

Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*

Prepared and issued by
Accounting Professional & Ethical Standards Board Limited

EXPOSURE DRAFT **0X/22**
ISSUED: XXXX 2022

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Commenting on this Exposure Draft

This Exposure Draft, *Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in APESB 110 Code of Ethics for Professional Accountants (including Independence Standards)*, was developed and approved by the Accounting Professional & Ethical Standards Board Limited (APESB).

The proposals in this Exposure Draft may be modified in light of comments received before being issued in final form. **Comments are requested by 28 October 2022.**

Comments should be addressed to:

Chief Executive Officer
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99 William Street
Melbourne Victoria 3000
Australia

E-mail: sub@apesb.org.au

APESB would prefer that respondents express a clear overall opinion on whether the proposed amendments, as a whole, are supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed amendments.

APESB also invites comments regarding these proposed amendments from small and medium-sized firms.

Respondents are asked to submit their comments electronically through the APESB website, using the link <https://apesb.org.au/current-projects/>.

Please submit comments in both a PDF and Word file. All comments will be considered a matter of public record and will ultimately be posted on the APESB website, www.apesb.org.au.

APESB prefers that comments are submitted via its website. However, if there are practical difficulties, comments can also be sent to sub@apesb.org.au or mailed to the address noted above. While APESB prefers formal submissions we also encourage opinions and comments to be sent via email to sub@apesb.org.au.

Request for Specific Comments

APESB is seeking respondents' specific comments and feedback as to whether there are categories of entities not captured by the extant AUST application material that should be included in proposed paragraph AUST 400.18 A3 as they are generally considered to be a Public Interest Entity in Australia.

Obtaining a copy of this Exposure Draft

This Exposure Draft is available on the APESB website: www.apesb.org.au.

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Reasons for issuing Exposure Draft 0X/22

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to amend APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) to incorporate changes made by the International Ethics Standards Board for Accountants (IESBA) to the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the International Code). These changes aim to expand the extant definition of Public Interest Entity (PIE), including updating the category of 'listed entity' to 'publicly traded entity' and provide guidance on the factors to consider when determining whether an entity should be subject to the additional independence requirements applicable to entities that are PIEs.

Key requirements and guidance in Exposure Draft 0X/22

This Exposure Draft sets out proposed amendments to the current version of the Code. The proposed key changes are summarised below:

- Introduce an overarching objective for additional Independence requirements for audit clients that are PIEs.
- Updating guidance on factors for consideration when determining the level of public interest in an entity.
- Revised the definition of "public interest entity" to specifically include entities which take deposits from or provide insurance to the public, and to update the term listed entity to publicly traded entity.
- Replace the definition of "listed entity" with the new definition "publicly traded entity," with the intention to avoid confusion created by the term "recognised stock exchange" in the extant definition of listed entity.
- Require firms to disclose if an audit client has been treated as PIE in proposed paragraphs R400.20 to R400.21.
- Removing the reference to Section 122 of the *Insurance Act 1973* in proposed paragraph AUST 400.18 A3 to meet a regulators' request.
- Amending the references to the applicable regulatory requirements in APRA prudential standards to refer specifically to the independence requirements.

The proposed revisions in this exposure draft include conforming amendments to some of the provisions proposed to be amended in APESB's Exposure Draft ED XX/22 *Proposed amendments to the Non-Assurance Services related provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*. Where changes relate to ED XX/22 in Section 600, they are listed in the Other Conforming Amendments section of this exposure draft.

Proposed operative date

It is intended that the proposed amendments will be effective for audits of financial statements for periods beginning on or after 1 January 2025.

Earlier adoption of these provisions will be permitted.

Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*

Date

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CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS (INCLUDING INDEPENDENCE STANDARDS)

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SCOPE AND APPLICATION

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (**this Code**). This Code is operative from 1 January 2020 and supersedes APES 110 *Code of Ethics for Professional Accountants* (issued in December 2010 and subsequently amended in December 2011, May 2013, November 2013, May 2017 and April 2018). Earlier adoption of this Code is permitted. Transitional provisions relating to **Key Audit Partner** rotation, revisions to Part 4B, the role and mindset of **Members**, ~~and~~ the objectivity of **Engagement Quality Reviewers** and other appropriate reviewers and the definitions of Publicly Traded Entity and Public Interest Entity shall apply as specified in the respective transitional provisions on page 12.

[Paragraphs R1.2 to 1.8 of the extant Code's Scope and Application remain unchanged.]

GLOSSARY

Audit Client

An entity in respect of which a Firm conducts an Audit Engagement. When the client is a **Publicly Traded Listed Entity** in accordance with paragraphs R400.17 and R400.18, Audit Client will always include its **Related Entities**. When the Audit Client is not a **Publicly Traded Listed Entity**, Audit Client includes those **Related Entities** over which the client has direct or indirect control. (See also paragraph R400.220.)

In Part 4A, the term "Audit Client" applies equally to "Review Client."

Listed Entity

~~An entity whose shares, stock or debt are quoted or listed on a recognised stock exchange, or are marketed under the regulations of a recognised stock exchange or other equivalent body.~~

[The definition of listed entity has been deleted and replaced by the definition of Publicly Traded Entity.]

Public Interest Entity

For the purposes of Part 4A, an entity is a Public Interest Entity when it falls within any of the following categories:

- (a) A **Publicly Traded Listed Entity***; or
- (b) An entity one of whose main functions is to take deposits from the public;
- (c) An entity one of whose main functions is to provide insurance to the public; or
- (d) An entity specified as such by law, regulation or professional standards to meet the purpose described in paragraph 400.10.
 - (i) ~~Defined by regulation or legislation as a public interest entity; or~~
 - (ii) ~~For which the audit is required by regulation or legislation to be conducted in compliance with the same Independence requirements that apply to the audit of Listed Entities. Such regulation might be promulgated by any relevant regulator, including an audit regulator.~~

* Includes a listed entity as defined in Section 9 of the *Corporations Act 2001*.

The Code provides for the categories to be more explicitly defined or added to as described in paragraphs 400.18 A1 and 400.18 A2. ~~Other entities might also be considered to be Public Interest Entities, as set out in paragraphs 400.8 to AUST 400.8.1 A1.~~

Publicly Traded Entity An entity that issues financial instruments that are transferrable and traded through a publicly accessible market mechanism, including through listing on a stock exchange.

A listed entity as defined by relevant securities law or regulation is an example of a publicly traded entity.

[All other terms in the Glossary of the extant Code remain unchanged.]

PART 3 – MEMBERS IN PUBLIC PRACTICE

SECTION 300

APPLYING THE CONCEPTUAL FRAMEWORK - MEMBERS IN PUBLIC PRACTICE

Introduction

[Paragraphs 300.1 to 300.3 of extant Section 300 remain unchanged.]

Requirements and Application Material

General

[Paragraphs R300.4 to 300.5 A1 of extant Section 300 remain unchanged.]

Identifying Threats

[Paragraph 300.6 A1 of extant Section 300 remains unchanged.]

Evaluating Threats

[Paragraphs 300.7 A1 to 300.7 A2 of extant Section 300 remain unchanged.]

The Client and its Operating Environment

[Paragraphs 300.7 A3 to 300.7 A4 of extant Section 300 remain unchanged.]

The Firm and its Operating Environment

[Paragraph 300.7 A5 of extant Section 300 remains unchanged.]

Consideration of New Information or Changes in Facts and Circumstances

[Paragraph 300.7 A6 of extant Section 300 remains unchanged.]

300.7 A7 Examples of new information or changes in facts and circumstances that might impact the level of a threat include:

- When the scope of a [Professional Service](#) is expanded.
- When the client becomes a [Publicly Traded/ Listed Entity](#) or acquires another business unit.
- When the [Firm](#) merges with another [Firm](#).
- When the [Member in Public Practice](#) is jointly engaged by two clients and a dispute emerges between the two clients.
- When there is a change in the [Member in Public Practice's](#) personal or [Immediate Family](#) relationships.

[Paragraphs 300.8 A1 to 300.10 A1 of extant Section 300 remain unchanged.]

PART 4A – INDEPENDENCE FOR AUDIT AND REVIEW ENGAGEMENTS

SECTION 400

APPLYING THE CONCEPTUAL FRAMEWORK TO INDEPENDENCE FOR AUDIT AND REVIEW ENGAGEMENTS

Introduction

General

[Paragraphs 400.1 to 400.7 of extant Section 400 remain unchanged.]

Public Interest Entities

400.8 Some of the requirements and application material set out in this Part are applicable only to the audit of Financial Statements of reflect the extent of public interest in certain entities which are defined to be Public Interest Entities, reflecting significant public interest in the financial condition of these entities due to the potential impact of their financial well-being on stakeholders.

~~AUST R400.98.1~~ Firms shall determine whether to treat additional entities, or certain categories of entities, as Public Interest Entities because they have a large number and wide range of stakeholders. Factors to be considered in evaluating the extent of public interest in the financial condition of an entity include:

- The nature of the business or activities, such as taking on financial obligations to the public as part of the entity's primary business the holding of assets in a fiduciary capacity for a large number of stakeholders. Examples might include financial institutions, such as banks and insurance companies, and pension funds.
- Whether the entity is subject to regulatory supervision designed to provide confidence that the entity will meets its financial obligations.
- Size of the entity.
- The importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure.
- Number and nature of stakeholders including investors, customers, creditors and of employees.
- The potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity.

[Paragraph AUST 400.8.1.A1 of extant Section 400 has been relocated to AUST 400.18 A3.]

400.10 Stakeholders have heightened expectations regarding the Independence of a Firm performing an Audit Engagement for a Public Interest Entity because of the significance of the public interest in the financial condition of the entity. The purpose of the requirements and application material for Public Interest Entities as described in paragraph 400.8 is to meet these expectations, thereby enhancing stakeholders' confidence in the entity's Financial Statements that can be used when assessing the entity's financial condition.

Reports that Include a Restriction on Use and Distribution

400.119 An audit report might include a restriction on use and distribution. If it does and the conditions set out in Section 800 are met, then the **Independence** requirements in this Part may be modified as provided in Section 800.

Assurance Engagements Other than Audit and Review Engagements

400.120 **Independence** standards for **Assurance Engagements** that are not **Audit** or **Review Engagements** are set out in Part 4B – *Independence for Assurance Engagements Other than Audit and Review Engagements*.

Requirements and Application Material

General

R400.134 A **Firm** performing an **Audit Engagement** shall be independent.

R400.142 A **Firm** shall apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to **Independence** in relation to an **Audit Engagement**.

AUST R400.142.1 Where a **Member in Public Practice** identifies multiple threats to **Independence**, which individually might not be significant, the **Member** shall evaluate the significance of those threats in aggregate and the safeguards applied or in place to eliminate some or all of the threats or reduce them to an **Acceptable Level** in aggregate.

Prohibition on Assuming Management Responsibilities

R400.153 A **Firm** or a **Network Firm** shall not assume a management responsibility for an **Audit Client**.

400.153 A1 Management responsibilities involve controlling, leading and directing an entity, including making decisions regarding the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

400.153 A2 When a **Firm** or a **Network Firm** assumes a management responsibility for an **Audit Client**, self-review, self-interest and familiarity threats are created. Assuming a management responsibility might also create an advocacy threat because the **Firm** or **Network Firm** becomes too closely aligned with the views and interests of management.

400.153 A3 Determining whether an activity is a management responsibility depends on the circumstances and requires the exercise of professional judgment. Examples of activities that would be considered a management responsibility include:

- Setting policies and strategic direction.
- Hiring or dismissing employees.
- Directing and taking responsibility for the actions of employees in relation to the employees' work for the entity.
- Authorising transactions.
- Controlling or managing bank accounts or investments.

- Deciding which recommendations of the Firm or Network Firm or other third parties to implement.
- Reporting to Those Charged with Governance on behalf of management.
- Taking responsibility for:
 - The preparation and fair presentation of the Financial Statements in accordance with the applicable financial reporting framework.
 - Designing, implementing, monitoring or maintaining internal control.

400.153 A4 Subject to compliance with paragraph R400.164, providing advice and recommendations to assist the management of an Audit Client in discharging its responsibilities is not assuming a management responsibility. The provision of advice and recommendations to an Audit Client might create a self-review threat and is addressed in Section 600.

R400.164 When performing a Professional Activity for an Audit Client, the Firm shall be satisfied that client management makes all judgements and decisions that are the proper responsibility of management. This includes ensuring that the client's management:

- (a) Designates an individual who possesses suitable skill, knowledge and experience to be responsible at all times for the client's decisions and to oversee the activities. Such an individual, preferably within senior management, would understand:
 - (i) The objectives, nature and results of the activities; and
 - (ii) The respective client and Firm or Network Firm responsibilities.

However, the individual is not required to possess the expertise to perform or re-perform the activities.
- (b) Provides oversight of the activities and evaluates the adequacy of the results of the activities performed for the client's purpose.
- (c) Accepts responsibility for the actions, if any, to be taken arising from the results of the activities.

Public Interest Entities

R400.17 For the purposes of this Part, a Firm shall treat an entity as a Public Interest Entity when it falls within any of the following categories:

- (a) A Publicly Traded Entity;
- (b) An entity one of whose main functions is to take deposits from the public;
- (c) An entity one of whose main functions is to provide insurance to the public; or
- (d) An entity specified as such by law, regulation or professional standards to meet the purpose described in paragraph 400.10.

400.17 A1 When terms other than Public Interest Entity are applied to entities by law, regulation or professional standards to meet the purpose described in paragraph 400.10, such terms are regarded as equivalent terms. However, if law, regulation or professional standards designate entities as "Public Interest Entities" for reasons unrelated to the purpose described in paragraph 400.10, that designation does not necessarily mean that such entities are Public Interest Entities for the purposes of the Code.

R400.18 In complying with the requirement in paragraph R400.17, a Firm shall take into account more explicit definitions established by law, regulation or professional standards for the categories set out in paragraph R400.17 (a) to (c).

400.18 A1 The categories set out in paragraph R400.17 (a) to (c) are broadly defined and no recognition is given to any size or other factors that can be relevant in a specific jurisdiction. The Code therefore provides for those bodies responsible for setting ethics standards for Members to more explicitly define these categories by, for example:

- Making reference to specific public markets for trading securities.
- Making reference to the local law or regulation defining banks or insurance companies.
- Incorporating exemptions for specific types of entities, such as an entity with mutual ownership.
- Setting size criteria for certain types of entities.

400.18 A2 Paragraph R400.17 (d) anticipates that those bodies responsible for setting ethics standards for Members will add categories of Public Interest Entities to meet the purpose described in paragraph 400.10 taking into account factors such as those set out in paragraph 400.9. Depending on the facts and circumstances in a specific jurisdiction, such categories could include:

- Pension funds.
- Collective investment vehicles.
- Private entities with large numbers of stakeholders (other than investors).
- Not-for-profit organisations or governmental entities.
- Public utilities.

AUST 400.18-4.A34 The following entities in Australia will generally satisfy the conditions in paragraphs 400.9, R400.17 and R400.18 ~~AUST R400.8.1~~ as having a large number and wide range of stakeholders and thus are likely to be classified as Public Interest Entities. In each instance Firms shall consider the nature of the business, its size and the number of its employees:

- Authorised deposit-taking institutions (ADIs) and authorised non-operating holding companies (NOHCs) regulated by the Australian Prudential Regulatory Authority (APRA)¹ under the *Banking Act 1959*;
- Authorised insurers and authorised NOHCs regulated by APRA² under ~~Section 122 of the Insurance Act 1973~~;
- Life insurance companies and registered NOHCs regulated by APRA³ under the *Life Insurance Act 1995*.
- Private health insurers regulated by APRA⁴ under the *Private Health Insurance (Prudential Supervision) Act 2015*;
- Disclosing entities as defined in Section 111AC of the *Corporations Act 2001*;

¹ Refer to the APRA *Prudential Standard CPS 510 Governance* for applicable independence regulatory requirements for audits of APRA-regulated entities.

² Refer to the APRA *Prudential Standard CPS 510 Governance* for applicable independence regulatory requirements for audits of APRA-regulated entities.

³ Refer to the APRA *Prudential Standard CPS 510 Governance* for applicable independence regulatory requirements for audits of APRA-regulated entities.

⁴ Refer to the APRA ~~*Prudential Standard HPS 510 Governance (until 30 June 2019) or Prudential Standard CPS 510 Governance (from 1 July 2019)*~~ for applicable independence regulatory requirements for audits of APRA-regulated entities.

- Registrable superannuation entity (RSE) licensees, and RSEs under their trusteeship that have five or more members, regulated by APRA⁵ under the *Superannuation Industry (Supervision) Act 1993*; and
- Other issuers of debt and equity instruments to the public.

AUST R400.19 A Firm shall determine whether to treat additional entities, or certain categories of entities, as Public Interest Entities for the purposes of this Part. When making this determination, the Firm shall consider the factors set out in paragraph 400.9 as well as following factors:

- Whether the entity is likely to become a Public Interest Entity in the near future.
- Whether in similar circumstances, a predecessor Firm has applied Independence requirements for Public Interest Entities to the entity.
- Whether in similar circumstances, the Firm has applied Independence requirements for Public Interest Entities to other entities.
- Whether the entity has been specified as not being a Public Interest Entity by law, regulation or professional standards.
- Whether the entity or other stakeholders requested the Firm to apply Independence requirements for Public Interest Entities to the entity and, if so, whether there are any reasons for not meeting this request.
- The entity's corporate governance arrangements, for example, whether Those Charged with Governance are distinct from the owners or management.

Public Disclosure - Application of Independence Requirements for Public Interest Entities

R400.20 Subject to paragraph R400.21, when a Firm has applied the Independence requirements for Public Interest Entities as described in paragraph 400.8 in performing an audit of the Financial Statements of an entity, the Firm shall publicly disclose that fact in a manner deemed appropriate, taking into account the timing and accessibility of the information to stakeholders.

R400.21 As an exception to paragraph R400.20, a Firm may not make such a disclosure if doing so will result in disclosing confidential future plans of the entity.

Related Entities

R400.22~~0~~ As defined, an Audit Client that is a Publicly Traded ~~Listed~~ Entity in accordance with paragraphs R400.17 R400.18 includes all of its Related Entities. For all other entities, references to an Audit Client in this Part include Related Entities over which the client has direct or indirect control. When the Audit Team knows, or has reason to believe, that a relationship or circumstance involving any other Related Entity of the client is relevant to the evaluation of the Firm's Independence from the client, the Audit Team shall include that Related Entity when identifying, evaluating and addressing threats to Independence.

[Paragraphs 400.23~~4~~ to 400.29 are intentionally left blank.]

[Paragraphs R400.30 to R400.89 of extant Section 400 remain unchanged.]

⁵ Refer to the APRA Prudential Standard SPS 510 Governance for applicable independence regulatory requirements for audits of APRA-regulated entities.

OTHER CONFORMING AMENDMENTS

SECTION 600

PROVISION OF NON-ASSURANCE SERVICES TO AN AUDIT CLIENT

[The revisions proposed for the amending standard on the definitions of Listed Entity and Public Interest Entity affect the numbering of paragraphs in Section 400 of the extant Code and amending standards which relate to the assumption of management responsibilities. The paragraphs on assuming management responsibilities are referred to in a number of paragraphs in Section 600. The table below sets out the proposed changes to the text of specific paragraphs within Section 600 to reflect the revised reference to the assuming management responsibilities paragraphs.]

Paragraph number	Proposed change to paragraph text
600.7 A1	<ul style="list-style-type: none">• Reference to paragraph R400.14 to change to R400.16.
600.9 A2	<ul style="list-style-type: none">• Reference to paragraphs R400.13 to R400.14 to change to R400.15 to R400.16.
R600.17	<ul style="list-style-type: none">• Reference to paragraph R400.14 to change to R400.16.• Reference to paragraphs R400.13 to R400.14 to change to R400.15 to R400.16.
R600.26	<ul style="list-style-type: none">• Reference to paragraph R400.13 to change to R400.15.
601.5 A2	<ul style="list-style-type: none">• Reference to paragraph R400.14 to change to R400.16.
R605.3	<ul style="list-style-type: none">• Reference to paragraph R400.13 to change to R400.15.
R606.3	<ul style="list-style-type: none">• Reference to paragraph R400.13 to change to R400.15.
R609.3	<ul style="list-style-type: none">• Reference to paragraph R400.13 to change to R400.15.

TRANSITIONAL PROVISIONS

[Paragraphs 1 to 6 of the transitional provisions in the extant Code and amending standards remain unchanged.]

Revisions to the Definitions of Listed Entity, Publicly Traded Entity and Public Interest Entity in the Code

7. Revisions to the Code for the Definitions of Listed Entity, Publicly Traded Entity and Public Interest Entity will be effective for audits of financial statements for periods beginning or on or after 1 January 2025. Early adoption will be permitted.

CONFORMITY WITH INTERNATIONAL PRONOUNCEMENTS

APES 110 and the IESBA Code

APES 110 incorporates the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (IESBA Code) issued by the International Ethics Standards Board for Accountants (IESBA) in April 2018 and incorporating amendments up to April 2022.

- Paragraph AUST R400.[198.4](#) in APES 110 mandates Firms to determine whether additional entities are Public Interest Entities.

[All other items on the list of compliance with the IESBA Code in the extant Code and amending standards remain unchanged.]