of their professional expertise to matters (such as their “reasonableness”) not amenable to agreed-upon procedures engagements or assurance engagements. We call these engagements “technical positions” or “expert opinions”. We take the view that these kinds of engagements involve issues that cannot be addressed as part of a standard on agreed-upon procedures engagements.

We therefore do not believe it to be appropriate for the IAASB to contemplate broadening the engagement beyond findings that are factual results, even if the IAASB receives some comment letters to that effect.

Use of the term “findings” rather than “factual findings”

However, having made the choice to retain a concept of factual findings (i.e., factual results) for ISRS 4400, we are not convinced that the IAASB is doing practitioners or users a favour by changing the term from “factual findings” to “findings”. Despite the intention not to change the meaning of the concept, the change in term will commonly be viewed as such – particularly by users who will not read ISRS 4400 and its definitions.

More importantly, the change is based on the erroneous view that the term “findings” in the English language is limited to those that are factual. That is not the case. Consultation of a number of leading English-language dictionaries shows that the term “findings” in English is not limited to factual ones.¹ These definitions include terms like “conclusions”, “results”,

¹ For example, the Funk & Wagnall’s Canadian College Dictionary includes the terms “a discovery” or “a conclusion arrived at before an official or a court”; Google states “a conclusion reached as a result of an inquiry, investigation, or trial”; and Merriam-Webster defines the term as “the result of a judicial examination or inquiry” or “the results of an investigation”. The Cambridge dictionary offers the following definitions: “a piece of information that is discovered during an official examination of a problem, situation, or object”; “a judgment made at the end of an official legal inquiry”; “information that has been discovered esp. by detailed study”; “information or a fact that is discovered by studying something; and “a decision in a court of law”.

Page 6 of 27 to the comment letter to the IAASB dated 13 March 2019

“a piece of information”, “a judgment”, “information” and “information or a fact” – all of which clarify that the term “findings” in the English language also relates to matters that are not facts. In addition, it should be noted that legal dictionaries (e.g. Black’s law dictionary) in the English language refer to “findings of fact”, which implies that legally speaking, not all findings need to be factual.

Furthermore, the term “findings” in current IAASB standards outside of extant ISRS 4400 is used to refer to findings other than factual findings.² This means that the proposed use of the term “findings” (without “factual”) in the draft as relating to factual results would no longer be consistent with the use of the term “findings” in other IAASB standards.

We also note that, like in English, in some other languages (such as German), a distinction is made between factual findings and other findings. While in other jurisdictions, such as in France, the French use of the term “findings” for agreed-upon procedures may be limited to factual ones, the same does not apply to French used in Quebec. It is therefore important for the IAASB to determine the number of jurisdictions with languages that limit their word for “findings” to factual ones and those that do not.

For all of these reasons, we believe that the proposed change in the draft from the term “findings” to “factual findings” is inadequately grounded and is therefore misplaced. The fact that the AICPA Attestation Standard for agreed-upon procedures engagements refers to “findings” rather than “factual findings” is due to the nature of the engagement, which has always been broader than that contemplated by ISRS 4400, in that greater flexibility is foreseen in defining the nature, timing and extent of procedures: the US standard does not expressly lead to “factual results”.

Consequently, we believe that the IAASB should retain the term “factual

² For example: ISQC1.A20 first bullet, in which findings are “evaluated for reasonableness”; ISA 240 Appendix 2, in which the “unreasonableness” of findings is determined; ISA 260.16 & .A49 fifth bullet, in which auditors’ views about significant qualitative aspects of the entity’ accounting practices are included as “significant findings”; ISA 315.A9, in which identified control deficiencies or risks are included as findings; ISA 315.A80, in which includes identified deficiencies of internal control as a finding; ISA 500.A48 first bullet, which addresses “evaluating the reasonableness” of findings; ISA 620.12(a) and .A34, which refer to the “reasonableness” of findings; ISA 700.40 (a) and the auditors’ reports, in which significant deficiencies in internal control are included as findings; ISRE 2400.A66, in which the reviewer’s views about significant qualitative aspects of the entity’ accounting practices are included as “significant findings”. All of these relate to findings other than factual ones.

Page 7 of 27 to the comment letter to the IAASB dated 13 March 2019

findings” for ISRS 4400. Hereinafter in our suggestions for wording, we use “findings”, but take the view that this should be replaced with “factual findings”.

Definition and related guidance

While we agree with the content of the definition of “findings” in paragraph 13 (f), we do not believe this definition to be complete. In particular, the application material in paragraph A10 provides a definition of “factual results” that is more than just an explanation: it provides the characteristics distinguishing factual results from other results. In particular, the phrase “different practitioners performing the same procedures are expected to arrive at the same results” is absolutely crucial to an understanding of what factual results are and the importance of appropriately specifying the nature, timing and extent of procedures agreed-upon as required in paragraph 22 (f) so that factual results are obtained. For these reasons, we believe that the application material in paragraph A10 properly needs to be taken up into the definition of “findings” in between the current first and second sentences of paragraph 13 (f).

However, we do believe that a definition is needed to define the meaning of “objectively described” as used in paragraph A10 of the draft (and as we propose be added to the definition in paragraph 13 (f)). The words used in paragraph 20 (b) could be used to that effect by defining “objectively described” as “being described terms that are clear, not misleading, and not subject to varying interpretations”.

The term “findings” is not changed back to “factual findings”

If, despite the weighty arguments that we have provided above, the IAASB nevertheless chooses to follow the proposal in the draft to use the term “findings”, rather than “factual findings”, we believe that it is crucial for parties to the engagement other than the practitioner to be made aware that the term “findings” refers to factual results and not to other results. As noted above, the dictionary and legal definitions of the term “findings” in the English language and its common English usage and usage in other IAASB standards would mean that other parties would not be aware of the fact that, when the term “findings” is used, only “factual results” are meant. It would be unreasonable to expect users to read the ISRS 4400 and its definitions. Consequently, the requirement in paragraph 22 (g) on the expected content of the report when agreeing the terms of engagement ought to include a requirement to clarify that the report will include the

Page 8 of 27 to the comment letter to the IAASB dated 13 March 2019

factual results of the procedures and that these are termed findings. Likewise, paragraph 30 (h) (i) should require the practitioner to clarify that the findings represent the factual results of the procedures performed. The example engagement letter and report would need to be adjusted accordingly. If the IAASB chooses to retain the term “findings” without “factual”, we suggest that paragraphs 22 (g) and 30 (h) (i) be written as follows, respectively:

“Reference to the expected form and content of the agreed-upon procedures report, including that the report will include the findings (factual results) that result from performing the procedures.”

“..., and the reporting of findings (factual results) resulting from the procedures performed.”

Professional Judgment

2. Do the definition, requirement and application material on professional judgment in paragraphs 13(j), 18 and A14-A16 of ED-4400 appropriately reflect the role professional judgment plays in an AUP engagement?

We agree with the proposed use, in paragraph 13 (j) of the draft, of the definition of professional judgment applied in other IAASB engagement standards (the ISAs, ISREs, and ISRS 4410) with reference to agreed-upon procedures engagements, because the meaning of the exercise of professional judgment is the same, regardless of the nature of the engagement.

We also agree with the proposed requirement in paragraph 18 and the proposed application material in paragraphs A14-A16 that professional judgment is used throughout an agreed-upon procedures engagement – but with one important exception. We do not agree that the exercise of professional judgment can take place in the actual performance of the agreed-upon procedures because it would fundamentally change the nature of the engagement so that it no longer leads to factual results, and it devalues the meaning of professional judgment – both of which we explain below.

The nature of professional judgment

The definition of professional judgment sets forth that professional judgment is exercised “in making informed decisions about the courses of action that are appropriate in the circumstances”. Therefore, by definition,

Page 9 of 27 to the comment letter to the IAASB dated 13 March 2019

the exercise of professional judgment is not relevant in circumstances where there are no reasonable alternative courses of action in the circumstances requiring the exercise of such judgment in order to choose an appropriate course of action from among those that are reasonable. In short, if there are no reasonable alternative courses of action from which to choose, no professional judgment is required or even possible. In this context, it is important to distinguish professional judgment from ordinary human judgments and from technical judgments.

Ordinary human judgments must be exercised all the time to function as a human being – like being able to recognize matters using the senses, etc., such as recognizing human faces on sight – and require no relevant professional training, knowledge and experience. Of course, in undertaking certain activities over time, the ability to exercise human judgments can improve (“practice makes perfect”). Technical judgments not involving professional judgments relate to applying technical knowledge to arrive at a conclusion that a layperson without such knowledge cannot do – that is, situations in which there are no reasonable technical alternatives resulting from the application such technical knowledge, such as that used by a trained bookkeeper in distinguishing a sales invoice from a purchasing invoice, or even recognizing that, technically speaking, there are no reasonable alternative technical courses of action in the circumstances. Technical judgments can be subjected to algorithmic resolution using technical knowledge.

Professional judgment surpasses mere technical judgment in that professional judgment requires, among other matters, a high level of expertise that needs to be obtained through more than a few years of advanced education of a high intellectual standard to obtain relevant general and technical knowledge and skills, more than a few years of professional experience in applying such knowledge and skills in practice, and a professional ethos based upon technical, professional and ethical standards, values and practices. These conditions are reflected in the requirements that most jurisdictions set forth to become a member of the accounting profession and as set forth the IAESB’s International Education Standards. Professional judgment needs to be applied when practitioners make decisions about alternative courses of action when

Page 10 of 27 to the comment letter to the IAASB dated 13 March 2019

those decisions involve weighing multiple factors in a non-linear decision-making process that cannot be subjected to algorithmic resolution.³

Claiming that simply exercising ordinary human judgments and technical judgments constitutes the exercise of professional judgment degrades the meaning of professional judgment, diminishes the qualities being sought of practitioners in making choices about alternative courses of action in planning and performing engagements, and eliminates the value of the concept of professional judgment in standards. In fact, if every judgment made by a practitioner is a professional judgment, then there is no need for the concept of “professional judgment” and both the concept and its definition can be deleted from the IAASB’s literature.

We particularly disagree with the assertion in paragraph 8 of the Explanatory Memorandum that “professional judgment is never suspended in an AUP engagement”. This statement erroneously presumes that “professional judgment” is a state of mind or an attitude (like professional scepticism), rather than a mental action that needs to be exercised when practitioners obtain information that leads them to recognize the need to choose among alternative courses of action (see the description of professional judgment in ISA 200.A25-.29). That said, professional judgment is exercised throughout the professional activities that professional accountants undertake – but not in every aspect of those activities.

ISA 230.8 (c), among other ISAs, recognizes that not all judgments are professional judgments: only significant professional judgments in relation to significant matters need to be documented – not all (significant) judgments in relation to significant matters. Eliminating the difference between significant professional judgments and other significant judgments could lead to the need to vastly increase what practitioners need to document under the IAASB engagement standards.

The meaning of “factual results” and the impact on the need for professional judgment

As proposed in the draft, an agreed-upon procedures engagement involves the practitioner performing the agreed-upon procedures and reporting the findings resulting from performing those procedures

³ See the FEE Paper “Selected Issues in Relation to Financial Statements Audits” from October 2007, pp. 78-87 for a treatment of professional judgment that covers these matters.

Page 11 of 27 to the comment letter to the IAASB dated 13 March 2019

(paragraphs 26 and 30 (j)). In agreeing those procedures, the draft (paragraph 22 (f)) requires the practitioner and the engaging party agree the nature, timing and extent of those procedures.

Findings are defined in the draft as factual results of procedures performed, where such findings are capable of being objectively verified and described (paragraph 13 (f)). We refer to our response to Question 5 above on the issues with that definition. In that response, we note that the application material to that definition stating “which means that different practitioners performing the same procedures are expected to arrive at the same results” is crucial to an understanding of what “factual results” mean. This implies that the nature, timing and extent of the procedures that must be agreed-upon under paragraph 22 (f), must be specific enough so that different practitioners performing the same procedures are expected to arrive at the same results. This can only be the case if there are no reasonable alternative courses of action available to the practitioner in performing the nature, timing or extent of procedures that could lead to different results. Hence, if reasonable alternative courses of action in performing the procedures are available to the practitioner that could lead to different results, the nature, timing and extent of the procedures agreed-upon are not specific enough to lead to “factual results”.

The need to choose among reasonable alternative courses of action is the prerequisite for the exercise of professional judgment as defined (see previous section above). Consequently, the nature, timing and extent of procedures agreed-upon need to be specific enough so that professional judgment is not needed to choose among reasonable alternative courses of action.

This argument leads to the conclusion that the performance of the agreed-upon procedures cannot lead to alternative results: that is, there are no alternative factual results possible (i.e., otherwise, the procedures would not have been “agreed-upon” and the results not “facts” .).

Page 12 of 27 to the comment letter to the IAASB dated 13 March 2019

If, however, the nature, timing and extent of the procedures agreed are not specific enough, variations in the nature, timing and extent of the procedures performed by the practitioner can lead to different results: the results would therefore no longer be “facts” resulting from performing agreed-upon procedures.⁴ Consequently, any need to apply professional judgment, as defined, in performing the agreed-upon procedures implies that the agreed nature, timing and extent of those procedures are not specific enough to yield factual results.

For these reasons, we believe that the requirement in paragraph 18 needs to be adapted to recognize that the nature, timing and extent of the agreed-upon procedures must be specific enough so that professional judgment (as opposed to human or technical judgment) need not be exercised in performing the procedures. In this context, the application material should to clarify that the following are factual results:

- determining that a procedure with an agreed-upon nature, timing and extent cannot be performed as agreed and needs to be replaced by another procedure
- that the nature, timing or extent of an agreed-upon procedure needs to be changed or specified further to enable the determination of factual results, rather than findings that are not factual.

In contrast, agreeing a replacement procedure or agreeing to change, or further specifying, the nature, timing or extent of a procedure are matters that clearly require professional judgment. Likewise, considering whether, having performed or in performing a procedure, due to new information obtained, a procedure with an agreed-upon nature, timing and extent that can be performed as agreed remains appropriate based upon the purpose of the engagement, and may need to be changed or replaced, is a matter requiring professional judgment. The same applies to the other sub-bullets of the last bullet point of paragraph A15 of the draft.

The last sentence of paragraph A16 introduces a “sliding scale” of professional judgment that permits the exercise of professional judgment,

⁴ For example, if the extent of a procedure were to only be agreed as to “choose ten items” without specifying which ten, the results may be different for different selections, whereas if there is a clear procedure for choosing the ten (e.g., the ten largest) or choosing those with certain other characteristics, those selected and hence the results would always be the same. The former (choose any ten) does not lead to factual results because the results can vary, but the latter (specifying a clear procedure for selection so that there is no professional judgment exercised in the selection) does.

Page 13 of 27 to the comment letter to the IAASB dated 13 March 2019

as long as the findings resulting from the performance of the agreed-upon procedures can be described objectively, in terms that are clear, not misleading, and not subject to varying interpretation. This means that the same practitioner applying the same nature of a procedure with an undefined time or extent could obtain completely different findings for the same matter depending upon how he or she chooses the time to perform the procedure or chooses to design the extent of the procedure, because the findings can still be described objectively, in terms that are clear, are not misleading, and are not subject to varying interpretation. As we note above, given the prerequisite that different practitioners performing the same agreed-upon procedures are expected to arrive at the same results, different factual results for the same agreed-upon procedure means that in fact the findings do NOT constitute factual results from agreed-upon procedures. We believe that the way paragraphs 18 and the last sentence of paragraph A16 are written, it will lead to practitioners not sufficiently specifying the nature, timing and extent of procedures, which would automatically mean that considerable professional judgment would be required to perform those procedures.

For the reasons we have explained above, we believe that the beginning of paragraph 18 needs to be written as follows:

“With the exception of the requirement in paragraph 26, the practitioner shall apply”.

The phrase at the end of the sentence of paragraph 18 with the dangling construction “...,taking into account the circumstances of the engagement” can be deleted: it was not used in the relevant paragraph in each of ISA 200, ISAE 3000, ISRS 4410 or ISRE 2400 and is therefore superfluous at best and confusing at worst. In addition, the guidance in the last sentence of paragraph A16 would need to be adapted for the change we propose to paragraph 18.

Practitioner’s Objectivity and Independence

- 3. Do you agree with not including a precondition for the practitioner to be independent when performing an AUP engagement (even though the practitioner is required to be objective)? If not, under what circumstances do you believe a precondition for the practitioner to be independent would be appropriate, and for which the IAASB would discuss the relevant independence considerations with the IESBA?**

Page 14 of 27 to the comment letter to the IAASB dated 13 March 2019

As all members of our profession are practitioners, under German law applicable to the profession, the members of our profession must always be independent. However, these independence requirements are not the same as those for audits of financial statements or for other assurance engagements. A comparison of the independence requirements for our members not performing audits or other assurance engagements shows that these are generally covered in Part B of the Code IESBA Code of Ethics (hereinafter the “Code”) applicable to professional accountants in public practice, such as in Subsection 112 on Objectivity, Section 310 on Conflicts of Interest, and Section 330 on Fees and Other Types of Remuneration – not in the requirements in the Code for independence for audits or other assurance engagements. We therefore recognize that in other jurisdictions and under the Code, professional accountants in public practice are not required to be independent as defined in the Code for every kind of professional service provided.

The issue of whether independence ought to be required at an international level ought to be determined by the definition of independence of mind under the Code and the nature of an agreed-upon procedures engagement. In the following analysis, we analyze only the applicability of independence of mind, since independence in appearance under the Code only relates to the appearance of independence of mind: if independence of mind is not applicable, then independence of appearance cannot be applicable. Independence of mind is defined by the Code as “a state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism.” This implies that independence of mind is a means to an end: the end being exercising professional judgment with objectivity, integrity and professional skepticism when expressing conclusions. First, professional skepticism as currently defined is not applicable to an agreed-upon procedures engagement. Second, we note that independence of mind serves the application of the fundamental principles of objectivity and integrity when expressing conclusions. While under the Code objectivity and integrity apply to all professional activities of professional accountants, currently only in assurance engagements as defined by the IAASB (ISAs, ISREs and the ISAEs) do they “express conclusions” (i.e., assurance conclusions or “opinions” under the ISAs, which are a form of assurance conclusion). In an agreed-upon procedures engagement under the draft, practitioners only provide “factual results” –

Page 15 of 27 to the comment letter to the IAASB dated 13 March 2019

they do not “express conclusions”. Consequently, independence of mind as currently defined by the Code cannot apply to agreed-upon procedures engagements as currently defined in the draft.

Extending independence of mind to agreed-upon procedures would involve changing the current definition of independence of mind (which is beyond the remit of the IAASB), but it also would involve changing the nature of an agreed-upon procedures engagement so that it involves some kind of expression of “conclusions” or “findings” beyond factual results, since performing procedures to obtain factual results, as noted in our response to questions 5 and 2 above, does not involve the exercise of professional judgment. For these reasons, we do not believe it to be appropriate to seek to have independence of mind required for agreed-upon procedures engagements. However, this would not preclude the IAASB from exploring and consulting with the IESBA to determine whether the ethical requirements in Part B of the Code relating to, for example, objectivity, conflicts of interest, and fees might be strengthened for agreed-upon procedures engagements.

4. **What are your views on the disclosures about independence in the AUP report in the various scenarios described in the table in paragraph 22 of the Explanatory Memorandum, and the related requirements and application material in ED-4400? Do you believe that the practitioner should be required to make an independence determination when not required to be independent for an AUP engagement? If so, why and what disclosures might be appropriate in the AUP report in this circumstance?**

We agree with the approach set forth in the table in paragraph 22 of the Explanatory Memorandum because it appropriately deals with the different possibilities that might arise in practice worldwide. On this basis, making a determination of independence when not required to be independent may not be practicable for practices that do not otherwise perform engagements in which they are not required to be independent. However, we believe that the wording in paragraph 19 (f) and (g) does not accurately reflect the approach in the table. For example, in contrast to the table, paragraph 19 (g) sets forth that even if the practitioner is required to be independent but is not, the practitioner need only disclose that fact, when the table correctly posits that the practitioner is not able to accept the engagement. We suggest that paragraph 19 (f) and (g) be revised so that all of the permutations in the table are accurately covered.

Engagement Acceptance and Continuance

6. Are the requirements and application material regarding engagement acceptance and continuance, as set out in paragraphs 20-21 and A20-A29 of ED-4400, appropriate?

We agree with the requirement in paragraph 21, but that requirement is more important than that in paragraph 20 and would be done prior to obtaining the acknowledgement in paragraph 20 (a). For these reasons, we believe that the requirement in paragraph 21 ought to be placed prior to that in paragraph 20.

We agree with the requirement in paragraph 20 (a), but not with the wording used in paragraph 20 (b) because the wording is not aligned with the definition and application material of the term “findings” in paragraphs 13 (f) and A10. We suggest that the wording be changed to the following to align with our proposed definition of “findings” (and our proposed application material in paragraph A10) as noted above in our response to Question 5:

“The agreed-upon procedures can be objectively described and lead to findings as defined in paragraph 13 (f).”

We agree with the content of the related application material in paragraphs A20-A29 of the draft to the extent it is adjusted to reflect the wording that we suggest for paragraph 20 (b) and our proposed definition of “objectively described”.

We are not convinced that unless item (e) in paragraph 22 relates to the overall matter upon which the agreed-upon procedures are performed (if this can be described in the circumstances), that it is possible to actually fulfill the requirement in (f) without mentioning for each procedure on what matter the procedure is being performed upon. We therefore suggest that the phrase “and the matter on which each were performed” be inserted at the end of the second sentence. In line with our comment on paragraph 2 in Appendix 2 and to distinguish (e) from (f), we suggest changing “subject matters” to “the overall matters” in (e).

Furthermore, in relation to the last bullet point of paragraph A26, for clarification, it seems to us that the word “only” needs to be inserted in between the words “the” and “intended user”, since, in line with the usage in ISAE 3000 (Revised) the engaging party will always be a – but not necessarily the only – intended user.

Practitioner's Expert

7. Do you agree with the proposed requirements and application material on the use of a practitioner's expert in paragraphs 28 and A35-A36 of ED-4400, and references to the use of the expert in an AUP report in paragraphs 31 and A44 of ED-4400?

We agree with some parts of the requirements in paragraph 28 and with some parts of the related application material in paragraphs A35-A36 in the draft but disagree with other parts. We focus here on those parts with which we disagree.

We believe there is a fundamental difference between using the work of a practitioner's expert as a basis for the practitioner's performance of the agreed-upon procedures (as described in the first sentence of paragraph A35) and having the practitioner's expert perform the agreed-upon procedures on behalf of the practitioner (as described in the second sentence of paragraph A35). The requirement in paragraph 28 (a) applies to both cases, but the requirements in paragraph 28 (b) to (d) actually relate only to cases in which the practitioner's expert performs procedures on behalf of the practitioner and reports the findings, which are then included in the practitioner's report. Since in the former case, no procedures other than providing advice to the practitioner are performed, no other requirements are needed for this case.

Using the phrase "work of the expert" in paragraphs 28 (b) to (d) leaves the impression that the expert can perform work other than agreed-upon procedures, which would be beyond the scope of an agreed-upon procedures engagement. Hence the wording should be changed from "using the work of the expert" to "having the expert perform procedures". In addition, the fact that an expert performs the procedures needs to be agreed with the engaging party: paragraph 28 should clarify that the procedures performed by the expert need to be agreed-upon with the engaging party (i.e. they would form part of the "agreed-upon procedures") and the application material should also note this. Consequently, there is some merit to considering the need to have an expert perform procedures at the engagement acceptance. There may also need to be a requirement and some guidance on how the practitioner instructs the expert as part of engagement planning.

Consequently, the words "work of the expert" in (b), "work performed by the expert" and "work agreed with the expert" in (c), as well as "results of

Page 18 of 27 to the comment letter to the IAASB dated 13 March 2019

the work performed” in (d) of paragraph 28 need to be replaced with “procedures performed by the expert”, “procedures agreed with the expert” and “results of the procedures performed”, respectively. The same applies to the phrase “work performed by practitioner’s expert” in paragraph A36, which needs to be replaced with “procedures performed by a practitioner’s expert”.

In the same vein, to prevent the potential misunderstanding about what experts can do for the practitioner (i.e., “procedures” rather than the ambiguous “work”), the latter half of the second sentence of paragraph A35 should be rephrased as follows:

“...may involve a chemist performing procedures to determine the toxin levels in a sample of grains, an engineer or lawyer inspecting a contract in relation to engineering or legal matters in that contract, or a procurement officer inspecting documents containing details about acquisitions to determine whether those acquisitions meet procurement guidelines”.

AUP Report

8. **Do you agree that the AUP report should not be required to be restricted to parties that have agreed to the procedures to be performed, and how paragraph A43 of ED-4400 addresses circumstances when the practitioner may consider it appropriate to restrict the AUP report?**

We agree with the IAASB’s approach in paragraphs 30 (m) and A43. The IAASB needs to recognize that there are circumstances around the world in which public institutions require the performance of agreed-upon procedures engagements and that these public institutions might be required by law or regulation to provide these reports to other parties or to make these reports publicly available.

Hence, restricting distribution or use of the report to those who have agreed to the procedures to be performed is not a viable option. The only action the practitioner can take is to alert users in the AUP report to the special purpose of the report and the special nature of the procedures and that therefore the report may not be suitable for another purpose as proposed in paragraph 30 (m) of the draft. Such a similar alert is currently required in ISA 800 for audits of special purpose financial statements: it seems to us that this kind of approach is appropriate for agreed-upon procedures engagements in all cases, but it is particularly appropriate when neither distribution nor use can be restricted.

Page 19 of 27 to the comment letter to the IAASB dated 13 March 2019

The discussions at the IAASB about restrictions on distribution or use suggest to us that there appears to be some confusion about the nature of each. A restriction on distribution is a contractual restriction on the parties for whom the report was intended not to distribute the report to other parties without the consent of the practitioner. The reference to a restriction on distribution in the AUP report makes those other parties become aware of when they might have received the report in contravention of contractual terms and reminds the parties that legitimately received the report of their contractual agreement in the engagement letter not to provide the report to other parties without the consent of the practitioner. On the other hand, a restriction on use in an AUP report makes parties, other than those for whom the report was intended, who received the report aware of the fact that they were not the intended users and that they therefore cannot use (that is, legally rely on) the report.

In some common law jurisdictions, it is not possible to restrict distribution, but it is possible to restrict use; in some civil law jurisdictions, it is not possible to restrict use, but it is possible to restrict distribution. In some jurisdictions, restricting both is possible; in others, neither can be restricted. For these reasons, ISA 800 includes application material clarifying that practitioners may restrict distribution or use of the report, or both, as applicable. Hence, in line with ISA 800, the only viable option is that which the IAASB has chosen in this draft, in which paragraph 30 (m) requires the alert in all cases (which would be particularly important when neither distribution nor use can be restricted), but would allow practitioners to restrict distribution or use, or both, as applicable in their particular jurisdiction in accordance with paragraph A43 of the draft.

In the first sentence of paragraph A43, the word “the” prior to “intended users” should be replaced by “other”, since, in line with the usage in ISAE 3000 (Revised), the engaging party is always a – but not necessarily the only – intended user.

9. Do you support the content and structure of the proposed AUP report as set out in paragraphs 30-32 and A37-A44 and Appendix 2 of ED-4400? What do you believe should be added or changed, if anything?

The paragraphs 30-32 and A37-A44 do not require a particular structure for the AUP report (some items, such as the title and addressee, would inconceivably be somewhere other than the front, and the signature on,

Page 20 of 27 to the comment letter to the IAASB dated 13 March 2019

and date of, the report and the location of the practitioner's practice would conceivably be at the end of the report). The proposed order of requirements in paragraph 30 appears to indicate a preferred order by the IAASB, which appears reasonable for most circumstances.

We agree with the content of the requirements in paragraphs 30-32 with the exception of the comments following.

In line with our comments on paragraph 22 (e) and (f) in our response to Question 6 above, the word "subject matters" in paragraphs 30 (c) should be change to "overall matters", and in paragraph 30 (i) the phrase "the matters upon which each were performed," should be inserted in between the words "detailing" and "the nature".

It is completely unclear what "exceptions" in paragraph 30 (j) constitute. We surmise that "exceptions from the required, desired or expected findings, as applicable" is meant. For this reason, the noted phrase should be added to the end of item (j) in paragraph 30.

General Comments

10. In addition to the requests for specific comments above, the IAASB is also seeking comments on the matters set out below:

a) Translations—recognizing that many respondents may intend to translate the final ISRS for adoption in their own environments, the IAASB welcomes comment on potential translation issues respondents note in reviewing the ED-4400.

We refer to our response above to Question 5 and the fact that changing the term "factual findings" to "findings" is, for the reasons given, not appropriate, including that in the German language not all findings need to be factual. The application material in A11 could be helpful in such translation if the IAASB were to change to "findings", but the proposed change to "findings" results in the need to use the term "factual results" in the definition of "findings". We have considered the term "factual results" and have found it to be inordinately difficult to translate, which is another reason to remain with the term "factual findings".

b) Effective Date—Recognizing that ED-4400 is a substantive revision and given the need for national due process and translation, as applicable, the IAASB believes that an appropriate effective date for the standard would be for AUP engagements for which the terms of

Page 21 of 27 to the comment letter to the IAASB dated 13 March 2019

engagement are agreed approximately 18–24 months after the approval of the final ISRS. Earlier application would be permitted and encouraged. The IAASB welcomes comments on whether this would provide a sufficient period to support effective implementation of the ISRS. Respondents are also asked to comment on whether a shorter period between the approval of the final ISRS and the effective date is practicable.

Once ISRS 4400 has been approved, due process for translation alone would be expected to take about six months. Adopting the translation with additions for German legal issues (if any) may take up to another six months. Once the standard is adopted, we expect firms to need up to six months to change their methodologies (or adopt IDW guidance, which may also take up to six months to develop) and another few months to train all of their staff to use the new standard. For these reasons, a 24-month period after approval would be appropriate for an effective date.

Appendix 2 to the Comment Letter:

Comments on Other Issues Identified by Paragraph Number

2. We note the use of the term “financial or non-financial subject matters”. Although the term “subject matter(s)” is described in paragraph A1 of the draft with examples in paragraph A2, we believe that the use of this term throughout the draft will cause confusion in connection with the term “underlying subject matter” as defined in ISAE 3000 (Revised), paragraph 12 (y). “Underlying subject matter” in ISAE 3000 (Revised) refers to the phenomenon that is measured or evaluated by applying criteria. By definition, this does not include information, since “subject matter information” is the result of applying the criteria to the underlying subject matter (i.e., to the phenomenon). In contrast, the term “subject matter” as used in the draft covers both phenomena and information (financial and nonfinancial). We are convinced that using terms that are so close in wording to describe very different concepts will cause considerable confusion. Consequently, we suggest that the term “subject matter(s)” as used throughout the draft simply be replaced by the term “matter(s)”, which is not so close to “underlying subject matter” and would therefore not engender the same confusion.

4. In line with the usage in ISAE 3000 (Revised), the engaging party is always an - but not necessarily the only – intended user. For this reason, in the second sentence after (b), the word “other” needs to be inserted in between “engaging party and“ and “intended users”. This thought also applies to the last bullet point of paragraph A26, in which the word “only” needs to be inserted in between the words “the” and “intended user” at the end of the sentence.

This sentence in paragraph 4 goes on to say that these parties “assess for themselves” the procedures and findings reported by the practitioner. We have a substantive and an IAASB policy issue with the use of the term “assess” in this sentence. From a substantive point of view, by using the term “assess” and making a positive statement that this is what the intended users do, the IAASB is positing that intended users apply the work effort associated with “assess” on the procedures and findings, which is beyond the mandate of the IAASB. In IAASB literature the work effort for “assess” means the same as that for “evaluate”, the work effort for which is

Page 23 of 27 to the comment letter to the IAASB dated 13 March 2019

defined in the IAASB Glossary of Terms and may be substantial. For these reasons, the term used to express the least amount of work effort “consider” (which means to apply one’s mind under the clarity conventions) ought to be used. In addition, any imputing of work effort for users should be worded in form of an expectation.

Our IAASB policy issue relates to the fact that in the IAASB Glossary of Terms the use of the term “assess” is supposed to be limited by convention to matters in relation to risk. For these reasons, the wording of this sentence should be as follows:

“The engaging party and other intended users are expected to consider for themselves the procedures and findings...”.

6. We refer to our comments on paragraph 5 in relation to the use of the word “assess”, which is also used in the second sentence of this paragraph to denote practitioner work effort. We suspect that the use of the word “assess” stems from the IESBA NOCLAR Project; the IESBA Glossary of Terms does not define “assess”, so it is unclear what the term actually means in terms of work effort for the IESBA Code of Ethics. We believe that the IAASB may need to consider how to deal with different terminology between the Code and IAASB standards by consulting with IESBA on this matter generally. Unfortunately, such a consultation did not take place as part of the IAASB project on NOCLAR.

When the engaging party is not the party responsible for the matter being subjected to the agreed-upon procedures, it appears to us not to be appropriate to refer to the engaging party in the second sentence. For these reasons, we suggest changing the wording in the second sentence to read “... the appropriateness of the response of the engaging party or the party responsible for the matter being subjected to agreed-upon procedures, as applicable, determining ...”. The words “the party responsible for the matter being subjected to the agreed-upon procedures” can be replaced with “responsible party” if that term is defined as such and included in the definitions.

12. In (a), the placement of “with the engaging party” suggests that the procedures are performed with the engaging party, when what is meant is that the procedures to be performed are agreed with the engaging party. Hence, the wordings for (a) should be “Agree with the engaging party the procedures to be performed”.

Page 24 of 27 to the comment letter to the IAASB dated 13 March 2019

13. In the definition of “practitioner’s expert” in (i), reference is made to “expertise in a field other than assurance”. There are many accountants in public practice – particularly, very small SMPs – that do not perform assurance engagements, but who may perform compilations and agreed-upon procedures engagements. Furthermore, expertise in assurance engagements is not required to be able to perform an agreed-upon procedures engagement. We gather what (i) actually means is that the expert has expertise that the practitioner performing the agreed-upon procedures engagement is not expected to have – that is, expertise in performing agreed-upon procedure engagements. For this reason, we suggest that “assurance” be replaced by “agreed-upon procedures engagements”.
17. In line with the wording used in the commensurate paragraphs in ISA 200, ISRS 4410, ISRE 2400 and ISAE 3000 (Revised), the wording “fulfill the practitioner’s responsibilities in accordance” should be replaced with “comply”. This also applies to the first line in paragraph A12.
19. Unlike in (a) in the draft, the corresponding requirements for the engagement partner to take responsibility for the overall quality of the engagement in ISA 220, ISAE 3000 (Revised), ISRE 2400, and ISRS 4410 do not make reference to “including, if applicable, work performed by a practitioner’s expert”. Since instances of the use of an expert’s work is very likely to be much less in an agreed-upon procedures engagement compared to these other engagements, placing the noted phrase in (a) badly overemphasizes the use of the work of an expert for agreed-upon procedures engagements in the context of taking responsibility for the overall quality of the engagement. We therefore suggest that the noted phrase be deleted here, and if considered necessary, placed elsewhere.
22. In line with paragraph 37 (a) of ISRE 2400 and 24 (a) of ISRS 4400, we believe that this paragraph ought to include a requirement for the terms of engagement to address the intended use and distribution of the agreed-upon procedures report and any restrictions on use or distribution where applicable.
23. The word “over” should be replaced with “during”.
27. We agree that it may be appropriate for practitioners to consider whether to request written representations, but we are not convinced that the requirement as written and its related guidance in the application material of paragraph A34 are appropriate. First, seeking a written representation is a procedure. If a practitioner believes that a written representation is

Page 25 of 27 to the comment letter to the IAASB dated 13 March 2019

appropriate given the purpose of the engagement, then the practitioner should include that procedure in the procedures that have been agreed-upon with the engaging party. Seeking a written representation is not a procedure in addition to the procedures that have been agreed-upon with the engaging party.

Second, the practitioner can consider seeking a written representation even if such a written representation is not necessary, but desirable from the point of view of the practitioner. Conversely, we ask ourselves under what circumstance such a written representation becomes necessary for an engagement in which the practitioner only performs the procedures agreed upon and reports on the factual results of those procedures: there are no assertions made by any party on which the practitioner provides an opinion or conclusion (i.e., the procedures are direct – not “attestation-like”). In addition, the procedures are based upon access to phenomena or information given by the party responsible for that phenomena or information (which may or may not be the engaging party) and the description of the agreed-upon procedure in question would state this. The practitioner can choose to include a written representation as an agreed-upon procedure that access was given to all relevant phenomena or that all information to be subjected to the procedure was given, but this is never an absolute necessity because another procedure, such as documented verbal inquiries, may suffice. Hence, although written representations as agreed upon procedures may help fulfill the purpose of the engagement, they are never “necessary”.

Third, it does not appear appropriate to us to refer only to the engaging party in the requirement, since the engaging party may not be the party responsible for phenomena or information being subjected to the agreed-upon procedures.

For these reasons, we believe the requirement needs to be worded as follows:

“The practitioner shall consider whether to include as an agreed-upon procedure a request for written representations from the engaging party or the party responsible for the matters being subjected to the agreed-upon procedures, as applicable.”

As noted in our response to paragraph 6, the words “the party responsible for the matter being subjected to the agreed-upon procedures” can be replaced with “responsible party” if that term is defined as such and included in the definitions.

Page 26 of 27 to the comment letter to the IAASB dated 13 March 2019

In relation to the application material in paragraph A34, the first part seems to assume that the engaging party is the same party as the one responsible for the matters being subjected to the agreed-upon procedures. We suggest the same wording could be used as we suggest for paragraph 27 to alleviate this issue.

In relation to the second part of paragraph A34, we ask ourselves why, unless it were an agreed-upon procedure to meet a certain purpose in which representations about fraud or non-compliance with laws and regulations were relevant, practitioners would be seeking written representations about fraud or non-compliance with laws and regulations. It suggests that practitioners might seek such written representations even if they are not relevant to the engagement. Agreed-upon procedures engagements are not “fishing expeditions”. These examples in relation to fraud or non-compliance with laws or regulations may also potentially widen the expectations gap in relation to what users and the public can rightfully expect from the nature of agreed-upon procedures engagements. If such an example is provided, the example should explain why an agreed-upon procedure to seek written representations about fraud or non-compliance with law and regulations are relevant to the engagement.

31. If a practitioner’s expert is needed to perform an agreed-upon procedure due to the expertise needed, then that is important information for intended users that ought to be included in the practitioner’s report. Hence, a sentence ought to be added to the beginning of paragraph 31 so that if such an expert is used to perform procedures, then the description of the procedures performed ought to describe that these were performed by a practitioner’s expert. The sentence could read as follows:

“If a practitioner’s expert performs procedures requiring expertise in a field other than agreed-upon procedures, then the fact that those procedures were performed by a practitioner’s expert shall be included in the description required by paragraph 30 (i).”

33. In line with the words of paragraph A45, the words “from other engagement reports” should be changed to read “from reports on other engagements”, which is clearer.
34. In (b), not only the nature, timing and extent of the procedures performed need to be documented, but also the matters upon which those procedures were performed. For this reason, we believe that the words “and the matters upon which they were performed” need to be inserted in between the word “performed” and “, and”. This would align the wording with our suggestions

Page 27 of 27 to the comment letter to the IAASB dated 13 March 2019

for paragraphs 22 (f) and 30 (i). This comment also applies to the end of the second sentence of paragraph A22 and in the lead-in sentence of paragraph A46, in which these words should be inserted in between “performed” and “may”.

- A9. The term “responsible party” is not defined in this standard, so it is unclear which party that would be. Using the definition from ISAE 3000 (Revised) would not be appropriate, because that definition relates the responsible party to the party responsible for the underlying subject matter, which, as we note in our comments on paragraph 2, would lead to some confusion. Either “responsible party” needs to be replaced with “the party responsible for the matters”, or the term needs to be defined in the definitions section as “the party responsible for the matter(s) being subjected to agreed-upon procedures”. The same comment applies to paragraphs A15 and A38.
- A16. Since the term “assurance evidence” is not used or defined in ISAE 3000, we suggest changing the relevant phrase in the first sentence to read “obtain evidence for reasonable or limited assurance”.
- A18. The guidance here refers to the terms “principle owner’s”, “key management”, “those charged with governance” and “management”. These terms need to be changed to engaging party and, if appropriately defined as noted in our comment to paragraph A9, “responsible party”.
- A43. Since the engaging party is an intended user, the latter part of the first sentence should be changed to read “the engaging party and other intended users”.
- A44. It seems to us that if a practitioner’s expert performed agreed-upon procedures because of the expertise needed, then reference would always need to be made to this fact in the report. Consequently, the guidance is superfluous. See our response to Question 9 in Appendix 1.

Illustration 2

As the report includes both a restriction on distribution AND use, the fourth bullet in the introductory box should use “and” rather than “or”.