

December 7, 2017

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

Re: Exposure Draft, Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements

Dear Members of the International Ethics Standards Board for Accountants:

We appreciate the opportunity to provide comments on the exposure draft "*Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements*" (the "ED") issued September 2017 by the International Ethics Standards Board for Accountants ("IESBA" or "Board"). We recognize and support the continuing efforts of the Board to promote ethical behavior by professional accountants in business (PAIBs) and professional accountants in public practice (PAPPs) (collectively, PAs). We overall support the proposals in the ED and consider they meet the objective of strengthening the provisions to assist professional accountants better deal with the offering and accepting of inducements.

We do consider that the proposals in the ED would benefit from some clarifications and explanations in places where the intent or meaning appears unclear, and have provided suggestions for the Board's consideration below.

General comments

Definition of inducement

It is unclear in 250.4 A1/340.4 A1 whether the proposals are intending to establish that every gift, employment opportunity, donation etc. is an inducement. We consider it is clearer to start from the basis that an object or action is not an inducement unless it is offered with the intention of influencing a person's behavior, for example:

250.4 A1 An inducement is an object, situation, or action that is ~~used as a means~~ offered with the intent to influence another individual's behavior, but not necessarily with the intent to improperly influence that individual's behavior. Inducements can range from minor acts of hospitality between business colleagues, to acts that result in non-compliance with laws and regulations. ~~An inducement~~ Many different objects or actions can be inducements when offered with the intention to influence behavior ~~can take many different forms, for example:~~

This would resolve any doubt as to how the subsequent provisions are applied, i.e. it is an inducement because there is intent to influence, so the PA must then determine whether the actual or perceived intent was to improperly influence behavior or not. For example, without intention to influence, an offer of employment is merely a response to a business need, not an inducement.

Improper influence

The offering or receipt of inducements that are prohibited by laws and regulations are generally clear to understand, however there is no guidance on what otherwise constitutes an effort to "improperly" influence an individual's behavior. It is a key concept in the provisions however is very subjective.

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There is an intention to influence behavior behind every inducement, whether it is to offer a token of thanks, to help build a relationship, or to follow a local custom. Guidance on what constitutes "improper" influence is therefore needed to ensure clarity and consistent application of the Code which is in the public interest. For example, it may be stated that the intent to influence is "improper" when the offeror is giving the inducement in an attempt to gain an unfair advantage. Without providing guidance on what constitutes "improper" influence, there is no context against which to consider the factors in 250.9 A1 / 340.9 A1.

Trivial and inconsequential

The use of "trivial and inconsequential" in these proposals appears circular and its meaning is unclear in places:

- It would seem that whether an object or action is trivial and inconsequential would be a relevant factor to consider in determining whether there is actual or perceived intent to improperly influence. This is implied by the first bullet in 250.9 A1/340.9 A1 which refers to considering the "value" of the inducement, however the same section provides that if there is intent to improperly influence then the inducement should not be offered or accepted regardless of whether it is trivial and inconsequential.
- Then 250.10 A1/340.10 A1 provides that without intent to improperly influence, an inducement creates no additional threats if it is trivial and inconsequential, and therefore reintroduces the relevancy of value in a different context.
- The interaction with Sections 420 and 906 creates further confusion. An auditor could accept a gift from an audit client that is trivial and inconsequential and still be independent, however may be breaching another part of the Code if such a gift was given with the intent to improperly influence. It seems to suggest there may be different standards applying to the same facts.

We consider that whether an inducement is trivial and inconsequential is especially relevant to determining impropriety with respect to gifts and hospitality - which are common place and predominantly not made with any intent to improperly influence. It seems overly prescriptive to have the PA start from the basis that they need to apply the conceptual framework to all gifts and hospitality, as we do not consider that gifts and hospitality that are trivial and inconsequential create any significant threats to the fundamental principles. This is because they are not likely to influence or be reasonably seen to influence a person's behavior (and therefore may not even meet the definition of an inducement). Such gifts and hospitality that do not exceed normal and socially acceptable levels and are not prohibited by laws and regulations, should be generally acceptable. We would suggest the gifts and hospitality considerations more closely aligned to Sections 420 and 906.

Provisions applicable to Immediate and Close Family members

There would also be threats created by inducements made to family members of the counterparty by the PA, for example, the professional accountant offering employment to the counterparty's child with the intention of gaining favor with the counterparty. It seems however that this situation would not be covered by the proposed R250.7/R340.7 which only refers to inducements made with the intent to influence the recipient's behavior (in this example the recipient being the child, not the counterparty whose behavior the PA is seeking to influence).

Specific comments

Proposed Section 250: Do respondents support the proposals in Section 250? In particular, do respondents support the proposed guidance to determine whether there is an intent to improperly influence behavior, and how it is articulated in the proposals?

We support the proposals in Section 250 however have included in the Appendix to this letter some suggestions for the Board's consideration to improve the clarity of the proposals in the ED.

Proposed Section 340: Do respondents agree that the proposed provisions relating to inducements for PAPPs should be aligned with the enhanced provisions for PAIBs in proposed Section 250? If so, do respondents agree that the proposals in Section 340 achieve this objective?

We support the objective of aligning the provisions so that PAPPs and PAIBs are subject to the same requirements relating to inducements. We consider the suggestions made in respect of Section 250 are also applicable to Section 340.

Proposed Conforming Amendments to Independence Provisions

Do respondents support the restructuring changes and proposed conforming amendments in proposed Sections 420 and 906?

We support the intention of the conforming amendments in Section 420 and 906 given the inclusion of gifts and hospitality in proposed Section 340. As noted above, it could still appear that there is a difference between the treatment of gifts and hospitality in each section as auditors and assurance practitioners can accept gifts that are trivial and inconsequential, whereas whether or not a gift is trivial and inconsequential could be irrelevant to the application of Section 340. As also noted above, we consider it would be more appropriate for Section 340 be consistent with Sections 420 and 906 with respect to the application of the trivial and inconsequential threshold to gifts and hospitality.

If the gifts and hospitality provisions are not aligned to permit the offer and receipt of trivial and inconsequential gifts and hospitality, then we do have a concern with the inducements requirement being added into the same provision as the independence requirement. It leaves unclear whether this is now also an independence requirement (and if breached, a breach of the independence requirements). We suggest leaving the independence requirement as a standalone requirement and adding a references to Section 340 after the independence requirement as follows which would be consistent with other parts of the restructured Code:

R420.4 (and also R906.4) ~~In addition to complying with the requirements relating to the offering or accepting of inducements set out in Section 340, a~~ A firm, network firm or audit team member shall not accept gifts and hospitality from an audit client, unless the value is trivial and inconsequential.

420.4 A (and also 905 A) If a firm, network firm or audit team member is offered a gift or hospitality from an audit client, and the value is trivial and inconsequential, then the requirements set out in Section 340 also apply.

Do respondents believe the IESBA should consider a project in the future to achieve further alignment of Sections 420 and 906 with proposed Section 340? If so, please explain why.

Yes, in line comments above. We also note that Sections 420 and 906 do not include references to offering gifts or hospitality to audit and assurance clients, nor restrictions on immediate and close family members offering or accepting gifts or hospitality. Without more closely aligning the independence provisions to the concepts in Section 340, the resulting outcome could be confusing to apply when you are an auditor or assurance practitioner or their immediate or close family.

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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,

A handwritten signature in cursive script that reads "Deloitte Touche Tohmatsu Limited".

Deloitte Touche Tohmatsu Limited

Appendix 1: Comments and suggestions related to Section 250 (also applicable to the equivalent provisions in Section 340)

<p><u>250.9 A1</u> Suggested edits for clarity including to illustrate they are only examples</p> <p>Suggested extra factors</p>	<p>Factors that might be rRelevant factors to consider in determining whether there is actual or perceived intent to improperly influence behavior include:</p> <p>...</p> <ul style="list-style-type: none"> • Whether the offer of the inducement is <u>offered limited solely</u> to the individual recipient or available to a broader group. The broader group might be internal or external to the employing organization, such as other customers or vendors • <u>Whether the inducement was required, requested or demanded by the recipient</u> • <u>The nature and closeness of the relationship between the offeror of the inducement and its recipient</u> • <u>Whether the inducement was accompanied with a request that the recipient alter a process or change a decision in order for the offeror to gain an unfair advantage</u>
<p><u>250.10 A1</u> Suggested edit for clarity – it seems unclear to start this section with “unless” and it may be helpful to be clearer about what the purpose of the paragraph is for the PA, and provide a link to the threats in the next paragraph.</p>	<p>Unless an inducement is trivial and inconsequential, the requirements and application material set out in the conceptual framework apply when a professional accountant believes there is no actual or perceived intent to improperly influence behavior.</p> <p><u>If a professional accountant believes there is no actual or perceived intent to improperly influence behavior, and the inducement is not trivial and inconsequential, the requirements and application material set out in the conceptual framework apply for the purposes of identifying, evaluating and addressing threats to the fundamental principles to assess in part whether the inducement might still improperly influence the individual, despite the lack of actual or perceived intent to do so.</u></p>
<p><u>250.11 A1</u> Suggested edits for clarity as per prior point</p> <p>See next comments also – if the factors in 250.9 A1 are applied to these examples, it is difficult to understand how a threat would be identified that would not also lead to a conclusion there was at least perceived intention to improperly influence</p>	<p>250.11 A1 The following are examples where threats might be created from offering or accepting an inducement <u>although there is no intent to improperly influence behavior</u>:</p> <p>(a) Self-interest threats</p> <ul style="list-style-type: none"> • A professional accountant is <u>procuring goods or services and is offered gifts or hospitality</u> from a vendor during a <u>the</u> procurement process <p>(b) Familiarity threats</p> <ul style="list-style-type: none"> • A professional accountant regularly <u>frequently</u> takes a customer or supplier to sporting events <p>(c) Intimidation threats</p> <ul style="list-style-type: none"> • A professional accountant accepts <u>gifts or hospitality that a reasonable and informed third party would be likely to conclude</u> would be perceived to be inappropriate were it to be publicly disclosed

<p><u>250.11 A2</u> Suggested edit for clarity</p>	<p>The factors that are <u>might be</u> relevant in evaluating the level of any threats created by offering or accepting an inducement are the same factors set out in paragraph 250.9 A1 for determining intent.</p>
<p><u>250.11 A2</u></p>	<p>This provision is hard to apply as it seems to contain a circular reference. If the PA determines there is no actual or perceived intent to improperly influence using the criteria in 250.9 A1, then under what circumstances would the PA identify different threats and be able to apply safeguards by using the same criteria? For example, if there is no intent to improperly influence in the first example, but the hospitality from the vendor is generous and offered only to one potential buyer, this may create a significant threat to objectivity, but wouldn't a reasonable person use the same factors to perceive there to be intention to improperly influence? It is hard to understand how evaluating different situations using the same factors would lead you to different conclusions.</p>
<p><u>250.11 A3</u> Suggested edit for clarity</p> <p>It is unclear how some of the safeguards reduce the threats</p>	<p>250.11 A3 Examples of actions that might be safeguards to address threats created by offering or accepting an inducement <u>although there is no intent to improperly influence behavior</u> include:</p> <ul style="list-style-type: none"> • [...]
<p><u>250.11 A4</u> Suggested additional action: This is noticeable by its absence and would serve as a good reminder to the PA, particularly in situations where an inducement is requested or demanded</p>	<p>An e<u>Examples</u> of an <u>actions</u> that might eliminate threats created by offering or accepting an inducement <u>are</u>:</p> <ul style="list-style-type: none"> • <u>Refusing to offer or accept the inducement</u> • Is transferring responsibility for any business-related decision involving the counterparty to another individual who the professional accountant has no reason to believe would be, or would be perceived to be, improperly influenced in making the decision.
<p><u>R250.12</u> Suggested edit: the PA should be subject to obligations only when they know. It is not reasonable to have the PA have to "monitor" what family members are doing, which is suggested by the term "should remain alert".</p>	<p>Immediate or Close Family Members R250.12 A professional accountant shall <u>evaluate and address any</u> remain alert to potential threats to the accountant's compliance with the fundamental principles <u>when the accountant becomes aware of arising from</u> an inducement being offered:</p> <ol style="list-style-type: none"> (a) By an immediate or close family member of the accountant to a counterparty with whom the accountant has a professional relationship; or (b) To an immediate or close family member of the accountant by a counterparty with whom the accountant has a professional relationship.

<p><u>R250.13</u> Suggested edit: The PA should have obligations only if aware, as otherwise, threats would not be created</p>	<p>Where the professional accountant <u>becomes aware of an inducement being offered of the nature referred to in paragraph R250.12 and the accountant has reason to believe there is intent to improperly influence the behavior...</u></p>
<p><u>250.14 A1</u> Suggested edit for clarity in (a)</p>	<p>The intent of this paragraph is not clear. It currently seems to provide that the PA does not apply the conceptual framework if the inducement is trivial and inconsequential, even when there is intent to improperly influence and the family member ignores the PA. However the PA does apply the conceptual framework if the inducement is not trivial and consequential however there was no intent to improperly influence.</p> <p>(a) The immediate or close family member offers or accepts the <u>an</u> inducement <u>made or offered with the intent to improperly influence the accountant's behavior</u> contrary to the advice of the professional accountant in accordance with R250.13; or</p>
<p><u>250.14 A1</u> Subsection (b)</p>	<p>If the inducement was offered or received by a third party with no intent to improperly influence, it is unclear how any threats are created to compliance with the fundamental principles by the PA. It is therefore unclear how any of the factors in 250.11 A1/A2 make sense when applied in this context.</p>
<p><u>250.11 A3</u></p>	<p>The safeguards in 250.11 A3 do not seem applicable or available to the PA in the circumstance where a third party has offered or received an inducement, regardless of the intent. The third party cannot be compelled to donate the inducement or disclose it. It becomes unclear what the PA can do if they have advised the third party not to offer or accept the inducement and they have ignored that advice.</p>