

8 December 2017

Mr. Ken Siong
Technical Director
International Ethics Standards Board for Accountants (IESBA)
International Federation of Accountants (IFAC)
529 Fifth Avenue, 6th Floor
New York, New York 10017 USA
By email: kensiong@ethicsboard.org

Dear Mr. Siong,

RE: IESBA's Exposure Draft *Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements*

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the IESBA's Exposure Draft *Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements* (Inducements ED).

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, high-quality professional and ethical pronouncements. These pronouncements apply to the membership of the three major Australian professional accounting bodies (Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants). In Australia, APESB issues APES 110 *Code of Ethics for Professional Accountants* which includes the Australian auditor independence requirements, as well as a range of professional & ethical standards that deal with non-assurance services.

Introductory comments

APESB is supportive of the IESBA's project to strengthen the provisions in the Code intended to assist Professional Accountants In Business (PAIBs) in dealing with the offering and accepting of inducements and to align these provisions with the Professional Accountants in Public Practice (PAPPs) as this ensures consistency amongst all professional accountants in respect of their ethical obligations relating to inducements.

APESB supports the clarification of the definition of *inducement*, and agree that *intent* is key to the application of the conceptual framework when dealing with inducements. We strongly agree with the requirement for professional accountants to understand and comply with laws and regulations that prohibit illegal inducements, such as those that relate to bribery and corruption.

APESB is concerned with the introduction of the concept of '*closeness of relationship*' between an accountant and the accountant's immediate or close family members as a factor in determining whether there is improper intent in the offering or accepting of inducements by family members. We are of the view that '*closeness of relationship*' is a subjective concept, and therefore assessing the 'closeness' between an accountant and an immediate or close family member may be subject to varying degrees of interpretation.

We strongly believe offering or accepting of inducements by immediate or close family members should by itself raise a question as to the intent of the inducement, regardless of the degree of closeness between the accountant and the family members.

We suggest that the IESBA give further consideration to this concept and refer, as appropriate, to the relevant provisions in Sections 521 and 921 *Family and Personal Relationships* of the restructured Code.

Recommendations

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

- Reconsider the concept of 'closeness of relationship' in respect of assessing the intent in inducements involving family members and align it with the Independence sections of the restructured Code to achieve overall consistency of the Code;
- Amend applicable requirements to clarify that prohibition of inducements with improper intent extends to trivial and inconsequential inducements;
- Amend relevant requirement paragraph to clarify that laws and regulations relating to illegal inducements may not be limited to those dealing with bribery and corruption;
- Include professional competence and due care in the list of fundamental principles that might be impacted by threats arising from inducements;
- transform the application material relating to compliance with the conceptual framework in respect of inducements without improper intent into a requirement paragraph;
- Explicitly state the need for professional accountants not to offer or decline an inducement at the first instance to eliminate the relevant threats;
- Consider the practical implications of disclosure of a donation and the impact it will have on the individual or organization who offered it, and make amendments as appropriate.

Further information on APESB's key recommendations, other comments and specific editorial suggestions are included in Appendix A for the IESBA's consideration.

Concluding comments

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

Yours sincerely

The Hon. Nicola Roxon
Chairman

Appendix A

APESB's Comments

APESB's responses to the specific matters raised by the IESBA in the Inducements ED are as follows:

Specific Matters

Proposed Section 250

1. Do respondents support the proposals in Section 250? In particular, do respondents support the proposed guidance to determine whether there is an intent to improperly influence behavior, and how it is articulated in the proposals?

Subject to our specific comments below, APESB is supportive of the proposed Section 250 *Inducements, Including Gifts and Hospitality* (Section 250), including the proposed guidance to determine whether there is an intent to improperly influence the behaviour of recipients of inducements.

We would like, however, to raise the following matters for the IESBA's consideration to enhance the clarity and effectiveness of the provisions in Section 250:

Nature of relationship with family members

APESB is concerned that the guidance relating to factors relevant in determining whether there is improper intent introduced a new but ambiguous concept when referring to the '*closeness of the relationship*' between an accountant and the accountant's immediate or close family members and counterparties (paragraph 250.13 A1).

We believe that the '*closeness of the relationship*' between an accountant and his or her family members is subjective and therefore will invariably create difficulties in determining whether there is improper intent in respect of the inducement. For example, an inducement offered to a sibling of the Chief Finance Officer (CFO) of a company by its supplier that is in the process of renewing its contract with the company should raise a question as to the intent of the inducement, regardless of the '*closeness of relationship*' between the CFO and his/her sibling.

We acknowledge that section 250 is applicable to PAIBs. However, we believe that, in principle, the factors relevant to inducements involving family members should be consistent with the factors relevant to threats created by family and personal relationships in audit and other assurance engagements (sections 521 and 921 in the restructured Code).

Relationships of an accountant with immediate and close family members will create threats to his or her independence in performing audit/assurance engagements, regardless of the degree of closeness between the accountant and his or her family members. In a similar manner, offering of or accepting inducements by immediate and close family members of an accountant should raise concerns as to the intent of the inducement.

We recommend that the IESBA reconsider this matter and amend the relevant paragraphs, as appropriate.

Professional competence and due care

We agree that offering or accepting inducements might create threats to compliance with the fundamental principles of integrity, objectivity and professional behaviour (paragraph 250.2).

We recommend the addition of the fundamental principle of professional competence and due care, as we believe that offering or accepting inducements might also create threats to an accountant's compliance with this principle. For example, an inducement may incentivise an accountant to undertake professional activities for which they do not have the necessary expertise or experience.

Trivial and inconsequential inducements with improper intent

We strongly support the prohibition of offering or accepting inducements if there is actual or perceived intent to improperly influence the recipient's behaviour (improper intent), even if the inducements are trivial or inconsequential. We agree with the IESBA that there are no safeguards that can reduce threats created by inducements with improper intent in all circumstances.

In view of this, we believe that it is important for the requirements (paragraphs R250.7 and R250.8) to clearly specify that the prohibition extends to trivial or inconsequential inducements. We suggest that paragraphs R250.7 and R250.8 be amended as follows:

R250.7 - A professional accountant shall not offer, or encourage others to offer, any inducement that is made with the intent to improperly influence the recipient's behaviour, even if it is trivial or inconsequential.

R250.8 - A professional accountant shall not accept, or encourage others to accept, any inducement that the accountant has reason to believe is made with the intent to improperly influence the recipient's behaviour, even if it is trivial or inconsequential.

Inducements prohibited by laws and regulations

We strongly support the requirement to obtain an understanding of and comply with laws and regulations that prohibit offering or accepting of inducements. We agree that this requirement should cover all illegal inducements, not just those related to bribery and corruption.

We are of the view, that the current requirement (paragraph R250.5) is drafted in a manner that focuses it solely on 'laws and regulations related to bribery and corruption that prohibit the offering or accepting of inducements'. In this regard, we suggest the following revision to paragraph R250.5 (first sentence):

In many jurisdictions, there are laws and regulations, such as those related to bribery and corruption, that prohibit the offering or accepting of inducements in certain circumstances.

Inducements without improper intent

Compliance with the conceptual framework

We have observed that the provision to apply the conceptual framework when inducements are made without improper intent is in the form of an application material, without a corresponding requirement paragraph (paragraph 250.10 A1).

We recognise that the introduction paragraphs in this section refer to the requirement for professional accountants to comply with the fundamental principles and apply the conceptual framework.

Further, we have noted that the topic of inducements without improper intent is the only topic that did not have a corresponding requirement paragraph, as opposed to the other topics in this section.

The above treatment may be misinterpreted to mean that the application of conceptual framework in respect of inducements without improper intent does not have the same degree of importance as the requirements for the other topics in this section.

To emphasise the requirement to apply the conceptual framework in these instances, we suggest that it be transformed into a requirement paragraph.

Safeguards for threats created by inducements without improper intent

We believe that providing examples of safeguards is helpful to professional accountants when dealing with threats created by inducements without improper intent (paragraphs 250.11 A3 and 250.11 A4).

However, we are of the view that in the first instance, an accountant should opt not to offer or accept an inducement. This action is consistent with the conceptual framework which requires to eliminate the circumstances that are creating the threats to compliance with the fundamental principles (paragraph R120.10).

APESB concurs with the IESBA view that this option is always available to the accountant, but we strongly believe that it is important to explicitly state it in the Code and emphasise it as the first option that an accountant should take to eliminate the threats arising from inducements. We recommend that the IESBA consider adding a new paragraph to address this matter.

Disclosure of a donation of an inducement

We are concerned with the practical implications of the last example of a safeguard in paragraph 250.11 A3, which requires disclosure of a donation of an inducement to the individual who offered it. We recognise that in some circumstances this may be a sound undertaking. However, we believe that there will also be instances that this will place the accountant in a difficult position. We recommend that the IESBA re-consider this example, and redraft or provide more guidance as appropriate.

Editorial Comment

We suggest that the spacing between paragraphs 250.15 A2 and 250.15 A3 be fixed.

Proposed Section 340

2. Do respondents agree that the proposed provisions relating to inducements for PAPPs should be aligned with the enhanced provisions for PAIBs in proposed Section 250? If so, do respondents agree that the proposals in Section 340 achieve this objective?

Yes, we agree with the proposed alignment of provisions in Section 250 for PAIBs with those in Section 340 for PAPPs.

Most paragraphs in Section 250 have replicate content in Section 340. Please refer to our comments in question 1 in relation to:

(a) Nature of relationship with family members - for paragraph 340.13 A1

Similar to our comments in question 1, we believe that the 'closeness of relationship' of the accountant with his/her family members is a subjective concept and should not be a factor in determining whether there is improper intent in the inducements.

We are also of the view that, in principle, the factors relevant to inducements involving family members should be consistent with the factors in evaluating the threats created by family and personal relationships in the independence section of the Code (sections 521 and 921 of the proposed restructured Code).

(b) Professional competence and due care – for paragraph 340.2

(c) Trivial and inconsequential inducements with improper intent – for paragraphs R340.7 and R340.8

(d) Inducements prohibited by laws and regulations – for paragraph R340.5

(e) Inducements without improper intent

- Compliance with the conceptual framework – for paragraph 340.10 A1
- Safeguards for threats created by inducements without improper intent – for paragraphs 340.11 A3 and 340.11 A4
- Disclosure of a donation of an inducement – for paragraph 340.11 A3 (last bullet point)

Proposed Conforming Amendments to Independent Provisions

3. Do respondents support the restructuring changes and proposed conforming amendments in proposed Sections 420 and 906?

Yes. APESB supports the restructuring changes and proposed conforming amendments in proposed Sections 420 and 906. They have simplified the provisions and enhanced their clarity.

4. Do respondents believe that IESBA should consider a project in the future to achieve further alignment of Sections 420 and 906 with proposed Section 340? If so, please explain why.

APESB is of the view that there are no significant matters that would necessitate the undertaking of a future project to achieve further alignment of Sections 420 and 906 with proposed Section 340.

General Comments

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

(a) Small and Medium-Sized Entities (SMEs) and Small and Medium Practices (SMPs)

None noted.

(b) Regulators and Audit Oversight Bodies

Not applicable.

(c) Developing Nations

Not applicable.

(d) Translations

Not applicable.