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June 3, 2020

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 Fee-related Provisions of the Code*

Dear Mr. Siong:

We appreciate the opportunity to provide comments on the exposure draft "Proposed Revisions to the Fee-related Provisions of the Code" (the "ED") issued in January 2020 by the International Ethics Standards Board for Accountants ("IESBA" or "Board").

We recognize the significant public interest in the topics of audit and non-audit fees and welcome efforts by the Board to provide guidance and clarity on when and how the nature and level of fees might create threats to the independence of the audit firm. We also support the IESBA's objective to enable professional accountants to meet their responsibility to be independent of their audit and assurance clients by having a Code that contains robust and high-quality provisions.

However, we also consider that overall, the Board has not achieved the right balance between addressing public perceptions and the level of regulatory burden. In our view, the cost of the proposals in many places outweigh the perceived public interest benefits, and may in fact detract the audit firm from spending time focusing on identifying and evaluating threats that are likely to reasonably bear on the audit firm's independence, which is not in the public interest.

For example, we are not aware of any empirical evidence to support the argument that the extensive information that the auditor is being asked to collect and communicate will be useful to stakeholders in making an assessment of the auditor's independence, and therefore whether the cost will outweigh the benefit. There are many factors that impact the level of audit fees and even the Board recognizes in the ED there may not be comparability of fee information across different entities and groups. Likewise, if the purpose of public disclosure of fees is for stakeholders to assess the auditor's independence, there is no reasonable rationale provided for why fees paid to non-network auditors are relevant to such an assessment.

We agree that transparency is an important means of informing the investor community and improving trust, particularly where information provided by companies to their investors might help them to assess the independence of the audit firm. However, we do not support the Board's proposals to impose the responsibility of corporate governance public disclosures on the audit firm. Where they already exist, auditor remuneration disclosure obligations are placed on

reporting entities by the laws and regulations of those jurisdictions, not on auditors through standard-setting processes. The audit report is not a disclosure document, and the auditor should not be required to assume responsibility for making such corporate disclosures.

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

Specific Comments

Evaluating Threats Created by Fees Paid by the Audit Client

Question 1 Do you agree that a self-interest threat to independence is created and an intimidation threat to independence might be created when fees are negotiated with and paid by an audit client (or an assurance client)?

We recognize that an audit firm's independence might be perceived to be impacted because the entity being audited is also the audit firm's client and pays its fees. However, we believe undue emphasis is being placed upon this concept in the proposal, primarily because this inherent risk is already recognized and addressed in the Code.

When taken in its entirety, the Code is essentially designed to provide a framework that addresses the potential impact arising from a "client relationship." As stated in 100.1 A1, the purpose of the requirements and application material in the Code – which includes the framework for performing independent audits – is to enable a professional accountant to meet their responsibility to act in the public interest and not exclusively satisfy the needs of an individual client. Therefore, any inherent self-interest in satisfying the needs of an audit client because it pays the audit fees is already reduced to an acceptable level when the audit firm complies with the independence standards and meets its responsibility to act in the public interest.

As recognized by the Board in the ED, the majority of fee negotiations and resulting audit fees will not impact the audit firm's independence, and we consider that this is because compliance with the independence framework of the Code already addresses and reduces this impact. We also consider this is because the circumstances where the level of the threats created by the fees paid by the audit client is less likely to be at an acceptable level are already covered in the other fee sections (fee dependency, contingent fees, etc.).

Therefore, we believe the proposal is placing undue emphasis on the general concept that a self-interest threat is created by the negotiation and payment of fees, especially as proposed in paragraph R410.4, and we do not support the application guidance as proposed.

Question 2 Do you support the requirement in paragraph R410.4 for a firm to determine whether the *threats* to independence created by the fees proposed to an audit client are at an acceptable level:

a) Before the firm accepts an audit or any other engagement for the client; and
b) Before a network firm accepts to provide a service to the client?

For the reasons outlined above we do not support the proposed requirement in paragraph R410.4 (and R905.3).

In our view, any proposal that requires the audit firm to analyze, evaluate and document threats with respect to every negotiation and payment in connection with every audit fee (and also communicate such threats to TCWG under R410.22) would create an unreasonable burden without any corresponding public interest benefit, especially when the Board recognizes the majority of negotiations and payments do not impact a firm's independence. In fact, there is a potential for the burden and significant effort to detract focus from identifying and evaluating threats that are reasonably likely to impact independence, which is not in the public interest.

We suggest that the Board remove the requirement in R410.4 because the individual subsections already capture the threats that might be created through various fee arrangements. However, the factors that are listed in the bullet points in paragraph 410.4 A2 might be factors that help in both identifying and evaluating threats created by certain types of

fee arrangements. These factors should be included with the specific fee provisions where they are most relevant (fees that are too low, dependency, contingent fees, proportion of fees).

If the Board moves forward with R410.4, the paragraph and related application material as currently written lacks clarity. It contains summarized information about the application of the conceptual framework from Section 120 but does not follow the structure of the "restructured" Code – such as being organized under a sub-heading of "Identifying and evaluating threats" which is not the structure of other sections, yet is not followed by any application material regarding "Addressing threats" nor examples of safeguards, which is how the conceptual framework is applied. Furthermore, we do not deem it necessary to restate the requirement to consider new information or changes in facts and circumstances and re-evaluate the threat, which is sufficiently explicitly stated as a part of the conceptual framework in R120.9 and 120.9 A1-A2.

Question 3 Do you have views or suggestions as to what the IESBA should consider as further factors (or conditions, policies and procedures) relevant to evaluating the level of threats created when fees for an audit or any other engagement are paid by the audit client? In particular, do you support recognizing as an example of relevant conditions, policies and procedures the existence of an independent committee which advises the firm on governance matters that might impact the firm's independence?

As noted in our responses to Questions 1 and 2 above, we believe that compliance with the Code sufficiently addresses any risk that independence is impacted by the "client relationship" that is created by the fact that the entity being audited pays the audit fees. We therefore do not have views or suggestions as to further factors and continue to support the existing principles-based approach in the extant Code.

We also consider that the relevant conditions, policies and procedures already form part of the existing framework that addresses such risk, including laws regulating audit appointments; laws that may require the audit firm to provide certain other services; the role of the audit committee in overseeing auditor appointment, compensation and independence; professional and quality standards on the staffing and resourcing of audits; tender processes; the prohibition on audit partners being compensated for the sale of non-audit services; external inspections; and quality control monitoring required under existing International Standard on Quality Control 1 (ISQC 1), *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements* and proposed International Standard on Quality Management (ISQM) 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements.*

We do not believe the existence of an independent committee that advises the firm on governance matters (even if such matters include the remuneration of audit engagement partners) would have any bearing on the level of a self-interest threat to independence on an individual audit engagement and therefore it is not a relevant factor in the context of fees.

Impact of Services Other than Audit Provided to an Audit Client

Question 4 Do you support the requirement in paragraph R410.6 that a firm not allow the level of the audit fee to be influenced by the provision by the firm or a network firm of services other than audit to the audit client?

We agree with the principle that, when determining the audit fee, the auditor should not be influenced by the provision of other services to the audit client. However, we also consider that this concept is being given undue prominence in the proposal. The self-interest threat is already addressed in section R411.4 which prohibits the firm from evaluating or compensating a key audit partner based on that partner's success in selling non-assurance services to their audit client, and it is unclear why the Board believes this particular matter rises to the level of requiring a separate topic and a specific requirement. Rather, we suggest for this principle to be included in the application material in 410.5 A2, which discusses the factors that are relevant in setting the level of the audit fee.

Proportion of Fees for Services Other than Audit to Audit Fee

Question 5 Do you support that the guidance on determination of the proportion of fees for services other than audit in paragraph 410.10 A1 include consideration of fees for services other than audit:

a) Charged by both the firm and network firms to the audit client; and

b) Delivered to related entities of the audit client?

We agree with the Board's conclusion that the Code should not establish fee caps, and we support a principles-based approach for requiring the audit firm to evaluate threats to the fundamental principles that might be created by the proportion of total fees charged for other services provided during the engagement period.

We believe it is important to recognize that there are many services other than the audit which are required to be undertaken by the audit firm or are consistent with the role of the auditor, such as the provision of comfort letters, other review and assurance services, regulatory reports required to be performed by the audit firm, etc. While such fees could contribute to a higher proportion of fees that are not from the audit, these fees should not be considered to form part of the proportion of fees that create threats to the independence of the audit firm especially when some of the services are assurance services that also require independence.

We suggest for the Board to harmonize to the extent possible the calculations being required to be performed and reported in various different sections of this ED. This section should require the consideration of the same information as that which is required under the fee dependency section – the fees charged by the firm expressing the opinion on the financial statements of the client (not the network firms) for services provided to the audit client. Similarly, the threats created by a large proportion of fees from non-audit services would reasonably be thought to bear on the independence of the firm expressing the opinion on the audit, not the entire network. In other words, given this ratio focuses on the level of threat created for the firm signing the opinion, the analysis should be limited to those factors that could reasonably influence the auditor signing the opinion. This focus on the firm signing the opinion is also consistent with the provisions of the EU Audit Legislation when considering the level of fees from non-assurance services compared to the audit.

Fee Dependency for non-PIE Audit Clients

Question 6 Do you support the proposal in paragraph R410.14 to include a threshold for firms to address threats created by fee dependency on a non-PIE audit client? Do you support the proposed threshold in paragraph R410.14?

We agree with the suggestion that an audit partner's or audit firm's independence might be threatened by fee dependency regardless of whether the audit client is a PIE or not, and as such, the threats should be evaluated under the conceptual framework. Though we do not see any need to change the extant position and introduce a specific threshold for non-PIEs, it is reasonable in principle to include a threshold for fee dependency on non-PIE audit clients as well. We do not object to this being a different threshold to that for PIEs, recognizing the different public interest concerns.

Question 7 Do you support the proposed actions in paragraph R410.14 to reduce the threats created by fee dependency to an acceptable level once total fees exceed the threshold?

Overall, we support the proposed actions to reduce the threats, however it is not clear how the existence of a joint audit reduces the threat created by fee dependency on an individual firm or partner, whether a PIE or non-PIE audit client.

Fee Dependency for PIE Audit Clients

Question 8 Do you support the proposed action in paragraph R410.17 to reduce the threats created by fee dependency to an acceptable level in the case of a PIE audit client?

We support the proposed action that an engagement quality review performed by a professional who is not a member of the firm expressing the opinion on the financial statements (but could be a member of a network firm) might be a safeguard in the circumstances.

R410.19 refers to the circumstances described in R410.17 continuing for five consecutive years, as a reason for requiring the firm to cease being the audit firm. It is unclear whether the existence of a joint audit referred to in R410.18 is an exception to R410.19.

Other Proposed Revisions to General NAS Provisions

Question 9 Do you agree with the proposal in paragraph R410.19 to require a firm to cease to be the audit firm if fee dependency continues after consecutive 5 years in the case of a PIE audit client? Do you have any specific concerns about its operability?

We have concerns about the operability of the requirements in R410.19 given the different laws that exist around the world with respect to audit resignations – even though the Board recognizes that the Code cannot override laws and regulations and has provided exceptions in R410.20, such as consultation with a regulator, which seems an appropriate safeguard.

The provisions should be clear that while the Code may require resignation as there is no alternative safeguard in this situation, it does not imply it is because the audit firm is no longer independent. If the audit firm cannot cease under law or there are compelling reasons not to do so, it should specifically be stated that such audit firm is not in breach of the Code, its objectivity is not impaired, and it can continue as auditor. It is not clear in such a situation whether the firm is required to continue applying the same actions in the following years as it has in the prior five years, so we suggest this be clarified.

Question 10 Do you support the exception provided in paragraph R410.20?

Please refer to our response to Question 9.

Transparency of Fee-related Information for PIE Audit Clients

Question 11 Do you support the proposed requirement in paragraph R410.25 regarding public disclosure of fee-related information for a PIE audit client? In particular, having regard to the objective of the requirement and taking into account the related application material, do you have views about the operability of the proposal?

Public disclosure of fee-related information

We agree that transparency, which can be obtained through the public disclosure of fee and other information, can be an important means of informing the investor community and improving trust, particularly where information provided by companies to their investors might help them to assess the independence of the audit firm.

However, we strongly oppose the Board's proposal to transfer the onus and burden of corporate governance disclosures to the audit firm. As the Board recognizes, it is outside its remit to establish corporate disclosure requirements and therefore we believe it is inappropriate, and contrary to the public interest, to require audit firms to assume these

responsibilities instead. Where they already exist, auditor remuneration disclosure obligations are placed on reporting entities by the laws and regulations of those jurisdictions, not on auditors through standard-setting processes.

We also consider that it is not in the public interest to require the audit firm to publicly disclose information that it may not have consent to disclose. As currently proposed, failure to make the disclosure (or state the information is not available) would be an independence breach under the Code, but it is not clear why such a failure would impact an audit firm's objectivity. The proposals also risk putting the auditor and audit client in an adversarial position, which might create additional threats to independence.

We are strongly opposed to the requirement to disclose the audit fees of component auditors that are non-network firms. The fees charged by non-network firms cannot be seen to bear in any way on the audit firm's independence and it is corporate information to which the audit firm has no specific right. If a company chooses to disclose this information, they have the ability to do so voluntarily. See also our comments in response to Question 13 in connection with anti-trust and competition laws.

We also note that many jurisdictions have pre-determined frameworks, formats or requirements for companies to make disclosures in their annual reports regarding fee-related information. The Board has attempted to compensate for this by proposing the last sentence in R410.25; however, it is unclear on what basis each firm will individually and consistently determine that compliance with laws and regulations "substantively satisfy" the corresponding requirements. For example, 410.25 A2 provides an example of when compliance would not substantively satisfy R410.25, however is not helpful in assessing compliance, for example, if the audit client discloses all the information outlined in R410.25 (a) and (c) but not the non-network fees in (b) because they are not required under local regulation to do so. We recommend the Board consider an example or guidance of how to determine local requirements meet the "substantively satisfy" test.

If the Board were to proceed with these proposals, we also do not support:

- The proposal that the audit firm make disclosures in the audit report when the audit client does not make those disclosures: We do not consider it would be in the public interest for the audit firm to potentially imply the audit client as being non-compliant with requirements to which is it not actually subject. Additionally, the proposal to make such disclosures in the audit report in our view is inconsistent with the objective of ISA 700, *Forming an Opinion and Reporting on Financial Statements*, which is to form an opinion on the financial statements based on the conclusions drawn from the evidence obtained and to express it clearly through a written report.
- The requirement in R410.26: This proposal seems impossible to apply, as a firm will be unable to explain the qualitative significance of fee information which it does not in fact have. It would seem a more logical disclosure to simply state that information is not available and therefore not disclosed. Though again, we are concerned this could imply a limitation has been placed on the auditor which, in fact, has had no impact on the quality of the audit.

We also do not consider that the Board has provided consistency and clarity regarding how fees are to be calculated for the purposes of public disclosure in R410.25 (nor across this whole section). Various terms are used in reference to fees, such "fees charged", "fees received", "level of the fee", "fees paid or payable" and fees "paid or estimated to be paid", which the guidance suggests is the same as "fees payable or payable" (which actually implies fees already billed). The proposal also refers to "fees paid or charged" during the period covered by the financial statements, when we suggest it is more relevant for the fee disclosures to be related to the services provided during the financial statement period, regardless of when they were billed.

For these reasons we suggest, for clarity and consistency, that the requirements and application guidance across the section on *Transparency of Information regarding Fees for Audit Clients that are Public Interest Entities* follow these principles:

- Fees for Audit Services should be the fees billed or expected to be billed for the audit of the financial statements.
- Fees for Services Other Than Audit should be the fees billed for the services provided during the period covered by the financial statements, regardless of whether they were billed after the end of the financial statement period (could also be referred as being paid or payable).

Communication about fee-related information with TCWG

We agree that the objective of communicating fee-related information to those charged with governance ("TCWG") is to enable TCWG to consider the independence of the firm. We therefore support efforts by the Board to strengthen guidance on such communications, provided the proposals are clear in their application, do not create anti-trust or anti-competition issues, and provide useful and timely information to TCWG in furtherance of that objective.

With respect to the section on Audit Fees, in our view there is a lack of clarity in the nature and timing of the information to be communicated to TCWG in various places, for example:

- R410.22 refers to in "a timely manner" and 410.22 A2 refers to "as soon as practicable" when it would seem certain communications should occur prior to the acceptance of the audit engagement.
- Overall there is a lack a clarity of when each communication is required to take place and whether they are done at separate times (which seems to significantly increase the burden on audit firms and TCWG) or can be made, for example, annually by agreement.
- It is unclear whether the communications under R410.22 take place with respect to each audit engagement within the PIE group (e.g., at each component level) which would create a lot of duplication and should not be required.
- It is not stated whether the audit fees being reported in R410.22 are solely for the firm or also network firms.
- It is not clear why the disclosure of the fees for the audit of special purpose financial statements and review engagements as required in R410.22(b) is relevant for TCWG to assess a firm's independence in connection with the audit.
- The factors in 410.22 A1 do not appear to be matters that would reasonably bear on independence, and it is unclear whether such discussions held at the time the audit fee was negotiated would be considered to discharge this communication requirement (though R410.22 (a) refers to fees … on which the firm "issued" an opinion which suggest after the engagement period).
- It is not stated whether the communications are required to be in writing.

With respect to the section on Fees for Services Other than Audit, we understand that the intent of R410.23 and 410.23 A1 is for the auditor to provide information that provides an overall view to TCWG about the fees. With respect to an audit client that is a PIE, we consider that a discussion with TCWG about the nature of the services and their associated fees would logically and practically occur at the same time the Board proposes that the audit firm be required to obtain concurrence for TCWG prior to providing a non-audit service [proposed R600.19 in the NAS ED].

We suggest that the Board consider more closely the interaction of these requirements on non-assurance services in order to provide clarity and consistency in communications to TCWG as well as their timing. For example, we suggest that the requirement in R410.23 be consistent in scope with the requirement for gaining the concurrence of TCWG for the provision of non-audit services in the NAS ED – i.e. to have the same scope for obtaining concurrence of non-audit services and communicating the fees paid or payable for such non-audit services.

However, as also noted in our response to the NAS ED, we do not agree that such scope should extend to entities over which the audit client has "direct or indirect control" and this is not consistent with other regulations (namely those of the SEC and the EU Audit Legislation). For instance, the SEC requires audit committee preapproval for services provided to an issuer audit client and its subsidiaries. Similarly, while the EU requirements refer to the audit client and its controlled undertakings, the concept of controlled undertakings follows the accounting directives and means the consolidated entities. Using the proposed language would greatly expand the scope of entities that would be subject to

preapproval, especially in the private equity space. Reporting requirements should extend only to entities over which TCWG will have decision-making or corporate governance responsibilities, that is, consolidated entities.

Consistent with our comments above in respect of R410.25, we suggest R410.23 should refer to "fees billed for services other than the audit provided during the period covered by the financial statements," rather than "fees charged during the period covered by the financial statements" for the provision of services.

Question 12 Do you have views or suggestions as to what the IESBA should consider as:

a) Possible other ways to achieve transparency of fee-related information for PIEs audit clients; and
b) Information to be disclosed to TCWG and to the public to assist them in their judgments and assessments about the firm's independence?

We have no comments with regards to additional disclosures. However, we suggest for the Board to continue to coordinate with the IAASB on this topic.

Regular and open communication between the audit firm and TCWG is extremely important and we support efforts by the Board to strengthen guidance on such communications. The Board proposes significantly increasing the information to be communicated to TCWG, which will now be contained in various different sections of the Code and ISA 260, *Communication with Those Charged with Governance*, (including extant provisions such as breaches, and proposals in this and the NAS ED). We suggest the Board consider placing all the matters that are required to be communicated to TCWG in one section (for PIEs and non-PIEs) to ensure clarity and understanding for audit firms and TCWG and help ensure consistency in application.

Anti-Trust and Anti-Competition Issues

Question 13 Do you have views regarding whether the proposals could be adopted by national standard setters or IFAC member bodies (whether or not they have a regulatory remit) within the framework of national anti-trust or anti-competition laws? The IESBA would welcome comments in particular from national standard setters, professional accountancy organizations, regulators and competition authorities.

It is our view that the Board's proposal that that the principal auditor be required to obtain confidential and competitively sensitive fee information from a non-network component auditor raises questions under the antitrust and competition laws of the European Union, the United States, and other jurisdictions. Although legitimate standard setting activities are generally viewed as procompetitive, information exchanges in the standard setting context are not immune from antitrust scrutiny. In the European Union, for example, exchanges of fee or future price information between competitors may be prohibited by article 101(1) of the Treaty on the Functioning of the European Union (TFEU). Other types of confidential information exchanges may raise concerns under the TFEU, U.S. antitrust laws (particularly Section 1 of the Sherman Act), or the competition laws of other jurisdictions to the extent they threaten to harm competition and are not reasonably related to a procompetitive purpose.

Proposed Consequential and Conforming Amendments

Question 14 Do you support the proposed consequential and conforming amendments to Section 905 and other sections of the Code as set out in this Exposure Draft? In relation to overdue fees from an assurance client, would you generally expect a firm to obtain payment of all overdue fees before issuing its report for an assurance engagement?

In general, we support the proposed consequential and conforming amendments, subject to our comments in this letter.

The proposals in relation to overdue fees in Section 905 appear reasonable in that they require the evaluation of threats when fees are overdue before the assurance report is issued, and also remove the expectation that the firm obtain payment of overdue fees before the assurance report is issued. This is appropriate for assurance engagements that may be performed on a one-off basis and not necessarily recurring.

In addition to the question asked regarding overdue fees from an assurance client, we also note the changes made in 410.11 A1 and A2.

It is not clear what is giving rise to the proposed changes to 410.11 A2 and the Board has not provided an adequate rationale for this change. We do not expect a firm to always have obtained payment of overdue fees before issuing the *current* year's audit report, and do not support the changes to 410.11 A2. The extant wording in the Code that references the *following* year is more intuitive especially when considering the requirements in R410.12 which involves the determination of whether it is appropriate to be re-appointed or continue the audit engagement which are more forward-looking actions.

We support a principles-based assessment of overdue fees, for example, considering the materiality of the fees to the firm, the period of time for which they remain outstanding since they were invoiced, etc., which is not necessarily relevant to the date the report is issued. We also note that it would be difficult for a firm to assess an audit client's "willingness" to pay overdue fees and suggest this be changed to "commitment" to pay.

Question 15 **Do you believe that there are any other areas within the Code that may warrant a conforming change as a result of the proposed revisions?**

We have no additional comments.

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

Sincerely,

Deloitte Touche Tohmatsu Limited

Deloitte Touche Tohmatsu Limited