

23 August 2021

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Via email: sub@apesb.org.au

Dear Channa

Exposure Draft ED 03/21: Proposed Amendments to Fee-related provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards)

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to comment on the proposals to revise APES 110 *Code of Ethics for Professional Accountants (including International Independence Standards)* (“**the Code**”) to address fee-related provisions (“**the ED**”).

Proposals based on the IESBA amendments

Overall, we support the APESB’s proposals to incorporate the changes made by the International Ethics Standards Board for Accountants (IESBA) to the *International Code of Ethics for Professional Accountants (including International Independence Standards)*. However, we would like to reiterate some of the concerns we raised in our submission to the IESBA on its ED.

Total Fees – Fee Dependency

Audit Clients that are Not Public Interest Entities

We do not support the proposal in paragraph R410.15 to include a threshold and timeframe for firms to address threats created by fee dependency on a single non-PIE client. We believe this gives rise to a risk that the focus will be solely on fulfilling compliance requirements rather than the application of principles within the Code. In situations where fee dependency on a single non-PIE client continues for an extended period, in our view firms should continue to comply with the fundamental principles and apply the conceptual framework and the general provisions within the Code.

The 30% threshold seems quite arbitrary and therefore may not be appropriate in all circumstances. The IESBA acknowledged in its ED that “*the thresholds proposed are not scientifically determined*” and there is “*no empirical evidence as to what [the threshold] should be*”. If the APESB is to prescribe specific thresholds and timeframes as criteria for assessing compliance with requirements, it should be jurisdiction specific and evidence based.

Audit Clients that are Public Interest Entities

It is important to consider that PIEs are not always large entities serviced by large audit firms or network firms. In Australia PIEs can be small entities, whose auditors are SMPs.

We encourage the APESB to carefully consider the impact of these proposals on smaller firms' ability to engage with markets, particularly where they may, in effect, result in mandatory audit firm rotation. For example, the proposal in paragraph R410.20 to require a firm to cease to be the auditor if fee dependency on a single PIE client continues after five consecutive years may practically result in there being no option for a firm, other than to resign from the engagement. The potential unintended consequences of this may include concentration of audit services with larger firms, leading to further public interest concerns similar to those raised during the inquiry into the regulation of audit in Australia.

Also, auditors of public companies who wish to resign from office under the *Corporations Act 2001* must seek ASIC's consent to resign which adds a further layer of complexity.

We welcome the recognition that there may be compelling reasons for a firm to continue to be an auditor after five consecutive years of fee dependency on a single PIE client. However, we are concerned that the proposed exception provided in paragraph R410.21(b) may be impractical to implement due to the potential limited availability of suitably skilled auditors in certain sectors to perform a pre-issuance review. This also may have the effect of restricting market participation.

We note that the proposed exception provided in paragraph R410.21(a) requires that *"the Firm consults with a regulatory or Professional Body in the relevant jurisdiction and it concurs that having the Firm continue as the auditor would be in the public interest"*. We highlight that CA ANZ is not intending to offer this as a service, so this proposal may not be able to be operationalised in Australia.

Proposals to address key recommendations from the inquiry into the regulation of audit in Australia

It is important to be cognisant that the Government is yet to respond to the recommendations in the final report of the parliamentary inquiry into audit regulation. As recognised in the report, the inquiry has already prompted many positive steps and enhancements in audit regulation.

PJC Inquiry Recommendation 3: The committee recommends that the Financial Reporting Council, in partnership with ASIC, by the end of the 2020–21 financial year, oversee consultation, development and introduction under Australian standards of ... defined categories and associated fee disclosure requirements in relation to audit and non-audit services.

New paragraph inserted:

AUST 410.29.1 A1 Firms should consider the following categories of services for making disclosures in relation to fees received or receivable for Professional Services provided to Audit Clients:

- (a) Audit services - which includes:
 - o Audit Engagements and audits of Related Entities for Audit Clients that are Public Interest Entities;
 - o Audit Engagements and audits of Related Entities for which the Audit Client has direct or indirect control; and
 - o Review Engagements in accordance with ASRE 2410 Review of a Financial Report Performed by the Independent Auditor of the Entity.
- (b) Audit-related services - which are services provided by members of the Audit Team that is closely related to work performed for audit services in (a) above, such as:

- o Reporting required to be provided by the external auditor by laws or regulations;
 - o Reviews of interim financial information;
 - o Reporting on regulatory returns (for example, reporting to the Australian Prudential Regulation Authority, or the auditor's report to ASIC on an Australian Financial Services licensee using Form FS 71);
 - o Reporting to a regulator on client assets;
 - o Reporting on government grants;
 - o Reporting on internal financial controls when required by law or regulation; and
 - o Additional audits or reviews performed on financial information and/or financial controls that have been authorised by Those Charged with Governance.
- (c) Other assurance services - comprise all Assurance Engagements other than (a) and (b) above. For example:
- o audit and other services relating to public reporting as a reporting or investigating accountant on financial or other information of the audited entity in an investment circular or prospectus;
 - o services, including private reporting that are customarily performed by the reporting or investigating accountant to support statements and disclosures made by the directors, in a prospectus or investment circular or, to support confirmations provided by the sponsor or nominated advisor; and
 - o audit and other assurance services relating to public reporting on other information issued by the entity, such as reports on information in the front of annual reports not covered by the auditor's report on the financial statements.
- (d) Taxation Services - which comprises any Professional Activities performed by a Member relating to ascertaining a client's tax liabilities or entitlements or satisfying their obligations under taxation law, provided under circumstances where they can reasonably expect to rely on the Professional Activities. This includes:
- (i) preparation of a return, notice, statement, application or other document for lodgement with a revenue authority, and responding on behalf of a client to the revenue authority's requests for further information;
 - (ii) Subject to the prohibition in paragraph R604.10, preparation of tax calculations to be used as the basis for the accounting entries in the financial statements;
 - (iii) provision of tax planning and other tax advisory services; and
 - (iv) assisting a client in the resolution of tax disputes; and
- (e) Other services - which comprise any service not covered in (a) – (d) above.

We believe that public disclosures relating to fees charged by the entity's audit firm are best made in the entity's financial statements. We support greater disaggregation in the disclosure in financial statements of fees paid or payable to auditors. In our submission to the inquiry into the regulation of audit in Australia we suggested four categories of fee disclosures – audit, assurance, audit related, and non-audit related services.

The Code is a sensible place to define the different categories of services that may be provided by an auditor due to the interrelation with the non-assurance services provisions in the Code. However, we recommend this is positioned in the context of proposed paragraph R410.25 which requires the firm to communicate with those charged with governance the fees charged for the provision of "other services" by the firm or a network firm, as opposed to in relation to public disclosures.

We understand the Australian Accounting Standards Board (AASB) has an ongoing project, jointly with the New Zealand Accounting Standards Board (NZASB), to improve disclosures of fees charged by the entity's audit firm. Since financial statement disclosure requirements are more appropriately achieved through accounting standards, we encourage the APESB to work closely with the AASB to get these same definitions recognised in Australian Accounting Standards for financial statement disclosure purposes.

PJC Inquiry Recommendation 5: The committee recommends that the Accounting Professional and Ethical Standards Board consider revising the APES 110 Code of Ethics to include a safeguard that no audit partner can be incentivised, through remuneration advancement or any other means or practice, for selling non-audit services to an audited entity.

[Deleted text struck through, new text underlined]

AUST R411.4. A Firm shall not evaluate or compensate a Key Audit Partner, either directly or indirectly, based on that partner's success in selling non-assurance services to any the partner's Audit Clients of the Firm. A Firm shall take reasonable steps to ensure that any profit-sharing arrangement of a Key Audit Partner is not a cross-subsidisation of the Audit Engagement by other services lines of the Firm or a mechanism for distributing indirect incentives to Key Audit Partners based on their ability to sell non-assurance services to the Firm's Audit Clients. This requirement does not preclude normal profit-sharing arrangements between partners of a Firm.

We support broadening the extant prohibition on audit partners being incentivised, either directly or indirectly, for selling non-assurance services to their audit clients to now prohibit incentivisation for sales of non-assurance services to all audit clients of the Firm. We understand this is consistent with many firms existing internal policies around cross-selling, so we do not believe it would present a significant change in practice.

Proposal due to specific request from regulators

[Deleted text struck through, new text underlined]

AUST R410.14.1 When the total fees in respect of multiple Audit Clients referred from one source represent ~~a large proportion~~ more than 20% of the total fees of the Engagement Partner, an Office of the Firm or the Firm expressing the audit opinions, the Firm shall evaluate the significance of the threat and apply safeguards when necessary to eliminate the threat or reduce it to an Acceptable Level.

We have reservations about the proposed 20% threshold in paragraph AUST R410.14.1 for firms to evaluate the threats to independence and implement appropriate safeguards, if required, created by fee dependency on a single referral source. We are concerned that the introduction of an explicit percentage may have potential unintended consequences.

While we recognise this is not a prohibition, we believe the principles-based Code should be preserved where possible. Earlier this year the ATO indicated that 20% is the limit of SMSF audit fees from a single referral source at which it considered threats to independence may occur. We recognise the challenges faced by the APESB in balancing the principles-based framework which underpins the Code, with the perceived benefits of definitive thresholds. These challenges manifest in determining the role of standard setters and the role of regulators, and how these must be clearly defined and delineated.

The proposed amendments to the Code are silent on the period of time over which the fees from one referral source should be considered. The ATO suggests two years, but fees from a single non-PIE client are proposed to be considered over five years, although you would expect single non-PIE client fee dependency to be a greater threat. It is unworkable to consider fees from referrals only at a point in time as that does not allow a firm the normal evolution in winning business, which may start with just one client or a dominant client until more business is won or to react to the loss of business from time to time.

The proposed amendments are also silent on the impact on threats of the time elapsed since the referral of clients was made in evaluating the qualitative significance of the referral source to the audit firm. Relevant considerations may include the time elapsed and whether the referral source has ongoing involvement with or influence over the SMSF clients referred. The relationship between the referral source and the clients referred to an audit firm inevitably can change over time. The threat from that referral source does not necessarily remain indefinitely and conversely is not necessarily something to be considered only in the first year of the referral.

When you compare proposed paragraph AUST R410.14.1 to the following similar provisions:

R410.15 When for each of five consecutive years total fees from an Audit Client that is not a Public Interest Entity represent, or are likely to represent, more than 30% of the total fees received by the Firm, ...

R410.18 When for each of two consecutive years the total fees from an Audit Client that is a Public Interest Entity represent, or are likely to represent, more than 15% of the total fees received by the Firm, ...

1. The percentage itself (20%) is lower than the percentage of fees from a single non-PIE client of 30% (over five years), and just slightly higher than fees from a single PIE client of 15% (over two years). This makes the referral percentage seem onerous in comparison and somewhat inconsistent.
2. The addition of “Engagement Partner” and “an Office of the Firm” also appears overly onerous and inconsistent.

We also urge the APESB to look at the implications that proposed paragraph AUST R410.14.1 has on the application of the appropriate reviewer safeguard in paragraph 410.14 A4. This says an appropriate reviewer cannot be a member of the firm. In our view, where there is a fee dependency at the Engagement Partner or Office level, it may be appropriate for a partner from another Office of the Firm who was not involved in the audits to be an appropriate reviewer.

APESB request for specific comments

APESB is seeking respondents’ specific comments and feedback on whether the intent of application material in proposed paragraph 410.3 A3 in relation to what is included and excluded in the term audit fees is clear to stakeholders.

410.3 A3. For the purposes of this section, audit fees comprise fees or other types of remuneration for an audit or review of Financial Statements. Where reference is made to the fee for the audit of the Financial Statements, this does not include any fee for an audit of Special Purpose Financial Statements or a review of Financial Statements. (Ref: Para. R410.23(a), 410.25 A1 and R410.31(a))

Glossary: Special Purpose Financial Statements – Financial Statements prepared in accordance with a financial reporting framework designed to meet the financial information needs of specified users.

We wish to highlight that the use of the term “Special Purpose Financial Statements”, and its associated definition, may need to be revisited in light of the AASB’s financial reporting framework reform project. It may be clearer if the statement was reversed to state “this includes any fee for an audit of General Purpose Financial Reports” where the definition of the term “General Purpose Financial Reports” makes reference to the AASB’s definition in the Appendix of the [revised Conceptual Framework](#). For the avoidance of doubt, it would also be useful if proposed paragraph AUST 410.29.1 A1 included the same services as mentioned in 410.3 A3 to show how they should be categorised.

The **Appendix** provides more information about CA ANZ. Should you have any questions about the matters raised in this submission or wish to discuss them further, please contact Zowie Pateman, Deputy Leader – Reporting and Assurance, at Zowie.Pateman@charteredaccountantsanz.com.

Yours sincerely

Simon Grant FCA
Group Executive
Advocacy and Professional Standing

Amir Ghandar FCA
Assurance and Reporting Leader

Appendix

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 128,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations. We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.