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May 3, 2021

Mr. Ken Siong
Senior Technical Director
International Ethics Standards Board for Accountants
529 Fifth Avenue
New York, NY 10017 USA

Dear Mr. Siong:

Re: January 2021 Exposure Draft, Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code

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 *Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code ("the Exposure Draft").*

CPA Canada is the national body of Canada's accounting profession, with more than 220,000 members both at home and abroad. It conducts research into current business issues and supports the setting of accounting, auditing and assurance standards for business, not-for-profit organizations and government. CPA Canada issues guidance on control and governance, publishes professional literature, develops continuing education programs and represents the Canadian CPA profession nationally and internationally.

One of the responsibilities of the PTC is to monitor international developments with respect to the International Ethics Standards Board for Accountants (IESBA) Code of Ethics and develop responses to changes on behalf of the Canadian CPA profession.

Our views

We commend the IESBA for its efforts to achieve greater global convergence around the concept of a public interest entity (PIE) and we are broadly supportive of the proposed revisions to the definitions of the terms "listed entity' and "PIE" in the Code to ensure their continued relevance. We also appreciate the coordination efforts undertaken with the IAASB in the development of the proposals contained in the Exposure Draft and the provision of the webinar to provide additional context and address questions.

Notwithstanding our overall support for these proposals and our responses to your specific

questions, we encourage the IESBA to consider two specific areas noted below, where we have recommended clarification or additional guidance to encourage consistency in the interpretation and application of the proposals.

Structure of the proposals

While we are supportive of the IESBA's broad approach and the proposal to use three components to identify PIEs, we are concerned that the proposed structure of the guidance related to the overarching objective, application material and definition of a PIE does not promote the same clarity as contained in the Explanatory Memorandum. Specifically, we note that the IESBA has proposed both an overarching objective and a non-exhaustive list of factors to be used by local bodies in refining the definition of a PIE, as well as by firms to determine if additional entities should be treated as PIEs. However, given the order of the proposed paragraphs, it is not sufficiently clear that the factors in paragraph 400.8 should be used by local bodies to refine the definition in paragraph R400.14, which we note is a requirement.

We believe that clarification is important here to ensure consistency and enforceability. It is critical that local bodies take consistent approaches in arriving at appropriate and complete scopes for PIEs in their jurisdictions. If applied correctly, this will limit the role of firms in identifying additional PIEs. The professional judgment required by firms could be difficult to navigate with clients in circumstances where it is not clear whether a client meets the factors in 400.8 or the additional factors in paragraph 400.16 A1.

We note that the extant definition of a PIE clearly indicates that other entities might also be considered to be public interest entities, based on factors set out in extant paragraph 400.8. In contrast, the IESBA's proposed definition of a PIE "provides for the categories to be revised or entities to be excluded as described in paragraph 400.15 A1", which does not refer to paragraph 400.8. We are of the view that the revised definition of a PIE should be explicit by clearly stating that the factors in proposed paragraph 400.8 should be considered by local bodies in refining the IESBA's categories. Accordingly, we are recommending that the IESBA clarify within paragraph R400.14, that local bodies should consider both the overarching objective (paragraph 400.9) and the non-exhaustive list of factors (paragraph 400.8) in refining the IESBA categories. Similar clarification is also required for paragraph 400.15 A1, which we note provides for local bodies to refine the categories that define PIEs but does not specifically refer to the overarching objective or application material in paragraphs 400.9 and 400.8.

We further observe that proposed paragraph R400.14(f) draws on the extant definition of a PIE to also include a category for entities that are specified as PIEs by law or regulation to meet the objective in proposed paragraph 400.9. We believe that, without further clarification, it may be difficult in some cases for firms to determine a legislator or regulator's objective in specifying an entity as a public interest entity. Therefore, we also recommend that the IESBA clarify in paragraph R400.14(f), that an entity is a public interest entity when it is specified as such by law or regulation to meet the objective in paragraph 400.9 or because consideration of the factors in 400.8 indicates that there may be a significant amount of public interest in the financial condition of the entity.

Entities that no longer meet the definition of a PIE

We note that the proposed guidance is not clear as to the treatment of entities that meet the definition of a PIE in one reporting period and not in the next period, due to changing facts and circumstances that can be temporary or permanent. We believe that in such cases an expectation gap could be created for users of the report which could have an impact on the public interest.

We note that the proposals require firms to consider whether the entity has been treated as a PIE under similar circumstances. However, we think that "similar circumstances" is vague and could be interpreted differently from one firm to the next and that different interpretations over time might contribute to a gap in expectations about an auditor's independence. We are also generally of the view that the role firms play in identifying additional PIEs should be limited, particularly when the facts and circumstances require a significant amount of professional judgment.

Accordingly, we recommend that the IESBA consider incorporating a requirement to continue treating an entity as a PIE, for example, on a presumptive basis until it has been established otherwise that such treatment is no longer valid and/or appropriate or, for an additional period of time, such as one or two years, after it is determined that the entity no longer meets the definition of a PIE. We further recommend a requirement to disclose that the entity is no longer being treated as a PIE following that change or time period. We think that such an approach would serve better to inform users of the report and to discourage firms from not treating entities as PIEs when they have been in the past, simply because of a change in a quantitative threshold, such as size, which can possibly be temporary.

Our responses to your questions

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

<u>Overarching Objective</u>

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?**

   Overall, the PTC is very supportive of the overarching objective for defining entities as PIEs for which the audits are subject to additional requirements under the Code. However, we suggest the following as highlighted above:

   - Clarify that local bodies should consider both the overarching objective (paragraph 400.9) and the non-exhaustive list of factors (paragraph 400.8) in refining the IESBA categories of PIEs in paragraph R400.14. We also suggest that the logical flow of these paragraphs could be improved and presented more concisely, by introducing the requirement first, followed by the application guidance in paragraphs 400.8 and 400.9.

We are concerned that the objective in paragraph 400.9 and the factors in paragraph 400.8 may not be given appropriate consideration by local bodies in the identification of entities outside of the IESBA's PIE categories where there is significant public interest in their financial condition. If paragraph 400.8 is not part of the requirement for local bodies to consider when refining the IESBA's categories, there may be circumstances where entities in competitive markets that evolve to have only a few very large players, such that the effect of one entity's failure in that particular market could have a significant impact, are not captured in the definition of a PIE. We question, for example, whether a major food producer or retailer which is privatized would necessarily mean that entity is no longer an entity of public interest, and whether making such a determination should be left to the discretion of firms. Regarding the role of firms, our stakeholders expressed concern that without sufficient clarity, some clients could argue that they do not meet the definition of a PIE based strictly on the requirements in paragraph R400.14 without due consideration of both the objective and factors in paragraphs 400.9 and 400.8.

- Consider incorporating requirements to continue treating an entity as a PIE, for example, on a presumptive basis until it has been established otherwise that such treatment is no longer valid and/or appropriate or, for an additional period of time such as one or two years after it is determined that the entity no longer meets the definition of a PIE. Following that change or time period, we recommend a further requirement to disclose that the entity is no longer being treated as a PIE. We also observe that changing facts and circumstances might impact whether entities meet the specific criteria in paragraph 400.14, and that such a change will affect independence requirements as well. For example, if an entity ceases to meet subparagraph R400.14(a), does not meet the criteria in subparagraphs R400.14(b) to (f), whether the situation is expected to be temporary or permanent, it is not clear whether firms should continue to treat these entities as PIEs for a certain period of time.

  We are of the view that it is important to provide transparency around whether an entity is treated as a PIE (please refer to our responses to questions 11 and 12), and that circumstances where differences in professional judgment between firms might lead to a different conclusion should be limited as much as possible. We note that paragraph 400.16 A1 provides a list of factors for firms to consider in determining whether additional entities should be treated as PIEs, including whether an entity is likely to become a PIE in the near future, or whether in similar circumstances the firm or a predecessor firm has treated the entity as a PIE. However, we note that this paragraph is not a requirement and that some of the terminology, such as "near future" and "similar circumstances," could be interpreted differently from one firm to another , even using the same set of facts and circumstances. Consequently, we think that the guidance should provide clear direction on how firms should treat an entity when new information or changes in facts and circumstances raise questions about whether an entity meets the definition of a PIE from one year to the next.

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?**

We agree with the list of factors set out in paragraph 400.8 for determining the level of public interest in an entity, however we think that the IESBA should consider providing additional guidance highlighting the most common determinants for some of the factors, such as size, the importance of the entity to its sector, and the entity's potential for systemic impact.

We are supportive of the IESBA's objective of moving toward greater convergence of jurisdictional approaches to identifying PIEs and we think that principles-based, rather than prescriptive or rules-based, application guidance will be very helpful in this regard. We also agree with the IESBA's view that it is not possible to achieve consistency with regard to the specific types of entities that are determined to be of public interest across all jurisdictions, however we think there is benefit to application guidance and sharing of best practices in applying the factors to refine the definition of a PIE. This would encourage convergence around a common approach to refining the definition.

We would also recommend that the IESBA consider the addition of "members" to the list of stakeholders identified in the fifth bullet because many not-for-profit organizations and credit unions identify their stakeholders as such.

Approach to Revising the PIE Definition

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?**

   We are supportive of the broad approach adopted by the IESBA, including high-level categories of PIEs and refinement of the IESBA definition by local bodies. However, we observe that this may result in inconsistent treatment across jurisdictions and a lack of comparability. We recommend that the IESBA National Standard Setters monitor the implementation/issues arising and that the IESBA should conduct a post-implementation review to report back on how different local bodies are adopting the revised definition of a PIE. We think that this would be valuable to achieve effective and consistent implementation, particularly in smaller, emerging jurisdictions or where local bodies are under-resourced or under-represented.

   We also recognize the importance of robust consultation with all stakeholder groups, including firms and governmental organizations in arriving at a local refined definition of a PIE and support the IESBA's efforts to encourage dialogue on the proposals.

PIE Definition

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.**

We support the proposals and appreciate the important distinction made in paragraph 400.14 A1, for entities that are defined as PIEs due to legal or regulatory reasons that are unrelated to the overarching objective set out in paragraph 400.9.

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

   We agree with the proposed categories but recommend that the IESBA consider some improvements and clarifications to ensure consistent interpretation and application. Our stakeholders have suggested that the intended meaning of "main functions" could be clarified with application guidance or with specific examples to facilitate a consistent approach in the application of subparagraphs 400.14 (b) and (c).

   Our stakeholders also suggested that subparagraph 400.14 (b) should include intermediaries such as payment processors and that the terms used within the categories in subparagraphs 400.14 (c), (d), and (e) should be clearly defined. We suggest that a possible approach would be to provide descriptions for these terms in the Code and to align such descriptions with the ones under the relevant accounting frameworks, such as International Financial Reporting Standards, which provide descriptions for insurance contracts, investment entities, and post-employment benefits.

   We also note that there are a significant number of individual and executive pension plans in our jurisdiction that provide post-employment benefits to a small number of individuals (i.e., 1 or 2 members), and that accordingly there may not be "public" interest in the financial condition of such entities. Therefore, we observe that in Canada and other jurisdictions where entities are formed for the purpose of providing post-employment benefits to one or two individuals, considering exemptions to the criteria in subparagraph 400.14(d) may be important when local bodies make further refinements to the PIE categories, to ensure that the cost of implementing the proposed definition of a PIE does not outweigh the benefits to users of financial statements of entities that provide post-employment benefits.

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 refine the definition as appropriate.**

   We are of the view that raising capital from the public in any form, where the proceeds are accounted for as equity or a financial liability that is traded on a second-tier market or other public forum, is an activity that is of public interest. Accordingly, the definition of a PIE should capture any capital raising activity, including capital raising activities outside the norm, if it results in an obligation of public interest. We observe that the Code must be written to remain relevant and that the easiest way to do this is from a principles-based approach that is not too prescriptive as to the form or fashion of capital being raised. Although oversight in this area may be complicated by the absence of a legislative

framework, we think that the PIE concept is certainly relevant to these types of entities and cannot be immediately dismissed as being inapplicable.

We recommend that the IESBA consider an additional category in paragraph R400.14 to capture the activity of raising capital from the public.

Role of Local Bodies

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?**

   We support proposed paragraph 400.15 A1 which explains the high-level nature and the role of local bodies. However, as noted in our response to Question 1, we recommend that the IESBA consider clarifying within this paragraph that local bodies are expected to be guided by the overarching objective in paragraph 400.9 and to consider the list of factors in paragraph 400.8 in refining the definition of a PIE in their jurisdiction.

   We agree with the IESBA's concern that relevant local bodies may not have the requisite capacity to make the necessary refinements to the PIE definition in their local codes, and that some jurisdictions may adopt the Code without any refinement, undermining the IESBA's objective. Consequently, we think that it is critical to ensure that the role of local bodies is as clear as possible. In addition, we support initiating a PIE post-implementation review that would consider local refinements of the PIE categories (R400.14) and provide recommendations to IESBA on whether refinements may be required in the Code.

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 and minimize inconsistencies?**

   We recommend the development of further non-authoritative guidance to support consistent application of the proposals and to provide additional information for local bodies to consider. More specifically, we recommend that the IESBA consider:

   - Additional non-authoritative guidance to assist local bodies and to encourage a uniform approach, as discussed in our response to Question 2;
   - Webinars and targeted stakeholder meetings, for example with local regulators; and
   - Formation of a working group to facilitate communication of implementation challenges and resolutions.

   We also recommended in our response to Question 3, tracking the implementation of these proposed revisions to the Code as a standing item at the National Standard-Setters meetings to foster discussion about challenges and sharing of best practices. We observe that smaller emerging jurisdictions may not have the capacity to make modifications to IESBA's requirements and might leverage the work of larger jurisdictions in this manner.

   We agree that alignment between the IESBA and the IAASB is critical to this project and think that this should continue to be given specific attention in any outreach.

Role of Firms

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

We support the proposal to introduce a requirement for firms to determine if any additional entities should be treated as PIEs. However, we are concerned that this proposal could lead to inconsistencies and become a competitive factor between firms, which would not be in the public interest. We observe that firms may be hesitant to designate clients as PIEs and that the enforceability of such designation by a firm could be called into question because of the significant judgement involved.

Therefore, we are of the view that the role of local bodies in refining the PIE criteria is critical and, if performed well, the role of firms should be very limited.

We think that robust consultations involving all stakeholder groups, including firms, will be important in arriving at appropriate criteria for refining the definition of a PIE by local bodies, and that this will help to limit the discretion required of firms in identifying additional PIEs.

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

We are of the view that the proposed list of factors should also refer to whether other firms have treated similar entities as PIEs (not just their own firm) and provide guidance on the intended meaning of "in the near future".

Our stakeholders also noted that expanded guidance on how firms should consider the entity's corporate governance structure in determining whether it is a PIE would be helpful.

We also recommend additional requirements in the Code to address the documentation that firms should maintain regarding the judgements made in the determination of whether additional entities are treated as PIEs as required by paragraph 400.16.

Finally, we think that a post-implementation review of the revised definition of a PIE could be used to collect information about entities designated as PIEs by paragraph 400.16 and the types of criteria that led to this designation.

Transparency Requirement for Firms

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

We support the proposed requirement for firms to disclose if they treated an audit client as a PIE. However, we are of the view that this disclosure should only be required in the auditor's report, with disclosure elsewhere optional, for reasons including professional

secrecy and the duty of confidentiality, specifically in jurisdictions where this is required.

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.

To ensure transparency, we agree that this disclosure must be made in the auditor's report, with disclosure elsewhere optional. However, we recommend deferring these proposals until the IAASB makes corresponding amendments to ISAs requiring this disclosure.

Other Matters

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?

Yes, we support the IESBA's conclusions.

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

Yes, we support the IESBA's conclusions.

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

We do support the proposed effective date, however, as discussed in our response to Question 3, we believe that the IESBA should monitor implementation through the National Standard Setters meetings as well as through a dedicated working group, beginning immediately after the revisions are issued. The IESBA should consider extending the effective date if there are indications that local bodies are having significant implementation issues or delays in refining the definition of a PIE.

Matters for IAASB consideration

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.

We support the overarching objective for use in establishing differential reporting requirements by both the IESBA and IAASB because different sets of criteria would create complexity and possible confusion for stakeholders.

We recommend the IAASB gather feedback from stakeholders regarding any proposed changes to ISAs and ISQMs to align them with the revisions to the Code, specifically the proposed paragraphs 400.8 and 400.9, and how this might be approached in relation to the ISAs and ISQMs.

We also recommend the definition of "listed entity" in the ISAs should be aligned with the proposed new definition of "publicly traded entity" in the Code, in order to maintain consistency and avoid confusion.

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.

We support the proposed case-by-case basis for determining differential requirements, particularly because the definition of a PIE might vary from jurisdiction to jurisdiction. We are of the view that it is important for the IAASB to seek stakeholder feedback on the proposed changes to ISAs in relation to each of the categories of PIEs before considering on a case-by-case basis whether differential requirements within the ISAs should be applied only to listed entities or 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?

We believe that it is appropriate to disclose that the firm has treated an entity as a PIE within the auditor's report and suggest several approaches. Firms could disclose that the entity has been treated as a PIE:

- With first mention of the entity's name;
- In conjunction with the statement related to the firm's independence; or
- In the section on ethical requirements.

We also suggest that IESBA and IAASB consider, with input from stakeholders, whether there is any additional public interest benefit to disclosing that an entity has not been treated as a PIE. In some circumstances, there may be an additional benefit for financial statement users of large private companies to know that the entity was not treated as a PIE and therefore was not subject to the additional independence requirements that apply to PIEs.

16. Any Other Comments?

We appreciate the IESBA's efforts in producing the webinar and supplemental guidance. We do think that these resources contribute to a better understanding of the Exposure

Drafts and would be even more helpful if they were made available earlier in the comment period.

We also observe that a 90-day comment period is challenging, particularly in a multi-jurisdictional country such as Canada. This will be all the more challenging in circumstances where our due process includes the exposure of IESBA proposals for public comment in Canada.

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We thank you for the opportunity to comment on this Exposure Draft and we appreciate that further revisions to these proposals may result through the feedback provided by stakeholders and as IESBA continues its close coordination regarding this and other related matters with the IAASB.

Yours truly,

Jamie Midgley, FCPA, FCA
Chair, Public Trust Committee