April 13, 2006

Dear Sir or Madam

Commentary on Draft IFAC Good Practice Guideline for Development of a Code of Conduct

Thank you for the opportunity to offer commentary to the exposure draft of the "Proposed Good Practice Guideline: Guidance for the Development of a Code of Corporate Conduct." This response is based on input from The PricewaterhouseCoopers Global Ethics & Business Conduct Office and our Governance, Risk and Compliance Advisory practice. “PricewaterhouseCoopers” refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

We recognize your organization's dedication to promoting a professional environment of strong corporate governance through integrity. The code of conduct typically serves as the vehicle to communicate the organization’s commitment to stakeholders, both internally and externally, to these goals. A well-executed code defines the organization's mission and values, acknowledges its commitment to comply with applicable laws and regulations, sets standards of professional conduct, supports them through appropriate policies and procedures, provides guidance for ethical dilemmas and reporting misconduct and ensures there are consequences for retaliation and non-compliance with these standards.

However, it is important to note that the code of conduct is only one part of a well-executed compliance and ethics program. To be effective, the organization's leaders, both at senior management and the board level, must demonstrate their commitment to incorporate ethics and transparency into their corporate strategy. This commitment includes ensuring that critical functions are led by people with the appropriate competence and authority, that the organization understands its market and risks, and addresses them effectively through communication and training, monitoring and reporting and seizing improvement opportunities. Recognizing this commitment "from the top", staff are encouraged to take personal accountability for their own actions and those of their peers, preserving the value and reputation for all stakeholders.

These factors help build a strong foundation of corporate governance and the commitment to operate with integrity. However, the responsibility for driving governance and ethics functions has not typically fallen to the shoulders of the accountants and auditors.
In our experience, there may be a combination of leaders driving the ethics and compliance function, but it must be done with the cooperation and oversight of legal, compliance, risk management and internal audit. These functions serve together, sometimes in a formal committee structure, to provide checks and balances to the integrity and ultimate credibility of the process. Given the importance of identifying and assimilating legal requirements into operational policies and procedures within the code of conduct, the legal department plays a critical role in the development, approval and on-going review of the code and the effectiveness of the ethics and compliance program overall. We recognize that accountants and auditors provide invaluable complementary support through objective assurance of financial integrity and control effectiveness; however, we question whether their role supports the underlying premise of this guidance in the development of codes of conduct.

Acknowledging this caveat, we provide general and specific commentary to the exposure draft content as follows:

**General Comments:**

The guidelines seem to mix the concept of developing a code (as a document) with designing and implementing a comprehensive ethics and compliance program. Perhaps the point should be that (as stated above) the code by itself has limited value unless supported by other program elements. If this is intended to be a "cookbook" on writing a code, we suggest giving the steps on how to write a code. If it's intended to be a cookbook on implementing a code, it is incomplete. In that case, we suggest following a framework such as the US Federal Sentencing Guidelines.

**Specific comments:**

**Page 1 - Forward**

We question whether the focus is on professional accountants only, or is it intended to be broader, including all professionals that want to promote an ethical culture in organizations?

**Page 2 - Introduction**

Last paragraph – While a well-executed and implemented code of conduct can be viewed as a competitive asset, we believe that this is a sweeping statement that might not be based on fact. A well-designed code of conduct does not guarantee an organization's success. Ultimately, it is the collective behavior of the employees of an organization (especially including its management employees) and its governing body, which drive success. In addition, many other factors contribute to business success or failure.

**Pages 2 & 3 - Benefits of Developing a Code of Conduct**

We suggest also reflecting that the Code of Conduct provides the organization with another, often public-facing, opportunity to articulate what the organization stands for, how it intends to conduct itself both internally and externally, and to create accountabilities for its conduct.

**Page 3 - The Role of the Professional Accountant**

It is unclear whether the focus of this paragraph is on changing behavior or compliance. We also believe the role of the accountant may be overstated here, e.g. "identify, monitor, and
communicate the expectations of stakeholders…”. We further question whether it is the role of the accountant to develop and design the code and/or report on compliance therewith. We suggest the development (and implementation) of the code is more appropriately led by other corporate functions, such as risk management, compliance, legal or human resources. In addition, active oversight of the code and other activities should be provided by the independent board of directors.

Page 4 - Defining Conduct for Organizations
We suggest including policy summaries in your list of what codes include, as this is one of the key purposes of the code. We also found “Exhibit 1 - Stakeholders” to be an easy to understand visualization that adds value to better comprehend the material.

Pages 5 & 6 - Typical Content for a Code of Conduct
While this is a useful list overall, there are some topics typically found in codes, which are missing. These include: anti-trust and anti-competition initiatives; insider trading; security (including workplace safety); fairness in evaluations and promotions; non-retaliation and an explanation about the organization's approach to inquiries and the process for investigating complaints and allegations of misconduct. We question the global applicability of "health screenings" (item 3.5.2), considering that employee data privacy requirements will vary by jurisdiction.

Page 7 - Approaches to Developing a Code of Conduct
These different approaches are perhaps misrepresented as progressive stages or approaches. We believe that rather than suggesting discrete stages or approaches, these three approaches represent a continuum. For example, an organization might adopt a Stage 3 approach and achieve Stages 1 and 2; however, if it strictly "manages for compliance"(Stage 1), it might never achieve Stages 2 or 3.

Page 8 - The Three Stages for Developing a Code of Conduct
While we like the concept of the visual diagram and the differences between values and principles-driven approaches, there is some danger in distinguishing them in such broad, "black and white" terms. Again, perhaps a presentation as a continuum would be more effective. Alternatively, the Guide might suggest that the concepts in the approaches be described as elements that organizations should consider in developing their strategies to implementing a Code of Conduct. These concepts might provide the opportunity to convey that organizations that adopt appropriate values, beliefs and standards (including standards that are based, as appropriate, on compliance with laws and regulations) might, in so doing, achieve compliance with the law.

An alternative model that might be considered is the Stages of Ethical Development, such as the model described by Dr. W. Michael Hoffman (of the Center for Business Ethics, Bentley College).

Page 9 - Typical Actions Included in the Three Stages: Limitations
In general, we believe that all three approaches/stages should involve performing a risk assessment, to include external inputs and employee outreach and feedback to identify and assess risks and mitigation plans.
**Bullet one:** This statement broadly dismissing the value of a compliance program to "simple standards of right and wrong". In our experience and view, strong ethics and compliance programs also include following internal policies and procedures for professional conduct, as well as external requirements.

**Bullet two:** In our experience and view, strong ethics and compliance programs can and do set minimum standards of behaviour that include standards for good behaviour. Training can reinforce desired behaviors (including demonstrating courage to challenge bad behaviors) as well as provide strong deterrents to undesirable behaviors.

**Bullet three:** While compliance communications can send messages of perceived mistrust, well-designed ethics and compliance communications can also serve to reinforce trust in employees and serve as powerful reminders of personal responsibility. Regardless of whether a program is principles- or values-based, an organization would be doing its employees a disservice if it does not train them with tools such as an "ethical decision model" to assist them in addressing the daily dilemmas they face, especially those that are not covered by specific rules or policies.

**Bullet four:** We suggest expanding this statement further, as a "compliance only" approach misses potential opportunities to build an organizational culture of employee engagement and loyalty (note research by, for one, the Corporate Executive Board on this point).

**Last paragraph:** We do not believe using the Stage 1 approach implies minimum standards only. As previously mentioned, we believe the elements of all approaches should be considered by organizations.

**Page 10 - Stage 2 - Managing Stakeholder Relations: Limitations**
We believe that, while organizations can and should consider the interests of all their internal (such as employees) and external (including regulators, NGOs, investors, customers, etc.) stakeholders, ultimately organizations need not label the expectations as legitimate or illegitimate, but rather, must make their own decisions regarding standards of conduct.

**Page 10 - Stage 3 - Creating a Values-based Organization**
We reiterate our prior comments about the danger of considering these stages to be mutually exclusive (e.g. compliance approach vs. values approach). In creating values-based organizations, organizations should also consider the changing expectations of younger generations of workers and consumers. These generations place a high value on integrity and social responsibility. In addition research (from the Corporate Executive Board) demonstrates that values-based companies, in general, experience longer-term financial success and greater employee engagement and loyalty.

**Paragraph 3:** In addition to the items influencing the organization’s values, we further believe that an organization’s values are closely tied to its commitment to integrity and compliance (with laws and regulations as well as internal policy), and preserving and strengthening its reputation and "brand".

**Bulleted items:** Again, the items listed cover more than the steps necessary to create a code of conduct, but yet, are not the full set of activities needed to develop a comprehensive ethics and compliance program. In addition, good practices for developing a code of conduct
include soliciting and considering stakeholders’ (especially including employees’) input, as well as examples to demonstrate the concepts in the code.

**Bullets 3 & 4:** We are unsure of your intent here, as it would be difficult to impossible to monitor whether "values" alone are being followed.

**Page 11 - Defining the Organization’s Values**

**Paragraph 1:** We think you should add "and the board" to the second sentence ("The CEO must be willing…"). The board and senior management are responsible for effective corporate governance oversight.

**Paragraph 3:** We believe the emphasis in the last sentence to be slightly misplaced. Management, not employees, must implement the code of conduct and lead by their own example. Perhaps the intent was that all employees (including management employees) must take responsibility to model the behaviors covered in the code of conduct.

**Paragraph 4:** We believe that effective codes can be long and detailed, or short and high-level, depending on the design and implementation of the other elements of the ethics and compliance program. However, we believe that the code, along with the other supporting materials and activities, should provide sufficient guidelines for many business situations the employees are likely to face.

**Page 11 - Codes of Conduct in Global Organizations**

These are very valid considerations in our global market. In driving acceptance, understanding and addressing cultural differences is critical. You might consider using terminology like “country specific supplemental guidance” to better explain the tailor-made process. In our experience, a design for implementation of a global code that allows for locally-customized program elements (training, communications, guidance, incident reporting, monitoring, etc.) while preserving the common global standards, is emerging as a best practice model.

**Page 12 - International Application of Codes of Conduct**

Our comments on this "staged" approach are mentioned elsewhere in this letter. In general, we think the approaches the three stages present have more in common than what distinguishes them. All must consider the legal obligations of the parent company in its primary jurisdiction, but they are also obligated to follow applicable laws and regulations in the other countries where the parent company does business. Problems arise where the various countries’ laws may conflict. That must be addressed by leadership in those jurisdictions, to ensure the license to operate (overall and locally) will not be compromised. In addition, the code might address how such conflicts should be resolved.

**Stage 1, Paragraph 2:** We suggest including "cultures" in this concept: "This possibility arises where the laws or cultures of the two jurisdictions differ".

**Stage 2, 1st sentence:** As previously stated in commentary to page 10, Stage 2, we disagree with this statement. An organization could understand stakeholders’ objectives, but still decide to take a different stance in its code of conduct.
3rd sentence: As alluded to elsewhere in this letter, if the overall intent of this approach is shifted toward understanding stakeholders, but not necessarily setting standards of conduct that meet all stakeholders’ expectations, this sentence would likely be unnecessary.

Pages 12 & 13 - Toward Best Practices in Global Business Operations
The impression is that the Stage 3 approach is the most advanced and therefore the best, however, in reality, it includes the elements of Stages 1 and 2.

Numbered items: The issue of translation should be included, as this is a critical component to drive local country acceptance, just as cultural sensitivity is. It is important to ensure the translation is of the quality to ensure the text is not literally translated, but captures the spirit and intent of the text. We also recommend having local legal counsel and business management review the translations and perform a "sanity check" to ensure accuracy regarding legal requirements and policy, as well as preserving the quality of the code overall. In addition, we believe that that the "tone" of the code of conduct should be addressed, to ensure it is not presenting a "we" (management) vs. "you" (employees) posture.

Number 6, 2nd sentence: We suggest modifying the sentence that states "The organization should focus on its own culture rather than the local national culture" to reflect that it is important to focus on organizational culture while also considering local national culture.

Pages 13 & 14 - Observations on the Presentation and Content of Specific Codes
Overall, we like this section and its organization, as it is practical and forces one to think about the factors and questions raised.

Paragraph 1: We suggest using the term "good practice" here as opposed to "current best practice". What works "best" would be contingent on many different factors both within and without the organization, and ultimately, it may be a very subjective determination about what works best. We also suggest adding "policies or compliance" to the sentence, "...clear and credible code that integrates ethics, policies, practice and conduct". We believe that there must be a foundation, both of internal and external requirements upon which behaviour expectations are based.

Page 14 - "Organization-Centeredness"
We disagree with this concept as a best practice, and with the premise that codes are drafted exclusively by management without stakeholder input. The drafting of a code of conduct requires consideration of many factors and requirements, and in some cases (as in the governance principles of the NYSE), it should address the recommended topics, at a minimum. We believe that the best codes of conduct consider the organization's commitments to all of its stakeholders, both internal and external. We also believe that soliciting input and feedback from employees and other stakeholders is considered a strong practice.

Page 14 - Precision and Clarity
In your example of supporting environmental concerns, we do not understand how the example of "whistleblower protection programs" illustrates this.
Page 15 - Use of Plan, Positive Language
Here again, we suggest the importance of addressing the proper tone of the message, and the use of "we" vs. "you", which could inhibit acceptance, if perceived as authoritarian. In addition, using practical illustrative examples to bring the code to life are a good/best practice.

Page 15 - Conflicts of Interest
If you also include gifts and entertainment here, it may be impossible to have one specific guideline that would work globally. Instead, principles to govern these activities (such as avoidance of conflicts of interest or undue influence, etc.), coupled with geographically-specific guidance/rules, is a good approach.

We suggest you add a section here on the organization's role in communicating these ethics principles and training employees on behaviour expectations, particularly at critical junctures, such as when newly hired, when policies or responsibilities change, and annually as a refresher course. In addition, enforcement of the code and ethics program is an important aspect of conveying management's commitment to its principles. We suggest adding a section on consequences for non-compliance and misconduct, which typically would include disciplinary action up to and including termination and/or criminal prosecution for violations of law.

Page 15 - Organizational and Management Challenges
Paragraph 2: You mention an ethical dilemma here, but leave it with no proposed solution. It would be important to note the fact that there can be moral and legal obligations to consider, along with profitability, and that solutions to ethical issues are not clearly "black or white". This is a good place to mention issue escalation procedures, the use of an ethics hotline (or identified resources within the organization) for help, and also the role and obligation of the board to be aware of and address ethical issues of potentially grave impact to the organization (e.g. Enron).

Page 16 - Organizational and Management Challenges
As mentioned earlier, while we believe that accountants can provide useful input to codes of conduct and other elements of ethics and compliance programs, we do not believe that accountants should be the primary developers and implementers. The assessment of a code's effectiveness is related to many other aspects of an organization's commitment to integrity, which includes an assessment of its corporate governance, risk and compliance functions.

Paragraph 1, 1st sentence: Change "accounts" to "accountants."

Page 16 - Conclusion
Paragraph 2: We believe an assessment of the effectiveness of a code of conduct and ethics/compliance program should by its nature, be part of a periodic corporate governance and/or compliance audit of the organization, perhaps part of an overall audit of the effectiveness of internal controls, conducted by professionals with expertise in these areas.
We support your efforts to promote practical guidelines for a stronger ethical culture, as evidenced by a code of conduct. However, we do believe that the role of the accountant/auditor is better suited to assessing the effectiveness of these programs and not in developing or implementing them.

We would be happy to discuss any aspects of this letter with you.

Yours sincerely,

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