

APESB

Accounting
Professional and
Ethical Standards Board

**COMMENTS ON THE IESBA EXPOSURE DRAFT
CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS
(JULY 2008)**

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**Accounting Professional & Ethical Standards Board Limited
Level 7, 600 Bourke Street
Melbourne, Victoria, 3000
AUSTRALIA**

E: enquiries@apesb.org.au W: www.apesb.org.au

1. Introduction

The Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the exposure draft, *Code of Ethics for Professional Accountants (July 2008)* issued by the International Ethics Standards Board for Accountants and commends the IESBA on the issue of the exposure draft which reflects proposed amendments designed to improve the clarity of the Code.

2. Background to the APESB

APESB was established as an initiative of the Institute of Chartered Accountants in Australia (ICAA) and CPA Australia. In November 2006, the National Institute of Accountants (NIA) was admitted to the APESB (these three organisations are collectively known as the professional accounting bodies). The primary role of the APESB is to:

- Develop and issue in the public interest, professional and ethical standards that will apply to professional accounting bodies; and
- Provide a formal and rigorous forum for the consideration, promulgation and approval of professional and ethical standards, which is performed in an open, timely, independent and proactive manner.

The APESB issued the Australian equivalent APES 110: *Code of Ethics for Professional Accountants* in July 2006. A compiled version which includes subsequent amending standards (including network firm amendments) was issued in July 2008.

3. Specific Comments

In response to the request for specific comments, APESB provides the following responses for consideration by the IESBA:

- (i) *The IESBA is of the view that identifying a requirement by the use of the word “shall” clarifies the Code and appropriately brings the language in line with that adopted by the IAASB. Do you agree? If you do not agree please provide an explanation.*

APESB strongly agrees with the proposal to identify a particular requirement by the consistent use of the word “**shall**”. While we believe that the change in terminology, as applied and proposed throughout the exposure draft, does not change the spirit of the requirements contained in the existing Code, we do believe the use of the word “**shall**” will clarify any potential misunderstandings of the requirements of the Code and has the additional benefit of terminological consistencies with the IAASB.

- (ii) *The IESBA is of the view that separately presenting the objective to be achieved, the requirements designed to achieve that objective, and the application guidance as in the ISAs would not further improve the clarity of the Code. Do you agree? If you do not agree, please provide an explanation and an example of the separate presentation that you recommend.*

APESB agrees with the IESBA view. Adding further structure and additional text to the existing Code is unlikely to improve the clarity of the Code. The existing Code has sufficient structure to enable users of the Code to find relevant requirements with sufficient ease.

- (iii) *The IESBA is of the view that in exceptional and unforeseen circumstances that are outside the control of the professional accountant, the firm or employing organization, and the client, the application of a specific requirement in the Code may result in an outcome that a reasonable and informed third party would not regard as being in the interest of the users of the output of the accountant's professional services. Therefore, the Board is proposing that the Code include a provision that would permit a professional accountant, in such circumstances, to depart temporarily from that specific requirement. This would not be the same as provisions in the Code that address situations in which a professional accountant has inadvertently violated a provision of the Code. The departure would only be acceptable if all of the conditions set out in paragraph 100.11 are met.*

- (a) *Do you agree that the Code should contain a provision that permits any exception to compliance with a requirement set out in the Code? If you do not agree, please provide an explanation.*

We strongly disagree that the Code should contain an overriding provision that permits exception to compliance. Refer below for further comments on paragraph 100.11.

- (b) *If you believe that the Code should contain a provision that permits an exception to compliance, are the conditions under which the exception would apply appropriate? Should there be additional or fewer conditions and, if so, what are they?*
- (c) *If you believe that the Code should not contain a provision that permits an exception, please explain how you would deal with the types of exceptional and unforeseen situations that may be covered by paragraph 100.11.*

Refer below for further comments.

- (d) *Are there any other circumstances where you believe a departure from a requirement in the Code would be acceptable? For example, should an event that is within the control of one of the relevant parties qualify for an exception? If so, please provide an explanation and specific examples of the circumstances where you believe a departure would be acceptable.*

Comments on 100.11

APESB is particularly concerned with the introduction of such a broad ranging exemption from the requirements and spirit of the Code. There does not appear to be any conceptual basis as to why such an exemption is required. It is our view that draft paragraph 100.11 seriously compromises the integrity of the Code and may lead to undesirable departures from the requirements and spirit of the Code.

The Australian Code (APES 110) has had the force of law in respect of financial statement audits conducted under the *Corporations Act 2001* (which includes all listed entities) since 2006 due to the legislative framework that operates in Australia. In the context of auditor independence and associated rotation requirements, Australian Commonwealth legislators have also introduced requirements into the *Corporations Act 2001*.

To-date we are not aware of any problems with the application of these requirements in practice that would suggest to us that an exemption such as 100.11 in the draft IESBA Code is required.

Further, the proposed section 100.4 already contains sufficient exemption from the specific requirements of the Code. That is, “compliance is required unless prohibited by law or regulation or an exception is permitted by this Code”. Proposed section 100.11 is not necessary since if there is a departure, then it is the role of regulators and member bodies to determine the severity of the departure from examining the specific facts and circumstances before determining the extent of any corrective action that needs to be undertaken by the member.

In the context of the example provided in the Explanatory Memorandum, in Australia any exemption (extension) to the audit rotation requirements would need to be provided by way of an exemption instrument executed by the corporate regulator (Australian Securities and Investments Commission). This situation is also envisaged in paragraph 290.155 of the Code. Without that instrument a member would still be viewed to be in breach even though they may have satisfied compliance with the proposed paragraph 100.11.

Accordingly, we strongly recommend that IESBA remove paragraph 100.11 to preserve the overall integrity of the code.

- (iv) *The IESBA is of the view that the proposed modification to focus the application of the conceptual framework throughout the Code, and the related documentation requirements in Sections 290 and 291, on threats that are not at an acceptable level will result in a more efficient and effective application of the framework approach. Do you agree? If you do not agree, please provide an explanation.*

APESB agrees with the IESBA view.

5. Additional Comments

Reports that Include a Restriction on Use and Distribution

We believe that the requirements contained in paragraphs 290.506 and 290.507 of putting the onus on the audit team to check related entities and network firms only when they are aware of a conflict or relationship may not be sufficiently robust. For example assume that all parties agree to the restricted independence requirements to apply to an engagement. The engagement is in relation to a sensitive merger transaction and a week after the transaction is completed a conflict is revealed in a network firm. If the client was aware of the conflict in the network firm then the client would not have engaged the relevant firm. But due to these provisions in the code the audit team will argue that although they “should have known” actually “they did not know” and they will be in compliance with the Code. Accordingly we believe that these provisions should be revised.

Definition of the term “firm”

The definition of the term “firm” contains a technical error that should be corrected. The definition of firm reads: “(a) a sole practitioner, partnership, or corporation of professional accountants; (b) an entity that controls such parties, through ownership, management, or other means; **and** (c) an entity controlled by such parties, through ownership, management or other means” (emphasis added). It is unlikely that any firm would meet this definition. The word “and” that separates paragraph (b) from paragraph (c) should be replaced with the word “or” to make the definition operable.

In Australia, we have extended the definition of the term “firm” to include Members working in “an Auditor-General’s office or department”. The IESBA should give consideration to similarly extending the definition of the term “firm” to incorporate members in the public sector.

Section 300: Members in Business

We believe that the changes from “should” to “shall” in the following paragraphs may cause difficulties for members in business

- Paragraph 300.17 – we believe that it would be appropriate to retain the word “should” instead of “shall” in this particular context.
- Paragraph 320.2 – we believe that it would be appropriate to retain the word “should” instead of “shall” in this particular context on the basis that the professional accountant that prepares the general purpose financial statements may not have the ultimate authority to approve the general purpose financial statements.
- Paragraph 320.6 – we believe that it would be appropriate to retain the word “should” instead of “shall” in this particular context.

6. Minor Editorial Comments

The attached Appendix contains minor editorial comments that should be rectified.

7. Further Information

Mr. Channa Wijesinghe
Senior Project Manager
Accounting Professional & Ethical Standards Board Limited
Level 7, 600 Bourke Street
Melbourne, 3000, Victoria, Australia

E: channa.wijesinghe@apesb.org.au

Minor Editorial Comments

- Paragraph 200.4 – the word “close” should be deleted from the 3rd dot point to be consistent with the wording used in the section that covers paragraphs 290.124 to 290.126.
- Paragraph 280.2 – the words “is required to” in the opening sentence should be replaced with the word “shall”.
- Paragraph 290.119 – the reference to “... a professional accountant from a network firm ...” should be replaced with “... a professional accountant outside the Firm...”.
- Paragraph 290.124 – the word “close” should be deleted from the opening sentence to be consistent with the preceding heading.
- Paragraph 290.145 – the final sentence should clarify that the review shall be undertaken by a senior person in the engagement team.
- The paragraph which follows paragraph 290.226 should be renumbered from “290.228” to “290.227.”
- The heading which precedes paragraph 290.508 – the word “close” should be deleted.
- Paragraph 291.32 contains a typographical error – the end of the third line should read “... and the service would ~~be~~-not be ...”.
- Paragraph 291.119 – the word “close” should be deleted from the opening sentence.