

31 March 2016

Mr. Ken Siong
Technical Director
International Ethics Standards Board for Accountants (IESBA)
International Federation of Accountants (IFAC)
529 Fifth Avenue, 6th Floor
New York, New York 10017 USA
By email: kensiong@ethicsboard.org

Dear Mr. Siong,

RE: IESBA's Exposure Draft *Proposed Revisions Pertaining to Safeguards in the Code* – Phase 1

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the IESBA's Exposure Draft *Proposed Revisions Pertaining to Safeguards in the Code – Phase 1* (Safeguards ED).

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, high-quality professional and ethical pronouncements. These pronouncements apply to the membership of the three major Australian professional accounting bodies (CPA Australia, Chartered Accountants Australia and New Zealand and the Institute of Public Accountants). In Australia, APESB issues APES 110 *Code of Ethics for Professional Accountants* which includes the Australian auditor independence requirements, as well as, a range of professional & ethical standards that deal with non-assurance services.

Introductory comments

APESB is supportive of the IESBA's project to improve the clarity, appropriateness, and effectiveness of safeguards in the Code. The proposed revisions in the Safeguards ED will increase clarity around the application of fundamental principles, and create a conceptual framework that sets high-level standards while providing flexibility to suit various circumstances and professional activities performed by professional accountants.

Overall APESB supports the IESBA's proposed revisions to Safeguards in the Code subject to the recommendations noted below. APESB has also responded to the IESBA's general and specific questions in Appendix A.

In developing APESB's response to the Safeguards ED, we have taken into consideration Australian stakeholders' feedback from two roundtable events conducted by APESB in Melbourne and Sydney in March 2016.

We acknowledge that we have had the opportunity to review the New Zealand Auditing and Assurance Standards Board's (NZAuASB) submission. We are supportive of NZAuASB's submission subject to the comments within this submission.

We look forward to the IESBA's work on Phase 2 of the Safeguards project which will allow us the opportunity to critically evaluate the proposed changes pertaining to safeguards in their entirety. APESB will reconsider the recommendations in this submission, if required, for the IESBA's developments announced in Phase 2.

Recommendations

APESB's key recommendations for the IESBA's consideration are:

- perform a comprehensive review of the Safeguards ED in respect of the instances where the term "might" is used and critically evaluate whether the term is appropriate;
- as a general principle, we believe that where a defined term is included in the glossary, then it is not necessary for the same definition to be reproduced in the text of the Code as this leads to unnecessary duplication (e.g. 'acceptable level' in paragraph 120.6 A1);
- remove the reference to Independence standards in paragraph 120.7 A1 or alternatively include examples that cover all professional accountants and not just auditors;
- develop guidance on the timing and function of the overall assessment and how it differs from the re-evaluation of threats; and
- where appropriate, clarify in safeguards that the specific task or review should be performed by a Partner or a senior professional accountant in public practice as distinct from another professional accountant in public practice.

APESB's specific editorial suggestions are included in Appendix A for the IESBA's consideration.

Concluding comments

We trust you find these comments useful in your final deliberations. Should you require any additional information, please contact APESB's Technical Director, Channa Wijesinghe at channa.wijesinghe@apesb.org.au.

Yours sincerely



The Hon. Nicola Roxon
Chairman

Appendix A

APESB's Comments

APESB's responses to the specific matters raised by the IESBA in the Safeguards ED are as follows:

Specific Matters

1. Do respondents support the Board's proposed revisions to the extant Code pertaining to the conceptual framework, including the proposed requirements and application material related to:

- (a) Identifying threats;
- (b) Evaluating threats;
- (c) Addressing threats;
- (d) Re-evaluating threats; and
- (e) The overall assessment.

If not, why not?

APESB is of the view that the IESBA's proposed revisions create a conceptual framework that sets appropriate standards while providing flexibility to suit various circumstances and professional activities performed by professional accountants.

Subject to our specific comments below, we are supportive of the proposed amendments which improve the flow of the Code and clearly articulates the expected correlation between threats and safeguards. We are of the view that this is a significant improvement on how safeguards are described in the extant Code.

APESB's key concern is the use of the term 'might' throughout the Safeguards ED. We note that the IESBA's Drafting Guidelines¹ for the Structure of the Code Project includes the following definitions of 'might' and 'may' at paragraph 19:

'Use the word "may" for when a matter is permitted and use the word "might" with reference to a matter where there is a possibility that something will or will not occur.'

APESB has noted a number of instances throughout the Exposure Draft where the use of the term 'might' may not be appropriate in a practical sense. For instance, please review proposed paragraph 300.2 A1, which describes a number of scenarios where threats are present, and the lead in paragraph describes it as "might." We respectfully suggest that in most of those instances it is more than likely that threats are present. Other instances where APESB considers 'might' is not the appropriate term to use are in paragraphs R120.5, 120.5 A1, R120.8, 300.2 A3 and 300.2 A11.

Accordingly, we believe that the IESBA needs to perform a comprehensive review in this Exposure Draft of where the term "might" is used and critically evaluate whether the term is appropriate as otherwise there is a risk that the requirements of the Code may be diluted and cause an unintended loss of clarity. Based on the current drafting approach it is likely that a professional accountant may argue that in the identified circumstances it might not

¹ *Structure of the Code – Drafting Guidelines (December 2015)* – presented to the IESBA at November – December 2015 meeting.

create a threat to the fundamental principles when a reasonable third party is likely to conclude that it does create a threat to the fundamental principles.

We believe that the use of “may” in the extant Code is stronger than the use of “might” in the proposed revisions.

Additional comments about the specific components of the conceptual framework and associated application guidance is noted below:

(a) Identifying threats

- Paragraph R120.5 is written using guidance language. To strengthen the requirement, the paragraph should be separated with the first sentence being retained as a requirement. The second sentence can be included in one of the application paragraphs. This would be consistent with the approach taken in paragraph R120.6.

(b) Evaluating threats

- No additional specific comments.

(c) Addressing threats

- Paragraph 120.7 A1 includes a reference to the International Independence Standards C1 and C2 to provide examples of situations where the threat created would be so significant that no safeguards could reduce it to an acceptable level. However, this could be read in a manner that implies that these threats do not happen in other circumstances. APESB recommends removing the reference to Independence standards from this paragraph or alternatively including examples that cover professional accountants in business and professional accountants in public practice who provide non-assurance services.

(d) Re-evaluating threats

- Re-evaluating threats is not listed as a key component of the conceptual framework in paragraph 120.2. APESB recommends paragraph 120.2 is amended to specifically reference the step of re-evaluating threats.

(e) The overall assessment

- The overall assessment is not listed as a key component of the conceptual framework in paragraph 120.2. APESB recommends paragraph 120.2 is amended to specifically reference the step of performing an overall assessment.
- Paragraph R120.9 includes reference to the reasonable and third party test. As the reasonable and third party test is included within the definition of acceptable level, we believe that the additional text is not required. APESB recommends deleting the following sentence:

~~*‘The reasonable and informed third party test described in paragraph 120.4 A1 is relevant to this assessment.’*~~

This recommendation also applies to paragraph 300.2 A12.

- During APESB’s Australian stakeholder consultation process, stakeholders queried the timing and function of the overall assessment and how it differs from the re-evaluation of threats. We believe that it would be useful for the IESBA to develop guidance to clarify the timing of the overall assessment and how it differs from the re-evaluation of threats that is required under paragraph R120.8.

2. Do respondents support the proposed revisions aimed at clarifying the concepts of (a) “reasonable and informed third party;” and (b) “acceptable level” in the Code. If not, why not?

(a) Reasonable and informed third party

APESB is supportive of the proposed revisions to the concept of reasonable and informed third party.

An editorial suggestion is to replace “test” in the first sentence of paragraph 120.4 A1 with “assessment”.

During APESB’s Australian consultation process, stakeholders noted that the words ‘skills, knowledge and experience’ imply that the reasonable and informed person has similar skills and knowledge as an accountant, but believe that the reference should be to ‘sufficient and relevant skills, knowledge and experience.’ The inclusion of the words ‘sufficient and relevant’ will ensure that an appropriate level of skills and knowledge is applied during this assessment.

(b) Acceptable level

APESB is supportive of the proposed revisions to the concept of acceptable level.

However, there is an unnecessary duplication of the definition of acceptable level. The definition should only be set out in the glossary and not included in the body of the Code. We, therefore, suggest that paragraph 120.6 A1 is unnecessary and should be deleted.

3. Do respondents support the proposed description of “safeguards?” If not, why not?

APESB supports the proposed description of ‘safeguards.’

4. Do respondents agree with the IESBA’s conclusions that “safeguards created by the profession or legislation,” “safeguards in the work environment,” and “safeguards implemented by the entity” in the extant Code:

(a) Do not meet the proposed description of safeguards in this ED?

APESB is supportive of the IESBA’s view that the safeguard types described in the extant Code would no longer meet the proposed definition of safeguards in the ED.

(b) Are better characterized as “conditions, policies and procedures that affect the professional accountant’s identification and potentially the evaluation of threats as discussed in paragraphs 26-28 of this Explanatory Memorandum?” If not, why not?

APESB is supportive of the IESBA’s view that the listed extant safeguards types should be considered as conditions, policies and procedures. We agree that the extant safeguards referred to were not specifically designed and implemented in response to threats of compliance with the fundamental principles.

5. Do respondents agree with the IESBA’s approach to the revisions in proposed Section 300 for professional accountants in public practice? If not, why not and what suggestions for an alternative approach do respondents have that they believe would be more appropriate?

APESB agree that the application of the conceptual framework is a key requirement that should be reiterated in Section 300 for professional accountants in public practice. While the concepts from Section 120 should not be duplicated in Section 300, in order to avoid Section 300 being disjointed there should be clear cross-referencing back to the key requirements in Section 120. For example, paragraph 300.2 A2, which lists conditions, policies and procedures specific to professional accountants in public practice, could be cross-referenced to the conditions, policies and procedures in 120.5 A4.

APESB understands that there are proposals to include in Part B of the restructured Code a distinction between senior members in business and other members in business. APESB is of the view that where appropriate this distinction should also be implemented in Section 300. For example, using a Partner or a senior professional accountant in public practice to perform a review as distinct from another professional accountant in public practice. Particularly to clarify the safeguards described in paragraph 300.2 A9.

APESB recommend the following specific amendments to paragraphs within Section 300:

- Paragraph 300.2 A1 provides examples of threats to compliance with the fundamental principles. The second threat listed under (a) Self-interest Threats could be amended to read:

‘A firm having undue dependence on total fees from a client, a revenue stream from multiple clients but originating from one contact or entity such as a bank referring clients, or the possibility of losing a significant client.’

- Paragraph 300.2 A3 could be amended to delete the words ‘with a large number and wide range of stakeholders’ from the last sentence. These words are being used to describe public interest entities, but as all public interest entities have these attributes, the additional text is not necessary.

- Paragraph 300.2 A9 refers to consulting with those charged with governance as a safeguard. APESB believes this point could be expanded to read as follows:

‘Consulting or seeking approval from those charged with governance or an independent third party, including a committee of independent directors, a professional regulatory body or another professional accountant may ~~might~~ address advocacy or intimidation threats.’

General Comments

APESB's responses to the general matters raised by the IESBA are as follows:

(a) Small and Medium Practices (SMPs)

The focus on the revised conceptual framework and compliance with the fundamental principles in the proposed revisions makes the Code easier to understand and hopefully facilitate its implementation by SMPs. With the reclassification of some extant safeguards as conditions or policies and procedures, SMPs can focus on applying specific safeguards that address the relevant threats at the engagement level.

We look forward to the IESBA's work on Phase 2 of the Safeguards project where we understand there will be a specific focus on the SMP sector and non-assurance services.

(b) Developing Nations

Not applicable.

(c) Translations

Not applicable.