

6 May 2020

Mr Ken Siong
Senior Technical Director
International Ethics Standards Board for Accountants (IESBA)
International Federation of Accountants (IFAC)
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By email: kensiong@ethicsboard.org

Dear Mr Siong,

IESBA's Exposure Draft *Proposed Revisions to the Fee-related Provisions of the Code*

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the IESBA's Exposure Draft *Proposed Revisions to the Fee-related Provisions of the Code* (Fees Exposure Draft).

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 (Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants). In Australia, APESB issues APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) as well as a range of professional and ethical standards that address non-assurance services.

Overall comments

APESB is generally supportive of the IESBA's project to revise the fee-related provisions in the IESBA's *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the IESBA Code) to ensure they remain robust and appropriate. We are of the view that the proposed amendments will assist professional accountants to understand how fees can cause threats to the fundamental principles of the Code.

An important aspect of the fee-related provisions is ensuring independence and audit quality through transparency and disclosure of fee-related information. APESB is concerned about the unintended consequences if the IESBA Code requires auditors to take responsibility for the disclosure of audit fees and other fees paid by an audit client.

In Australia, legislation and accounting standards require the preparers of the financial statements (i.e., Those Charged with Governance (TCWG) or the Directors) to disclose information on fees paid to an entity's external auditor, including whether the provision of other non-assurance services has impacted the independence of the auditor. APESB is of the view

that these provisions in laws and accounting standards appropriately address this issue in Australia. Additional provisions in the IESBA Code could address fee related issues depending on the requirements imposed on auditors and how these interact with the existing requirements imposed by law.

APESB encourages the IESBA to liaise with the International Accounting Standards Board (IASB) to address the disclosure of all fees paid or payable to the external auditor in connection with the annual audit and other services delivered by the external auditor. This proposed mechanism will emphasise the role and responsibility of the preparers of financial statements in making appropriate disclosures in financial statements, which contribute to the transparency of the audit relationship.

In developing APESB's response to the Fees Exposure Draft, we have taken into consideration local submissions made to the APESB on this exposure draft and Australian stakeholders' feedback from two roundtable events conducted by APESB in April 2020. The stakeholders who attended the roundtables included national standard setters, regulators, professional accounting bodies, accounting firms, investors and academics.

APESB's key recommendations are noted below. Appendix A provides APESB's responses to the IESBA's specific and general questions.

Recommendations

APESB's key recommendations in relation to the Fees Exposure Draft for the IESBA's consideration are:

- The IESBA liaise with the IASB to implement reforms with respect to the disclosure of external audit and other fees in the financial statements and remove the proposed requirement in the Code for the auditor to be responsible for the specified disclosures relating to fees;
- The inclusion of a requirement for a firm to decline an audit engagement if threats to the fundamental principles caused by fees cannot be reduced to an acceptable level;
- Remove the proposed threshold for non-PIE audit clients and replace it with the same threshold as PIEs (15%) or adopt a principle-based approach to ensure the provisions are scalable for SMPs;
- Review the drafting of proposed paragraphs R410.14, R410.15 and R410.17 to clarify the approach to the application of safeguards and the action to be taken where safeguards cannot be applied;
- Refine drafting to ensure that the requirements are enforceable and capable of being monitored, such as replacing the word 'influence' in proposed paragraph R410.6;
- Provide additional guidance on what would cause an auditor to re-evaluate the threats to the fundamental principles caused by fees;
- Provide additional guidance on documentation of matters relating to fees including the assessment (or re-evaluation) of threats to the fundamental principles;
- Provide additional guidance on the types of services that fit into categories such as 'audit-related services,' 'other assurance services,' 'taxation services' and 'other services';
- Consider the inclusion of further examples where the proportion of fees could cause threats to the fundamental principles (such as the referral of multiple audit engagements from one source);
- Consider enhancing the role of TCWG and audit committees in the financial reporting supply chain by providing guidance on their role in upholding audit quality and auditor independence; and

- The IESBA reconsider the consequential amendments to Section 270 *Pressure to Breach the Fundamental Principles* to ensure that the section continues to provide guidance on where the member is under pressure from others or may themselves be placing pressure on others.

Concluding comments

We trust you find these comments useful in your final deliberations. Should you require additional information, please contact APESB's Chief Executive Officer, Mr. Channa Wijesinghe, at channa.wijesinghe@apesb.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Nancy Milne". The signature is written in a cursive, flowing style.

Nancy Milne OAM
Chairman

APPENDIX A

APESB's Specific Comments

APESB's responses to the request for specific comments by the IESBA on the proposals in the Fees Exposure Draft are as follows:

Evaluating Threats Created by Fees Paid by the Audit Client

1. **Do you agree that a self-interest threat to independence is created and an intimidation threat to independence might be created when fees are negotiated with and paid by an audit client (or an assurance client)?**

APESB does agree that a self-interest threat is created and an intimidation threat to independence might be created when fees are negotiated with and paid for by a client. The Code addresses this through the inclusion of specific requirements and guidance to assist auditors in determining whether these threats will impact their independence.

From the client's perspective, the issue of fees and independence is a matter to be considered and addressed by Those Charged with Governance (TCWG), either by the Board or an Audit Committee (if one exists for the entity). TCWG have a responsibility to represent the shareholder's interests, and not management's. Therefore, if TCWG have the ability to oversee and control the audit fee negotiation process, and are focusing on the shareholder's interests, then the risks (and potential threats to an auditor's independence) should be lower with a user-pays model.

APESB is generally supportive of the proposals in the Fees Exposure Draft but believes that further clarity could be provided on when it is not appropriate to continue with an engagement due to threats caused by fees (as elaborated in our response to Question 2 below).

2. **Do you support the requirement in paragraph R410.4 for a firm to determine whether the threats to independence created by the fees proposed to an audit client are at an acceptable level:**
 - (a) **Before the firm accepts an audit or any other engagement for the client; and**
 - (b) **Before a network firm accepts to provide a service to the client?**

APESB is supportive of the requirement in proposed paragraph R410.4 for a firm to assess whether threats in relation to fees are at an acceptable level before accepting an engagement and during the course of the engagement if circumstances change. APESB is of the view that this approach will encourage firms to focus on the impact of fee levels on their independence.

APESB encourages the IESBA to consider splitting the proposed paragraph into two separate requirements, similar to the approach applied in the conceptual framework provisions where the re-evaluation of threats is required separately to the initial evaluation of threats (refer to paragraphs R120.7 and R120.9 of the existing Code). The splitting of the requirements would enable the IESBA to include new guidance as to what circumstances would trigger the need to re-evaluate whether threats are at an acceptable level, and the matters the professional accountant should document when this situation arises.

APESB notes that there is currently no definitive requirement or guidance in the proposed Fees section, which clarifies the approach to be taken when threats caused by fees are not reduced or eliminated to an acceptable level. APESB recommends the inclusion of a requirement that states a firm shall decline or discontinue an engagement where threats related to fees cannot be eliminated or reduced to an acceptable level.

3. **Do you have views or suggestions as to what the IESBA should consider as further factors (or conditions, policies and procedures) relevant to evaluating the level of threats created when fees for an audit or any other engagement are paid by the audit client? In particular, do you support recognizing as an example of relevant conditions, policies and procedures the existence of an independent committee which advises the firm on governance matters that might impact the firm's independence?**

APESB does not have any further suggestions for additional factors to evaluate the threats created by fees.

APESB is supportive of the inclusion of the example of the independent committee as an example of a condition, policy or procedure a firm may undertake, which helps them to identify and evaluate threats. The inclusion of this example would be best placed in proposed paragraph 410.4 A3.

Australian stakeholders were of the view that smaller firms may not have the resources to create such a committee, nor be able to demonstrate it is independent, but that this example could be relevant to medium or large firms.

Impact of Services Other than Audit Provided to an Audit Client

4. **Do you support the requirement in paragraph R410.6 that a firm not allow the level of the audit fee to be influenced by the provision by the firm or a network firm of services other than audit to the audit client?**

APESB strongly supports the intent of the proposed paragraph R410.6 but is concerned that the drafting, such as the use of the word 'influence,' will make this requirement very difficult to monitor and enforce in practice.

There is no proposed guidance in the Fees Exposure Draft as to how the term *influenced* is to be interpreted or what that would equate to in practice. It raises the question of how an auditor will be able to prove that the provision of other services has not *influenced* them. The only way this could be done with absolute certainty is not to provide any other services. It is not clear whether this requirement would be satisfied by the audit engagement partner documenting the rationale for the fee they propose to charge and how they determined that it was appropriate. APESB encourages the IESBA to consider providing guidance on documentation in relation to fees.

APESB recommends that the IESBA reconsider the use of the term 'influence' or to include other terms that can be quantified, such as 'affected,' 'determined' or 'impacted.' APESB also recommends that the guidance in paragraph 410.22 A1 relating to considerations affecting the level of the fee be replicated as guidance material relating to paragraph R410.6. It would be useful to have these factors for consideration at the start of the section on fees.

Proportion of Fee for Services Other than Audit to Audit Fee

5. **Do you support that the guidance on determination of the proportion of fees for services other than audit in paragraph 410.10 A1 include consideration of fees for services other than audit:**
- (a) Charged by both the firm and network firms to the audit client; and**
 - (b) Delivered to related entities of the audit client?**

APESB is supportive of the guidance in proposed paragraph 410.10 A1.

APESB believes the IESBA could also provide additional guidance on another situation where a significant portion of fees relates to multiple audit fees referred from one source. This scenario prompted the audit regulator in Australia to request the APESB to include strengthened provisions in the Australian Code (APES 110) to prevent this situation occurring in Australia. In particular, the regulator was concerned about the practices they saw in relation to the accounting and auditing engagements for Self-Managed Super Funds (SMSFs). The regulator noted that some SMSF auditors were reliant on one or two sources for referrals of SMSF audit engagements and believed this caused a significant threat to the independence of that auditor (refer paragraphs AUST R410.3.1 & AUST 410.3.1A1 of APES 110).

We encourage the IESBA to consider whether this matter affects other jurisdictions and should, therefore, be addressed in the IESBA Code.

Fee Dependency for non-PIE Audit Clients

6. **Do you support the proposal in paragraph R410.14 to include a threshold for firms to address threats created by fee dependency on a non-PIE audit client? Do you support the proposed threshold in paragraph R410.14?**

APESB appreciates that the intent of the inclusion of a fee-dependency threshold for non-PIE audit clients is to provide clarity as to when fee dependency is likely and to provide a consistent approach for all audit clients (not just to PIE audit clients).

APESB is concerned that the proposed amendments to the IESBA Code will not address the intent of consistency and that the proposed thresholds are not an accurate reflection of fee dependency levels.

APESB is of the view that the proposed threshold level of 30% to determine fee dependency for non-PIE audit clients is too high. In conjunction with the time frame to assess fee dependency (five consecutive years), it creates the possibility that the threat could be in place for a significant time before the IESBA Code would require any action to be undertaken.

If there is a concern in a specific jurisdiction as to the appropriate threshold to adopt for fee dependency, then the national standard setter or regulator of that jurisdiction could determine a different threshold.

At a time when globally, there is a focus on audit quality and independence, the perception that auditors can have 30% of their income from one client for five years could harm the public perception of the accounting profession.

APESB considers that there are two potential options in relation to this proposed measure. The first option would be to maintain the current provision but have a decreased threshold level. To be consistent with the approach for PIE audit clients, APESB suggests that the level of 15% be considered. The IESBA could consider obtaining empirical evidence as to the composition of fee dependency for non-PIE audit clients over an extended period to assess the validity of this threshold.

Alternatively, the IESBA could consider removing the threshold for non-PIE audit clients and have a principle-based approach to assess fee-dependency and to determine the action to be taken to address the threats created.

APESB notes that a similar approach is used in other sections of the Code, such as Section 540 *Long Association of Personnel (including partner rotation) with an Audit Client*. This approach allows for the scalability of the provisions to SMPs, and APESB would consider this the best method for addressing fee dependency in respect of non-PIE audit clients.

Australian stakeholders who attended the APESB roundtables expressed significant concern with respect to the high level of the threshold (i.e., 30%) for non-PIE audit clients and stated that they prefer to see a principle-based approach for fee-dependency for non-PIE audit clients.

7. Do you support the proposed actions in paragraph R410.14 to reduce the threats created by fee dependency to an acceptable level once total fees exceed the threshold?

Subject to APESB's specific comments on the level of the fee dependency threshold and timeframe in question 6 above, APESB is supportive of a firm needing to undertake action to address threats related to fee dependency. However, APESB is concerned with the drafting of proposed paragraph R410.14, in particular, the phrase '...might be a safeguard to reduce the threats to an acceptable level, and if so, apply it.'

The proposed drafting does not address what should happen if this safeguard is not able to reduce the threats to an acceptable level. Is the auditor able to just continue providing the services with no other action needed? This phrasing is also used in proposed paragraph R410.15, which contains actions to be taken if fee dependency continues past 5 years.

APESB is of the view that the current drafting of the proposed paragraphs R410.14 and R410.15 appear to leave a gap in which firms may decide that neither a pre-issuance review nor a post-issuance review is an appropriate safeguard and, therefore, take no further action in relation to the issue of fee dependency. The proposals do not address how to proceed when no safeguards can be applied to address the threats to the fundamental principles.

APESB has considered whether the re-evaluation of threats as required in the proposed paragraph R410.4 would address this issue. APESB believes it would be a reason to re-evaluate threats caused by fees. However, the proposals do not clearly state what a firm or auditor should do in the case where threats are not at an acceptable level.

As noted in our response to question 2 above, APESB is of the view these gaps could be addressed by the IESBA through the inclusion of a new requirements paragraph (located

just after R410.4) where firms are required to decline or discontinue an engagement if threats related to fees cannot be eliminated or reduced to an acceptable level.

Fee Dependency for PIE Audit Clients

8. Do you support the proposed action in paragraph R410.17 to reduce the threats created by fee dependency to an acceptable level in the case of a PIE audit client?

APESB is supportive of the proposed action to undertake a pre-issuance review as a safeguard for fee dependency on a PIE audit client. However, we are concerned with the drafting of this paragraph. In particular, the phrase ‘...might be a safeguard to reduce the threats to an acceptable level, and if so, apply it.’

The proposed drafting does not address what should happen if this safeguard is not able to reduce the threats to an acceptable level. Is the auditor able to just continue providing the services with no other action needed? Is it only at the point where there have been 5 consecutive years of fee dependency that action must be taken so that the firm ceases to be the auditor under the proposed paragraph R410.19?

APESB notes that the extant paragraph R410.5 is proposed to be deleted. This paragraph effectively required the performance of a pre-issuance review if a post-issuance review would not reduce threats to an acceptable level. The removal of this paragraph and the current drafting of the proposed paragraph R410.17 appear to leave a gap in which firms may decide a pre-issuance review is not a safeguard, and therefore, take no further action in relation to the issue of fee dependency.

APESB has considered whether the re-evaluation of threats as required in the proposed paragraph R410.4 would address this issue. However, the proposals in the Fees Exposure Draft do not clearly state what a firm or auditor should do in the case where threats are not at an acceptable level, at either the initial evaluation or the re-evaluation of threats to the fundamental principles caused by fees.

As noted in our response to questions 2 and 7 above, APESB is of the view this matter could be addressed by the IESBA through the inclusion of a new requirements paragraph (located just after proposed paragraph R410.4) where firms are required to decline or discontinue an engagement if threats related to fees cannot be eliminated or reduced to an acceptable level.

9. Do you agree with the proposal in paragraph R410.19 to require a firm to cease to be the auditor if fee dependency continues after consecutive 5 years in the case of a PIE audit client? Do you have any specific concerns about its operability?

APESB is supportive of the requirement for a firm to cease being the auditor of a PIE audit client if fee dependency continues after 5 consecutive years.

In relation to the operability of this provision, there are specific requirements in Australian legislation that restrict the ability of an auditor to resign from a public company. The auditor must seek approval from the regulator, the Australian Securities and Investments

Commission (ASIC), to be able to resign.¹ This existing obligation would appear to fit within the exception in proposed paragraph R410.20, specifically part (a), however, APESB believes it would add clarity to the provision if this paragraph specifically referred to the firm needing to meet the requirements of applicable laws and regulations.

10. Do you support the exception provided in paragraph R410.20?

APESB is supportive of this exception; however, we believe that this paragraph could be enhanced by referring to the requirements of applicable laws and regulations, as noted in APESB's response to question 9 above.

Transparency of Fee-related Information for PIE Audit Clients

11. Do you support the proposed requirement in paragraph R410.25 regarding public disclosure of fee-related information for a PIE audit client? In particular, having regard to the objective of the requirement and taking into account the related application material, do you have views about the operability of the proposal?

APESB understands the intent of proposed paragraph R410.25 is to ensure that information in relation to fees paid to an auditor is publicly available for transparency or to assess audit quality. However, APESB has concerns about the potentially unintended consequences if this responsibility was a requirement relating to the auditor's independence under the IESBA Code.

APESB is firmly of the view that the responsibility to disclose information on audit fees needs to be placed on the audited entity, not on the auditor. The audited entity has the knowledge of the fees paid or payable to all of the auditors they use in respect of all services. For example, this information may be challenging to determine for a group auditor for component audits performed by firms outside of their network.

In Australia, companies are currently required under the Australian Accounting Standards² to disclose the fees paid to auditors in their financial statements. In addition, the *Corporations Act 2001*³ also imposes requirements on directors of listed entities to disclose fees paid to the auditor for non-audit services and provide a statement on how the provision of these services did not impact the auditor's independence.

While the recent Parliamentary Joint Committee (PJC) Inquiry into the regulation of auditing in Australia noted concerns about the different categories of audit services used for these disclosures, it recommended that clear categories be established so that the disclosures in an entity's financial statements are consistent across the years and

1 Refer to the requirements in s329 of the *Corporations Act 2001*.

2 Under AASB 1054 *Australian Additional Disclosures* issued by the Australian Accounting Standards Board (AASB), entities must disclose fees paid to each auditor or reviewer, including any network firm, separately for the audit or review of the financial statements and for all other services performed during the period.

3 Refer to the requirements in s300 of the *Corporations Act 2001*.

comparable with other entities. We note that the PJC Interim Report did not recommend that auditors take responsibility for this disclosure.⁴

This proposed IESBA requirement received very strong criticism from attendees at the APESB Roundtables held in April 2020 as stakeholders were fundamentally opposed to the disclosure of fee information obligation being placed on the auditor or it being included in the audit report. They also raised concerns about how these requirements would interact with local legislative requirements relating to audit fee disclosures. Stakeholders noted that the requirements in local accounting standards mean audit clients will need to disclose this as part of the financial statements. They were also concerned about the consequences if the auditor believes the client's disclosures are appropriate, but the regulator does not. Should this be a breach of the auditor independence provisions and who should be ultimately responsible for the robustness of the fee disclosures?

Based on APESB's consideration of the proposed provisions and the feedback received from our stakeholders, we are of the view that this requirement is unwarranted. APESB strongly encourages the IESBA to raise this issue with the International Accounting Standards Board (IASB) to request their consideration of fee disclosures and for it to be incorporated in an entity's financial statements as a responsibility of the preparer.

12. Do you have views or suggestions as to what the IESBA should consider as:

- (a) Possible other ways to achieve transparency of fee-related information for PIEs audit clients; and**
- (b) Information to be disclosed to TCWG and to the public to assist them in their judgements and assessments about the firm's independence?**

In addition to the comments made in relation to Question 11, APESB recommends the IESBA consider whether additional guidance could be developed in the Code in relation to the classification of various services such as 'audit-related services,' 'other assurance services,' 'tax services' and 'other services.' During the recent PJC inquiry in Australia, it became apparent that many companies and audit firms were not consistently classifying these services into different service categories.

The [Revised Ethical Standard](#) issued in December 2019 by the Financial Reporting Council (UK) includes guidance on what services would be captured by the terms listed above. APESB is of the view this could provide surety on what types of engagements fall into these categories and, therefore, what prohibitions or requirements apply to the provision of that service.

⁴ The interim recommendations of the Parliamentary Joint Committee Inquiry into the Regulation of Auditing in Australia were released in February 2020, and are available on the [Australian Government's website](#).

Anti-Trust and Anti-Competition Issues

13. **Do you have views regarding whether the proposals could be adopted by national standard setters or IFAC member bodies (whether or not they have a regulatory remit) within the framework of national anti-trust or anti-competition laws? The IESBA would welcome comments in particular from national standard setters, professional accountancy organizations, regulators and competition authorities.**

APESB is not aware of any issues in relation to anti-trust or anti-competition laws that would prevent the adoption of the proposals in the Fees Exposure Draft in Australia.

As mentioned in our comments on question 11, companies in Australia are currently required under the Australian Accounting Standards (and listed entities are required by legislation) to disclose the fees paid to auditors in their financial statements. Therefore, we do not think the disclosure of fee-related information will conflict with the provisions of the Australian competition laws.

However, it may be prudent for the IESBA to consider obtaining legal advice as to how these proposals interplay with competition legislation across different jurisdictions.

Proposed Consequential and Conforming Amendments

14. **Do you support the proposed consequential and conforming amendments to Section 905 and other sections of the Code as set out in this Exposure Draft? In relation to overdue fees from an assurance client, would you generally expect a firm to obtain payment of all overdue fees before issuing its report for the assurance engagement?**

APESB does not support the proposed consequential amendments to Section 270 *Pressure to Breach the Fundamental Principles* in their current form. The proposed amendments include the addition of the words 'from others' in paragraph 270.3.A2. However, some of the examples provided in that paragraph could also apply where the professional accountant is the person applying the pressure, for example, reporting misleading results or suppressing internal audit reports.

APESB is of the view that the example of putting pressure on a professional accountant to provide the service at low fees levels could be included with the examples under the subheading 'Pressure to act without sufficient expertise and due care'. If this change was made, consequential amendments could be made to Section 230 *Acting with Sufficient Expertise* to include a provision or guidance on ensuring that others have sufficient expertise to undertake tasks or engagements. Alternatively, this guidance could be included in Subsection 113 *Professional Competence and Due Care* after paragraph R113.2.

Apart from this matter, APESB supports the other consequential amendments included in the Fees Exposure Draft.

In relation to the collection of overdue fees on assurance engagements, APESB would expect that the professional accountant should receive payment for the engagement before the assurance report is issued. However, APESB is of the view that this is a matter

for the professional accountant and the assurance client to agree to the terms relating to fee payment and that this should not be mandated in the Code.

15. Do you believe that there are any other areas within the Code that may warrant a conforming change as a result of the proposed revisions?

Apart from the matters identified in our response to Question 14, APESB does not believe any other areas of the Code warrant change.

APESB's General Comments

APESB's general comments on the Fee-related revisions for the IESBA's consideration are as follows:

(a) *Those Charged with Governance, including Audit Committee Members*

APESB is of the view that TCWG and Audit Committee Members undertake essential roles in the financial reporting supply chain, including ensuring audit quality and the Independence of the external auditor. Within Australia, there is guidance from other organisations, such as in Principle 4 of the [ASX Corporate Governance Principles and Recommendations](#), as to the role of the audit committee and the Board in relation to the appointment of the external auditor (including determining fee levels and ensuring independence).

APESB would encourage the IESBA to consider whether the Code should include application material for professional accountants in business who act in TCWG roles about the importance of ensuring the independence of the auditor. We acknowledge that this may not be relevant to many professional accountants in business but believe it is worth enhancing the professional accountant's understanding of their role in the financial reporting supply chain.

We favourably note that the IESBA developed application material aimed explicitly at Senior Professional Accountants in Business in Section 260 *Responding to Non-Compliance with Laws and Regulations* and consider that as an example of how this guidance material could be incorporated in Part 2 of the Code.

(b) *Small- and Medium-Sized Entities (SMEs) and Small and Medium Practices (SMPs)*

APESB believes that the IESBA should obtain empirical evidence on fee dependency levels, especially for SMPs, to determine the appropriateness of the thresholds proposed in the Fees Exposure Draft for non-PIE audit clients.

(c) *Regulators and Audit Oversight Bodies*

APESB has no general comments with respect to regulators and audit oversight bodies.