

22 April 2016

Mr. Ken Siong  
Technical Director  
International Ethics Standards Board for Accountants (IESBA)  
International Federation of Accountants (IFAC)  
529 Fifth Avenue, 6<sup>th</sup> Floor  
New York, New York 10017 USA  
By email: [kensiong@ethicsboard.org](mailto:kensiong@ethicsboard.org)

Dear Mr. Siong,

**RE: IESBA's Exposure Draft *Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1***

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the IESBA's Exposure Draft *Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1* (Structure ED).

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, high-quality professional and ethical pronouncements. These pronouncements apply to the membership of the three major Australian professional accounting bodies (CPA Australia, Chartered Accountants Australia and New Zealand and the Institute of Public Accountants). In Australia, APESB issues APES 110 *Code of Ethics for Professional Accountants* which includes the Australian auditor independence requirements, as well as a range of professional and ethical standards that address non-assurance services.

**Introductory comments**

APESB is supportive of the IESBA's project to revise the structure of the existing Code. We believe that the restructuring will raise the visibility of the Code's requirements, simplify the Code's language and assist professional accountants in understanding and applying the requirements of the Code.

We commend the IESBA on its significant progress to date on this important project and its consideration of stakeholders' feedback from the initial 2015 consultation paper, and its extensive global outreach activities undertaken in the development process of the Structure ED.

In developing APESB's response to the Structure ED, we have taken into consideration Australian stakeholders' feedback from two roundtable events conducted by APESB in Melbourne and Sydney in March 2016. We look forward to the IESBA's work on the second phase of the Structure ED project that will offer us the opportunity to assess the changes to the Code as a whole. Where required, APESB will reconsider our recommendations in this submission once the IESBA's developments are announced in the Structure ED Phase 2.

Subject to APESB's key recommendations noted below, APESB strongly supports the IESBA's proposed revisions in the Structure ED. APESB has also responded to the IESBA's general and specific questions in Appendix A.

### **Recommendations**

APESB's key recommendations for IESBA's consideration are:

- state the whole requirements paragraph in **bold** to enhance the prominence of mandatory requirements (page 3);
- enhance the requirement to apply the Conceptual Framework by creating electronic linkages and cross references to the specific requirements in the Code's fundamental principles and the Conceptual Framework (page 4);
- the IESBA reconsider whether some of its drafting conventions are appropriate by performing a comprehensive review of the Structure ED in respect of instances where the term 'might' is used and to critically assess whether any requirements of the extant Code is diluted (page 5);
- classify the International Independence Standards as a new Part D to place more prominence on the Independence requirements (page 7);
- link the Independence Standards with both the fundamental principles of Integrity and Objectivity and the application of professional scepticism (page 8);
- relocate the *Ethical Conflict Resolution* guidance to be within the Code (e.g. section 120 *The Conceptual Framework*) rather than the Guide to the Code (page 8);
- relocate the glossary to the beginning of the Code potentially after the Guide to the Code (page 9); and
- refer explicitly to the terms 'audit' or 'review' in C1 to avoid any confusion when professional accountants refer to specific sections of the Code in isolation (page 10).

APESB's specific editorial suggestions are included in Appendix A for the IESBA's consideration.

### **Concluding comments**

We trust you find these comments useful in your final deliberations. Should you require any additional information, please contact APESB's Technical Director, Channa Wijesinghe at [channa.wijesinghe@apesb.org.au](mailto:channa.wijesinghe@apesb.org.au).

Yours sincerely



The Hon. Nicola Roxon  
**Chairman**

## Appendix A

### APESB's Comments

APESB's responses to the specific matters raised by the IESBA in the Structure ED are as follows:

#### ***Specific Matters***

##### *Refinements to the Code*

#### **1. Do you agree with the proposals, or do you have any suggestions for further improvement to the material in the ED, particularly with regard to:**

Subject to our specific comments below, APESB is supportive of the Structure ED as the restructured format is easier to read, understand and comprehend. We believe that the restructured format will assist professional accountants to more easily understand and implement the Code when performing professional activities for a client or an employer.

##### **(a) Understandability, including the usefulness of the Guide to the Code**

APESB supports the inclusion of the Guide to the Code (Guide) which provides an overview of the Code's objectives and layout and believes it describes the way professional accountants should use the Code.

##### **(b) The clarity of the relationship between requirements and application material**

APESB is supportive of the IESBA's decision to clearly separate the requirements from application material as it enhances the visibility of the Code's requirements. We believe that this will also assist professional bodies and regulators who are responsible for reviewing professional accountants' compliance with the Code.

We strongly agree with the IESBA's decision to place the application material next to the relevant requirements, which is similar to the approach adopted by APESB in its standards and the approach adopted in the International Financial Reporting Standards (IFRS).

##### **Stating the requirements paragraphs in bold**

In order to further enhance the prominence of mandatory requirements, the IESBA should consider depicting the requirements in bold-type lettering as it explicitly distinguishes the requirements from guidance, rather than merely stating the alpha-numeric references in bold.

We also propose that the IESBA removes the 'R' from the requirements to be consistent with the approach adopted in standards issued by the International Auditing and Assurance Standards Board, International Accounting Standards Board and the APESB.

We are of the view that by making the paragraph bold and removing the 'R', professional accountants will be more likely to be familiar with this drafting approach to depict a mandatory requirement.

Accordingly, APESB recommends that the IESBA considers:

- removing the 'R' from the requirements; and
- stating the requirements in bold-type lettering.

**(c) The clarity of the principles basis of the Code supported by specific requirements**

APESB understands that the IESBA has clarified the importance of the Conceptual Framework approach by including several reminders (i.e. a header, new introductory paragraph as well as a requirement for professional accountants to apply the Conceptual Framework at the start of each section). We support this cohesive approach to addressing the Code's fundamental principles (section 110) and the Conceptual Framework (section 120).

Enhancing the requirement to apply the Conceptual Framework

However, we query whether the inclusion of a generic header at the top of every page of the Code is necessary and whether the other reminders included (i.e. new introductory paragraph and the explicit requirement to apply the Conceptual Framework in each section) is sufficient.

Instead of reiterating a generic header throughout the Code, the IESBA could consider enhancing the requirements to apply the Conceptual Framework by creating electronic linkages and cross references to specific requirements in sections 110 and 120.

**(d) The clarity of the responsibility of individual accountants and firms for compliance with requirements of the Code in particular circumstances**

APESB agrees that the restructured Code has appropriately identified whether a professional accountant or a Firm is responsible for complying with the Code's requirements in specific circumstances. Thus, there is an increased clarity in respect of a professional accountant's or a Firm's responsibility.

**(e) The clarity of language**

APESB agrees that where possible, the IESBA has simplified the Code's language and improved its clarity and readability by using simpler sentences and avoided complex grammatical structures. However, we raise the following drafting matters for the IESBA's consideration:

### Ensuring the IESBA's drafting conventions are appropriate

APESB notes that drafting guideline no.19<sup>1</sup> provides guidance on when 'may' or 'might' is used (i.e. 'might' is used when there is a possibility that something may or may not occur, whereas 'may' is used for when a matter is permitted). However, we have identified several instances where the use of the term 'might' is inappropriate in a practical sense.

For instance the use of 'might' has inadvertently weakened the original provisions of paragraphs 310.3 and 310.4 of the proposed Code where examples provided are indicative of there invariably being a conflict, such as:

- providing advice to two clients at the same time where the clients are competing to acquire the same company and the advice might be relevant to the parties' competitive positions.
- providing services to a seller and buyer in relation to the same transaction.
- representing two clients in the same matter who are in a legal dispute with each other.

The use of 'might' in paragraph 114.1 A2 is inappropriate if a professional accountant is required to disclose confidential information by law. Similarly the use of 'might' is also inappropriate in paragraph 521.1 where it is more probable than not that a family or personal relationship between an audit team member and the audit client (in a position to exert significant influence over the client's accounting records or the financial statements on which the audit firm will express an opinion) will create self-interest, familiarity or intimidation threats.

APESB is of the view that the use of 'may' in the extant Code is stronger than the use of 'might' in these circumstances. Thus we propose that the IESBA retains the word 'may' in these paragraphs (based on the extant Code).

We believe that the IESBA needs to perform a comprehensive review of the Structure ED of where the term 'might' is used and critically assess whether any other requirements of the extant Code has inadvertently been diluted.

### Ensuring IESBA's drafting conventions are applied consistently

Drafting guideline no.33<sup>1</sup> provides guidance on abbreviating the term 'professional accountant'. When 'professional accountant' has been used once in a paragraph any following references should be abbreviated to the term 'accountant'. However, APESB has identified several inconsistencies with the use of this abbreviation as follows:

- The second paragraph in no.11 of the Guide immediately refers to an abbreviated term 'accountant', however the term 'professional accountant' has not yet been used in that paragraph. Thus, we propose the addition of the word 'professional' before the word 'accountant' at the start of the sentence as it is a new paragraph.
- The term 'professional accountant' is not abbreviated in the definitions of 'professional accountant in business' and 'reasonable and informed third party'. However, it is abbreviated in the definition of 'review engagement' (in accordance with the new drafting guideline no. 33<sup>1</sup>).

---

<sup>1</sup> Structure of the Code Phase 2 – Revised Drafting Guidelines presented at the IESBA Meeting (March 2016)

Therefore APESB proposes that the abbreviation should be applied consistently across all definitions including 'professional accountant in business' and 'reasonable and informed third party'.

The word 'professional' has been added to the term 'existing accountant' in some paragraphs of the Code (e.g. R320.6 and 320.6 A1), but not in other paragraphs (e.g. paragraph R320.5). APESB believe that the word 'professional' should not be added to 'existing accountant' which is a defined term. Thus, we propose that the word 'professional' be deleted from the defined term 'existing accountant' in paragraphs R320.6 and 320.6 A1.

If the IESBA accepts this proposal, then the APESB proposes that the word 'professional' be inserted before the word 'accountant' in paragraphs R320.6 and 320.6 A1, as set out below.

**R320.6** *When an existing ~~professional~~ accountant is asked to respond to a communication from a proposed professional accountant, the existing accountant shall: ....*

**320.6 A1** *An existing ~~professional~~ accountant is bound by confidentiality. Whether this existing accountant is permitted or required to discuss the affairs of a client with a proposed professional accountant will depend on the nature of the engagement and: (a) Whether the existing accountant has permission from the client for the discussion; or (b) The legal and ethical requirements relating to such communications and disclosure, which might vary by jurisdiction.*

APESB is of the view that where a paragraph refers to multiple professional accountants (e.g. existing accountant and a proposed professional accountant in paragraphs R321.5 and 320.6 A1), it may be inappropriate to abbreviate these terms to 'accountant' as it may not be clear to a reader which accountant is being referred to. Accordingly in these instances, it may be appropriate to use the actual terms 'existing accountant' and 'professional accountant' which the IESBA has already applied to the proposed revisions in paragraphs 320.4 A3, 320.4 A4, 320.4 A5 and R320.5.

#### Removing redundant description of terms that are defined in the Glossary

Drafting guideline no.22<sup>1</sup> provides guidance on whether a wording is a definition or a description of what the term might include, and drafting guideline no.23<sup>1</sup> provides guidance that repeating terms that are already included in a definition should be avoided.

APESB has identified that the term 'Acceptable Level' is defined in the Glossary and described in the text of paragraph 120.6 A1, and that both the definition and description of the term are identical. We acknowledge that IESBA has intentionally duplicated the term in paragraph 120.6 A1 upon the request of its Consultative Advisory Group. Additionally, we note that the term 'Contingent fee' is also defined in the Glossary as well as described in the text of paragraph 410.9 A1.

However any redundant description of a defined term should be removed from the body of the Code, to avoid unnecessary repetition of a definition and to ensure that the drafting guideline no.23<sup>1</sup> is applied consistently throughout the Code.

Therefore, we propose to delete:

- paragraph 120.6 A1 and the additional description to the definition of 'Acceptable Level'; and
- paragraph 410.9 A1.

APESB believes that the definition of 'Independence' should be revised to remove any duplicated elements of the 'reasonable and informed third party' concept (i.e. weighing all the specific facts and circumstances – as this is part of the definition of reasonable third party). This will ensure a consistent application of drafting guideline no.23<sup>1</sup> which the IESBA has already applied to the proposed paragraphs 115 A1, R310.14, 340.3 A1, R401.3 and R404.2 and the definition of 'Acceptable level' (Safeguards Exposure Draft).

Accordingly, we propose that the phrase 'weighing all the specific facts and circumstances' be deleted in both paragraph 400.2 and the definition of 'Independence'.

**(f) The navigability of the Code, including:**

**(i) Numbering and layout of the sections**

***Numbering***

Adopting a simpler sequential numerical numbering system

APESB is of the view that the alpha-numerical referencing proposed by the IESBA is complex and cumbersome. The long numbering system may cause difficulties when professional accountants need to cross-reference their policies and procedures with the requirements of the Code.

In conjunction with our recommendation in specific matters 1(b), the IESBA could consider adopting a shorter and simpler sequential numerical system for both requirements and application material based on the existing approach applied in the extant Code, IAASB, IFRS and APESB standards.

***Layout of the sections***

APESB supports reversing the order of extant Part B *PA in Public Practice* and extant Part C *PA in Business* as this will allow section 200 (relating to professional accountants in business) to be presented first and followed by sections 300 to 900 (relating to professional accountants in public practice). Consequently, the auditor independence provisions (sections 400 to 900) can be presented at the end of the Code. Thus, we agree that the extant Part C is better positioned after Part A as it will then encourage and facilitate its use by professional accountants in business.

APESB respectfully raises the following recommendation for IESBA's consideration:

Classifying the International Independence Standards as a new Part D

The auditor independence provisions (proposed Parts C1 and C2 are approximately 92 out of 160 pages of the extant Code) is a major component of the Code. However, these provisions impact a minority of professional accountants in public practice as

compared to other provisions in Part C that impact all professional accountants in public practice.

Thus, APESB proposes that the IESBA clearly distinguish section 300 (Part C) from the International Independence Standards by classifying these Independence standards as Part D comprising sections 400-900:

Part D – *International Independence Standards*

- D1 – *Independence – Audit and Review Engagements*
- D2 – *Independence – Other Assurance Engagements*

It would be logical to have a separate part for the auditor Independence standards due to the following:

- it comprises a significant number of sections (i.e. 400 to 900) as compared to Parts A and B that only comprise sections 100 and 200;
- it only impacts professional accountants in public practice who are auditors; and
- it will place more prominence on the auditor Independence requirements.

Linking Independence with fundamental principles and professional scepticism

Independence is a fundamental component in complying with the Code's fundamental principles of Integrity and Objectivity, as these are the key principles to consider and must be applied with a significant level of professional scepticism when providing an assurance service. APESB is concerned that moving the Independence standards to the end of the Code may be viewed as detaching Independence from the fundamental principles. Thus, we are of the view that the importance of Independence may be better highlighted by drawing more attention to the linkage between Independence and the Code's fundamental principles (i.e. Integrity and Objectivity) such as:

- creating electronic linkages or cross references to both subsections 111 *Integrity* and 112 *Objectivity*;
- including guidance on Independence within subsection 111 in a similar manner to paragraph 112.3 A1; and
- including fundamental principle of Integrity in no.3 of the Guide and paragraph 400.1.

Ensuring the *Ethical Conflict Resolution* guidance is appropriately located within the Code

APESB notes that substantial parts in subsection *Ethical Conflict Resolution* (paragraphs 100.19 to 100.24 of the extant Code) have been removed. These paragraphs have been summarised significantly and included in the Guide as paragraphs 11 and 12 under the subsection *Exceptional Circumstances*.

We believe that this relocation is inappropriate as the purpose of the Guide is to assist professional accountants to navigate the Code. It should not contain the Code's requirements and application material and thus will not have equal authority as a mandatory requirement that is included in Part A of the Code. APESB is of the view that the extant section *Ethical Conflict Resolution* is better placed within the body of the Code (e.g. Section 120).

Additionally, we are of the view that the removal of the factors to consider in the conflict resolution process is inappropriate, as these factors assist professional accountants to identify, evaluate and respond to threats to compliance with the fundamental principles.

Furthermore, in Australia, APESB has provided further guidance to professional accountants in business in dealing with the ethical issues they may encounter in the workplace<sup>2</sup> by issuing [Guidance Note 40 Ethical Conflicts in the Workplace – Considerations for Members in Business](#).

Accordingly, we suggest that the IESBA considers reinstating the key factors to consider in the *Ethical Conflict Resolution* process in section 120 as they assist professional accountants to:

- apply the Conceptual Framework to identify, evaluate and address ethical issues; and
- respond to Non-Compliance with Laws and Regulations (NOCLAR) or suspected NOCLAR.

#### Relocating the Glossary to be after the Guide

APESB recommends that the Glossary is relocated to be positioned after the Guide as most standard setters and legislators provide the definitions at the beginning of a document rather than at the end.

#### **Other editorials**

APESB notes the following editorials for the IESBA's considerations:

- Paragraph 400.4 includes a cross-reference to section 300.2 A10 that appears to be incorrect. The reference should be to section 300.2 A9.
- The term 'professional' is used multiple times in the Code when referring to roles on audit teams. In order to improve the clarity of the Code, APESB recommends that the IESBA considers explicitly stating 'audit team member' rather than 'professional' in the following paragraphs: 521.3 A1, 521.3 A2, 521.4 A1, 521.5 A1, 521.5 A2 and 522.3 A2.
- Paragraph 300.3 A2 appears to duplicate the last sentence in paragraph R300.3. Accordingly, APESB believes that paragraph 300.3 A2 should be deleted.

#### **(ii) Suggestions for future electronic enhancements**

APESB notes that the current search function in the Code (PDF version) is useful. We are supportive of the IESBA developing the proposed filtering options, further enhancements to the navigability of the current electronic Code and to electronically link the defined terms in the body of the Glossary to the Code.

#### **(iii) Suggestions for future tools**

APESB is supportive of the IESBA developing the proposed future tools such as the matrix summarising various financial relationships for different individual categories (audit team member, immediate family member) or entity (firm or

---

<sup>2</sup> Accounting Professional & Ethical Standards Board. APES GN 40 *Ethical Conflicts in the Workplace-Considerations for Members in Business*: October 2015. Section 4 Conceptual framework approach: Page 5.

network firm); and a summary reference to documentation of requirements and application material.

**(g) The enforceability of the Code?**

As outlined in Specific Matters 1(b), APESB is of the view that the enforceability of the Code will be improved by the proposed restructure.

**2. Do you believe the restructuring will enhance the adoption of the Code?**

APESB believes that the re-organised layout supports the Code's accessibility and readability. The reorganisation enables professional accountants in business (which constitutes the majority of professional accountants) to easily access the sections that relate to them. Subject to our recommendations in this submission, we believe that the restructured Code will facilitate the usability and adoption of the proposed Code.

**3. Do you believe that the restructuring has changed the meaning of the Code with respect to any particular provisions? If so, please explain why and suggest alternative wording.**

In addition to our specific recommendations in this submission, APESB believes the IESBA needs to perform a comprehensive review of the Structure ED to consider the circumstances where the term 'might' is used and ensure that there is no unintentional weakening of the Code due to the use of this term.

*Other Matters*

**4. Do you have any comments on the clarity and appropriateness of the term "audit" continuing to include "review" for the purposes of the independence standards?**

Referring explicitly to the terms 'audit' or 'review' in C1

APESB expresses some concern on the continued use of the collective term 'audit' to include 'review' in C1. In Australia and in most other jurisdictions different standards are issued for audit engagements (Australian Auditing Standards) compared to review engagements (Australian Standards on Review Engagements) which create a clear distinction between these two different types of engagements. Additionally, the defined terms 'review client', 'review engagement' and 'review team' are distinguished from 'audit client', 'audit engagement' and 'audit team' in the glossary. Thus, we believe that the Code's Independence requirements should similarly address this distinction.

It is possible for recurring review engagements to exist which do not involve or relate to a recurring audit. In these circumstances, inexperienced users may misinterpret the Code if it does not directly address review engagements.

We note that the New Zealand Auditing and Assurance Standards Board (NZAuASB) has amended their Code to specifically state "audit or review" in their Professional and Ethical Standard 1 *Code of Ethics for Assurance Practitioners* (PES 1).

Furthermore, APESB notes that the IESBA has differentiated audit engagements from review engagements in the NOCLAR Exposure Draft. We understand that this is due to the provision of review engagements and the perceived level of public reliance on the review engagements which vary significantly around the world.

APESB is of the view that the Code is clearer when terms are used in a consistent manner across all sections of the Code. Therefore, we propose that the IESBA considers referring explicitly to audit or review in C1 in the proposed Code.

However, if IESBA determines to continue with the current approach in the Structure ED, we propose the following:

- Review the Structure ED for the use of the term ‘audit’ and determine whether the use of “audit engagement” is more appropriate. We believe that the colloquial use of the term “audit” should be avoided, and it should be used in context.
- We note that the terms ‘audit engagement’, ‘audit team’, ‘audit client’ and ‘audit report’ are not marked with a footnote when they appear for the first time in the other sections of Part C1 (e.g. section 410 *Fees*, section 411 *Compensation and Evaluation Policies* etc.). Therefore, we propose that these terms are marked with a footnote when they appear for the first time in all sections of part C1 to clearly specify that ‘audit’ includes ‘review’ in the relevant sections. This will also avoid any confusion when professional accountants refer to selected sections of the Code when dealing with a specific matter.

**5. Do you have any comments on the clarity and appropriateness of the restructured material in the way that it distinguishes firms and network firms?**

APESB is supportive of the restructured approach to explicitly state ‘Network Firm’ in the relevant provisions (e.g. subsections on Network Firm in sections 310 and 401). We agree that the restructured Code has appropriately distinguished network firms from firms.

**6. Is the proposed title for the restructured Code appropriate?**

APESB is supportive of the proposed title as it emphasises the global nature of the Code and recognises that the Code has specific requirements.

***General Comments***

APESB’s responses to the general matters raised by the IESBA are as follows:

*(a) Small and Medium Practices (SMPs)*

APESB believe the proposals in the Structure ED will assist SMPs in understanding and applying the Code. In particular, we feel that the following proposed improvements in the Structure ED will be of great benefit to SMPs:

*The clear distinction between requirements and application material*

The proposed revisions make it easy to identify the mandatory requirements in the Code.

Location of application material next to the requirements

Users can read the requirements and easily locate the application material to assist in understanding and applying the requirements. This change will also reduce the likelihood of users misunderstanding how the requirement is to be applied.

Focus on the Conceptual Framework and Fundamental principles

The focus in the Code on the application of the Conceptual Framework, rather than a list of specific requirements, means SMPs can consider the applicable principles that relate to the specific matter and determine the action they need to take in respect of the professional activities they are performing for their client.

Clear identification of responsibilities

The proposed revisions make it clear when either the firm, network firm or an individual is responsible for complying with a specific requirement of the Code.

Additional matters that the IESBA could consider to further assist SMPs in the application of the Code include:

- clearly distinguishing between requirements that apply to Public Interest Entities and the requirements that apply to other entities; and
- ensuring consistency of terms used throughout the Code to avoid confusion by professional accountants (e.g. the use of term 'professional' in section 521 *Family and Personal Relationships*).

(b) *Developing Nations*

Not applicable.

(c) *Translations*

Not applicable.