

April 18, 2016

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

*Re: Exposure Draft, Improving the Structure of the Code of Ethics for Professional Accountants - Phase I*

Dear Members of the International Ethics Standards Board for Accountants:

We appreciate the opportunity to provide comments on the exposure draft “*Improving the Structure of the Code of Ethics for Professional Accountants - Phase I*” (the “ED”) issued December 2015 by the International Ethics Standards Board for Accountants (“IESBA” or “Board”).

## **General Comments**

It is in the public interest for the Code of Ethics for Professional Accountants (“Code”) to be understandable and enforceable and we are supportive of efforts that will improve the readability and usability of the Code. We recognize that the restructure of the Code is a very significant project that is demanding an enormous amount of effort not only from the Board, but from many external stakeholders.

When considered together with the safeguards project and subsequent phases of work, we are concerned about the strain being placed on stakeholders and the Board’s ability to maintain momentum and interest. We consider that there is still much more work to do to ensure that the public interest objectives, and ultimately the global adoption of the Code, are not undermined.

Of most concern to us is the proposed project timetable and effective date. Taking into account all the other projects underway, we continue to question the achievability of having a final version in early 2017. The timeline set forth by the Board does not seem feasible if the Board wishes to produce a high quality, and technically correct, restructured Code.

We also note that without a complete restructured Code to consider, our comments in this letter are evidently limited to the material provided in Phase I. We request that the Board not make any decisions about the content of this Exposure Draft until stakeholders have had the opportunity to review and comment on the restructured Code in its entirety, including the

results of Phase 2, the safeguards project, the other EDs under exposure or consideration, and the consultation on International Standard on Quality Control (ISQC) 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*.

### **Specific Comments**

#### **1. Do you agree with the proposals, or do you have any suggestions for further improvement to the material in the ED?**

We have provided comments and feedback below on the specific questions posed by the Board, however we cannot provide agreement or otherwise with the proposals until we can consider a complete restructured Code. There are many significant changes proposed which are contingent on other projects. For example, in the restructured Section 310, which forms part of this ED, the concept of the reasonable and informed third party has been removed even though the safeguards project has not completed its work on the conceptual framework.

We have provided comments below with respect to the following areas:

##### **(a) Understandability, including the usefulness of the Guide to the Code?**

- The Guide to the Code is helpful. It may also be helpful when describing “How the Code is Structured” in paragraph 4 to provide the Section numbers for each Part.
- It is sufficient to include the requirement to comply with the conceptual framework at the beginning of each section - the sentence in the header of each page isn’t necessary and could be deleted.

##### **(b) The clarity of the relationship between requirements and application material?**

- We consider it is important to clearly indicate the requirements from the application material and ask that the Board consider more obviously highlighting the requirements, for example, by having the provision, not just the paragraph number, in bolded text.
- In places, separating the requirements from application material makes the Code disjointed and difficult to consider in totality. There are numerous sections (e.g., R310.11 before 310.11A2 and A3, R410.7 before 410.7 A1 before R410.7, and R410.9 before 410.9 A1) where the inclusion of the requirement before the application material section is confusing and the context of the requirement is not clear until you read the section in its entirety. In such places, the application guidance would seem more logically placed before the requirement. Further, other sections such as Section 350 are confusing as there is no logical flow between the alternating requirements and application material.
- The Board has redrafted as application guidance many “shall” statements in the extant Code that were determined to be examples of the application of a requirement, including situations where the extant Code included a requirement to apply threats and safeguards. We consider this lessens the importance of applying

a threats and safeguards analysis for situations that the extant Code specifically addressed. For example in Section 340 the only requirement in the section is to apply the conceptual framework to the acceptance of gifts and hospitality. However the Code no longer provides that where the threats cannot be eliminated or reduced to an acceptable level, the professional accountant “shall not accept such an offer”. It may seem redundant or the logical outcome of application of the framework, however it seems to weaken the Code to remove such requirements that the extant Code specifically addressed.

- The Board has included a requirement to apply the conceptual framework at the beginning of each Section, however the requirements and application material seldom follow the conceptual framework approach (identify, evaluate and address threats). It may assist the professional accountant in applying the conceptual framework, and also assist with the flow between the requirements and the application material, if the sections were structured to follow the steps that would be followed when applying the conceptual framework approach.

**(c) The clarity of the principles basis of the Code supported by specific requirements?**

- We continue to have concerns, as noted in our response to the safeguards project, that the principles based approach of the Code may be gradually eroded through the restructure and safeguards projects, particularly given the continual repetition of the application of the conceptual framework as a requirement and the move towards a codification of the conceptual framework. This also highlights the importance of considering the Board’s changes in their totality.

**(d) The clarity of the responsibility of individual accountants and firms for compliance with requirements of the Code in particular circumstances?**

- We support the references to ISQC 1 and outline of responsibility in paragraph 400.7. We also conceptually support efforts to clarify, where appropriate, a firm’s responsibilities versus the responsibilities of professional accountants (which includes the firm).
- However we do not entirely support the Board’s approach to always refer to “firm” in C1 as this seems to exclude personal responsibility or accountability for compliance with some requirements of the Code. Specifically we consider that the documentation requirements in Subsection 402 and R3403.7 should refer to the professional accountant and not the firm.
- In other places, such as the financial interest provisions, the proposals appears to imply the responsibility for compliance with certain requirements of the Code is potentially with family members of the professional accountant, for example in R510.6. In such instances, the responsibility ultimately rests with the professional accountant not the family members.

**(e) The clarity of language?**

- We support the Board's efforts to simplify the language where possible by using simpler and shorter sentences. We have included additional drafting suggestions in Appendix 1.
- We note that shorter sentences do not always increase clarity. For example, in 310.8 A1 the Board has shortened "*This is particularly true when a professional accountant is asked to conduct an engagement in a situation that may become adversarial, even though the parties who engage the professional accountant may not initially be involved in a dispute*" to "*This is often true in a situation that might become adversarial although there is no dispute when the engagement begins.*" The latter sentence no longer has any real context and does not even refer to a dispute being relevant only when it involves the professional accountant's clients.
- We support indicating to the reader which terms are defined terms in the Glossary, at a minimum in the requirements provisions, by a simple convention such as bolding, capitalizing or italicizing each defined term every time it appears.

**(f) The navigability of the Code, including (i) numbering and layout of the sections, (ii) suggestions for future electronic enhancements; and (iii) suggestions for future tools?**

- We would consider it more helpful to navigate the Code by including the Glossary at the front rather than then end.
- We note that the numbering has become very complicated, though we are at a loss to suggest an improvement. For example the requirement in paragraph R510.11(d)(ii) and the application guidance in 510.11 A1 are hard paragraph numbers to distinguish.
- As mentioned in our response to the Consultation Paper, it would be helpful to include each Basis for Conclusion in an appendix to aid the reader with interpretation of the Code.

**(g) The enforceability of the Code?**

- While separating requirements from application material may make requirements stand out more prominently, we are not aware of instances where a lack of clarity led to an inability to enforce the Code. Additionally, the intention of the restructuring project was not to change the meaning of what had been in the extant Code. Therefore, if there was an issue with enforceability, a mere restructuring will not ultimately address this concern.

**2. Do you believe the restructuring will enhance the adoption of the Code?**

We consider reissuing the Code will necessarily set back convergence and adoption efforts as standard setters and regulators will need to start over in translating the Code and understanding the application in their jurisdictions. This may be particularly frustrating for those member bodies that have recently adopted the Code.

**3. Do you believe that the restructuring has changed the meaning of the Code with respect to any particular provisions? If so, please explain why and suggest alternative wording.**

One of our main concerns was that the restructure would lead to changes to the meaning of the extant Code and there are numerous cases where this has occurred. This is disappointing and raises concerns for Phase 2 of this project, as the Board has already dedicated significant resources to this effort, and a thorough and proper technical review of the final completed draft will be a significant undertaking. We have included examples in Appendix 2 of provisions where we consider the meaning has been changed.

**4. Do you have any comments on the clarity and appropriateness of the term “audit” continuing to include “review” for the purposes of the independence standards?**

We support that the term “audit” include “review” for the purpose of the independence standards. We do not support adding a standalone section solely for reviews, as the concepts in the independence standards apply equally to review and audit engagements.

**5. Do you have any comments on the clarity and appropriateness of the restructured material in the way that it distinguishes firms and network firms?**

We do not support distinguishing network firms from firms in the manner proposed. The extant Code is clear in 290.4 and 290.13 that in the case of audit engagements, it is in the public interest that firms and network firms shall be independent of audit clients. The Board has changed this concept significantly by stating that a network firm shall be independent of the audit clients of other firms only where “C1 specifically requires such independence”. We consider this decreases the importance of network firms being independent of the audit clients of other firms in its network. We support maintaining the extant requirements that “firm” includes “network firm” other than in limited stated circumstances.

If the Board’s proposed approach is taken, we consider that the Board has incorrectly removed requirements applicable to network firm in several places. For example, Subsections 403 and 404 both discuss numerous situations where “the firm” is required to take steps, including ending interests or relationships. Both subsections are silent on the fact that the interests and relationships causing the threat or the breach may in fact be the interests and relationships of a network firm (and therefore the steps would need to be taken by the network firm). In addition, the sections on employment relationships and family relationships now only apply to the firm that is issuing the opinion, when these provisions should apply equally to relationships with network firms as is the case in the extant Code.

Finally, at times the restructured Code refers to “a firm” and other times it refers to “the firm”. It is not clear whether there is a reason for this or a distinction.

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**6. Is the proposed title for the restructured Code appropriate?**

We find the proposed title confusing as it references both a Code of Ethics and Standards.

We support maintaining the current title, or alternatively, using the title “International Ethics Standards for Accountants” which is consistent with the name of the Board.

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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, Managing Director of Global Independence, via email ([wgregory@deloitte.com](mailto: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: Drafting suggestions to add clarity**

<b>Restructured Code Paragraph</b>	<b>Explanation</b>
6	Does not appear to be an appropriate placement under the category “How to Use the Code”
8	“consideration of the material is necessary <del>to</del> <u>for</u> the proper application of the requirements of the Code, including application of the conceptual framework”
111.3 A1	Appears the proper reference would be to R111.2.
114.1 A2	Is there a reason the bullets under (a) are not roman numerals?
300.3	Is this properly a subsection under 300.2?
R300.3 and 300.3 A2	The second sentence of R300.3 appears to be the same as 300.3A2.
310.4	Break last bullet point (with two sub-bullet points) into two distinct bullet points.
310.5	Appears repetitious with other sections. If it remains, consider whether to rephrase to make consistent with 112.3 A1 (“Independence is a measure of objectivity” versus “objectivity requires independence” in 310.5).
310.7 A1	A conflict resolution process does not “address” matters, it only helps the accountant to identify conflicts.
310.11 A1	Consider bulleting the factors.
310.11 A3	It may read better for this paragraph to come before 310.11 A2 – explain what disclosure and consent is and then when it may be required.
320.4 A5	“A <u>proposed</u> professional accountant will usually need the client’s permission, preferably in writing, to initiate discussions with the existing accountant.”
R320.5	This paragraph would be better placed after R320.6.
320.6 A2	“Circumstances where a professional accountant <u>is or</u> might be required to disclose confidential information...”
400.2(b)	Section C1 does not apply to other non-audit assurance engagements. The word “assurance” should be deleted from 400.2(b).
400.3 and 400.4	The last sentence of 400.3 would seem to be better placed in paragraph 400.4.
R400.11	Put the subheading “Related Entities” before this paragraph.
R400.12	The title “Engagement Period” before this section is incorrect as independence also covers the period covered by the financial statements. Retain extant Code wording “Independence from the audit client is required by C1 during both...”
R403.3	Seems strange to have a requirements paragraph made up of 3 sub-sections without an introduction, such as “If an entity becomes a related entity of an audit client because of a merger or acquisition, the firm shall...”

	403.2 seems to be Application Material relating to R403.3 (b) and (c) and would therefore logically go after the requirement.
R404.2	Should follow extant Code and the proposed sub-title and start “When a firm ...” not “If a firm” Due to formatting, the last paragraph appears to be an overall comment for the entire section, when it only relates to R404.2(e). If so, the paragraph should be further indented.
R404.3	It could be helpful to place R 404.3 under the subtopic “ <i>Communication with Those Charged with Governance – Breaches of an Independence Provision</i> ”.
R510.5 subheading	“ <i>Financial Interests Held by the Firm, Network Firm,...</i> ”
R510.5(d)	“Any other partner or managerial employee who provides non-audit services to the audit client, except for any whose involvement is minimal, or any of <del>their</del> that individual’s immediate family.”
R510.8	“Paragraph R510.5 also applies to a financial interest in an audit client held <u>in a trust for which the individual acts as trustee as it does to other financial interests</u> , unless:”
R510.9(b)	“Before an individual <u>who has a financial interest described in R510.9(a)</u> can become an audit team member, the individual or that individual’s immediate family member shall either:”
R510.11	“If <del>the</del> <u>a</u> retirement benefit plan of a firm or a network firm...”
520.1	“A close business relationship between an audit client <u>or its management</u> and a firm, a network firm, an audit team member”
521.1	“A family or personal relationship between an audit team member and a director or officer or <u>certain</u> other employees of the audit client ( <del>depending on their role</del> ) might create self-interest, familiarity or intimidation threats.”
R521.6	Include the subheading “ <i>Relationships of Partners and Employees of the Firm</i> ” before this paragraph to give it greater prominence.
522.1	“Self-interest, self-review or familiarity threats might be created if an audit team member has recently served as a director or officer, or employee of the audit client. For example, <u>this might occur if an audit team member might have to evaluate</u> elements of the financial statements when that individual prepared the relevant accounting records while with the client.”
523.2	This paragraph would appear to be application material instead of part of the introduction.
R524.4(b)	The need for this sentence is not clear when the section includes R524.2.
R524.5	This sentence structure is unlike any other requirements as there is no “shall”. It is suggested to amend as follows: “ <del>If an</del> An individual who was a key audit partner <u>shall not</u> joins an audit client of the firm that is a public interest entity: [...] <del>independence is compromised</del> , unless subsequent to the partner ceasing to be a key audit partner...”



Section 525	Use the term “loaned personnel” instead of “loan of personnel” as there are instances in this section where it can be confused with a loan that is a financial relationship.
Glossary	<p>“Fundamental Principles” would benefit from a short description. It is suggested to include “The standard of behavior expected of a professional accountant.”</p> <p>“Safeguards” is defined in one sentence in paragraph 120.7 A2. It is suggested to repeat this sentence in the glossary so the reader doesn’t have to refer to the other paragraph.</p> <p>“Audit”: In C1, the term “audit” includes “review <del>engagement</del>”.</p>

**Appendix 2: Instances where the meaning appears to be different from the extant Code**

<b>Restructured Code Paragraph</b>	<b>Explanation</b>
11	<p>The extant Code describes what is meant by a conflict of interest (threats to objectivity and potentially other fundamental principles). Paragraph 11 in the ED states complying with one fundamental principle may conflict with another fundamental principle. This is completely different conceptually.</p> <p>When obtaining guidance on ethical issues, the extant Code states advice can generally be obtained without breaching confidentiality when the matter is discussed with a professional body on an anonymous basis or with a legal adviser under the protection of legal privilege. These two concepts are excluded from the restructured Code and are important to describe why confidentiality would not be breached.</p>
R100.4	<p>The extant Code in paragraph 100.10 provides two avenues to responding to a breach: it refers first to Sections 290 and 291 for requirements relating to a breach of an independence provision (which refers to actions the firm must take) and second, the requirements of a professional accountant if they identify a breach of another section of the Code. R100.4 significantly expands the current requirement, making the professional accountant who identifies any breach of the Code responsible for the actions to be taken.</p>
Subsection 112 - Objectivity	<p>The ED does not include the statement “A professional accountant in public practice who provides an assurance service shall be independent of the assurance client.” which is currently contained in extant paragraph 280.2. This is an important concept that should not be deleted from this sub-section.</p>
310.7 A2	<p>The last sentence of the first paragraph doesn’t include the phrase “or reduce it to an acceptance level” which is an important concept. Otherwise, the paragraph infers that all threats must be completely eliminated.</p>
310.9	<p>The “shall” requirement in extant paragraph 220.8 is about the scope of the identification process, however 310.9 has changed the requirement into being about the consideration of conflicts.</p>
320.2	<p>Accepting new clients or new engagements doesn’t automatically create threats to complying with the fundamentals. The key is to evaluate <i>if</i> a threat is created.</p>
340.2	<p>Based on the way this is written, it appears the examples are the only instances that would be the cause of a threat to complying with the fundamental principles. The following changes are suggested to clarify: “An offer of gifts or hospitality from a client to a professional accountant, or an immediate or close family member of an accountant, might create a <u>threat to compliance with the fundamental principles</u>. For example, there <u>may be a self-interest or familiarity threat to objectivity</u> if the offer is</p>

	accepted, or an intimidation threat to objectivity if the acceptance of the offer might be made public.”
350.3 A1	Complying with law is a requirement in the extant Code, but is only guidance in the ED. This should be a requirement. Consider combining this with R350.4.
401.2	The extant Code requires network firms to be independent of the audit clients of other firms. This has now been qualified.
401.3 A1 through 401.3A6	These would appear to be requirements that would apply under R401.3.
R410.7	The extant Code states “if fees remain unpaid” the threat needs to be evaluated and safeguards applied. One of the factors to be considered is the significance of the fees. The ED states “when <i>significant part</i> [emphasis added] of fees due from an audit client remains unpaid...” This appears to be different threshold for evaluation (any unpaid fees versus a significant part of fees).
411.1	The extant Code states a threat “is created” while the ED states “might create”.
R510.6(b)	It does not make sense to say that a financial interest may be held provided that the family member disposes of the financial interest. The extant Code provides the financial interest may be held subject to (a) and (c), however the family member must sell the interest as soon as they are able to.
520	This section does not include a discussion about the threats caused by business relationships of immediate family of audit team members. Presumably this is because the Board felt it is already covered generally by R520.3. However, without the specific application material it may not be given the proper attention that is warranted.
Section 524	The extant Code applies the provisions on employment relationships to the firm and the network firms. The ED only applies these provisions to the firm. If this is intentional in the ED, it is a significant change from the extant Code and the justification for such a change is not addressed in the introductory or background materials.
524.3 A1	These elements of “significant connection” should be included as part of R524.3 to highlight the importance of meeting these requirements.
Glossary	“Engagement Period” is defined in the context of an audit. This concept also applies to non-audit assurance engagements. This definition should either include both types of engagements or describe “engagement period” in the respective sections C1 and C2.