

April 18, 2016

Mr. Ken Siong
Technical Director
International Ethics Standards Board for Accountants
545 Fifth Avenue, 14th Floor
New York, NY 10017 USA

Dear Mr. Siong:

Re: December 2015 Exposure Draft, *Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*

I am writing on behalf of the Public Trust Committee (PTC) of the Chartered Professional Accountants of Canada (CPA Canada) in response to your request to comment on the Exposure Draft entitled *Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1* (“the Exposure Draft”). CPA Canada together with its partners Chartered Professional Accountants of Bermuda and the Canadian provincial accounting bodies are currently working towards unification of the Canadian accounting profession under the designation “Chartered Professional Accountant”. The Canadian CPA profession represents a membership of more than 200,000 professional accountants in Canada and Bermuda.

CPA Canada conducts research into current business issues and supports the setting of accounting, auditing and assurance standards for business, not-for-profit organizations and government. It issues guidance on control and governance, publishes professional literature, develops continuing education programs and represents the Canadian CPA profession nationally and internationally. The PTC is responsible for overseeing the regulatory structures and processes across provincial jurisdictions in Canada. The PTC’s goals include achieving consistency between provincial CPA bodies in Canada and ensuring that the processes and standards in Canada meet or exceed the international standards.

Thank you for the opportunity to provide our comments on this Exposure Draft. Although we appreciate the workload involved in IESBA’s recently published timetable, we respectfully suggest our preference would have been to consider all sections of the Code simultaneously so that respondents could examine the restructuring in its entirety. We believe this would enhance the ability of accounting bodies to conduct meaningful consultations with stakeholders, increase efficiency and enable more thorough responses.

Generally, we found that the restructuring of the Code added to the quality and understandability of the sections provided in the Phase 1 review. We noted the research and consultation effort that had been conducted by IESBA in developing this Exposure Draft. Overall, we found the Exposure Draft materials to be understandable, the language to be clear and the navigability improved. However, without current application and use of the IESBA Code in Canada, we were unable to consider whether meanings had been inadvertently changed through the re-structuring process.

Please find below our responses to the requested matters for input from Respondents as outlined in the Explanatory Memorandum’s Guide for Respondents.

Refinements to the Code:

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

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

Overall, the understandability was evaluated as very good and the Guide was found to be useful in considering the Code. It was noted that the Purpose of the Code on Page 16 could be enhanced by incorporating a brief description of ethical behavior that encompasses a responsibility for a professional accountant to go beyond the minimums of what is required by laws or rules and to ultimately do what is “right” using the Fundamental Principles and Conceptual Framework of the Code as intended.

As a general observation, we noted that the Guide does not clearly describe whether “standards” and “requirements” are synonyms, and if not, what the differences are between them.

We also noted that the Guide and Part A do not clearly outline the requirements, beyond the Fundamental Principles, for a professional accountant who is not in either a Professional Accountant in Public Practice (PAPP) or Professional Accountant in Business (PAIB) role. Professional accountants need clarity with respect to the requirements that apply to them and we are unsure that all will be addressed through the grouping of requirements according to PAPP and PAIB roles.

Further, a heavy reliance is being placed on Paragraph 4 of the Guide, which states, “Professional accountants in public practice might also find Part B relevant to their particular circumstances”. This approach may not be realistic, or practical. We also noted that it is not always clear that one topic is addressed in two Parts to cover different circumstances. When sections are repeated in more than one Part, it may create the impression that each Part can stand alone such that a professional accountant would not look to another Part.

A more practical approach to help professional accountants understand which requirements apply to circumstances that all could face would be to create a separate part of the Code to address these common topics. The result would be that the Parts related to PAPPs and PAIBs would only address unique circumstances that need to be highlighted in the public interest.

Questions were identified regarding Paragraph 8 on Page 17 of the Guide concerning *Application Material* and the use of words in describing the consideration of the material as “necessary” and the understanding of same as “required”. Earlier in the same paragraph, application material is described as more guidance-like providing context and intended to help understanding by the professional accountant. This was identified as a potential mixed and confusing message for users.

On Page 18 of the Guide, we were unclear as to the intended meaning in Paragraph 13 of “Non-authoritative guidance”. It begs the question as to what non-authoritative guidance is and also as compared to authoritative guidance. We suggest that a more robust explanation is likely required to ensure clarity for users.

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

Generally, we found the relationship between the requirements and the application material to be clear because of the proximity of same. Although presented well in terms of placement, it was felt that the visual presentation could be further enhanced through the use of bolding or boxing the requirements so that they more clearly stand out from the application material text. This may further enhance the ease of use of the Code and would assist as a visual cue of the relative proportions of requirements and application material.

As a general observation and point for further consideration, it was noted that some sections contain few requirements but seemingly a lot of application material. One case in point was identified on Page 44-45 concerning Section 330 *Fees and Other Types of Remuneration*. Also noted was Part C 300.2. We believe enforceability issues could arise where too much content has been removed from the requirements to the application material. For example, the requirement to identify threats appears in R120.5, the second sentence in R120.5 is guidance-like and the threats themselves appear in 120.5 A2. Enforceability issues may result from the delineation made between the requirements and the application material especially if the application material extends the requirement.

It was also noted for further consideration that there appeared to be a lack of a requirement or an issue with respect to the numbering of the application material contained in 112.3 A1 and 112.3 A2.

The clarity of the relationship between requirements and the application material was not evident in 120.5 A4 as we were unable to determine what conclusion was to be drawn by the professional accountant from this information.

We believe greater emphasis should be placed on the guidance that appears in paragraph 120.7 A1. The potential impact of not being able to reduce all threats to an acceptable level has important implications that should be more fully described to ensure the user's awareness.

We noted that some requirements appear to describe process considerations. For example, the process outlined in parts (a) and (b) of R310.7 may be very useful suggestions but they may be more appropriately included in application material.

In addition, the context for some requirements was not entirely clear. For instance, R310.13 in Section 310 *Conflicts of Interest* states that "a professional accountant shall remain alert to the fundamental principle of confidentiality when making disclosures..."; the connection to Section 310 is not necessarily clear. Also, the wording emphasizes the need to be "alert" to the principle, and it does not state a requirement to apply the principle, which is instead part of the requirements of R114.1 in Subsection 114 *Confidentiality*. It may be more appropriate to include Rule 310.13 in that Subsection.

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

Overall, the clarity of the principles basis of the Code supported by specific requirements was found to have improved relative to the extant Code. It was noted, however, that the linkage was not entirely direct because of the Conceptual Framework. As professional accountants use and apply the Code, perhaps the clarity of the principles basis may be enhanced.

Having said the above, some concern was expressed with the emphasis placed on the Conceptual Framework relative to the fundamental principles as proposed through the restructuring of the Code. Although the requirement to apply the Conceptual Framework was made clear through the restructuring, we did not find the linkage to the relevant fundamental principles to always be clearly laid out.

We also noted that there may be inherent problems in applying the Conceptual Framework in all circumstances as it may allow for a defence based on the application of safeguards thereby diluting the principles and requirements. Ultimately, this could bring enforceability into question and may reduce the adoptability of the Code where jurisdictions are concerned that the requirements, including the application of safeguards, may not be sufficiently clear to establish when fundamental principles of ethics have been violated.

Given the importance of both the Conceptual Framework and the Fundamental Principles, it was suggested that the header appearing on each page should be expanded to note both. In addition we noted that each section could be strengthened if it began with reference to the applicable Fundamental Principle(s). We believe that both of these suggestions would further enhance the clarity for the user of the principles basis of the Code supported by the specific requirements.

In reviewing Part A, we identified that the title *Introduction to the Code and Fundamental Principles* could be improved by describing its applicability to all professional accountants. Although stated in Paragraph 4 of the Guide on Page 16 in describing Part A, it was felt that the Title of Part A and its impact could be improved and strengthened by stating its applicability to all professional accountants and by removing the words “Introduction to”. For example, “The Code and Fundamental Principles Applicable to All Professional Accountants” would be preferred.

We also identified that the first sentence of paragraph 100.2 could be more succinctly and strongly stated to the effect that professional accountants must comply with the five principles. It was thought that this would enhance the understanding of the applicability of the principles.

We considered Section 110 The Fundamental Principles in detail and overall felt that they were well presented in terms of the requirements and application material. We believe a preamble in advance of stating the principles in 110.1 might be useful to “set the tone” and expectations of professional accountants. With the knowledge that professional accountants will not necessarily consider and re-read the entire Code at each sitting, we believe that opportunities should be taken where possible to remind the user of the importance of the principles to the profession and the professional accountant’s responsibilities.

We also noted that the Fundamental Principles section might be further enhanced with a paragraph summarizing that a professional accountant who does not adhere to the principles has not maintained the reputation of the profession.

With specific reference to 112.2 A2, we identified that this application material had gone considerably deeper than would be expected of a principle; its inclusion in Subsection 112 is seemingly out of context and we believe it should be considered further. It was also noted that the references within 112.2 A2 appeared to be public practice focused and not generally applicable to all professional accountants as presented.

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

Overall, we identified that greater clarity could be provided as it is not always clear who the requirement is written for or directed to. For example, in R310.11 it is not clear whether a professional accountant includes a firm. We also noted the use of “professional judgment” in this requirement and identified that this should be clarified or defined so that the user can understand what it is and how it is to be used in relation to the framework.

It was noted that the term “professional accountant” is defined to include “firm” for the purposes of Part C. However, the term “firm” is also used throughout Part C. In some cases, the terms are used in close proximity; for instance, both terms are used in Section 310 *Conflict of Interest*. R310.7 refers to a “professional accountant”, whereas R310.9 refers to “firm”.

We also noted the definition of “firm” to be quite narrow and it is not clear whether a firm could have non-member employees and what the responsibility is of individual professional accountants for non-members.

In reviewing the definition of professional accountant, we were uncertain whether it would adequately include retired or inactive professional accountants who must continue to comply with ethical requirements.

e) *The clarity of language?*

Generally we believe that there has been a good use of clearer language and simplified, shorter sentence structuring. The frequent use of the word “extant” was noted as a less than commonly used term that could be further considered.

It was identified that the different terms of consent utilized could be clearer and noted the following definition included within our CPA Code as having more precision:

“consent” means fully informed and voluntary consent given, after disclosure of sufficient information and with sufficient time to make a knowledgeable decision,

- (a) in writing, provided that if more than one person consents, each signs the same or a separate document recording the consent; or
- (b) orally, provided that each person consenting receives a separate written communication recording the consent as soon as practicable.

In considering R111.2, it was noted that a more complete description should be utilized to capture the prohibition of those circumstances where the professional accountant either knows or should know that they should not be associated with reports, returns, communications or other information where the accountant believes that the information is as described in (a), (b) or (c).

f) *The navigability of the Code, including:*
i. *Numbering and layout of the sections*

A mixed response to the numbering system was received with some finding it less than ideal but overall the layout was found to be functional.

We suggest that a numbering protocol be adopted whereby a consistent set of numbers

is reserved in every section for “country use” so that as countries adopt the IESBA Code they will have the flexibility to tailor/add to sections in specific reference to their country’s potential needs. Such a numbering protocol would likely enhance the adoptability of the Code and ensure its flexibility for future and at present, unknown, needs.

ii. *Suggestions for future electronic enhancements; and*

Generally, we believe that there are tremendous opportunities to be garnered from the digital IESBA Code. It was noted that an understanding will be needed of the IP requirements as countries will need their version of the IESBA Code to be available to their professional accountants on their own accounting bodies’ websites. Functionalities such as bolding of defined terms and the suitability of the header in an electronic format were raised for consideration.

iii. *Suggestions for future tools?*

Beyond hyperlinking the document for the index and glossary, for example, it was felt that the most important suggestion was for the IESBA Code to be searchable by word. In addition, a concordance of amendments and electronic archives would be critically important to the users of the Code as changes are invariably made in the future.

g) *The enforceability of the Code?*

As explained under b) above, enforceability issues may result from the delineation made between the requirements and the application material. We believe that information that is critical to the clear understanding of the requirement should not be presented as application material and the application material should not be used to extend the requirement.

As explained under c) above, enforceability issues may arise due to the required application of the Conceptual Framework throughout the IESBA Code and defences based on the application of safeguards thereby diluting the principles and requirements. We believe this will be an issue where jurisdictions are concerned that the requirements, including the application of safeguards, may not be sufficiently clear to establish when fundamental principles of ethics have been violated.

We believe that there may be issues in enforceability where the word “shall” has been used in the drafting but without specifying the obligations of professional accountants. Some examples of this include R320.3, R321.4, R330.3 and R340.3. The result is that the only requirement is to exercise professional judgment to determine if there are threats to the Fundamental Principles and whether these threats can be mitigated. Limitations have therefore not been established and apparent breaches of what should be expected from the requirements may be difficult for regulators of the profession to act on and enforce because of the use of the Conceptual Framework as a defence thereby weakening the Fundamental Principles.

We are very supportive of the Fundamental Principles but remain concerned that enforceability will be compromised through the required application of the Conceptual Framework throughout the IESBA Code. Effectively, without clear limits or requirements to be adhered to, a professional

accountant may apply the Conceptual Framework without achieving an appropriate outcome and enforcement may be difficult if not impossible.

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

Notwithstanding our serious concerns noted above regarding enforceability, we believe the restructuring will generally enhance the adoption of the Code providing for greater international consistency.

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.*

Nothing came to our attention during the review of the Exposure Draft and without the experience of the use and application of the IESBA Code, we are unable to comment further on any unintended alterations of meaning occurring through the restructuring process.

Other Matters

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 believe the use of “assurance” would be better and if not assurance, then the use of “audit” and “review” separately identified would be strongly preferred.

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?*

Generally, we found the description of network firm sufficiently broad but found the description of firm potentially narrow in its references to structures known to exist today which may become limiting for the future. Through discussion, other terms such as organization or entity were identified as broader terms allowing for future flexibility in considering new and different business structures that may be firms of the future.

Title

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

We agree that the title seems appropriate as explained by IESBA. Having said this, it is our view that a title utilized by IESBA should not be required to be identically matched by those countries adopting the Code.

Request for General Comments

We anticipate that the proposed changes will be favorably received by Small and Medium Practices (SMPs) noting that clearer language, improved navigability and electronic tools will all enhance the usefulness of the Code. Overall, we believe that it is likely that the restructured Code will be seen as an improvement for this

important market segment of professional accountants but we note that the overall size of the Code could be a concern for typically resource constrained SMPs.

As noted earlier in this response, we appreciate the workload involved for IESBA in its recently published timetable. However, we are concerned that with the numerous consultations planned within overlapping and short timeframes, difficulties will be encountered by stakeholders in carrying out meaningful consultations. We therefore believe that IESBA should consider this in refining its timetable to ensure that the quality of the consultative process in considering the various exposure drafts is not compromised or diminished.

We thank you for the opportunity to comment on this Exposure Draft and commend IESBA's objectives to enhance the understandability and usability of the Code. We appreciate that further revisions may occur through the feedback provided by stakeholders to this Exposure Draft as well as Phase 2 of the project.

Yours truly,

A handwritten signature in black ink, appearing to read 'B. Friedrich'.

Brian Friedrich, FCPA, FCGA
Chair, Exposure Draft Working Group – Public Trust Committee
CPA Canada