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Mr K Siong

Senior Technical Director

International Ethics Standards Board for Accountants

529 Fifth Avenue, 6th Floor

New York, NY 10017, USA

Submitted electronically to kensiong@ethicsboard.org

Dear Mr Siong

Comments on the Exposure Draft: Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code

The Independent Regulatory Board for Auditors (IRBA) is the audit regulator and national auditing and ethics standard-setter in South Africa. Its statutory Committee for Auditor Ethics is responsible for prescribing standards of professional competence, ethics and conduct for registered auditors. One of the IRBA's statutory objectives is to protect the public by regulating audits that are performed by registered auditors, thereby promoting investment and employment in South Africa.

The IRBA adopted Parts 1, 3, 4A and 4B of the International Ethics Standards Board for Accountants (IESBA) International Code of Ethics for Professional Accountants (including International Independence Standards) (IESBA Code). This was prescribed in November 2018 as the Code of Professional Conduct for Registered Auditors (the IRBA Code) in South Africa, with certain additional national requirements. The IRBA Code, with its Rules Regarding Improper Conduct, provides the basis for disciplinary action against registered auditors.

We appreciate this opportunity to comment on the IESBA's Exposure Draft: *Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code*, as set out under the following sections:

A. Overall Comments;

B. Request for Specific Comments; and

C. Request for General Comments.

We have also noted the proposed amendments and have initiated due process procedures in South Africa for the possible adoption of these amendments, when they are finalised by the IESBA.

If further clarity is required on any of our comments, kindly e-mail us at kmatambo@irba.co.za.

Yours faithfully,

Signed electronically

Imran Vanker

Director: Standards

A. OVERALL COMMENTS

1. We support the IESBA's proposed amendments relating to the definitions of Listed Entity and Public Interest Entity (PIE) in the IESBA Code. We appreciate the rationale for the overarching objective, which takes into account the importance of public confidence in the financial statements of the types of entities for which there is significant public interest; and the consideration that confidence in such audits will be enhanced by additional independence requirements.
2. We acknowledge that this project requires coordination with the International Auditing and Assurance Standards Board (IAASB), and also note the efforts of both Boards to ensure the project achieves its objectives.
3. The PIE definition plays an important role for many regulatory bodies. It has far-reaching implications for legislation; and for a regulator, it has implications on inspections and investigations. For example, in South Africa the PIE definition (as amended in the IRBA Code) is used to scope entities to apply our Mandatory Audit Firm Rotation and Audit Tenure rules.

B. REQUEST FOR SPECIFIC COMMENTS

Question 1

Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 as the objective for defining entities as PIEs for which the audits are subject to additional requirements under the Code?

4. Yes. We support the overarching objective set out in the proposed paragraphs 400.8 and 400.9. However, the term "financial condition" may not be understood as intended by the IESBA; or it could be subject to different interpretations in determining whether an entity is a PIE. As currently worded, it could be understood to refer only to the balance sheet position of an entity. In the determination of public interest, auditors and those who use financial statements and regulate audits, would be interested in matters beyond the "financial condition" of an entity. They could, for example, be interested in the entity's results as well as the entity's prospects, each of which could individually be the area of public interest in the entity. Thus, while we are supportive of the overarching objective, we are reserved about the implications of its narrowness or possible misunderstanding in application.

Question 2

Do you agree with the proposed list of factors set out in paragraph 400.8 for determining the level of public interest in an entity? Accepting that this is a non-exhaustive list, are there key factors which you believe should be added?

5. We agree with the proposed list of factors set out in paragraph 400.8.
6. We recognise that "the size of the entity" may be interpreted differently from jurisdiction to jurisdiction. In South Africa, our IRBA Code prescribes thresholds to determine the size of an entity. An example would be funds as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that hold or are otherwise responsible for safeguarding client assets in excess of ZAR10 billion (Ten billion South African Rands - approximately US$ 700 million). Therefore, we are of the view that clarity should be given regarding the "size of an entity" through the use of staff guidance.
7. We recommend that the IESBA considers developing staff guidance on how a jurisdiction can apply the factor of "size of an entity". The staff guidance could include matters such as:
    - Thresholds that mirror other legislation.
    - Thresholds that capture a significant percentage of participants in an industry.
    - Thresholds that consider an appropriate indicator. For example, for a Collective Investment Vehicle, this would be the assets under management, and not the number of staff.
8. The reference to an "entity's primary business" has the potential to create further classification problems. An entity may not have a primary business if it is interpreted to be a segment greater than half of the entity. Alternatively, the segment that is the primary employer or user of capital of an entity may not be the primary revenue generator or contributor to earnings of that entity. This classification issue could then create confusion through contradictory messages, and the

possibility that it may be determined that an entity has no primary business and therefore not being capable of being classified as a PIE.

9. The proposal in paragraph 400.8 limits regulatory supervision to financial supervision as it relates to the entity's financial obligations. As currently worded, it would not include a big mining company (without significant debt) that has legislated environmental obligations, that could very well be in the public interest.

Question 3

Do you support the broad approach adopted by the IESBA in developing its proposals for the PIE definition, including:

- Replacing the extant PIE definition with a list of high-level categories of PIEs?
- Refinement of the IESBA definition by the relevant local bodies as part of the adoption and implementation process?

10. Yes, we support the approach followed. The approach considers the role of the Code, the role of local bodies and the role of firms. In South Africa, the IRBA Code plays a big role by elevating specific entities into the definition of a PIE, using a threshold approach, and thus eliminating some areas of judgement and local inconsistency. While a globally consistent definition would be beneficial, we acknowledge that there is no single definition that could likely fit all jurisdictions; therefore, we support the view that local bodies should further refine the definition of a PIE to suit the needs of their respective jurisdictions.
11. The IESBA should be mindful that the proliferation of local amendments to the Code in respect of the definition of a PIE, and the encouragement of local amendments, will have the effect of:
    - Undermining the universal applicability and consistency of the Code.
    - Creating the means, and therefore the propensity, for local lawmakers and regulators to step into other areas of the Code, where they believe the IESBA's Code is not sufficiently robust, to customise the Code.
12. A factor not addressed in the IESBA's proposal but one that commands significant interest in South Africa, and likely elsewhere in the world, is "entities that have a high public profile or play a role in the political situation in a country". Other than state-owned and state-controlled entities, this could, for example, include political parties and their affiliated arms, media entities and monopolistic entities in key industries.

Question 4

Do you support the proposals for the new term "publicly traded entity" as set out in subparagraph R400.14(a) and the Glossary, replacing the term "listed entity"? Please provide explanatory comments on the definition and its description in this ED.

13. Yes, with conditions. We support the use of the new term "publicly traded entity". However, the term might be misunderstood, as the proposed definition of a "publicly traded entity" in the Glossary is circular in that it refers to an entity that issues financial instruments that are "publicly traded", without further defining what that means.
14. We understand from the Explanatory Memorandum that the intention is to broaden the scope of the types of markets or platforms on which financial instruments may trade as being beyond

formal exchanges, and we support that. However, it is not sufficiently clear whether the criteria for financial instruments to be "publicly traded" is that the instruments should actively trade in some form of secondary market or be available to trade in such a market.

15. For example, the volume of trading in certain listed instruments is not necessarily an indication of the number of public holders of the instruments and, therefore, the extent of the public's interest in the financial condition of the relevant entity. The Explanatory Memo cites the example of certain financial instruments that are listed, but do not trade in the secondary market, stating that in the IESBA's view there would not be significant public interest in the financial condition of the entity issuing such an instrument. But the lack of secondary market trading cannot be the sole measure of the number of investors in the instrument and, therefore, the extent of the public's interest in the financial condition of the relevant entity. An instrument listed for tax reasons, as mentioned in the Explanatory Memo, (and other reasons) may in fact have a significant number of public investors. The fact that those investors do not trade the instrument in the secondary market, due to other suitable channels being available to them, may say nothing about the breadth and significance of the interest in the financial condition of the relevant entity. Similarly, the mere fact that a financial instrument has some secondary market trading is also not a measure of the number of investors in the instrument and, therefore, the extent of the public's interest in the financial condition of the relevant entity. A listed instrument may have very few secondary market trades, specifically because it has very few public shareholders and, therefore, a fairly narrow public interest in the relevant entity's financial condition.

16. Without clarification on what "publicly traded" is intended to mean, we assume from the information in the Explanatory Memo that the intention is that as long as a financial instrument trades at all in some form of market (perhaps infrequently or in low volumes), that trading (however little) will be deemed to reflect a significant public interest in the financial condition of the relevant entity. For the reasons that we have mentioned above, we recognise that the extent of the public's interest in the financial condition of an entity can be difficult to gauge from the entity's status as a listed entity or the fact that the entity's financial instruments are traded (or available for trading) in a recognised public market. We also recognise the challenges associated with appropriately defining the "publicly traded entities" that must be considered to be PIEs. But given that it will be obligatory for all "publicly traded entities" to be included as PIEs, it is important to be as clear as possible on what this term means.

17. We have described above why excluding a listed entity that does not trade in a secondary market and including an entity whose financial instruments merely have some, but very little, secondary market trading may not always achieve the objective of identifying which of them might generate significant interest regarding their financial condition. As such, the answer to how a "publicly traded entity" should be clearly defined will need to be pragmatic because this is one of the categories of PIEs where any definition is either likely to include some entities to which the factors in R400.8 do not apply or exclude some to which those factors apply. A prudent approach that could be considered is to include those entities that have been included as PIEs to date (i.e. listed entities), in addition to broadening the scope to those entities whose financial instruments trade in the less formal public markets, as proposed in the Exposure Draft. This approach, while not perfect, will get closer to capturing the relevant factors in R400.8, those being the significance of the public's interest in the financial condition of the entity; the fact that the entity is subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations (in this context through its regulated disclosures to investors); and the number of investors.

To achieve this, and to remedy the current circular definition of a "publicly traded entity", we propose that the definition be amended to "*an entity that issues financial instruments that are transferrable and available for trading in a public market, such as an exchange or other trading platform accessible to the public*". This definition would remove any possible confusion regarding how often a financial instrument actually trades in a secondary market and in what volumes for it to be "publicly traded". An entity will be scoped into the definition as long as its financial instruments are available for trading in the relevant market. Our proposed definition also incorporates some of the guidance in the Explanatory Memo regarding the types of marketplaces that facilitate "public trading" in financial instruments, which is important to have in the Code for clarification.

Question 5

Do you agree with the proposals for the remaining PIE categories set out in subparagraphs R400.14 (b) to (f)?

18. We agree with the proposed categories. However, our view is that an important category that relates to an entity that manages or assumes custody of assets on behalf of the public, such as an asset manager, has been omitted.

19. The extant paragraph 400.8 refers to entities that hold assets in a fiduciary capacity on behalf of a large number of stakeholders. The proposed amendment to paragraph 400.8 seeks to replace the holding of assets in a fiduciary capacity with a broader reference to entities taking on financial obligations to the public as part of the entity's primary business. An entity that manages and assumes custody of client assets, such as an asset manager, clearly falls within the scope of the extant paragraph 400.8. Therefore, we assume (although it is not clear) that the intention is that such an entity would fall within the scope of the revised paragraph 400.8, as the entity has a financial obligation to the public in that it has an obligation to safeguard and return the custodial assets to its clients. Such an entity is also very likely to be "subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations", as contemplated in one of the other proposed factors in paragraph 400.8. This is because the financial failure of an entity such as an asset manager can affect the ability of its clients to obtain timeous access to their assets.

20. Therefore, as an entity that manages or assumes custody of assets on behalf of the public will meet at least two of the proposed factors in the revised paragraph 400.8, it seems logical that such an entity should be included in the list of PIE categories in paragraph 400.14. Consequently, we recommend that this category be included in paragraph 400.14. Each jurisdiction can determine whether to apply any specific exclusions or set thresholds based, for example, on the value of assets under management or held in custody.

21. For example, in South Africa and in the IRBA Code, we have the following categories:

    - Financial Services Providers, as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), with assets under management in excess of ZAR50 billion (approximately US$ 3.5 billion).
    - Authorised users of an exchange, as defined in the Financial Markets Act, 2012 (Act No. 19 of 2012), who hold or are otherwise responsible for safeguarding client assets in excess of ZAR10 billion (approximately US$ 700 million).

Question 6

Please provide your views on whether, bearing in mind the overarching objective, entities raising funds through less conventional forms of capital raising such as an initial coin offering (ICO) should be captured as a further PIE category in the IESBA Code. Please provide your views on how these could be defined for the purposes of the Code recognizing that local bodies would be expected to further define the definition as appropriate.

22. In respect of capital raisings (which may include debt, equity and other rights to the business), via initial coin offerings (ICO), we hold the view that the broad framework in the Code is likely to capture such entities within the extant and revised PIE definitions.

23. Should the IESBA decide to develop a separate category for ICOs, that would need to be future-proof in this rapidly developing area. In addition, if the category is defined in more generic terms than it currently is, that will serve the needs of the Code and users better. Should the IESBA decide not to develop a new category, a question in the Frequently Asked Questions (FAQs) could be a welcome addition, to clarify the public interest status of entities involved in ICOs.

Question 7

Do you support proposed paragraph 400.15 A1 which explains the high-level nature of the list of PIE categories and the role of the relevant local bodies?

24. We support the proposed paragraph 400.15 A1. We agree with the IESBA's view that the relevant local bodies have the responsibility, and are also best placed, to assess and determine which entities or types of entities should be treated as PIEs, for the purposes of additional independence requirements. In South Africa, the IRBA Code sets thresholds for certain types of entities in relation to their size and the definition of a public interest entity. We do, however, find it odd that the paragraph suggests that a basis to exclude an entity locally may be related to a ''particular organizational structure" yet such a structure is not included as a factor in 400.8 or R400.14.

Question 8

Please provide any feedback to the IESBA's proposed outreach and education support to relevant local bodies. In particular, what content and perspectives do you believe would be helpful from outreach and education perspectives?

25. We support the proposed outreach and educational support to relevant local bodies. Over recent years, South Africa has applied a broader definition of PIE, with specific categories. Some of the learnings we have drawn from the implementation of a broader PIE definition include the risk of misunderstanding when it comes to the technical definition of a PIE. Explaining the proposed definition of a PIE to non-users of the IESBA Code can be challenging, due to the technical nature of the definition. There is therefore a need for educational support and non-technical materials. This can be, for example, in the form of FAQs. The material in the Explanatory Memo should be retained and used in guidance. Also, communication and consultations should be encouraged at the jurisdictional level.

Question 9

Do you support the proposal to introduce a requirement for firms to determine if any additional entities should be treated as PIEs?

26. Yes, we support the increased role for the firms to determine if any additional entities should be treated as PIEs. We are of the view that the requirement in R400.16 that firms take into account whether a reasonable and informed third party would be likely to conclude that such entities should be treated as public interest entities will work as a sense check for auditors and prompt firms to enhance their documentation, when it comes to the determination of PIEs.

27. This decision should be for the firm and not left to the engagement partner, as reflected in the proposed requirement. In South Africa, our local amendments to the definition of PIEs are contained in paragraphs R400.8a SA, R400.8b SA and R400.8c SA of the IRBA Code. The IRBA Code requires the firm to document its reasoning and consideration of paragraph R400.8b SA, if it considers an audit client that falls under one or more of the PIE categories not to be a PIE (a rebuttable presumption).

Question 10

Please provide any comments to the proposed list of factors for consideration by firms in paragraph 400.16 A1.

28. We recommend that the IESBA includes application material or guidance to clarify the meaning of "near future" because this concept could be subjective. We acknowledge the example used in the Explanatory Memorandum relating to an imminent listing. However, this example could be misleading if it has no further guidance, as "imminent" implies that the entity is due to be listed in the very short term. "Near future" might extend a few years into the future; for example, in instances where one needs to consider comparatives, they might look at a two or three year period. In other instances, it can be a matter of comparing where a firm becomes aware that an entity's status could possibly change from a non-PIE to a PIE. One would therefore ask whether

the entity is classified as a PIE as soon as the firm becomes aware of that matter or in the next 12 months? There is then a wide spectrum of what "near future" might mean, and it is important to clarify what it means, to correctly highlight the risk related to ethical requirements for the firm.

Question 11

Do you support the proposal for firms to disclose if they treated an audit client as a PIE?

29. We support the proposal for firms to disclose if they treated an audit client as a PIE. This will enhance transparency by the auditors, for example, in instances where non-assurance services are prohibited for PIEs in the Code.

Question 12

Please share any views on possible mechanisms (including whether the auditor's report is an appropriate mechanism) to achieve such disclosure, including the advantages and disadvantages of each. Also see question 15(c) below.

30. The auditor's report is an appropriate mechanism to disclose if a firm has treated an audit client as a PIE. That way, an investor or a member of the public would identify that fact in the audit report, whether the report is publicly available or not. However, these financial reports are not always publicly available and there needs to be another mechanism to ensure that the reports are publicly available. One of the possibilities could be to have these reports published on the audit firm's website.
31. However, this brings the need for clarity and consistency in situations where an entity has been identified as a PIE, but its financial statements are not publicly available. Application material to this effect would be useful. Consistency in this regard will be key to ensure the ease of access to this information for the users of financial statements. We suggest that the IESBA indicates that each jurisdiction should seek to achieve consistency.
32. Proposed paragraph R400.17 requires a firm to publicly disclose if an audit client has been treated as a public interest entity. The question then is: What does "publicly disclose" mean? We are of the view that this means that the information should be easy to find. We have noted that there is no application material to this effect, and we suggest that application material should be included to add clarity to the proposed paragraph R400.17.

Question 13

For the purposes of this project, do you support the IESBA's conclusions not to:

(a) Review extant paragraph R400.20 with respect to extending the definition of "audit client" for listed entities to all PIEs and to review the issue through a separate future workstream?

(b) Propose any amendments to Part 4B of the Code?

Part (a)

33. We support the IESBA's conclusions that the definition of audit client in extant paragraph R400.20 is not further addressed as part of this project. We agree that the issue should be reviewed through a separate future work stream, and in consultation with the IAASB.

Part (b)

34. We support the conclusions not to propose any amendments to Part 4B of the Code. There is no differential between PIE and non-PIE in Part 4B. Other assurance engagements, other than audit or review engagements, are not driven by the type of entity but other things that are relevant to that entity, such as compliance engagements.

Question 14

Do you support the proposed effective date of December 15, 2024?

35. We support the proposed effective date. We are of the view that it will give sufficient time for the jurisdictions that do not have extended PIE definitions to develop experience with the application of the new NAS and Fees provisions for PIEs, based on the extant PIE definition, before these provisions become applicable to a broader group of PIEs.

Question 15

To assist the IAASB in its deliberations, please provide your views on the following:

(a) Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 for use by both the IESBA and IAASB in establishing differential requirements for certain entities (i.e., to introduce requirements that apply only to audits of financial statements of these entities)? Please also provide your views on how this might be approached in relation to the ISAs and ISQMs.

(b) The proposed case-by-case approach for determining whether differential requirements already established within the IAASB Standards should be applied only to listed entities or might be more broadly applied to other categories of PIEs.

(c) Considering IESBA's proposals relating to transparency as addressed by questions 11 and 12 above, and the further work to be undertaken as part of the IAASB's Auditor Reporting PIR, do you believe it would be appropriate to disclose within the auditor's report that the firm has treated an entity as a PIE? If so, how might this be approached in the auditor's report?

Part (a)

36. Paragraph A32 of ISA 260 refers to entities of significant public interest and gives examples thereof, such as entities that have a large number and a wide range of stakeholders, and with consideration to the nature and size of the business. It further gives examples of such entities, which include financial institutions (such as banks, insurance companies and pension funds), and other entities such as charities. Paragraph A15 of ISA 265 makes use of PIE. Paragraph A133 of ISQM 1 makes reference to law or regulation requiring an engagement quality review to be performed, for example, for audit engagements for entities that are public interest entities, as

defined in a particular jurisdiction. Paragraph A134 of ISQM 1 also makes reference to entities other than listed entities that may have public interest or public accountability characteristics, for example:

- Entities that hold a significant amount of assets in a fiduciary capacity for a large number of stakeholders, including financial institutions such as certain banks, insurance companies and pension funds, for which an engagement quality review is not otherwise required by law or regulation.
- Entities with a high public profile, or whose management or owners have a high public profile.
- Entities with a large number and a wide range of stakeholders.

37. The references and examples discussed in paragraph 36 above are similar to the wording used in the proposed definition of PIE and could therefore be indicative of the need to align the terms, as used by the IESBA and the IAASB. We therefore support the use of the overarching objective set out in proposed paragraphs 400.8 and 400.9 by both the IESBA and IAASB in establishing differential requirements for certain entities. This can be done by ensuring that the use of "Public Interest Entity" is applied consistently in the ISAs and there is clarity on which entities are of Significant Public Interest.

Part (b)

38. We support the proposed case-by-case approach for determining whether differential requirements already established within the IAASB standards should be applied only to listed entities and might be more broadly applied to other categories of PIEs.

Part (c)

39. It would be appropriate to disclose within the auditor's report that the firm has treated an entity as a PIE. This might require local bodies to establish regulations that require such disclosure in the audit report, through the enactment of local laws and regulations. This would then pave the way for auditors to apply the requirements of ISA 700.43, which require that if the auditor addresses other reporting responsibilities in the auditor's report on the financial statements that are in addition to the auditor's responsibilities under the ISAs, these other reporting responsibilities shall be addressed in a separate section in the auditor's report, with a heading titled "Report on Other Legal and Regulatory Requirements".

C. REQUEST FOR GENERAL COMMENTS

Small- and Medium-sized Entities (SMEs) and Small and Medium Practices (SMPs) – The IESBA invites comments regarding any aspect of the proposals from SMEs and SMPs.

40. No comment.

Regulators and Audit Oversight Bodies – The IESBA invites comments on the proposals from an enforcement perspective from members of the regulatory and audit oversight communities.

41. The extension of the PIE definition could have implications on the inspection and investigation arms of the relevant local bodies; in addition, the availability and extent of resources might be something to consider. There might be a need for communication and discussions with other regulators that regulate the entities that would now be in the scope of the definition of a PIE.

Developing Nations – Recognizing that many developing nations have adopted or are in the process of adopting the Code, the IESBA invites respondents from these nations to comment on the proposals, and in particular on any foreseeable difficulties in applying them in their environment.

42. From the IRBA's previous experience in extending the definition of a PIE in the IRBA Code, there can be a lengthy period of time involved in developing the PIE definitions and categories, understanding the implications, and implementing them, particularly in relation to any specific additions, exclusions and thresholds. As such, capacity constraints could create the need for support in these jurisdictions.

Translations – Recognizing that many respondents may intend to translate the final changes for adoption in their own environments, the IESBA welcomes comment on potential translation issues respondents may note in reviewing the proposals.

43. No comment.

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