

May 25, 2017

Chair
International Ethics Standards Board for Accountants
45 Fifth Avenue, 14th Floor
New York, New York 10017

Re: Exposure Draft, Improving the Structure of the Code of Ethics for Professional Accountants - Phase 2

Dear Members of the International Ethics Standards Board for Accountants:

We appreciate the opportunity to provide comments on the exposure draft "*Improving the Structure of the Code of Ethics for Professional Accountants - Phase 2*" (the "ED") issued January 2017 by the International Ethics Standards Board for Accountants ("IESBA" or "Board").

The Board has substantially met the objectives of the restructuring established in Phase 1 of the project, however there are a number of areas that could use clarification. Our substantive suggestions are noted in the letter below and drafting suggestions are offered in the Appendix to this letter.

Specific Comments

Do you believe that the proposals in this ED have resulted in any unintended changes in meaning of any of the following provisions?

1. The provisions for Part C of the Extant Code, as revised in the close-off document for Part C Phase 1 (see Sections 200-270 in Chapter 1)?

The drafting in 210.2 is different to most other introductory sections because relevant Application material about how threats might be created has been included in the introduction paragraph rather than as application guidance. The words after "*Such threats might be created when...*" would seem to be more appropriately included in the General section of the Requirements and Application material.

2. The NOCLAR provisions (see Sections 260 and 360 in Chapter 2)?

The provisions do not refer to "non-compliance" consistently. Some references are to "acts" of non-compliance, some to "instances" of non-compliance and sometimes just to non-compliance, which might imply they mean different things. We suggest referring consistently to non-compliance or suspected non-compliance for clarity, for example: *260.2 Threats to compliance with the principles of integrity and professional behavior are created when an accountant becomes aware of non-compliance ~~an act~~ or suspected ~~act~~ of non-compliance with laws and regulations.*

There is a difference between the wording of 260.3 and 360.3, and 260.5 A1 and 360.5 A1 regarding the application of this Section. We suggest 260.3 and 360.3 should read consistently with 260.5 A1 and 360.5 A1 "*...regarding the approach to be taken by a professional accountant who encounters or is made aware of when responding to non-compliance or suspected non-compliance with...*"

There is a sub-title "*Addressing the Matter*" before sections R260.13 and R360.13. Considering the greater focus on the conceptual framework and "addressing threats" this subtitle could be confusing as to whether it is referring back specifically to the conceptual framework. We suggest renaming the sub-title "*Responding to the Matter*" which would remove any confusion with "addressing threats". It would also be

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consistent with the wording used in other paragraphs in this section, for example, R260.15 "In addition to responding to the matter in accordance with the provisions of this section..." There are several other places in this Section where "respond" may be a better word to use than "address" to avoid confusion, for example, 360.16 A1 "... and if so, how to respond to ~~address~~ it in accordance with the provisions of this section.

We consider that for clarity, the requirements in R260.21, R260.22, R360.27, R360.26 should include the clear reference that disclosure will not be a breach of confidentiality only when the decision to disclose is made in accordance with the provisions of the Section (as is included in R260.26). For example:

R260.21: If the senior professional accountant determines, pursuant to paragraphs 260.20 A2 and A3, that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this is not a breach of the duty of confidentiality under Subsection 114 of the Code.

and

R360.26: If the professional accountant determines, pursuant to paragraphs 360.25 A2 and A3, that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this is not a breach of the duty of confidentiality under Subsection 114 of the Code.

There appears to be an inconsistency in the provisions with regard to considering whether to inform management or those charged with governance before making disclosures. R360.26 includes a requirement that the professional accountant shall also consider whether it is appropriate to inform the client of the accountant's intentions before disclosing the matter, however there is no similar requirement in R260.22. However, both 260.22 A1 and 360.27 A1 also set out the professional accountant might consider whether to discuss prior to deciding whether to disclose the matter to an appropriate authority *immediately*. We recommend making the requirements/guidance consistent for clarity, while recognising it is also missing in the extant provisions.

3. The revised provisions regarding long association (see Sections 540 and 940 in Chapter 3)?

By splitting the requirements into bullet points in R540.5, the meaning of the first bullet point has been changed as it has lost the link to being "for the audit engagement". The rotating individual is not permitted to be a member of the engagement team for the audit engagement (which, for the sake of clarity, is different to an engagement team member and different to an audit team member). R540.5 should read:

If a firm decides that the level of the threats created can only be addressed by rotating the individual off the audit team, the firm shall determine an appropriate period during which the individual shall not:

- (a) Be ~~an member of the engagement team~~ member for the audit engagement; or*
- (b) Provide quality control for the audit engagement; or...*

For the same reasons, R940.5 (a) should read "*Be ~~an member of the engagement team~~ member for the assurance engagement*"

It would also be more accurate to separate R540.19 (a) into two separate points and make clear the reference is to a member of the engagement team for the audit engagement, as follows:

R540.19 For the duration of the relevant cooling-off period, the individual shall not:

- (a) Be an engagement team member for the audit engagement;*
- ~~(b) or~~ Provide quality control for the audit engagement;*
- ~~(b)~~ (c) Consult with the engagement team or the client regarding technical or industry-specific...*

Sections R540.7-9 which are set out as exceptions to R540.6 are confusing as Requirements as they do not contain "shall" wording and therefore do not follow the drafting conventions. As the Requirement in R540.6 already states it is subject to R540.7 to R540.9, we would question whether the "exceptions" in fact need to be set out in Requirement paragraphs.

4. The provisions addressing restricted use reports in the extant Code (see Section 800 in Chapter 4)?

The last paragraph in R800.3 and R999.3 does not seem to form part of the conditions for an engagement to be an "eligible engagement" in the extant Code, rather an additional requirement/clarification regarding the requirement to communicate to intended users. It would seem better placed as a new Requirement paragraph located before 800.3 A2 and 999.3 A2 respectively, which would also more closely link the Requirement with the Application guidance which is currently disjointed and hard to follow. For example: *New R800.4/R999.4 Where the intended users are a class of users who are not specifically identifiable by name at the time the engagement terms are established, the firm shall subsequently make such users aware of the modified independence requirements agreed to by their representative.*

New 800.4. A1/999.4 A1 For example, where the intended users are a class of users such as lenders in a syndicated loan arrangement, the firm might describe the modified independence requirements in an engagement letter to the representative of the lenders...

5. The provisions relating to independence for other assurance engagements (Part 4B in Chapter 5)?

Some helpful guidance from the extant Code is missing from the restructured Part 4B:

- The extant Code is clear that if an assurance client is also an audit client that Part 4A applies. While 900.14 cross references to Part 4A, it does not explicitly make the point that you cannot apply Part 4B to an engagement with an audit client just because you are performing an assurance engagement.
- Extant 291.101 explains that in the majority of assurance engagements there is one responsible party and that responsible party is the assurance client.

Independence requirements are different with respect to audit and other assurance clients and therefore we would suggest that it is important for R900.15 to state "A firm performing an assurance engagement shall be independent of the assurance client in accordance with Part B". Likewise suggest 900.5 state "When performing assurance engagements, the Code requires firms to comply with the fundamental principles and be independent of the assurance client in accordance with Part B".

The requirement in R905.7 has been changed slightly and no longer recognises that fees may remain unpaid after the issuance of the assurance report, and that is when the matters in R905.7 (a) and (b) are to be determined:

R905.7 ~~When a significant part of fees due from an assurance client remains unpaid for a long time, If fees remain unpaid after the assurance report has been issued the firm shall determine:~~

It is unclear how a firm would have the ability to meet the requirement in R910.11 to apply the conceptual framework set out in Section 120 to two situations where the assurance team member is the individual with the knowledge of the financial interests. The extant Code does not place a requirement on the firm.

A new requirement has been created in R911.7 that prohibits accounts with banks or brokers unless held on normal commercial terms. Extant 291.117 states that a deposit or brokerage account on normal terms does not create any threat to independence. It does not prohibit one from having an account that is not on normal terms, in which case, presumably one would evaluate the threats created by such a circumstance (note the construct "does not usually create a threat to independence" is still used elsewhere for example 920.6 A1).

2. Do you believe that the proposals are consistent with the key elements of the restructuring as described in Section III of this Explanatory Memorandum?

The proposals are substantially consistent with key elements of the restructuring however we have two substantive comments in this respect.

Requirements to apply the conceptual framework / evaluate threats

There continues to be inconsistency in how these requirements appear in the ED, both in comparison to the requirements of the extant Code, and within the ED provisions themselves. It is understood and agreed that references that merely repeat the requirement to apply the conceptual framework can be

removed because the conceptual framework is now contained in Section 120 and references are made in each Introduction paragraph. However:

- There are “shall evaluate the threats” requirements in the extant Code which are not included in the restructured provisions that refer to specific additional circumstances that should not be omitted. For example, the last paragraph of extant 291.118 includes a requirement to evaluate threats in respect to business relationships between an immediate family member of the assurance team member and the assurance client, which is missing entirely in Section 902 (and perhaps should be located after paragraph R920.5).
- The restructured Code uses “shall evaluate and address any threats” and sometimes it uses “shall apply the conceptual framework set out in Section 120” (for example R910.11, and the last paragraph in R923.5). It is not clear whether these references imply the same or different requirements. R900.19 in fact includes both constructs in the same provision: *R900.19... (b) The firm shall apply the conceptual framework set out in Section 120 to relationships with individuals at the client in a position to exert significant influence over the subject matter of the engagement; and (c) The firm shall evaluate and address any threats that the firm has reason to believe are created by network firm interests and relationships.*

Requirements and responsibilities in application guidance

There are several places where the restructured provisions state that the professional accountant is “required” to do something or has a “responsibility”, which is contained within an Application material paragraph instead of a Requirement. It then becomes confusing as to how these “requirements” apply outside of the Requirements paragraphs. We suggest the Board ensure there is clarity and review every situation where “required” or “responsibility” is used in Application material. Examples include:

- 220.7 A1 *The professional account is required to comply with the fundamental principles when preparing or presenting information...*
- 924.5 A3 (and 524.6 A1) includes an implied requirement *“The requirement to apply the conceptual framework also applies if, prior to an entity becoming a client of the firm, a former partner of the firm has joined the entity in a position set out in paragraph R924.5”*. This is also another example of the extant Code having a “shall evaluate the threats” applied to a specific additional circumstance that has seemingly been misplaced.
- R220.8 is now a Requirement even though there is no corresponding “shall” in extant 320.3
- R220.10 includes both a “shall” and a reference to the “responsibilities” in 220.7 A1
- 900.6 states *“firms are required to apply...”*

Effective Date

3. Do you agree with the proposed effective dates for the restructured Code?

The effective dates generally appear reasonable. However, given that the code is translated in many jurisdictions, and then adopted into local law, the Board should consider whether one year is sufficient to allow for these processes.

* * *

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 Wally Gregory, Senior Managing Director of Global Independence, via email (wggregory@deloitte.com) or at +1 203 761 3190.

Sincerely,



Deloitte Touche Tohmatsu Limited

Appendix 1: Drafting suggestions to add clarity Restructured Code Paragraph

Various provisions repeated in the Introductions	There should not be different paragraphs in the Code that use the same words but apply to different situations, as this causes confusion as to where and how a provision applies.
	Using the example of the “gifts and hospitality” provisions; 340.3, 420.3 and 906.3 in the ED use exactly the same words. We suggest that each provision which is repeated in the various introductions include reference to the type of client it applies to in order to differentiate the provisions if they are taken in isolation. For example:
	340.2 An offer of Accepting gifts or hospitality from a client might create self-interest, familiarity or intimidation threats.
	340.3 Section 340 sets out specific application material relevant to applying the conceptual framework to offers of gifts and hospitality <u>from a client</u> .
	420.2 Accepting gifts or hospitality from an audit client might create self-interest, familiarity or other <u>intimidation</u> threats.
	420.3 Section 420 sets out a specific requirement relevant to applying the conceptual framework to offers of gifts and hospitality <u>from an audit client</u> .
	906.2 Accepting gifts or hospitality from an assurance client might create self-interest, familiarity or other <u>intimidation</u> threats.
	906.3 Section 906 sets out a specific requirement relevant to applying the conceptual framework to offers of gifts and hospitality <u>from an assurance client</u> .
R200.9	The separation of the R and A paragraphs in this case have led to a confusing provision where the R paragraph is not entirely understandable on its own. Suggest adding the following:
	R200.9 If a professional accountant communicates with individuals who have management responsibilities, <u>and those individuals also have governance responsibilities</u> , the accountant shall be satisfied that communication with those individuals adequately informs all of those in a governance role with whom the accountant would otherwise communicate.
210.10 A1	“ <u>Being subject to</u> Preparing or presenting financial information as a result of undue pressure from others within the employing organization <u>when preparing or presenting financial information;</u> ”
220.2	Inconsistent with extant wording and other wording in the section for example 220.4 A1. Suggest “when an accountant is responsible for <u>involved</u> in preparing or presenting information”.
220.4 A1	Professional accountants at all levels in an employing organization are <u>might be</u> involved in the preparation and presentation of information both within and outside the organization.
Consistency of wording in “Other Considerations” paragraphs	In some sections, under “Other Considerations”, there are references to other Sections that may be referred to by the user. It is unclear whether the difference in wording is intended to mean different requirements, for example:
	220.14 A2: the material in Section 270 is “relevant”
	230.5 A: 1 the material in Section 270 “applies”
270.3	Section 270 sets out specific requirements and application material relevant to applying the conceptual framework when addressing pressure <u>to breach the fundamental principles</u> .
Last line of 270.4 A4	The principle of confidentiality applies in communications with <u>both internal and</u> external parties.

- 260.6 A1 The reference to "client" should be "relevant party" as this refers to a public accountant in business.
- 260.7 A3 Without a qualifier, this paragraph seems to suggest a broader exception than
360.7 A3 intended. Suggest:
A professional accountant who encounters or is made aware of matters that are clearly inconsequential is not required to comply with this section with respect to such matters.
- 260.7 A4 This guidance relates to an exclusion to the "scope" of the provisions which would be
360.7 A4 more helpful to be included earlier, for example before R260.5/R360.5
- 260.9 A1 ...These protocols and procedures might include, for example, an ethics policy or internal whistle-blowing mechanism...
- R260.10 "For the purpose of taking timely steps" does not read well. Suggest:
R360.9 Where a professional accountant becomes aware of a matter to which this section applies, the steps that the accountant takes to comply with this section shall be taken on a timely basis. ~~For the purpose of taking timely steps, the accountant shall~~ having regard to...
- 260.17 A2 Contrary to legal or regulatory requirements, they have not reported the matter, or authorized the reporting of, the matter, to an appropriate authority within a reasonable period.
- 260.23 A1 The construct of these paragraphs would imply the accountant would have someone
260.27 A1 else document the matter, where it is more appropriate to place the expectation to document on the accountant him/herself.
"In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the senior professional accountant is encouraged to document the following ~~have the following matters documented:~~"
- 260.7 A1 This statement is already in 100.1 and there seems no point in having it just here and
360.7 A1 not in other sections.
~~A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest.~~ When responding to non-compliance or suspected non-compliance...
- R400.73 If, following the discussion set out in paragraph R400.72(b), those charged with governance request the firm to continue as the auditor, the firm shall do so only if:
(a) ...
(b) Any individual who has such an interest or relationship, including one that has arisen through performing a non-assurance service that would not be permitted by Section 600 and its subsections, will not be a member of the engagement team for the audit engagement or the individual responsible for the engagement quality control review for the audit engagement; and
- Placement of 540.5 A1 This paragraph sets out what to consider when evaluating the threats. This should be before proposed 540.4 A3 which sets out the actions that might be safeguards to address the threats. Alternatively, 540.A3 should be moved after 540.5 A2.
- R540.11 Where the individual ~~has been appointed as~~ is responsible for the engagement quality control review and has acted in that capacity for seven cumulative years, the cooling-off period shall be three consecutive years.
- R540.15 ...the cooling-off period shall be:
(a) As an exception to R540.14 and subject to R540.18, ~~be~~ five consecutive years where the individual has been the engagement partner for three or more years; or
(b) ~~Be~~ Three consecutive years in the case of any other combination.

- 940.5 A1 Factors, individually or in combination, that are relevant to evaluating the level of any threats created from an individual being involved in an assurance engagement of a recurring nature over a long period of time include:
- R800.6-9 and R999.7-8 The extant Code is clear in this respect and the addition of “need”/“need not” wording is confusing. Suggest:
R800.6 When the firm performs an eligible audit engagement, the ~~firm does not need to apply the additional~~ independence requirements set out in Part 4A (excluding this section) that apply only to public interest entity audit engagements do not apply.
R800.7 When the firm performs an eligible audit engagement, references to audit client in Part 4A (excluding this section) do not ~~need to~~ include its related entities.
R800.8 When the firm performs an eligible audit engagement, the ~~specific~~ independence requirements regarding network firms set out in Part 4A (excluding this section) do not ~~need to be applied~~ apply.
R800.9(a) The relevant provisions set out in Sections 510, 511, 520, 521, 522, 524 and 525 ~~need apply~~ only apply to the members of the engagement team, their immediate family members and close family members,
- 900.10-12 We suggest moving 900.10 to 900.12 together with the Requirements and Application guidance related to assertion-based and direct reporting assurance engagements. It is confusing to describe these engagements in two different places.
- 900.12 In a direct reporting assurance engagement, the professional accountant either (a) Directly performs the evaluation or measurement of the subject matter; or (b) Obtains a representation from the responsible party that has performed the evaluation or measurement that is not available to the intended users. [separate paragraph] The subject matter information is provided to the intended users in the assurance report.
- 900.30 A1 The engagement period starts when the assurance team begins to perform assurance services with respect to the particular assurance engagement.
- 905.5 A1 The second sentence in 905.5 A1 which refers to relevant material in Section 911 should go after R905.7, which is the first time the question of evaluating whether the overdue fees might be equivalent to a loan is mentioned.
- 910.4 A1 The use of “beneficial” is incorrect where the owner has control:
A financial interest might be held directly or held indirectly through an intermediary such as a collective investment vehicle, an estate or a trust. When an ~~an beneficial~~ owner has control over the intermediary or the ability to influence its investment decisions, the Code defines that financial interest to be direct. Conversely, when a beneficial owner has no control over the intermediary or ability to influence its investment decisions, the Code defines that financial interest to be indirect.
- 910.5 A1 It is confusing to have “materiality” in inverted commas, as it is not in the glossary nor a defined term. Suggest removing inverted commas here and in other paragraphs where it appears such as 911.4 A1.
- R910.11 This paragraph is more confusing combined than if contained in two separate Requirements followed by the relevant application material. In addition, including references in the Requirements paragraph to the relevant Application guidance is not used in the rest of the provisions. Suggest splitting R910.11(a) and (b) into two different Requirements that are joined with the relevant Application guidance.
- R910.11 In the following circumstances related to financial interests, the firm shall apply the conceptual framework set out in Section 120:
(a) ...
(b) If an assurance team member knows that a financial interest is held in the assurance client by other individuals, including: ...

- Titles in section 911 For additional clarity:
Loans and Guarantees made to ~~with~~ an Assurance Client
Loans and Guarantees from ~~with~~ an Assurance Client that is a Bank or Similar Institution
Loans and Guarantees from ~~with~~ an Assurance Client that is not a Bank or Similar Institution
- 911.6 It is unclear who this paragraph applies to. Suggest:
If a loan to a firm from an assurance client that is a bank or similar institution is made under normal lending procedures, terms and conditions and it is material to the assurance client or firm receiving the loan...
- 920.4 A1 It is unclear why "significance" is reference in inverted commas in this paragraph however not then clarified or defined. Suggest deleting "...and the "significance" of a business relationship."
- 921.2 Family or personal relationships between ~~firm~~ assurance team members and their immediate family and client personnel might create self-interest, familiarity or intimidation threats.
- 921.4 A1 Threats might be created by family and personal relationships between an assurance team member and a director or officer or, depending on their role, certain employees of the assurance client. Factors that are relevant in evaluating the level of any such threats include:
 - The individual's responsibilities on the assurance team.
 - The role of the family member or other individual within the client, and [new bullet] the closeness of the relationship.
- R921.6 This paragraph contains a prohibition regarding relationships with individuals who can exert influence over the *subject matter information* of the assurance engagement. This prohibition should come before 921.5 A1-A3, which then provides guidance of how to evaluate threats related to relationships with individuals who can influence the *subject matter* of the engagement.
- 921.8 A1 and 922.5 A2 Factors that are relevant in evaluating the level of any threats ...include:
 - ...
 - ...
 - The role of the assurance team member on the assurance team
- 921.8 A2 An example of an action that might address threats created by close relationships of assurance team members is structuring the responsibilities of the assurance team so that the ~~audit~~ assurance team member does not deal with matters that are within the responsibility of the individual with whom the assurance team member has a close relationship.
- R924.5 R924.5 If a former partner, or a former assurance team member, joins an assurance client of the firm ~~or a former assurance team member joins the assurance client~~ as:
- 924.5 A3 The requirement to apply the conceptual framework also applies if, prior to an entity becoming an assurance client of the firm, a former partner of the firm has joined the entity in a position set out in paragraph R924.5.