



ASIC

Australian Securities & Investments Commission

14 March 2010

Ms K Spargo
The Chairperson
Accounting Professional and Ethical Standards Board
Level 7, 600 Bourke Street
MELBOURNE VIC 3000

Dear Ms Spargo

CONSULTATION PAPER 01/09 - PROPOSED REVISION OF APES 110 CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS (CP01/09)

We request that the contents of this submission remain strictly confidential.

Thank you for the opportunity to comment on the consultation paper for proposed revisions to APES 110 Code of Ethics for Professional Accountants (“the APES Code”) and the possible methods for adopting the revised Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (“IESBA”) (“the revised IFAC Code”).

Need for improvement to revised IFAC Code

Confident and informed markets rely on high quality financial reports. A high quality independent audit function is important to the effective functioning of our free enterprise system.

We understand that the APESB’s initial consultation on the revised IFAC Code focuses largely on drafting conventions and that the more substantive issues about the requirements will be considered at a later date. Our main concerns relate to the substance of the auditor independence requirements of the revised IFAC Code. Removing duplication should be addressed as a secondary focus if the APESB has sufficient resources.

While recognising that the revised IFAC Code makes a number of improvements on the previous code, there is an opportunity for further improvements to be made to the auditor independence requirements in adopting the revised IFAC Code in Australia. These improvements could be provided to the IESBA to contribute to future improvements to the revised IFAC Code.

ASIC contributed to the International Organisation of Securities Commissions (“IOSCO”) submissions on the exposure drafts that led to the revised IFAC Code. The IOSCO submissions included a number of significant recommendations for substantive improvements to the auditor independence requirements that were not addressed in the revised IFAC code. We understand that these matters will be considered further by the IESBA in the future. The IOSCO submissions are publicly available on the IOSCO website (www.iosco.org).

The revised IFAC code appears to reflect a number of compromises to address perceived practical issues in some, particularly smaller, jurisdictions. In a larger developed country such as Australia, the revised APESB Code should have regard to the higher expectations of users of financial reports and users of accounting/audit services. A number of exceptions are inappropriate in Australia and should not appear in the revised APESB Code. Regard should also be given to the auditor independence requirements of the Corporations Act 2001 (“the Act”).

International convergence

The revised IFAC Code recognises that differing requirements may be adopted in individual jurisdictions. We are not currently aware of any jurisdictions that have adopted the existing IFAC Code without changes or that intend to adopt the revised IFAC Code without changes.

While we recognise that there may be pressure to adopt reduced requirements in some smaller jurisdictions, we believe that it is important to pursue international convergence of high quality auditor independence requirements in the interests of auditors, users of financial reports and users of accounting/audit services.

However, the APESB should not adopt verbatim a code that is not of the standard to be expected by users of financial reports and which will not achieve international convergence. The convergence process should take place at the international level involving not just professional requirements but also the legislative, regulatory and professional requirements in many jurisdictions. A key element will be the development of high level principles and resolving different approaches in key areas such as auditor rotation.

Specific concerns with the revised IFAC Code

We have some specific concerns about adopting the revised IFAC Code without improvements to the substantive provisions. Examples include:

(a) *Clarity format*

A “clarity” format should be adopted to provide clear mandatory objectives and a clear distinction between mandatory requirements and application guidance. The “clarity” format also consistently uses unequivocal language such as “shall” rather than “should”. This approach would ensure that the obligations of an auditor or an accountant are clearly communicated;

(b) *Inadvertent violations exemption*

The exemption for “inadvertent violations” in paragraphs 100.10, 290.39, 290.117, 290.133, 290.159, 291.33 and 291.112 of the revised IFAC Code should be removed. The revised IESBA Code permits inadvertent violations and, particularly in the case of paragraph 100.10 and 290.159, may encourage firms not to establish systems to prevent contraventions. Further, it is unclear what constitutes an inadvertent violation and this creates uncertainty for practitioners and disciplinary bodies. The circumstances of any violation are a matter to be considered by the relevant body in considering any disciplinary or other action;

(c) *Materiality*

The revised IFAC Code only applies to material contraventions but does not provide any guidance as to the meaning of materiality;

(d) *Unnecessary and inappropriate exemptions*

The revised IESBA Code contains exemptions that are unnecessary and inappropriate in Australia. For example, an auditor of a public interest entity can provide bookkeeping services, including taxation calculations, “in emergency or other unusual situations when it

is impractical for the audit client to make other arrangements” even though another firm could be engaged to provide those services (paragraphs 290.174 and 290.186). Australia has relatively large numbers of qualified accountants. In some circumstances it may be appropriate to seek extensions of time for completing the financial report;

(e) *Fee dependence*

Compromises in the revised IESBA Code should be addressed to meet the higher expectations of users of financial reports in Australia. For example, the revised IESBA Code only requires an external review of the audit of a public interest entity in more extreme cases of fee dependence, and then only after the second year audit (paragraphs 290.220 to 290.223). An auditor is never required to decline an engagement. There is no quantitative guidance as to the level of acceptable fees for non-public interest entities;

(f) *Inappropriate safeguards*

The revised IESBA Code allows threats to independence to be disregarded if the auditor puts in place specified safeguards. The approach is flawed and many safeguards are inappropriate or ineffective. There should be a definition of safeguards, and a delineation of safeguards that are equivalent to standard quality control or best practice initiatives. Inappropriate safeguards should be removed;

(g) *Internal audit services*

The revised IESBA Code permits auditors to also perform internal audit services, subject to safeguards. What constitutes “internal audit” and the distinction from similar other services is unclear (paragraph 290.195). The revised IESBA Code requires safeguards but only gives the example of staff providing significant services are not members of the external audit team;

(h) *Documentation*

The documentation requirements in paragraph 290.29 of the revised IFAC Code should apply to any threats to independence requiring analysis, and should require documentation for multiple threats that are individually less significant but accumulate to a significant threat; and

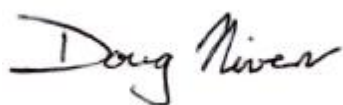
(i) *Local law, regulations and circumstances*

The revised IFAC Code should be amended to deal with complexities introduced by local law, regulation and circumstances, and ensure consistency with the independence requirements of the Act. The current APESB code already details differences between the requirements of the Act and the code to reduce the possibility of contraventions of the Act.

The Attachment to this letter details our responses to the specific questions in CP01/09.

Please contact me on (02) 9911 2079 if you have any questions about this submission.

Yours faithfully



Doug Niven
Senior Executive Leader, Accountants and Auditors

ATTACHMENT

RESPONSES TO THE QUESTIONS IN CP01/09

Question 1a) - Mixture of mandatory requirements and guidance – In accordance with APESB drafting conventions, should the revised APES 110 be formatted so that mandatory requirements appear in separate paragraphs to guidance?

We support the adoption of a “clarity” format that separates not only requirements and guidance but also provides clear objectives. The objectives should be met, even in the absence of a specific requirement. Priority should be given to key issues of substance and structure and format addressed if there are sufficient resources. The work done by the APESB could be provided to the IESBA to assist in applying a “clarity” format to the revised IFAC Code.

Question 1b) - Defined terms – Should the revised APES 110 use IFAC defined terms, use defined terms tailored to the Australian environment, or, where applicable, use defined terms which are consistent with those used in Australian Auditing Standards?

Definitions should be considered on a case by case basis to determine whether to retain the IESBA definition or modify the definition to conform to the definitions in auditing standards or the Act. Some terms require greater clarity (eg the definition of “internal audit”).

Question 1c) – Capitalisation of defined terms – Should defined terms be differentiated from non-defined terms by capitalising defined terms in the revised APES 110?

We support capitalising defined terms in accordance with convention. This will assist users of the revised APES 110 in identifying defined terms.

Question 1d) - Definition of “public interest entity” – Should the revised APES 110 use the IFAC definition of “public interest entity” or provide guidance on the application of the IFAC definition in the Australian context or redefine this term in the Australian context?

Certain provisions of the Code only apply in respect of an entity that is a “public interest entity”. The IESBA intended that this term be determined in each jurisdiction. It would seem to make sense to align this term with the corresponding term proposed to be adopted by the Australian Accounting Standards Board to identify entities subject to the full requirements of the International Financial Reporting Standards.

Question 2 - Should specific references to the Corporations Act 2001 and Australian Auditing Standards be incorporated into the revised APES 110 where relevant?

We support the inclusion of specific references to the Australian law and regulation as this will assist readers of the Code and reduce the possibility of contraventions of those requirements. For example, section 100.22 of the IFAC code mandates withdrawal from engagements in some circumstances, but ASIC consent is required to resign from audits of public companies and registered schemes under sections 329 and 331AC of the Act.

Question 3 - Do you believe sections 290 and 291 of the IFAC Code should be presented in their current form in the revised APES 110 or should they be restructured to remove duplication where possible?

We do not object to removing duplication between sections 290 and 291 provided it is clear which requirements apply to audits and which apply to other assurance engagements. Removing duplication should not be regarded as a high priority.