

15 April 2015

Mr Ken Siong
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,

RE: IESBA's Exposure Draft *Proposed Changes to Part C of the Code Addressing Presentation of Information and Pressure to Breach the Fundamental Principles*

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on IESBA's Exposure Draft *Proposed Changes to Part C of the Code Addressing Presentation of Information and Pressure to Breach the Fundamental Principles* (Exposure Draft). APESB commends IESBA's efforts to strengthen Part C of the Code in order to address the ethical responsibilities of Professional Accountants in Business (PAIB) with respect to the presentation of information and pressure by superiors and others to breach the fundamental principles in the Code. Subject to the comments noted in this submission, APESB is supportive of IESBA's proposals in the Exposure Draft.

APESB is concerned with IESBA's proposal to remove the original requirement in extant paragraph 320.2 of the Code, which imposes a professional obligation on a PAIB who prepares or has the responsibility to approve general purpose financial statements, to be satisfied that those financial statements are presented in accordance with an applicable financial reporting framework. We understand that IESBA believes that this requirement is better placed as an elaboration of the overarching 'fair and honest' principle. We note that IESBA is of the view that this existing requirement unnecessarily duplicates what the relevant jurisdiction's Accounting Standards would already require.

On the contrary, we are of the view that local jurisdiction Accounting Standards impose the requirement on the relevant entity or organisation (practically those charged with governance) to prepare and present financial information in accordance with the applicable financial reporting framework rather than on the PAIB. The existing requirement in the extant Code created the professional obligation on the PAIB and thus in a sense closed the loop between the preparer, and in certain instances the preparer/approver, of the financial statements and the relevant entity or organisation. Thus, we believe that IESBA's proposal in the Exposure Draft effectively removes a critical existing professional requirement on a PAIB who prepares or approves general purpose financial statements.

Recommendations

APESB's key recommendations for IESBA's consideration are:

- to include other examples where a PAIB is associated with issuing external financial and non-financial information for public purposes in paragraph 320.1 (refer specific comment 1 – page 3);
- to retain the original paragraph 320.2 which created a mandatory professional obligation on a PAIB to comply with an applicable financial reporting framework when preparing, or in certain instances approving, general purpose financial statements (refer specific comment 1 – page 2);
- to provide additional guidance where a PAIB relies on the work of others in paragraph 320.5 (refer specific comment 4 – page 4);
- to take into account both qualitative and quantitative factors when evaluating the significance of misleading information in paragraph 320.6 (refer specific comment 5 – page 5);
- to specify that a PAIB consider section 140 *Confidentiality* of the Code and/or whistleblower laws when contemplating to disclose confidential information in paragraphs 320.6, 320.7 and 370.6 (refer specific comment 5 for section 320 - page 5 and specific comment 4 for section 370 – page 8); and
- to provide additional safeguards to strengthen the organisation's ethical culture (refer specific comment 1 for section 370 – page 6).

Specific Comments

APESB's responses to the specific questions raised by the IESBA in the Exposure Draft are as follows:

Proposed Revised Section 320

1. Is the enhanced guidance on applying the “fair and honest” principle in Section 320 helpful?

Guidance on “fair and honest” principle

Subject to our comments below, APESB is supportive of IESBA's efforts to enhance the “fair and honest” principle by developing additional guidance for PAIBs.

Deletion of original requirements in paragraph 320.2

As noted above APESB is not supportive of the deletion of the existing requirement in paragraph 320.2 which created a mandatory professional obligation for a PAIB who prepares or has responsibilities in respect of approving general purpose financial statements to comply with the applicable financial reporting framework. We believe that the proposed deletion removes a critical professional obligation which currently exists for PAIBs.

Accordingly, we recommend that the original paragraph 320.2 be reinstated due to the following reasons:

- Accounting Standards of the relevant jurisdiction (as is the case with Australian Accounting Standards) generally imposes the requirement on the organisation or entity (practically those charged with governance) to prepare and present financial statements in accordance with the relevant financial reporting framework rather than on the PAIB; and
- It is in the Public Interest to retain this requirement as the preparation and presentation of financial information is the most common task a PAIB performs for the employing organisation or entity and it is for external public consumption.

The importance of the existing requirement in the Code is further emphasised in Australia whereby an additional *AUST paragraph 320.2.1*¹ has been included in the Australian Code (i.e. AUST 320.2.1). This paragraph mandates that where a PAIB is not satisfied that the general purpose financial statements of an employing organisation are presented in accordance with the applicable financial reporting framework, the PAIB must in all cases:

- notify those charged with governance;
- document this communication; and
- qualify any declarations given by the PAIB in connection with the financial reporting obligations whether the financial statements are in compliance with legislative and regulatory requirements or in accordance with the organisation's reporting requirements.

Due to the reasons noted above we respectfully request that IESBA reconsider the decision to delete the existing paragraph 320.2.

Suggested additional guidance in paragraph 320.1

We note that paragraph 320.1 includes examples of information that may be used for external or internal purposes given the diversified roles of PAIBs. However, APESB believes that IESBA should emphasise and place more importance in those circumstances where a PAIB is associated with issuing financial and non-financial information for external purposes.

PAIBs employed in listed organisations are increasingly involved in preparing amongst other things, reports to assist with fundraising activities, corporate social responsibility reports or sustainability reports (e.g. Independent Accountant's Report, Integrated Reporting, social and environmental impact assessment reports). Accordingly, we propose that you consider the inclusion of other common examples where information is issued externally:

320.1 Examples include, but are not limited to:

- *financial information in a public document provided to shareholders, unit holders or holders of a relevant interest in an entity when issuing shares or in respect of other fund raising activities;*
- *non-financial information in a public document (e.g. specific tax-related information, environmental matters, information technology matters);*
- *valuation reports;*

¹ Accounting Professional & Ethical Standards Board. Compiled APES 110 Code of Ethics for Professional Accountants: November 2013. Section 320 Preparation and Reporting of Information: Paragraph AUST 320.2.1, Page 134.

- declarations to the Board such as CEO/CFO financial reporting certifications or internal control certifications e.g. Sarbanes-Oxley Act certification; and
- special purpose financial statements filed with regulators for regulatory and compliance purposes.

2. In particular, do respondents support the guidance in paragraph 320.3 addressing the issue of misuse of discretion in a manner that is intended to mislead? If not, please explain why. Are there any other considerations relating to this issue that should be addressed in Section 320?

APESB proposes that IESBA consider including the following editorial amendments to the proposed paragraph 320.3 to ensure that the information captures both financial and non-financial information, and where applicable, takes in to consideration the applicable financial reporting framework.

320.3 Preparing or presenting financial and non-financial information often involves judgment and discretion—to ensure information is understood in its context. Preparing or presenting such information fairly and honestly, and where applicable, in accordance with the applicable financial reporting framework requires the professional accountant not to exercise such judgment and discretion in a manner that is intended to mislead, including when...

3. Paragraph 320.4 provides guidance as to what PAIBs are expected to do ethically in order to prepare or present fairly and honestly information that does not have to comply with a relevant reporting framework. Is this guidance sufficient? If not, what further guidance could Section 320 usefully provide?

APESB proposes that paragraph 320.4 may be further enhanced by including that the PAIB considers the user's decision making needs and to exercise professional judgement in balancing the qualitative characteristics of information in different contexts.

The relevance and faithful representation of information may influence the user's economic decisions, or alternatively allow a user the opportunity to reassess past decisions and evaluations. Accordingly, the following proposed amendments to paragraph 320.4 are for IESBA's consideration:

320.4 An important factor for the professional accountant to consider is having regard to the purpose for which the information is to be used, the context in which it is provided and the audience to whom it is addressed. Relevant and faithfully represented information can influence users' economic decisions or allow them to reassess past decisions and evaluations. For example, preparing or presenting financial information such as pro forma reports, budgets or forecasts would require the professional accountant to include relevant estimates, approximations and assumptions that are necessary to enable those who may rely on such information to form their own judgments.

4. Do respondents agree that where a PAIB relies on the work of others, the PAIB should be required to take reasonable steps to be satisfied that such work enables the PAIB to comply with the overarching principle in paragraph 320.2?

APESB is supportive of IESBA's proposals in paragraph 320.5. However, IESBA should consider providing additional guidance on matters PAIBs should consider when relying on the work of others whether it is an external management expert, an outsourced service provider, or internal staff. PAIBs should evaluate the work of others and determine

whether they have the required professional competence, skills, and capacity to perform the allocated tasks.

If the PAIB forms the view that the work performed by others includes a misstatement, then the PAIB should consider undertaking additional procedures to either confirm and correct the misstatement or to dispel the view that a misstatement exists. The proposed additional guidance will enable the PAIB to exercise professional scepticism and critically assess whether reliance on the work of others is reasonable.

5. Do respondents agree with the guidance proposed in paragraphs 320.6 and 320.7 regarding disassociation with misleading information? Are there other actions that could be specified?

Disclosure of confidential information

APESB is supportive of the proposed guidance in paragraphs 320.6 and 320.7. However, we note the importance of a PAIB considering section 140 *Confidentiality* of the Code or whistleblower laws applicable to the jurisdiction when contemplating whether to disclose confidential information. Accordingly, we suggest the following matters for IESBA's consideration:

- to include a reference in paragraph 320.6 to Section 140 *Confidentiality* of the Code (similar to IESBA's proposed guidance in paragraph 370.1) as follows:

When a professional accountant has determined that information with which the professional accountant is associated is misleading, the professional accountant, being alert to the fundamental principle of confidentiality, shall take steps to resolve the matter.

- to include a reference in paragraph 320.7 for a PAIB to consider local whistleblower laws.

The proposed enhanced guidance will remind PAIBs of their obligations to respect the confidentiality of information acquired as a result of professional and business relationships and to be mindful that whistleblowing may be in conflict with their professional requirements to maintain confidentiality and that such a decision needs to be taken after careful consideration of the applicable legal obligations.

Other factors to consider when dealing with misleading information

In Australia, APESB issued Guidance Note APES GN 40 *Ethical Conflicts in the Workplace – Considerations for Members in Business* (APES GN 40) that provides guidance to PAIBs in dealing with ethical issues that they may encounter in the workplace.

We suggest that IESBA consider including guidance to encourage a PAIB to consider all relevant factors (i.e. both qualitative and quantitative factors) when assessing misleading information and to reassess the information, particularly when circumstances change. Accordingly, based on relevant guidance in APES GN 40², the following editorial amendments are for IESBA's consideration:

320.6 *Where a professional accountant has formed a tentative view that information with which the professional accountant is associated is misleading, the professional*

² Accounting Professional & Ethical Standards Board. APES GN 40 Ethical Conflicts in the Workplace-Considerations for Members in Business: March 2012. Section 4 Conceptual framework approach: Paragraph 4.3, Page 5.

accountant shall take qualitative as well as quantitative factors into consideration when evaluating the significance of misleading information, and be alert to the fact that reassessment of the misleading information may need to occur on an ongoing basis. If, after exhausting all relevant possibilities the Professional Accountant is of the view that the information remains misleading, the professional accountant shall take steps to resolve the matter...

Proposed Section 370

1. Do respondents agree with the overarching requirements in paragraphs 370.1 and 370.2?

APESB supports the overarching requirements in paragraphs 370.1 and 370.2. We suggest that in addition to intimidation threats in paragraph 370.1, IESBA consider including pressure from self-interest threats, as that is likely to be the other most relevant threat.

The Chartered Global Management Accountants (CGMA) '*Executive Summary on Managing Responsible Business*'³ states that while there have been positive developments in terms of building the architecture of ethical code and policies, the translation of these into actual practice and everyday business processes are lagging. Based on a global survey on business ethics conducted by CGMA, it was reported that although PAIBs are well placed to bring their skills, insights and influence to encourage ethical performance, they may not always be supported and enabled to do so by the wider organisation. In some cases it was identified that PAIBs do come under pressure to act unethically.

The Chartered Institute of Management Accountants' (CIMA) global survey on 'Acting under pressure'⁴ noted that despite positive signs of ethical support and guidance within organisations, there are still, for a minority, recognised pressures within the organisations to act unethically. The survey explored specific situations at work that created pressures on PAIBs to act unethically, how they personally felt pressured by management and colleagues, as well as any influence exerted by the overall economic climate. The survey highlighted the following circumstances as situations where pressure is most likely to occur:

- working with colleagues from different functional areas;
- meeting reporting deadlines; and
- dealing with customers.

The Association of Chartered Certified Accountants' (ACCA) '*Culture and channelling corporate behaviour*'⁵ states that a healthy corporate culture is a prerequisite of good governance, sound risk management and essential for good long-term corporate performance. A global survey conducted by ACCA affirmed the critical importance of tone at the top in setting the ethical compass for the organisation, and being able to shape and drive a strong corporate culture that channels functional behaviour.

³ Chartered Global Management Accountant. CGMA Executive Summary - Managing Responsible Business A global survey on business ethics: May 2012. Conclusion: Page 7.

⁴ Chartered Institute of Management Accountants. Acting under pressure - How management accountants manage ethical issues: August 2012. Pressure Points: Page 7.

⁵ Association of Chartered Certified Accountants. Culture and channelling corporate behaviour: November 2014: Page 1.

Thus, based on the above observations, we recommend that IESBA include the following additional safeguard in paragraph 300.14 of the Code to strengthen the organisation's ethical culture:

300.14 Safeguards in the work environment include:

- *incentives for senior management and employees to uphold the organisation's standards of ethical conduct.*

2. Are the illustrative examples of types of pressure that could result in a breach of the fundamental principles in paragraph 370.4 helpful?

APESB agrees that the illustrative examples in paragraph 370.4 are helpful. However, it would be beneficial for IESBA to state that the examples provided are non-exhaustive and we suggest the following editorial amendment for your consideration:

370.4 Examples of pressure that could result in a breach of the fundamental principles include but are not limited to:

We also suggest that IESBA broadens the list of examples of pressures in paragraph 370.4 based on the additional proposed examples of pressure included in *Appendix 1* of this submission.

3. Is it sufficiently clear that Section 370 addresses pressure that could result in a breach of fundamental principles, as opposed to the routine pressures that exist in the workplace? In particular, does paragraph 370.5 provide sufficient guidance to assist the PAIB in making that distinction? If not, what other considerations should the PAIB take into account?

Subject to our comments above, APESB agrees that Section 370 sufficiently addresses pressure that could result in a breach of fundamental principles, as opposed to the routine pressures that exist in the workplace. However, IESBA should consider the following proposed amendment to paragraph 370.5:

370.5 The professional accountant may wish to consider the following when faced with pressure that could result in a breach of the fundamental principles:

- *The application of the relevant laws, and regulations and Professional Standards to the circumstances.*

4. Do respondents find the guidance in paragraph 370.6 on responding to pressure that would result in a breach of the fundamental principles helpful? Are there other actions that should be considered?

APESB is of the view that the guidance in paragraph 370.6 is helpful. Similar to our comments in question 5 (proposed revised section 320), we propose that IESBA consider including references to Section 140 *Confidentiality* of the Code and local whistleblower laws.

5. Are the references to other sections of Part C of the Code, in paragraph 370.9 helpful?

APESB is of the view that references to other sections of Part C of the Code is helpful as then it is not necessary to repeat content that is presented in other sections of Part C.

General Comments

APESB's responses to the general matters raised by the IESBA are as follows:

(a) Preparers (including Small and Medium Entities), and users (including regulators)

APESB considers the additional guidance with respect to pressures faced by PAIBs and potential beaches of the fundamental principles in the Code as useful. We incorporated a 'flow diagram of an ethical decision making process'⁶ in APES GN 40 to facilitate the practical adoption of an ethical decision making process by a PAIB.

Accordingly, we suggest that IESBA consider including a similar flow diagram of an ethical decision making process in an appendix to the Code in order to facilitate the practical adoption of these proposed changes.

(b) PAIBs working in the public sector

Not applicable.

(c) Developing Nations

Not applicable.

(d) Translations

Not applicable.

Concluding comments

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

Yours sincerely



The Hon. Nicola Roxon
Chairman

⁶ Accounting Professional & Ethical Standards Board. APES GN 40 Ethical Conflicts in the Workplace-Considerations for Members in Business: March 2012. Section 4 Conceptual framework approach: Paragraph 4.2, Page 4.

Appendix 1

Proposed Section 370

Pressure to Breach the Fundamental Principles

370.4 Examples of pressure that could result in a breach of the fundamental principles include but are not limited to:

Pressure related to conflicts of interest

- Pressure to withhold information from auditors when a PAIB discovers a significant error which relates to work performed by a colleague/superior and disclosure may have an impact on the PAIB's employment security;
- Pressure from long association with business contacts or dealing with long standing customers that may influence significant business decisions.

Pressure to act without sufficient expertise or due care

- Pressure from colleagues or superiors from different functional areas to act without sufficient expertise or due care.

Pressure related to financial interests

- Implicit or explicit pressure from superiors or colleagues' self-interest to present information that has been altered in order to increase their compensation; and
- Pressure to use insider information for personal gain.

Pressure related to inducements

- Pressure to pursue financial strategies to maximise short term profits at the expense of long term returns in order to obtain performance bonuses.

Pressure related to non-compliance with laws and regulations

- Pressure from superiors to engage in activities or transactions that may violate laws or regulations i.e. proposals for tax evasion/minimisation by manipulating financial statements or financial information reported to a tax authority.