

December 8, 2017

Mr. Ken Siong
Technical Director
International Ethics Standards Board for Accountants
529 Fifth Avenue
New York, NY 10017 USA

Dear Mr. Siong:

Re: September 2017 Exposure Draft, *Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements*

I am writing on behalf of the Public Trust Committee (PTC) of the Chartered Professional Accountants of Canada (CPA Canada) in response to your request to comment on the Exposure Draft entitled *Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements* (“the Exposure Draft”).

CPA Canada is the national body of Canada’s accounting profession, with more than 210,000 members both at home and abroad. The Canadian CPA designation was created with the unification of three legacy accounting designations (CA, CGA, and CMA).

CPA Canada conducts research into current business issues and supports the setting of accounting, auditing and assurance standards for business, not-for-profit organizations and government. It issues guidance on control and governance, publishes professional literature, develops continuing education programs and represents the Canadian CPA profession nationally and internationally.

The PTC is responsible for overseeing the regulatory structures and processes across provincial jurisdictions in Canada. The PTC’s goals include achieving consistency between the provincial CPA bodies in Canada and ensuring that the processes and standards in Canada meet or exceed the international standards.

Generally, as provided below, we are supportive of the proposals as presented in the Exposure Draft and appreciate the breadth of inducements considered and the emphasis on potential applicability of relevant laws and regulations. However, through our consultation efforts, we did receive some consistent feedback regarding concerns that we have also presented below for IESBA’s information. Overall in considering the proposals, we recognized the importance of appropriate use of professional judgment in relation to inducements, the specificity of each

situation and acknowledgment of the grey area that arguably exists between establishing or maintaining positive business or working relationships and the potential for improper influence.

Please find below our responses to the requested matters for input from Respondents as outlined in the Explanatory Memorandum's Guide for Respondents.

Request for Specific Comments:

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?*

Overall, we support the proposals in Section 250 and also the proposed guidance to determine whether there is an intent to improperly influence behavior.

With the objectives of the Code restructuring project top of mind, we noted the following general observations for consideration:

- The nature and location of 250.4 A1 was questioned. We believe it appears to be a definition of an inducement but it isn't located in the Glossary and we were not certain as to why it couldn't be a defined term.
- 250.4 A1 precedes any requirement which seems out of order. We suggest that perhaps the information in 250.4 A1, if it should remain within the Section, could be better located in the Introduction in order that a requirement should begin the Requirements and Application Material section immediately followed by application paragraphs.
- We noted a few instances where simpler, clearer language could be used such as in the use of "counterparty" (e.g., R250.12 (a)) and "whilst" (e.g., 340.11 A1 (a)).

In describing an inducement in 250.4 A1, we suggest the description could be enhanced as follows "An inducement is an object, situation or action that ***might*** be used as a means to ***directly or indirectly*** influence another individual's behavior". In addition, we questioned whether a commission could be considered to fit the description of an inducement. We suggest there should be some clarity in this regard and/or linkage between the sections within the Code with references to commissions to those relating to inducements.

In considering R250.7 and R250.8, we deliberated upon the feedback received from our consultation which notably included the observation and, for some, a significant concern, that the key principle of intent may be difficult to establish for purposes of compliance and enforcement of the requirements when no evidence of intent may be obtainable from the third party providing the inducement.

In addition, we believe that two important changes should be made to remove the apparent compromise of the reasonable and informed third party test by the subjective beliefs held by the professional accountant as follows:

- R250.7 – A professional accountant shall not offer, or encourage others to offer, any inducement that is made, or which ~~the accountant believes~~ a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the recipient’s behavior.
- R250.8 – A professional accountant shall not accept, or encourage others to accept, any inducement that the accountant has reason to believe is made, or ~~believes that~~ a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the recipient’s behavior.

Should the above changes not be made to remove the apparent compromise of the reasonable and informed third party test by the subjective beliefs held by the professional accountant, we believe the concept of assessing perceived intent within this Section will be unworkable from a regulatory perspective. In our view, a similar change would also be required in R250.13

In considering the relevant factors posed in 250.9 A1 when determining whether there is actual or perceived intent to improperly influence behavior, we generally found the list helpful and expect it will be of benefit to professional accountants as they exercise their professional judgment in this regard. We noted that an additional factor to consider may be the proximity between the offer of the inducement and when the event that the inducement might be deemed to influence will take place. We also noted, however, the apparent inconsistency in the proposals which state that where there is an intent to improperly influence behavior, it does not matter if the inducement is trivial or inconsequential (Explanatory Memorandum Paragraphs 22 and 24) and, at the same time, the first factor listed in 250.9 A1 includes the consideration of the nature and value of the inducement. Overall, we found that the bright line drawn within the Explanatory Memorandum regarding trivial and inconsequential inducements did not clearly appear or become so notable within the Requirements or Application Material in R250.7, R250.8 and 250.9 A1.

In addition to the above observations concerning the ethical bar drawn with respect to trivial or inconsequential inducements made with improper intent, our consultation brought forward some views that this bright line may be unnecessarily restrictive and that the requirements should be in relation to inducements that are not trivial. One such view posited that regardless of the intent of the individual who makes the offer, a gift that is trivial and inconsequential is unlikely, even in the eyes of a reasonable person, to have undue influence.

In considering the examples in 250.11 A1, it was noted that the most obvious and perhaps easiest to identify inducement examples were used. A suggestion would be to also include examples of some of the more abstract forms of inducements listed in 250.4 A1, such as appeals to friendship and loyalty and facilitation payments, to provide for enhanced understanding.

Our review of 250.14 A1 suggests that a revisit may be necessary in regard to the reference to consider the application material in 250.10 A1 to 250.11 A4. Paragraph 250.14 A1 indicates that the application material in those paragraphs is relevant when the immediate or close family member offers or accepts an inducement contrary to the advice of the professional accountant in accordance with R250.13. However, we do not believe that safeguards should be relevant in these situations since it has already been determined that there is intent to improperly influence behavior. Consequently, we believe the threat should be eliminated by applying only the guidance in 250.11 A4.

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?*

We agree that the proposed provisions relating to inducements for PAPPs in Section 340 should be aligned with the enhanced provisions for PAIBs in proposed Section 250. We generally agree that the proposals in Section 340 achieve this objective and we note the relevance of our detailed comments above regarding proposed Section 250 which should also be considered integral to our response here in regard to proposed Section 340.

Proposed Conforming Amendments to Independence Provisions

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

We support the restructuring changes and proposed conforming amendments in proposed Sections 420 and 906.

- 4. Do respondents believe the 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.*

We do not believe that further alignment of Sections 420 and 906 with proposed Section 340 is needed.

Request for General Comments

We offer general comments, as requested, in regard to the following:

Regulators and Audit Oversight Bodies

As noted above, we received some feedback through our consultation efforts about concerns that the key principle of intent may be difficult to establish for purposes of compliance and enforcement of the requirements when no evidence of intent may be obtainable from the third party providing the inducement. Further, in determining perceived intent, differences of opinion

about the perception could arise and the demonstrated use of professional judgment will be important in supporting the professional accountant's actions. We believe that documentation requirements would be most helpful in this regard both in terms of encouraging the analysis and thought used by the professional accountant to achieve compliance with the requirements and also for enforcement purposes.

We thank you for the opportunity to comment on this Exposure Draft and we appreciate that further revisions to these proposals may result through the feedback provided by stakeholders.

Yours truly,

A handwritten signature in black ink, appearing to be 'B Friedrich'.

Brian Friedrich, FCPA, FCGA
Chair, Exposure Draft Working Group – Public Trust Committee
CPA Canada