

Constituents' Submissions – Specific Comments Table
Exposure Draft ED 03/11: Proposed Amendments to the Definition of Public Interest Entity in APES 110 Code of Ethics for Professional Accountants

Note: General comments relating to Exposure Draft ED 03/11: Proposed Amendments to the Definition of Public Interest Entity in APES 110 Code of Ethics for Professional Accountants are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Specific Matter No. in Consultation Paper	Respondent	Respondents' Comments
1	290.25	APRA	<i>*Confidential Submission*</i>
2	290.25.1 and 290.26.1	AUASB	<p><i>[Technical Staff Note: the following two paragraphs is repeated in General comments table.]</i></p> <p>We believe that the proposed changes to paragraph 290.25 will improve the clarity of the definition and the proposed changes to paragraph 290.26 will ensure that firms actively consider whether a range of additional entities should be treated as <i>public interest entities</i>.</p> <p>In addition, we support the approach taken by the APESB in the proposed new guidance (paragraphs AUST 290.25.1 and AUST 290.26.1), where the APESB distinguishes between entities that are clearly <i>public interest entities</i> by virtue of the extent of public interest in them (that is, listed entities and certain APRA-regulated authorised deposit-taking institutions, general insurance companies and life insurance companies) and other entities that may, or may not be, Public Interest Entities, depending on the particular circumstances of each entity (such as disclosing entities), and therefore need to be considered on a case by case basis to determine whether there is a significant public interest element.</p>
3	290.25.1	BDO	<p>In respect of the specific amendments proposed, we believe that the entities listed in paragraph AUST 290.25.1 should not meet the definition of a Public Interest Entity in all situations and ask that you consider adding size limitations to these criteria. A number of respondents to Consultation Paper 01/11: Proposed Definition of <i>Public Interest Entity</i> for the Code acknowledged that APRA, in its role as a prudential regulator, provides audit independence requirements under APS 510 that parallel some, but not all, of the requirements for Public Interest Entities set out in APES 110. Additionally, within the structure of the Prudential Standards smaller ADIs are regulated under the provisions for Standardised Institutions. APRA conducts detailed onsite inspections of all ADIs as part of its regulatory role. The issues of corporate governance and the internal audit function have been matters given particular emphasis in recent times. In most instances APRA has specifically</p>

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			<p>allowed outsourced internal audit to be performed by the same firm that performs the external audit role. Although they have had the power to mandate specific rules for Auditor Independence, APRA has been quite selective in which requirements they have imposed.</p> <p>Since APRA is the primary regulator for ADIs, BDO believes that these views should carry more weight than the views of ASIC, which, in its response to the Consultation Paper, recommended that all ADIs be treated as Public Interest Entities. Smaller standardised ADIs primarily comprise credit unions and mutual building societies and more recently some mutual banks.</p> <p>Members of mutual institutions join primarily as depositors and/or borrowers, with no direct value being attributed to the membership share.</p> <p>The primary user of the aggregated financial data is APRA which, as stated above, has its own powers to mandate the independence rules required of auditors of mutual institutions.</p> <p>We are unaware of any industry support for the proposals set out in APES 110, paragraph AUST 290.25.1, and we do not believe that all ADIs should be treated as Public Interest Entities unless there is a specific proposal from APRA supporting this assertion.</p> <p>Our primary concern is that the proposed prohibitions on the external auditor from providing additional services to smaller standardised ADIs (particularly outsourced internal audit services) will impose an additional cost burden on those institutions to engage other firms to conduct services which will have significant duplication with work required to be performed by the Audit Firm.</p> <p>We therefore consider that, as a minimum, there should be a size limit to distinguish between those ADIs large enough to have some element of public interest, and the remainder who clearly are not true "Public Interest Entities". We recommend that an appropriate size limit would be to treat only those mutual ADIs that are sufficiently large enough to be eligible to be regulated by APRA as sophisticated ADIs. Standardised ADIs should retain the existing status and be excluded from the Public Interest Entity definition.</p>
4	290.25.1	Deloitte	<p>Paragraph 290.25(b) of the Code ensures that the auditors of non-listed entities that are already required by law or regulation to comply with the same independence provisions as those that apply to listed entities cannot avoid applying the stricter provisions of the Code. In the absence of law or regulation, paragraph 290.26 ensures firms consider facts and circumstances that may lead to the judgment that a particular non-listed entity should be treated as a PIE.</p> <p>Except for listed entities as defined in the Corporations Act 2001 (the Act), we do not consider that the entities included in the</p>

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			<p>proposed paragraph AUST 290.25.1 satisfy the conditions in paragraph 290.25(a) or (b) of the Code.</p> <p>Our detailed comments are set out below.</p> <p>Detailed Comments</p> <p>1. Paragraphs 290.25 and 290.26</p> <p>The proposed amendments are aimed at clarifying the provisions, however as stated previously, we consider that the Code should reflect the wording and structure of the IESBA Code as closely as possible, preferably with no changes, unless changes are shown to be required for legislative or regulatory reasons.</p> <p>2. Paragraph AUST 290.25.1</p> <p><i>First bullet point - listed entities as defined in the Act</i></p> <p>Listed entities as defined in the Act meet the definition of a PIE. However the proposed drafting suggests that in Australia, the only listed entity that would meet the definition of a PIE is one defined as a listed entity under the Act. This may be misleading as there are many audits conducted in Australia of entities listed in other jurisdictions and such audits must also be conducted in accordance with the independence rules applicable to PIEs.</p> <p>We suggest that the APESB add a footnote to paragraph 290.25 (a), consistent with other references to the Act in the Code. The footnote could read "Includes a listed entity as defined in Section 9 of the Corporations Act 2001".</p> <p><i>Remaining three bullet points - ADIs and general and life insurance companies</i></p> <p>APRA has determined that the auditors of certain entities (not all) subject to Prudential Standards APS 510, GPS 510 and LPS 510 (collectively Prudential Standard 510) must comply with some (not all) of the independence requirements that apply to listed entities in Australia. The auditors of entities subject to Prudential Standard 510 are not required to comply with the "same Independence requirements that apply to the audit of Listed Entities" and therefore do not satisfy the conditions of paragraph 290.25 of the Code.</p> <p>Notwithstanding, some authorised deposit-taking institutions (ADIs), general insurance, and life insurance companies (collectively ADI's and insurance companies) subject to Prudential Standard 510 should be treated as a PIE.</p>

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			<p>However the size, number of employees and the number of stakeholders should be taken into account when determining whether an ADI or insurance company should be treated as a PIE. For example, the small Australian branch of a foreign reinsurer would be automatically deemed a PIE under the proposed provisions merely because it is regulated by APRA. It may have a small number of employees and no broad category of public stakeholders, however the auditor of the branch would have to treat the branch as a PIE in Australia, and the foreign reinsurer may not even be considered a PIE in its own jurisdiction.</p> <p>For the reasons set out above, we recommend that ADIs and insurance companies be removed from paragraph AUST 290.25.1 and included in paragraph AUST 290.26.1.</p> <p><i>References to Prudential Standard 510</i></p> <p>The requirements currently contained in APS 510, GPS 510 and LPS 510 have been consolidated into the new <i>Prudential Standard CPS 510 Governance</i> (CPS 510) effective from 1 July 2012. CPS 510 will apply to all APRA-regulated institutions in the banking, general insurance and life insurance industries.</p> <p>Currently, authorised and registered non-operating holding companies (NOHCs) are subject to Prudential Standard 510 however their auditors are not required to comply with the specific independence requirements therein.</p> <p>CPS 510 introduces a new requirement for auditors of NOHCs to meet the specific independence requirements which they were not previously subject to under Prudential Standard 510.</p> <p>It is unclear whether the effect of this change had been considered by the APESB. If the same rationale is applied, then it would seem that a NOHC should also be deemed a PIE after 1 July 2012 because it is subject to the independence requirements of CPS 510. However an NOHC does not conduct its own business and there would appear to be no factors that would lead to the determination that an NOHC should be treated as a PIE. We request that the APESB consider the new CPS 510 and make clear whether the intention is that NOHCs are included or excluded from the proposed amendments.</p>
5	290.25.1	PWC	<p>Detailed Comments</p> <p>i) Paragraph AUST 290.25.1</p> <p>Our views on this proposed paragraph are as follows:</p> <ul style="list-style-type: none"> a) There is a reference to Listed Entities as defined under Section 9 of the Corporations Act 2001. We believe that it is also appropriate that there be a reference to entities that may be listed on other exchanges outside of Australia. While not commonplace, it is not unusual for Australian entities to be listed on an overseas exchange without a listing

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			<p>in Australia. The non inclusion of this reference may confuse auditors where there is a specific reference to Listed Entities as defined under the Corporations Act 2001.</p> <p>b) We do not believe that the independence requirements in prudential standards APS 510, GPS 510 and LPS 510 as issued by the Australian Prudential Regulatory Authority (“APRA”) are the same independence requirements that apply to listed entities. Indeed the opening paragraph in each of the standards notes that “the auditor independence requirements in this Prudential Standard are substantially consistent with those requirements...” The phrase “those requirements” refers to the auditor independence requirements of the Corporations Act generally rather than those specific to listed entities. Clearly the auditor rotation requirements in the prudential standards are in line with those for listed entities but other requirements set out in the Corporations Act 2001 are not reflected in the Prudential Standards. We believe that the entities covered by the above Prudential Standards are likely to be Public Interest Entities but are more appropriately addressed as part of the proposed paragraph AUST 290.26.1.</p>
6	290.25 and 290.26	PP	<p><i>APESB’s proposed changes to IESBA definition of a “Public Interest Entity”</i></p> <p>We consider that paragraph 290.25 already provides a clear definition of entities that <i>must</i> be included as public interest entities, and concur with the intention in paragraph 290.26 as drafted by the IESBA, to <i>encourage</i> further application in certain circumstances by reference to the specific conditions of individual entities and the firms concerned. We consider that further discussion around ‘size and nature’ by the profession will be essential to a consistent application of the provisions as redrafted by APESB. We note, for example, that there are many small disclosing entities which would not even reach the size criteria of a ‘large proprietary company’ as defined in section 45A of the Corporations Act 2001. We consider that entities which do <i>not</i> have economic significance should <i>not</i> be classified as public interest entities. Further, we consider that there may be an adverse impact on the market for audit services, if rotation is extended to each and every entity in these categories.</p>
7	290.25.1	KPMG	<p>1. Paragraph AUST 290.25.1</p> <p>(i) In the first bullet point, the use of the term Listed Entity could cause confusion as it is already a defined term in APES 110 and is not a defined term in the Corporations Act. We recommend the first bullet point be amended to read:</p> <ul style="list-style-type: none"> • Entities that are listed as defined in Section 9 of the Corporations Act 2001.

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			<p>(ii) As a result of the proposed changes set out in the last three bullet points, the noted entities, where unlisted, will be classified as PIEs irrespective of their size or number of employees.</p> <p>In our view, this will have undesirable outcomes by capturing unlisted entities that, in general terms, would not meet the “large number and wide range of stakeholders” criteria of paragraph 290.26.</p> <p>We recommend that these three bullet points be moved to AUST 290.26.1 where such entities can then be considered on the “nature and size” criteria contained therein.</p> <p>As we have previously outlined in prior submissions to the Board, separate guidance should be developed, via further public consultation, as to what minimum thresholds should be applied in defining entities that should be considered for classification as PIEs under the proposed AUST 290.26.1.</p> <p>In our view, such consultation and issuance of relevant guidance would best be done by the Joint Accounting Bodies.</p>
8	290.25.1	EY	<p><u>Detailed Comment</u></p> <p>Paragraph Aust 290.25.1</p> <ul style="list-style-type: none"> • The inclusion of reference to the Corporations Act omits the application of the rules to entities listed outside Australia and foreign entities listed in Australia. We believe this should just refer to – Any Listed Entity. • Whilst we accept that partner rotation is required for entities subject to Australian Prudential Regulatory Authority (APRA) standards, the independence requirements are not precisely the same as for Listed Entities. We therefore disagree that all APRA regulated are included in 290.25.1. In our view the ability to consider factors such as size, nature of business and number of stakeholders is essential. An example might be a wholly owned branch of an offshore parent required to register with APRA to provide reinsurance operations for large corporates. A move of APRA regulated entities to 290.26.1 would allow these judgements to be made.
9	290.26	APRA	*Confidential Submission*

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10	290.26.1	Deloitte	<p>3. Paragraph AUST 290.26.1 We support the addition of paragraph AUST 290.26.1 although, as noted above, we consider ADIs and insurance companies should also be included under this paragraph.</p>
11	290.26 290.26.1	PWC	<p>ii) Paragraph 290.26 Our views on the proposed amendment to the above paragraph are as follows:</p> <ul style="list-style-type: none"> a) We believe that the removal of the reference to “member bodies” is appropriate as the determination as to whether an entity is a Public Interest Entity is a matter for the auditor to make. b) We are comfortable with the change to “shall determine” whether to treat additional entities as Public Interest Entities. However we note that practically auditors may make a determination by category of client. For example a small proprietary company with no issued debt would in the absence of some unusual attribute not to be regarded as a Public Interest Entity. <p>iii) Paragraph AUST 290.26.1 We believe that the amendments proposed in the above paragraph are appropriate. However we believe that it should be expanded to include those entities covered by Prudential Standards APS510, GPS 510 and LPS 510 issued by APRA.</p>
12	290.26.1	EY	<p>Paragraph Aust 290.26.1</p> <ul style="list-style-type: none"> • Paragraph 290.26.1 requires consideration of number of employees; however a small number of employees are a common characteristic of many of the entities specified in 290.26.1. The number of investors we believe is probably a more important consideration to include here.
13	290.26.1	ASIC	<ul style="list-style-type: none"> (a) Disclosing entities should always be regarded as public interest entities; and (b) The entities listed in the proposed AUST 290.26.1 should be presumed to be Public Interest Entities unless there are compelling reasons to the contrary and these reasons are documented by the auditor.
14	Transitional Provision	BDO	<p>Transitional Provisions Paragraph 4 of the proposed Transitional Provisions proposes that the Firm may continue providing such services only if they were contracted for and commenced prior to July 1, 2011, and are completed before January 1, 2013.</p>

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			<p>We consider that the amendments should not be retroactive, and therefore recommend that this be amended to providing such services only if they were contracted for and commenced prior to July 1, 2012.</p>
15		Deloitte	<p>4. Transitional Provisions</p> <p>We support making the proposed amendments to the Code effective from 1 January 2013. However, the revised transitional provisions should only apply to the proposed AU amendments. The existing transitional provisions are already in effect and adopted by firms. Amending transitional provisions which have been in place for nearly a year would be extremely confusing to firms and the market.</p> <p>We recommend that AU paragraphs be inserted in the current transitional provisions. For example: AU 1 Paragraphs AUST 290.25.1 and 290.26.1 of the Code set out types of entities that may be considered Public Interest Entities for the purpose of the application of the independence requirements in Australia. For an entity that did not meet the definition of a Public Interest Entity prior to the introduction of these paragraphs, the additional provisions that are applicable are effective on 1 January 2013.</p> <p>AU 2/AU 3 For an entity that did not meet the definition of a Public Interest Entity prior to the introduction of paragraphs AUST 290.25.1 and 290.26.1, the rotation provisions are effective for the Audits or Reviews of Financial Statements for years beginning on or after 1 January 2013.</p> <p>AU 4 If non-assurance services are being provided to an Audit or Review Client and the services were permissible prior to the introduction of paragraphs AUST 290.25.1 and 290.26.1 but are either prohibited or subject to restrictions under the revised paragraphs, the Firm may continue providing such services only if they were contracted for and commenced prior to 1 July 2012, and completed before 1 January 2013.</p>
16		KPMG	<p>2. Transitional provisions</p> <p>We support the date extension of the paragraphs relating to PIEs and Partner Rotation (i.e. 1 to 3 and 5) but do not consider that paragraphs 4 and 6 need to be amended as such are already in place and implemented, and are unaffected by the proposed PIE changes.</p> <p>If paragraphs 4 and 6 are not amended then, for clarity, the amendments to the dates in the other paragraphs would be better noted as AUST paragraphs to distinguish them from the other (unchanged) transitional provisions of the currently</p>

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			<p>issued APES 110.</p> <p>Also the Effective Date comment in the “Conformity with International Pronouncements” section would then require modification.</p>
17		EY	<p>Transitional Provisions</p> <ul style="list-style-type: none"> We consider that an extension to the transitional provisions should only be available to newly identified PIES under these amendments and this should be more clearly stated. Also in paragraph 3 the examples given in brackets need to be updated in line with other amendments.
18	Operative Date	PP	<p>Operative date</p> <p>The proposed operative date requires a tight timeline for client education and the immediate rotation of key audit partners. We consider that the timeline should not be any shorter than 1 January 2013 as drafted.</p>

Staff Instructions

- Comments of a “general” nature should be dealt with first, followed by paragraph specific comments.
- Respondents’ comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order.
- Use acronyms only for respondents. Update the attached table with details of additional respondents.

RESPONDENTS

1	ACAG	Australian Council of Auditors-General
2	APRA	Australian Prudential Regulation Authority
3	AUASB	Auditing and Assurance Standards Board
4	BDO	BDO
5	Deloitte	Deloitte
6	KPMG	KPMG
7	JAB	Joint Accounting Bodies
8	EY	Ernst and Young
9	PwC	PricewaterhouseCoopers
10	PP	Pitcher Partners
11	GT	Grant Thornton
12	ASIC	Australian Securities and Investments Commission