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Mr Channa Wijesinghe
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Submitted via: <http://apesb.org.au/current-projects/>

Exposure Draft 05/22 - Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in APES 110 Code of Ethics for Professional Accountants (including Independence Standards)

Dear Channa,

EY welcomes the opportunity to comment on ED 05/22.

EY is supportive of the Accounting Professional & Ethical Standards Board's (APESB) efforts to enhance the definitions of Listed Entity and Public Interest Entity within APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110 or the Code), aligning the Australian Code with the IESBA's amendments. We broadly agree that APESB's proposed changes will reinforce and strengthen auditor independence, and in turn promote increased confidence in financial reporting.

However, EY are concerned that a number of Australian-specific amendments, if adopted in their current form, will create significant barriers to adoption and enforcement of these provisions.

Paragraph AUST 400.18 A3

We are of the view that paragraph 400.18 A3 requires further consideration by the Board. We are particularly concerned by the language "*In each instance Firms shall consider the nature of the business, its size and the number of its employees*" as this goes against the IESBA's intentions regarding thresholds.

In their [Basis for Conclusions](#), IESBA clarify that turnover and number of employees might be relevant to the definition of PIE, however, IESBA's intent was for National Standard-Setters (NSS) to make this determination, not the Firms. Having this decision at the Firm level would create inconsistency between Firms and could result in a dilution of the application of the PIE definition. Further, the determination of such thresholds by Firms could be retrospectively challenged by regulators without clearer language from APESB.

Further, in their [submission to the IESBA](#), IOSCO clearly state they "strongly believe that firms should not have the option to strip away any entities from the baseline definition", which could be an unintended consequence of the current subjective language proposed in ED 05/22.

EY further notes the use of "shall", which connotes a requirement, in an application paragraph.

Recommendation

EY strongly encourages APESB to set turnover and number of employee thresholds directly, rather than deferring to Firms for such a determination. We believe this will strengthen the definition of Public Interest Entity and standardise application between Firms.

EY further encourages replacement of the word “shall” to clarify the paragraph is not a requirement, and to consider whether simplifying this paragraph might increase compliance.

Interaction between R400.17 and AUST 400.18 A3

EY is also concerned by the drafting of paragraph AUST 400.18 A3, and the interaction with the IESBA’s baseline PIE definition in R400.17. We are of the view that supplementing a requirement with less onerous Australian-specific application material creates a confusing situation where Firms are required to treat all categories of entities in R400.17 as PIEs, but could elect to reduce this through the application of AUST 400.18 A3.

In their [PIE Rollout Draft Questions and Answers](#) Board paper, IESBA technical staff clarify in paragraph 15:

“It is noted that to fully adopt the revised PIE definition, a local body must not exclude any one of the mandatory categories set out in paragraph R400.17(a)-(c).”

IESBA further note in their [Basis for Conclusions](#), paragraph 55:

“A firm must apply any more explicit definitions or refinements established at the local level for those categories. By doing so, the firm will have complied with the requirement in R400.17.”

We are of the view that this requires further consideration by APESB to clarify the Board’s intent.

Recommendation

APESB to consider the inconsistencies between these two paragraphs and provide further clarity or amendments.

Paragraph AUST R400.19

EY notes that paragraph 400.19 A1 of the IESBA Code has been elevated to the Australian-specific requirement paragraph AUST R400.19. Such an approach was contemplated and rejected by the IESBA, as noted in their [Basis for Conclusions](#). We do not support the proposal to introduce a such a requirement and are not aware of a compelling reason to do so. We do not believe it is appropriate or in the public interest for Firms to make this judgmental determination, and doing so could create inconsistencies in how entities are treated, which would ultimately impede rather than enhance stakeholders’ confidence in the independence of the auditor.

As discussed above, EY strongly believes that local standard setters, professional bodies and regulators are best positioned to supplement a narrow, baseline list of categories in the Code and we believe it is not in the public interest for audit firms to make these determinations.

Recommendation

EY strongly believes this paragraph should be reverted to application material. If this provision is retained, those charged with governance should be required to agree to the classification as a public interest entity. If those charged with governance do not agree, then the entity would not be considered a PIE.

Paragraphs 400.18 A1 and 400.18 A2

EY notes that per APESB's paragraphs 400.18 A1 and 400.18 A2 are taken directly from the IESBA Code. However, we are concerned that these paragraphs apply more as guidance to standard-setters and regulators than to audit firms (Part 4A's intended audience). These paragraphs also appear to be superseded by paragraph AUST 400.18 A3. As such, we request that APESB further consider the inclusion of these paragraphs and whether these are better suited for removal or modification in place of AUST 400.18 A3.

We also take this opportunity to request APESB make available marked-up versions of their Exposure Drafts, both from the previous standard and from the IESBA Code (where relevant) to improve stakeholder transparency and understanding of the proposed changes.

Finally, where there are Australian-specific amendments to IESBA provisions, we encourage APESB to adopt similar effective dates to IESBA to minimise disruption for firms.

In response to APESB's request for specific comments, EY do not believe there are no additional categories of entities that should be included in the proposed revisions.

We would be pleased to discuss our comments with the Board and with technical staff. Should you wish to do so, please contact me at leigh.walker@au.ey.com or on 03 9288 8454.

Yours sincerely

Leigh Walker
Oceania Risk Management and Independence Leader