

February 3, 2015

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

Re: *Consultation Paper: Improving the Structure of the Code of Ethics for Professional Accountants*

Dear Members of the International Ethics Standards Board for Accountants:

We appreciate the opportunity to provide comments on the consultation paper "*Improving the Structure of the Code of Ethics for Professional Accountants*" (the "Consultation Paper") issued November 2014 by the International Ethics Standards Board for Accountants ("IESBA" or "Board"). We agree it is in the public interest for the *Code of Ethics for Professional Accountants* ("Code") to be understandable. We also have concerns about the means the Board is proposing in order to achieve this goal. This is a very significant project that will demand a significant amount of effort not only from the Board, but from all stakeholders and we are concerned that it will ultimately undermine rather than support the global adoption of the Code.

### **General Comments**

We are supportive of efforts that will improve the readability, clarity and adoption of the Code. However, we are concerned about the potential unintended consequences arising from IESBA's attempt to entirely rewrite the Code in what seems a very short period of time. While the Consultation Paper mentions it is not the purpose of this project to change the meaning of the Code, what may seem to be a slight change in wording may entirely change the intended meaning of a provision. We note the Consultation Paper states "if any new requirements were proposed, for example to address the issue of responsibility as set out in section VI of this Paper, these would be subject to IESBA's normal due process." We are concerned that the restructure and rewriting process may inadvertently create new requirements that will not be readily identified as changes that should be subject to due process. To avoid this, any changes to the Code, no matter how minor, should be subject to the normal due process. This would amount to a large scale overhaul of the Code and would be a significant undertaking not only for the Board, but for all stakeholders. Stakeholders will be required to commit substantial resources to this project which will be comparable to the last time the Code underwent such a significant change in 2009.

While we do have concerns about the scale of what is being considered, given IESBA's plan to issue an exposure draft of the rewritten Code by the end of 2015, we agree with a particular

change to enhance the readability and clarity of the Code. Namely, we are supportive of aligning terminology used in the independence Sections 290 and 291 with that used by the International Auditing and Assurance Standards Board (IAASB). For consistency and transparency, it is advisable to use terminology in the Code that links to the assurance standards where appropriate. There also has to be recognition of the reasons why some of the terminology differs slightly, for example, the Code uses the term “professional accountant in public practice” and the IAASB uses the term “practitioner.”

Our comments to the questions raised in the ED are provided below.

### **Specific Comments**

**1. Do you believe that the approach outlined in this Consultation Paper, as reflected in the Illustrative Examples, would be likely to achieve IESBA’s objective of making the Code more understandable? If not, why not and what other approaches might be taken?**

We are supportive of starting each section with an explanation of its purpose so the reader can understand the context of that section. We are also supportive of distinguishing the requirements from the guidance. However, separating the “Requirements” from the “Application and Other Explanatory Material” in the way that is suggested in the Illustrative Examples makes the standard disjointed and difficult to consider in totality. For example, in the Illustrative Example provided for business relationships (proposed Section 420), there is a requirement to consider the threats and application of safeguards with respect to the purchase of goods and services from an audit client. There is additional guidance much later in the “Application and Other Explanatory Material” section that describes the safeguards that can be applied. It would be more useful to a reader to present this material together in one section, particularly as there are several different and distinct business relationship topics included in the same section.

It is also unclear what is intended by the distinction under “Requirements” between the sub-titles “Business Relationships Specifically Identified as Threats” and “Business Relationships Specifically Not Permitted”. This does not enhance understandability; in fact the first title suggests that the professional accountant is only required to consider threats created by relationships that are specifically mentioned in the Code. It would also seem that the prohibitions should be set out first.

We do recognize that it is important to clearly distinguish the requirements from guidance. However we do not consider that the separation of requirements and guidance as set out in the Illustrative Examples achieves the objective of making the Code more understandable. In fact, the section on business relationships in the Illustrative Examples has doubled the length of the same provisions in the extant Code.

We suggest that a more useful approach could be to include the requirements in bolded text with the relevant guidance following the requirement in unbolded text to clearly delineate the difference (see an example in the appendix to this letter). Another approach could be to have the guidance appear in a box right after the requirement is presented. In that way the reader will be able to see all of the considerations presented together, with a clear indication of what is required and what is guidance. It would also be helpful to include each Basis for Conclusion in an appendix to aid the reader with interpretation of the Code.

We also agree that in many places, the wording and drafting could be simplified to make the provisions more understandable. However a lot more work needs to be done by IESBA to achieve this. There are too many examples in the Illustrative Examples of paragraphs that no longer make sense given the proposed restructure and addition of sub-titles; for example, proposed paragraph 420.004 (b) appears to be a standalone paragraph under its own sub-title but does not make sense unless read as part of paragraph 420.004.

**2. Do you believe that the approach outlined in this Consultation Paper, as reflected in the Illustrative Examples would be likely to make the Code more capable of being adopted into laws and regulations, effectively implemented and consistently applied? If not, why not and what other approaches might be taken?**

It may be true that distinguishing the requirements in the Code assists the adoption of the requirements into the laws of certain countries, however, as noted in our comment letter dated February 28, 2014, in response to the Board's "Consultation Paper: Proposed Strategy and Work Plan, 2014-2018", we believe that the Board can also promote the adoption and consistent application of the Code by dedicating time to outreach, promotion of the Code and convergence and adoption activities.

As we noted in that comment letter, if the structure of the Code is widely viewed as a significant impediment to its adoption and implementation or greater acceptance of the Code, then it would make sense to reconsider its structure. It is not clear if there is any empirical evidence that the Code has not been adopted into laws and regulations because of shortcomings in its readability. In the absence of such evidence, we caution the Board if reissuing the Code will set back its adoption even further as lawmakers and regulators will need to start over in translating the Code and understanding its application in their jurisdictions. This may be particularly frustrating for those member bodies that have recently adopted the revised Code.

**3. Do you have any comments on the suggestions as to the numbering and ordering of the content of the Code (including reversing the order of extant Part B and Part C), as set out in paragraph 20 of the Consultation Paper?**

We are supportive of a numbering convention that facilitates the future expansion or addition of topics and subtopics without having to renumber every existing paragraph that follows a change. The suggested approach would seem to achieve that.

The Consultation Paper notes that reversing the order of extant Part B and Part C will allow all of the material related to professional accountants in public practice to be grouped together and independence to be presented at the end. This change is not really necessary as sections 200 through 400 could incorporate Part B of the extant Code and Part C could become section 500, but since this is the least disruptive change being considered we would not object to such a reversal.

**4. Do you believe that issuing the provisions in the Code as separate standards or rebranding the Code, for example as International Standards on Ethics, would achieve benefits such as improving the visibility or enforceability of the Code?**

As mentioned above, we believe the Board should focus on promoting the Code through its outreach efforts. Issuing the Code as separate standards or rebranding may achieve some improvement in readability by breaking down the material into individual topic areas which are easier to understand and apply. We do not consider it is sufficient to achieve global adoption of the Code and we question whether it would significantly improve its visibility or enforcement. Additionally, by issuing separate standards (e.g., having a separate independence standard) there is a risk that in consulting one standalone standard, other applicable standards may inadvertently be overlooked.

We also have a concern that the rebranding of the Code into standards together with the separation of requirements from guidance could lead to an increasing perception of the Board taking a rules-based approach instead of promoting the conceptual framework upon which the Code is currently based. Rather than focusing on rebranding or issuing separate standards, the Board should actively engage with local regulators and legislators to stress the high quality of the Code and really understand the impediments to convergence and adoption of a global Code to make any strides in this area.

**5. Do you believe that the suggestions as to use of language, as reflected in the Illustrative Examples, are helpful? If not, why not?**

We do not see the benefit of including the defined terms in every section in which they are included. Users are accustomed to referring to a section of definitions. We find the following contemplated approach in the Consultation Paper to be particularly confusing: “defined terms are colored blue and underlined the first time they appear in each paragraph, ... terms which have a particular meaning explained within the Code are colored blue and underlined with a dotted line the first time they appear in the paragraph. ... terms which are explained at the beginning of each section are shown in blue, bold and underlined text the first time they appear in each paragraph.” A more simple convention such as bolding, capitalizing or italicizing each defined term every time it appears would serve the same purpose of alerting the user that he/she should refer to the Definitions section for the meaning. Similarly, we don’t see the benefit of repeating the fundamental principles in every section. This is unnecessarily increasing the length of the Code.

**6. Do you consider it is necessary to clarify responsibility in the Code? If so, do you consider that the illustrative approach to responsibility is an appropriate means to enhance the usability and enforceability of the Code? If not, what other approach would you recommend?**

The Code and its requirements have been in place for many years and we are not aware of any instances where firms and their partners have been unsure or unclear how to take responsibility for actions related to independence. We are also not aware of instances where a regulator has had any difficulty identifying a person at a firm with responsibility for compliance with policies and procedures relating to independence requirements.

Further provisions could be added to the Code to address specific responsibility of individuals within the firm for actions related to independence, but there is a great amount of detail in the *International Standards on Quality Control (ISQC)* regarding the policies and procedures that a firm should design to provide it with reasonable assurance that independence is maintained when required by relevant ethical requirements. If the Board wishes to clarify responsibility within the Code without referring the reader to the ISQC, the Code should include at least the same level of detail in this area as the ISQC.

If it were determined that it was necessary to make a change in this respect then we would support that the Code specify that the firm have policies and procedures in place that enable identification of individuals who, in particular circumstances, are responsible for taking appropriate action on behalf of the firm in accordance with the requirements of the Code.

**7. Do you find the examples of responsible individuals illustrated in paragraph 33 useful?**

Yes, these are reasonable examples of individuals who may be designated, in the firm's judgment, as being responsible for taking appropriate action on behalf of the firm in accordance with the requirements of the Code.

**8. Do you have any comments on the suggestions for an electronic version of the Code, including which aspects might be particularly helpful in practice?**

We have noted that the Board has already posted an electronic version of the Code on its website. We found the way in which defined terms are highlighted is very useful, especially by allowing the user to see the definition by hovering over the term without going to the definitions section. The table of contents on the left part of the page was also helpful for quickly navigating through the Code. However, we do not agree that an individual should have to register and login to the IFAC website in order to access the electronic Code. The Code should be readily available to all stakeholders and interested parties without the need to go through a registration process.

**9. Do you have any comments on the indicative timeline described in Section VIII of this Paper?**

We do not feel the timeline set forth by the Board is reasonable. This is a tremendous undertaking and it should not be rushed, especially given the other projects that the Board has underway, such as Noncompliance with Laws and Regulations and Long Association. For all of the comments received in connection with this Consultation Paper to be considered, a way forward determined, and the whole Code redrafted in an appropriate and technically correct manner, we feel the October 2015 date for an exposure draft is too aggressive. Stakeholders will need to be given a sufficient comment period and will need to dedicate significant resources to ensure the meaning of any requirements or guidance in the Code has not inadvertently been changed by the restructure and redrafting. Therefore, we have serious questions about the achievability of having a final version in early 2017.

We also have concerns about such a large scale overhaul of the Code considering the changes that are occurring for the profession. For instance, significant efforts are currently underway in the European Union where member states are entirely focused on determining how to adopt the recently enacted EU audit legislation into local law. The Board should consider whether this is the optimal timing for this project, especially if member bodies could delay adoption of the Code given the other matters that are being addressed locally.

\* \* \*

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, Managing Director Global Independence, via email ([wgregory@deloitte.com](mailto:wgregory@deloitte.com)) or at +1 203 761 3190.

Sincerely,



Deloitte Touche Tohmatsu Limited

## Appendix – Suggested Alternative to the Illustrative Example

[Words that are italicized are defined terms.]

### Business Relationships

A *close business relationship* between a *firm*, or a member of the *audit team*, or a member of that individual's *immediate family*, and the *audit client* or its management, arises from a commercial relationship or common *financial interest* and may create self-interest or intimidation threats.

Examples of such relationships include:

- Having a *financial interest* in a joint venture with either the client or a controlling owner, *director*, *officer* or other individual who performs senior managerial activities for that client.
- Arrangements to combine one or more services or products of the *firm* with one or more services or products of the client and to market the package with reference to both parties.
- Distribution or marketing arrangements under which the *firm* distributes or markets the client's products or services, or the client distributes or markets the *firm's* products or services.

### Close business relationships

A *firm*, its *network firms* or a member of the *audit team* shall not have a *close business relationship* with:

- An *audit client* of the *firm*; or
- Its management,

unless the *financial interest* is immaterial and the business relationship is insignificant to the *firm*, its *network firms* or the *audit team* member, as the case may be, and the client or its management.

A *firm* shall evaluate the significance of any threat created by a business relationship between an *immediate family* member of a member of the *audit team* and the *audit client* or its management, and apply safeguards when necessary to eliminate the threat or reduce it to an *acceptable level*.

### Co-Investments

A *firm*, its *network firms*, a member of the *audit team* or a member of that individual's *immediate family* shall not have a business relationship involving the holding of an interest in a closely-held entity when:

- The *audit client*; or
- A *director* or *officer* of the *audit client*; or
- Any group thereof,

also holds an interest in that entity, unless:

- The business relationship is insignificant to the *firm*, its *network firms*, the member of the *audit team* and the *immediate family* member, as the case may be, and the *audit client*;
- The *financial interest* is immaterial to the investor or group of investors; and
- The *financial interest* does not give the investor, or group of investors, the ability to control the closely-held entity.

### Purchase of Goods and Services

The purchase of goods or services from an *audit client* by a *firm*, or its *network firms*, a member of the *audit team*, or a member of that individual's *immediate family*, does not generally create a threat to *independence* if the transaction is in the normal course of business and at arm's length. However, such transactions may be of such a nature or magnitude that they create a self-interest threat.

**A *firm* shall evaluate the significance of any threat created by a *firm*, its *network firms* or a member of the *audit team* or a member of that individual's *immediate family* entering into a transaction to purchase goods or services from an *audit client* of the *firm* when the transaction is:**

- **Not at arm's length;**
- **Not in the normal course of business; or**
- **Of such a nature or magnitude that it creates a self-interest threat.**

**A *firm* shall apply safeguards, when necessary to eliminate the threat or reduce it to an *acceptable level*.** Examples of such safeguards include:

- Eliminating or reducing the magnitude of the transaction; or
- Removing the individual from the *audit team*.