Drafting Conventions Report Back

This agenda paper contains extracts from the minutes of the March 2008 CAG meeting related to the discussion of the drafting conventions project and describes how the Task Force/IESBA responded to CAG members' comments.

CAG Member Comments	Task Force/IESBA Response
Use of the word "shall"	
Mr. Ray noted that the IAASB use of the term "shall" denoted a specific meaning and he questioned whether IESBA would be using the meaning in the same way as in the ISAs.	Paragraph 100.4 of the exposure draft contains the following: "The use of the word "shall" in this Code imposes a requirement on the professional accountant or **firm** to comply with the specific provision in which "shall" has been used. Compliance is required unless prohibited by law or regulation or an exception is permitted by this Code."
Mr. Haaning stated that the Code should contain some flexibility for situations where it might be appropriate for a professional accountant to depart from a requirement conveyed by use of the word "shall." Mr. Damant stated that it was a very important point of principle as to whether any such flexibility was needed or desirable. Ms. Sucher noted that the Code contained provisions to address inadvertent violations of the Code but this was a different matter.	At the meeting, Mr. Dakdduk indicated that the IESBA's view was that the requirements in the Code were mandatory and, as such, there should be no flexibility to enable accountants to depart from a requirement. (Note; Subsequent to the CAG meeting, the IESBA discussed this matter and concluded that it is impossible to anticipate all circumstances faced by professional accountants when rendering a professional service and that there may be exceptional and unforeseen circumstances in which the application of a specific requirement may result in an outcome that a reasonable and informed third party would not regard as being in the interest of the users of the output of the accountant's professional services. This matter is discussed in more detail in Agenda Paper C under the heading "Temporary Departure from a Requirement in the Code."

CAG Member Comments	Task Force/IESBA Response
Acceptable Level	
Ms. Koski-Grafer questioned whether the phrase "apply safeguards, when necessary" was the appropriate construction, or if more specific language such as "apply safeguards whenever a threat was not trivial or inconsequential, or was not insignificant" would be more appropriate. Mr. Dakdduk responded that the meaning was that if, having evaluated the significance of identified threats, the accountant concluded that the threats were not at an acceptable level, safeguards shall be applied to eliminate the threats or reduce them to an acceptable level. He noted that the Task Force intends to recommend that this full construction be contained in paragraph 100.2 to make clear that this is what is meant by "when necessary." Ms. Koski-Grafer noted that it was important that the Code was clear on this matter and that the language did not take a short-cut.	Paragraph 100.2(c) of the exposure draft contains the following: "Apply safeguards, when necessary, to eliminate the threats or reduce them to an **acceptable level**.* Safeguards are necessary when the professional accountant determines that the threats are not at a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised."
Mr. Ray questioned whether a better definition of acceptable level would be a level at which a reasonable and informed third party *would* conclude that compliance with the fundamental principles is not compromised. Mr. Dakdduk said the Task Force would consider this.	The IESBA continues to hold the view that the appropriate definition of acceptable level is a level at which a reasonable and informed third party *would be likely* to conclude that compliance with the fundamental principles is not compromised. The IESBA is of the view that it is impossible to know what a reasonable and informed third party would conclude; the accountant can only judge what the third party would be likely to conclude.
Mr. Bradbury questioned whether the reference to "specific facts and circumstances" was sufficiently clear. He noted that it did not address hindsight. Mr. Fleck indicated that this could be addressed by including wording such as "available at that time."	The definition of "acceptable level" contained in the exposure draft now reads: "A level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles

CAG Member Comments	Task Force/IESBA Response
	is not compromised."
Consider/evaluate/determine	
Ms. Sucher commented that it was useful to clarify the intention. She also indicated that it would be useful to have a trail so that respondents could see how the changes had been applied. She further noted that paragraph 100.15 used the term "consider" and she could see that it might be better expressed using "determine" or "evaluate."	The explanatory memo that accompanied the exposure draft describes how the IESBA proposes to use these terms and includes a chart that identifies where changes were made to the Code to reflect the proposed convention. Paragraph 100.15 previously said "In exercising professional judgment, a professional accountant should consider what a reasonable and informed third party . . . would conclude to be unacceptable." That guidance has been changed and is now covered in paragraph 100.7 of the exposure draft, which states: "When a professional accountant identifies threats to compliance with the fundamental principles that are not at an acceptable level, the professional accountant shall determine whether appropriate safeguards are available and can be applied to eliminate the threats or reduce them to an acceptable level. In making that determination, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of the safeguards, such that compliance with the fundamental principles is not compromised."
Mr. Hegarty expressed the view that it was important for there to be documentation when there were threats that were other than clearly insignificant. If the auditor concludes the threats are at an acceptable level, this is an important matter and	The IESBA believes that when threats are deemed to be at an acceptable level by a close margin, the accountant will have discussed those threats with others to support such a conclusion. In those cases, the documentation requirement should

CAG Member Comments	Task Force/IESBA Response
should be documented. Mr. Fleck expressed the view that it was important that there was some documentation when a matter was "close to the line." Mr. Dakdduk responded that the ISA requires documentation of the conclusion and any relevant discussions that support the conclusion and, therefore, this would seem to address documentation of matters that were "close to the line." He indicated that the Task Force would consider this.	extend to such discussions. The IESBA thus concluded that, in addition to the need to document in cases where threats are identified that require the application of safeguards, the documentation should mirror that required by the ISAs. Paragraph 290.29 of the exposure draft now reads: "Even though documentation is not, in itself, a determinant of whether a firm is independent, conclusions regarding compliance with independence requirements, and any relevant discussions that support those conclusions, shall be documented. Documentation of independence conclusions and related discussions prepared to meet the requirements of international standards on auditing will meet this requirement. When threats to independence are identified that require the application of safeguards, the documentation shall also describe the nature of those threats and the safeguards applied to eliminate them or reduce them to an acceptable level."
Threats	
Ms. Todd McEnally stated that this seemed reasonably clear but she wondered whether it was envisaged that the appearance of compliance would be addressed. Mr. Dakdduk indicated that "appearance" would be addressed.	Paragraph 100.13 of the exposure draft states: "Threats may be created by a broad range of relationships and circumstances. When a relationship or circumstance creates a threat, such a threat could compromise, *or could be perceived to compromise*, a professional accountant's compliance with the fundamental principles."
Mr. Fleck noted that a better construction for the description might be "A self-interest threat is the risk that a professional accountant's…"	The IESBA is of the view that describing a self-interest threat as a risk could, potentially, be confusing. A self-interest threat is a sub-category of threat and, is, therefore, described as a threat.
Ms. Sucher questioned whether the last two lines of the definition [intimidation threat] were repetitive. Mr. Fleck noted that the	The definition of an intimidation threat in the exposure draft reads: "the threat that a professional accountant will be deterred

CAG Member Comments	Task Force/IESBA Response
phrase "undue influence" was probably more appropriate than "pressures, actual or perceived."	from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the professional accountant."
Mr. Damant suggested the list of examples include the threat of not getting a promotion. Mr. Fleck noted that another example could be the threat of a client dropping a non-audit service.	The following examples of circumstances that create intimidation threats were added to paragraph 200.8: • An audit client indicating that it will not award a planned non-assurance contract to the firm if the firm continues to disagree with the client's accounting treatment for a particular transaction. • A professional accountant being informed by a partner of the firm that a planned promotion will not occur unless the accountant agrees with an audit client's inappropriate accounting treatment.
Other	
Ms. Blomme reported that when the FEE Ethics Working Party had reviewed the CAG papers it was noted that there were a few instances where the word "generally" had been deleted and this seemed to change the meaning. Mr. Dakdduk indicated that the Task Force was reconsidering this matter.	The IESBA has reconsidered the matter and has re-instated the word "generally" in those paragraphs where it was deemed that the meaning might have been changed by deleting it.