

May 3, 2021

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

Re: *Exposure Draft, Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code*

Dear Mr. Siong:

Deloitte Global appreciates the opportunity to provide comments on the exposure draft "Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code" (the "ED") issued in January 2021 by the International Ethics Standards Board for Accountants ("IESBA" or "Board").

Deloitte Global acknowledges the importance of establishing a clear and consistent definition of a public interest entity ("PIE") in the Code, given that it drives the application of many additional independence requirements, including new non-assurance service and fee disclosure requirements. We also recognize the challenge that comes with trying to establish a definition that can be universally adopted when both the public interest and the factors that drive such a definition are predominantly defined at an entity or jurisdictional level. The fact that the current state is a patchwork of different PIE definitions around the world, even in the European Union legislation which starts with one common definition and allows for local adaptation by member states, demonstrates that, on balance, the definition of a PIE is more appropriately determined by local bodies at a jurisdictional level, and we applaud the local jurisdictions that have undertaken this process in recent years.

Conversely, Deloitte Global considers that a broad PIE definition contained in a Requirements paragraph in the Code will have unintended consequences for entities that fall within that definition but where the extent of public interest would not be significant, for example, because of the size of the entity. While the Board is proposing that the definition be further refined by local bodies, using such a broad stroke does not address the disproportionate impact the requirements will have on the entities and the audits in jurisdictions where there is inaction by local bodies, or where it may take many years for jurisdictional changes to occur.

There may be a view that there is no harm in disproportionately applying stricter PIE independence requirements to entities that do not have any significant public interest in their financial condition. However, a delayed action or a complete lack of action by a local body in a particular jurisdiction will mean the Forum of Firms will follow the Code, but other audit firms might only follow the local standards and regulations. This fragmentation and inconsistency in the application of the standards within the same jurisdiction is not in the public interest and might create confusion and harm the public trust in the profession.

Given the concerns stated above, Deloitte Global prefers Approach 1 of providing a narrow definition such as in the current Code to which local bodies can add. Consequently, we also recommend that the effective date of any change to

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the PIE definition be the effective date of the local body's standard or regulatory setting, which addresses the risk of the disproportionate outcomes mentioned above.

Finally, Deloitte Global notes that the comments obtained last year in response to the Exposure Drafts for the non-assurance services ("NAS") and fees proposals were provided in the context of their impact on PIEs as they are currently defined in the Code. The revisions of the NAS and fees sections will be vastly more impactful if applied to the broader category of entities the Board is proposing to define as PIEs; however, the ED does not state whether the Board has undertaken any impact analysis regarding the application of the NAS and fees revisions on the proposed broad list of PIE categories.

Please find below our comments in response to the specific questions in the ED.

## Specific Comments

### *Overarching Objective*

**Question 1** Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 as the objective for defining entities as PIEs for which the audits are subject to additional requirements under the Code?

Deloitte Global supports the Board's overarching objective of determining that entities should be defined as PIEs only where there is significant public interest in the entity's "financial condition," rather than any other aspects such as the quality of services they provide to the public.

However, the wording in paragraph 400.9 could be wrongly interpreted to imply there are two different "types" or "levels" of audits. We suggest amending paragraph 400.9 to emphasize there are additional independence requirements for audits of PIEs which reflect stakeholders' heightened expectations regarding a firm's independence.

**Question 2** Do you agree with the proposed list of factors set out in paragraph 400.8 for determining the level of public interest in an entity? Accepting that this is a non-exhaustive list, are there key factors which you believe should be added?

Most of the proposed factors reflect the considerations that a reasonable and informed third party would be likely to conclude should be taken into account when determining the extent of public interest in the financial condition of an entity - in particular the factors referring to the size and the nature of the entity as well as whether it is subject to regulatory supervision.

However, Deloitte Global believes that the factors included in the fourth and sixth bullet points are not sufficiently well-defined nor clearly linked to the Board's overarching objective. It would not be practical or reasonable to assess the importance of an entity to a sector based on how easily an entity could be replaced, especially if there is no public financial information available, and it would be difficult to expect a consistent assessment unless additional guidance (or indeed a separate set of factors to consider when making that assessment) is provided. Likewise, the potential systemic impact on the economy arising from an entity's financial failure is hard to gauge. As these two considerations appear to reflect public policy and competition concerns but would not necessarily translate into public interest in the entity's financial condition, we recommend they be deleted.

Finally, with respect to the fifth bullet point, Deloitte Global does not consider the number or nature of customers or creditors to be relevant criteria.

### *Approach to Revising the PIE Definition*

**Question 3** Do you support the broad approach adopted by the IESBA in developing its proposals for the PIE

definition, including:

- Replacing the extant PIE definition with a list of high-level categories of PIEs?
- Refinement of the IESBA definition by the relevant local bodies as part of the adoption and implementation process?

Deloitte Global does not support the broad approach adopted by the IESBA in developing its proposal for the PIE definition. This lack of support is driven by the reasons outlined in the introduction above, and in particular the atypical approach proposed by the Board in which the successful implementation of the standard is contingent on active engagement by the local bodies. This concern is supported by IFAC's publication International Standards: 2019 Global Standards Report<sup>1</sup> which indicates only 48% of the jurisdictions have completely adopted the Code and 46% have only partially adopted it. Furthermore, given that only 57% of the jurisdictions directly refer to the Code and the remainder go through a convergence process or do not use the Code at all, this broad approach is particularly problematic.

Deloitte Global agrees that, for the purposes of the application of the provisions of the Code, a reasonable and informed third party would be likely to consider that most of the proposed high-level categories in the ED would ordinarily be defined as PIEs, especially entities whose main functions are to take deposits from and provide insurance to the public. However, as recognized by the Board, the definition as proposed has the potential to sweep in entities that are not in fact PIEs and create a disproportionate outcome if applied with no consideration of size and/or other criteria (for example if a local body does not exclude entities.)

IESBA's vision is for the Code to be a foundation of strong ethical principles, values and standards to underpin trust in the global accountancy profession in a dynamic and uncertain world, and to enable the profession to act in the public interest. With this vision of the Code as a foundation in mind, Deloitte Global strongly believes that allowing local bodies to change or remove Code requirements will cause confusion and undermine trust in the profession. A better approach would be to provide a narrow definition as baseline guidance and allow the local bodies to add to the list as appropriate in the jurisdiction. We are of the view, as is the Board, that it is within purview of the local bodies to develop a PIE definition that best addresses the specifics at the local level. It has been clearly stated by the Board that in the event of lack of engagement of the local bodies, the standard would not fulfill its objectives, primarily because it would then scope in entities whose financial condition is not significant to the public interest. An approach that is so heavily dependent on the actions of third parties, which are beyond the control of the Board, raises significant risks that will be very difficult to rectify in the event the necessary engagement does not materialize.

#### *PIE Definition*

**Question 4** Do you support the proposals for the new term "publicly traded entity" as set out in subparagraph R400.14(a) and the Glossary, replacing the term "listed entity"? Please provide explanatory comments on the definition and its description in this ED

Deloitte Global supports replacing the term "listed entity" with "publicly traded entity." However, we suggest the Board consider slight amendment to the proposed definition of "publicly traded entity" to clearly define the relevant financial instruments in scope, as follows: "An entity that issues ~~financial instruments~~ shares, stock, debt equity or debt instruments that are transferable and publicly traded."

**Question 5** Do you agree with the proposals for the remaining PIE categories set out in subparagraphs R400.14 (b) to (f)?

As noted above, and subject to the comments below, Deloitte Global considers that a reasonable and informed third party would likely conclude that the proposed high-level categories in the ED would ordinarily be defined as PIEs subject to the assessment of the criteria in paragraph 400.8.

<sup>1</sup> <https://www.ifac.org/system/files/publications/files/IFAC-International-standards-2019-global-status-report.pdf> (pages 14 and 19)

With respect to subparagraph (d), and notwithstanding the clarification in the ED that this category is not intended to capture employers providing post-employment benefits to their employees, Deloitte Global is concerned that it remains unclear upon reading the words in the standard whether such limitation would be understood or applied. For example, in the United States pension plans are standalone entities that employers establish to provide retirement benefits to their employees. Varying numbers of employees might receive benefits from such plans based on the size of the company and not all carry the same level of public interest – yet based on the definition these pension plans would appear to be PIEs even where the sponsoring company is not. Without action by local regulatory or standard setting bodies to exclude some of those entities based on size, the impact would be disproportionate, especially for small and medium sized firms that might be more likely to audit smaller pension plans, and would introduce unnecessarily cumbersome pre-approval requirements for non-assurance services and fee disclosure requirements under the two new standards.

With respect to subparagraph (e), while recognizing the Board’s rationale for avoiding terms that are jurisdiction specific such as “mutual fund”, Deloitte Global is concerned that the effort to remain global in scope will adversely impact the Code’s understandability and clarity about what entities this category is intended to capture. Adding examples that may be jurisdiction specific but are broadly comprehensible, such as “mutual fund” or “pension fund,” would in our view contribute to greater clarity of this category.

With respect to subparagraph (f), as a broad category we consider that it should include any entity that has been designated as a PIE under law, regulation or professional standards to recognize that there are jurisdictions (for example the United States) that have standard setters which are not regulators or legislators. The inclusion of standard setting bodies should be incorporated throughout to reflect this concept consistently in this section.

Also, Deloitte Global does not believe subparagraph (f) should be qualified by the phrase “to meet the objective set out in paragraph 400.9”. This subparagraph, read together with paragraph 400.14 A1, seems to ask firms to speculate about the motivation of a local law or regulation for designating an entity as a PIE and then to evaluate whether or not to apply the provisions of the Code based on that subjective determination. Deloitte Global does not consider it in the public interest, nor conducive to the market’s understanding of the application of independence requirements to PIEs, for the Code to allow this distinction to be made.

Paragraph 400.14 A1 also seems to contradict paragraph R400.15, which requires firms to “have regard” to local law and regulation, and paragraph 400.15 A1, which allows a local body to make reference to local law and regulation governing certain types of entities to narrow the qualifying categories of PIE. On balance, Deloitte Global believes the Code should follow Approach 1 and provide guidance that establishes the broad categories that are ordinarily expected (not required) to be defined as PIEs, including an entity defined as a PIE by law, regulation or professional standards, and then allow local bodies to define and implement. This approach would make paragraph 400.14 A1 redundant.

**Question 6** Please provide your views on whether, bearing in mind the overarching objective, entities raising funds through less conventional forms of capital raising such as an initial coin offering (ICO) should be captured as a further PIE category in the IESBA Code. Please provide your views on how these could be defined for the purposes of the Code recognizing that local bodies would be expected to further refine the definition as appropriate.

Deloitte Global does not believe there is a need to specifically identify any further categories of PIEs.

### *Role of Local Bodies*

**Question 7** Do you support proposed paragraph 400.15 A1 which explains the high-level nature of the list of PIE categories and the role of the relevant local bodies?

As noted above, Deloitte Global believes that there is a considerable risk of lack of action from the relevant local bodies, which could result in inconsistencies between the Code and pre-existing local standards in certain jurisdictions, and a disproportionate outcome in application in others where there are no pre-existing definitions and all the PIE requirements would apply by default. We are, as is the Board, fully aware that there are different speeds at which the adoption of the Code has been progressing in many jurisdictions, yet the success of these proposals relies on proactive engagement from all of the relevant local bodies.

In the case of jurisdictions that have already gone through processes to define PIEs through law, regulation and professional standards, there may be no desire to reopen the process to align with the Code definition or potentially explicitly exclude categories. It is therefore unclear whether an existing local PIE definition could be construed as a refinement of the Code definition, even though it was in place before the Code was amended. In other words, if a local body in a jurisdiction with an extant PIE definition in place has not included a certain category in their definition, could it be concluded that such jurisdiction had already considered all the categories and effectively decided to exclude that category now included in the Code, as the Code allows them to do prospectively in paragraph 400.15 A1? Or would the broader Code definition supersede the extant PIE definition unless and until the local body modifies its existing definition?

Deloitte Global understands the Board's outreach activities indicate that refinement of the PIE definition can be achieved even in the smaller and less developed jurisdictions, but we remain concerned about its timeliness when considering the length of time various bodies will need to carry out their own study and due process, especially in those jurisdictions where legislative action is required to adopt changes reflected in the Code or where there are multiple regulators and standard setting bodies within the same jurisdiction who need to take action. The effects of the global pandemic on the economy as a whole and on the priorities for legislators, regulators and standard setters, as applicable, in shaping the regulatory framework also constitute a significant factor that could impact the timeliness of action from the local bodies in adoption and implementation. Delayed action or complete lack of action will have a significant impact, especially when considering the Forum of Firms will follow the Code but the smaller firms in the jurisdiction might not. This will cause fragmentation and inconsistency within a local market which is contrary to the public interest.

**Question 8** Please provide any feedback to the IESBA's proposed outreach and education support to relevant local bodies. In particular, what content and perspectives do you believe would be helpful from outreach and education perspectives?

Deloitte Global has no specific feedback on this question.

### *Role of Firms*

**Question 9** Do you support the proposal to introduce a requirement for firms to determine if any additional entities should be treated as PIEs?

The extant provisions in the Code that encourage the consideration of additional PIE entities by the firm remain appropriate, but Deloitte Global does not support the proposal to introduce a requirement that a firm should determine whether additional entities should be treated as PIEs. This approach introduces a third layer to the Code definition and the refinements by the local bodies that would further decrease consistency in the interpretation and the application of the PIE standards in a given jurisdiction.

The introduction of a requirement to determine whether to treat an entity as a PIE implies that firms bear the disproportionate responsibility of considering every entity that does not meet the PIE definition and concluding whether or not to treat it as a PIE. This additional level of judgement applied in every case will also lead to different independence requirements being applied by different firms to similar entities in the same jurisdiction, or even to entities in the same corporate group if audits are undertaken by different firms. Those Charged With Governance are more appropriately positioned to make this determination than the auditor.

Paragraph R400.16 requires firms to take into account whether a reasonable and informed third party would be likely to conclude such entities should be treated as PIEs and consider additional factors supplementary to those in paragraph 400.8. It would appear, however, that the view of the reasonable third party has already been taken into account by the Board in determining the broad categories of PIEs in paragraph R400.14 and will be taken into account by the local bodies when evaluating whether to refine the categories pursuant to the factors set forth in paragraph 400.8. In Deloitte Global's view, firms could be encouraged to consider additional PIE entities, but only with respect to entities that meet the specific criteria in paragraph 400.16 A1 (which, as explained below, could benefit from greater consideration and clarity.)

**Question 10 Please provide any comments to the proposed list of factors for consideration by firms in paragraph 400.16 A1.**

Deloitte Global is of the view that the proposed list of factors in paragraph 400.16 A1 does not provide clear guidance for making the assessment, which supports the argument that placing a requirement on firms to make such determination would result in an inconsistent application of the Code.

Specifically, we have the following comments with respect to the proposed factors:

- We understand that the factor in the first bullet, i.e., whether the entity has been specified as not being a PIE by law or regulation (or professional standards), to be intended as a factor *against* treating an entity as a PIE. However, we do not think it is appropriate for a firm to oppose what is expressly stated in a law or standard. We believe that any category of entity which has been expressly specified as not being a PIE by law or regulation should not be the subject of any additional determination by the firm.
- In the second bullet, we do not consider a *potential* future event a sufficient reason to apply the PIE requirements in advance of such event unless specifically requested by Those Charged With Governance given some of the additional requirements in the Code that are applicable when auditing a PIE. The auditor may wish to voluntarily apply certain aspects of the Code that apply to PIEs, such as stricter rules on providing non-assurance services, but the other elements, such as public disclosure of fees, would be unnecessary until there is a public interest in the financial condition of the entity.
- In the third bullet, we discourage using a predecessor's determination as a factor in the assessment. A firm will use significant professional judgment to make the assessment and any reasons for a past determination might not be applicable to the current situation, nor do professional standards require the predecessor to disclose their rationale to the successor auditor.
- In the fifth bullet, we are uncertain as to what could be an appropriate reason to not meet an entity's request to be treated as a PIE.
- In the sixth bullet, while we agree that appropriate governance arrangements are important to allow an entity to fulfil the obligations expected of a PIE, it is unclear how this drives a determination whether there is significant public interest in the financial condition of the entity.

***Transparency Requirement for Firms***

**Question 11 Do you support the proposal for firms to disclose if they treated an audit client as a PIE?**

Deloitte Global believes transparency is often an important means of informing the investor community and improving trust. However, unless stakeholders understand that the distinction is being made only because it results in the application of additional independence requirements (and most would likely not be aware of this) the proposed disclosure of simply stating a client is treated as a PIE is unlikely to increase the level of confidence in the audit of the financial statements or help in the assessment of the independence of the audit firm. Furthermore, such a disclosure might result in an unintended consequence of creating a perception about the level of risk that is inherent in the entity or the quality of the audit

performed. Therefore, we do not support the Board's proposal for firms to disclose whether a firm treated an audit client as a PIE.

If the Board continues to believe disclosure will be meaningful to stakeholders, it would seem more appropriate for such disclosure to be consistent with ISA 700 (Revised), *Forming An Opinion And Reporting On Financial Statements*, which already requires the auditor to identify the relevant ethical requirements relating to the particular audit engagement. In other words, it may be more useful to the reader for the audit report to state that the auditor is independent of the entity in accordance with the auditor independence requirements of the Code that apply to PIE audit engagements.

Finally, Deloitte Global notes that is unclear whether the proposed disclosure in paragraph R400.17 solely includes those entities the firm has determined to be "treated as a public interest entity" as a result of the application of paragraph R400.16. We assume the intent is broader and also includes entities that are PIEs under paragraph R400.14, but if the requirement for disclosure remains in the final pronouncement, the wording should make this clear.

**Question 12** Please share any views on possible mechanisms (including whether the auditor's report is an appropriate mechanism) to achieve such disclosure, including the advantages and disadvantages of each. Also see question 15(c) below.

See Deloitte Global's comments above.

#### *Other Matters*

**Question 13** For the purposes of this project, do you support the IESBA's conclusions not to:

- (a) Review extant paragraph R400.20 with respect to extending the definition of "audit client" for listed entities to all PIEs and to review the issue through a separate future workstream?
- (b) Propose any amendments to Part 4B of the Code?

Deloitte Global agrees with the Board's conclusion with respect to reviewing extant paragraph R400.20 through a future workstream. We consider that there are significant potential challenges which would result from expanding the definition in paragraph R400.20 to all PIEs, including, but not limited to, difficulties in application of certain concepts such as control and materiality in structures other than corporate structures (e.g. private vehicles, trusts, partnerships, benefit plans, funds) which are complex and diverse across the world, limited access to relevant information, and undue burden on audit firms to monitor related entities that are not audit clients of the firm. An expansion in the definition also has the potential to increase complexity of the application of the rules and reduce competition in the market by restricting access to services as several firms may be required to treat the same entity as an audit client.

Deloitte Global agrees with the Board's conclusion to not include amendments to Part 4B of the Code as part of this project given the significant standard setting underway with this proposal in conjunction with the fees and NAS revisions. However, we consider it is a very important project for the near future given the increasing investor demand for ESG disclosures and the importance of integrated reporting assurance in enhancing confidence in integrated reporting – keeping in mind that the public interest in an integrated reporting assurance engagement is not necessarily driven by the entity's financial condition, so a different objective might be appropriate.

**Question 14** Do you support the proposed effective date of December 15, 2024?

Deloitte Global is not supportive of the proposed effective date as it may not provide sufficient time for local bodies to decide what to define and implement in their respective jurisdiction, especially when considering their need to adhere to due process, allowing for a public comment period, etc. As noted in our introductory comments, we recommend that the effective date of any change to the PIE definition be the effective date that is dictated by the local standard setting body or regulatory setting.

*Matters for IAASB consideration*

**Question 15** To assist the IAASB in its deliberations, please provide your views on the following:

- (a) Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 for use by both the IESBA and IAASB in establishing differential requirements for certain entities (i.e., to introduce requirements that apply only to audits of financial statements of these entities)? Please also provide your views on how this might be approached in relation to the ISAs and ISQMs.

Deloitte Global supports the usage of the same terms and definitions by IESBA and IAASB. This would mean the IAASB would need to review the terms currently used in the ISAs and ISQMs and deliberate what changes may be necessary.

- (b) The proposed case-by-case approach for determining whether differential requirements already established within the IAASB Standards should be applied only to listed entities or might be more broadly applied to other categories of PIEs.

Deloitte Global supports the IAASB's proposed approach to review each requirement in the ISAs and ISQMs on a case-by-case basis and determine if it should be applicable to all entities, or only to a sub-set of entities (and whether that sub-set is PIEs or only publicly traded entities). We also recommend that the effective date of any changes proposed to the standards of the IAASB be aligned with the effective date of changes to the Code, as practitioners will be applying both in connection with each other.

- (c) Considering IESBA's proposals relating to transparency as addressed by questions 11 and 12 above, and the further work to be undertaken as part of the IAASB's Auditor Reporting PIR, do you believe it would be appropriate to disclose within the auditor's report that the firm has treated an entity as a PIE? If so, how might this be approached in the auditor's report?

As noted above, Deloitte Global encourages IESBA to reconsider the objective of such disclosure. It would not be in the public interest for the reader to misinterpret the disclosure to mean that a different "type" or "level" of audit was performed, especially for cases in which an entity becomes a public interest entity in a subsequent audit and the report language differs from the previous year. We recommend that the IAASB consider this proposal in conjunction with the current post-implementation review of the Auditor Reporting standards and potential changes to the ISAs as a result of that review.

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We would be pleased to discuss our comments with members of the IESBA or its staff. If you wish to do so, please feel free to contact Denise Canavan, Senior Managing Director of Deloitte Global Independence, via email (decanavan@deloitte.com) or at +1 203 563 2759.

Sincerely,



Deloitte Touche Tohmatsu Limited