

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

May 5, 2016

Dear Mr. Siong:

Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1

We are pleased to comment on the Exposure Draft, *Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*.

We fully support efforts to be by the International Ethics Standards Board for Accountants (IESBA, or the Board) to restructure the *Code of Ethics for Professional Accountants* (the Code) to enhance its understandability and usability. We also agree that such improvements will likely increase the frequency of adoption, effective implementation, consistent application, and enforcement of the Code. We agree that there are opportunities to reduce the complexity and improve the clarity of the Code, and the changes being proposed are generally in keeping with these stated objectives by raising the visibility of the Code's requirements, clarifying who is responsible for compliance and clarifying the language in the Code. Further, we acknowledge that the redrafted content under review as part of Phase 1 largely complies with the Board's important precept that "it is not the purpose of the project to change the meaning of the Code" and the proposed changes are viewed as favorable.

However, notwithstanding our overall support for the project to restructure the Code, we have identified some potentially problematic changes, some areas where the restructuring may not be meeting the intended objectives and a number of sections which we believe still could be further improved. A high level summary of our concerns is contained below and by attachment more detailed observations and suggestions for improvement are included. The Board is also seeking input to six specific questions, and our responses are organized accordingly below.

Quality of End Product

Although we support the overall objectives of the Structure project and acknowledge that substantial progress has been made, we believe additional work on behalf of the Task Force and further dialogue with stakeholders is required before finalizing the re-structured Code to ensure the stated objectives, particularly enhanced clarity and understandability, are fully achieved. While content has been re-organized, we believe clarity can be further improved. We believe this to be a consequence of taking the existing wording of the Code and re-

arranging it with the result that wording that suited the existing structure may be ill-suited to the revised structure. Although we have stated in the past that the Structure project should not introduce changes to the meaning of the Code and have cautioned against changes that could have unintended consequences, we recognize that in re-organizing the content changes in the wording may be required to improve the overall quality of the Code.

Significant reliance is being placed on stakeholder review of the proposed content, but it is difficult to assess the full impact of proposed changes when reviewing discrete sections of the Code rather than its entirety, and especially in light of the other projects concurrently underway. We look forward to further opportunity to review and comment on the restructured Code in its entirety at the appropriate time. Although much has been accomplished, we believe further work is required if this project is to result in a meaningfully improved Code.

Objectivity and Independence

We are concerned that certain language being introduced to the Code as part of the Structure project may inadvertently impact the way the fundamental principle of objectivity is related to independence.

Sections 112.3 A1 and 400.1 introduce the notion that independence is “a measure of objectivity”. As currently drafted, this wording could be interpreted to mean that if a professional accountant is deemed not to be independent, the professional accountant would not be objective. Although objectivity and independence are inter-dependent, the relationship between the two is not symmetrical. Independence is a condition that helps assure that an auditor is able to act with objectivity as well as integrity and professional scepticism but lack of independence does not necessarily result in lack of objectivity. In fact, the current provisions of the Code regarding breaches make it clear that an accountant may not be independent but may continue to be objective. Such a case could exist, for example, if an audit engagement team was unaware of a significant breach of independence at the time it performed the audit.

Objectivity – applicability to all professional accountants

New language has been introduced to the Guide to the Code which, we believe, describes the relevance of the fundamental principle of *Objectivity* too narrowly. Paragraph 3 of the new Guide to the Code references objectivity only in relation to audits, reviews and other assurance engagements. We believe this statement minimizes the importance of the principle of objectivity for professional accountants in public practice providing professional services other than audits, review and other assurance engagements and suggest this language be revisited to capture its broader applicability.

Conceptual Framework

Although we support the Board's interest in raising the profile of the conceptual framework within the Code, we believe significant ambiguity has been created in the Phase 1 re-drafting and we encourage the Board to closely review the Board's approach for clarity and consistency. We have observed inconsistent use of reference to the conceptual framework from section to section. Many sections begin with the need to apply the conceptual framework and then follow with specific prohibitions. Other sections begin with specific prohibitions followed by the need to apply the conceptual framework, while other sections contain no specific prohibitions and only require the application of the conceptual framework. We agree that application of identified prohibitions is not sufficient and the professional accountant should consider other relevant threats that may arise from specific facts and circumstances, but believe that the correct order is to first assess whether there exists a specific prohibition in respect of the relationship under review and, where there is none, proceed to an assessment of threats under the conceptual framework.

We also believe the reminder to apply the conceptual framework should be removed from the heading sections of the Code. The inclusion of this statement in every heading section is repetitive and is unnecessary in light of enhanced discussion of the framework that is being added to the body of the Code.

Network Firm

The extant Code establishes a general rule for the meaning of "firm" where used in extant Section 290 as follows: "firm includes network firm, except where otherwise stated." The proposed restructured Code distinguishes network firms from firms and corresponding responsibilities. Conceptually, we are not opposed to this change. However, we believe the language in the extant Code is clear that a firm within a network must be independent of the audit clients of other firms in that network and this message is no longer as clear as a result of the proposed changes. We have also noted at least a few sections where the revised usage resulted in a different meaning than in the extant Code. We have particular concerns on unintended changes in meaning and lack of clarity with respect to network firms in the following sections:

- Section 403 Mergers and Acquisitions;
- Section 404 Breach of an Independence provision;
- Section 521 Family and Personal Relationships; and
- Section 524 Employment with an Audit Client.

For example, section 524 refers to former professionals of the "firm" joining an audit client and threats to independence caused by such a situation. With the new wording such situations do not appear to apply to professionals joining the audit client from a network firm. Instead, in the current Code it is clear that such situations do apply to professionals coming from a network firm.

Professional Accountant

We have observed inconsistency in usage of the term *professional accountant*. In some places in the Code the term “professional accountant” is used and in others the term “accountant” (excluding the adjective “professional”) is used. Users of the Code might be confused as to whether there is an intentional distinction trying to be made by using either the defined term “professional accountant” or the undefined term “accountant”.

New provision 110.1(b) (extant 100.5)

We have noted a number of instances where the transition of passive to active voice simultaneously with the reversal of subject and object has resulted in a change in meaning.

For example, new provision 110.1(b) (extant 100.5) which is repeated as a requirement in R112.1 formerly read as “... to not allow... undue influence of others to override... judgments.” but now reads “... to make judgments without... undue influence of others.” The new clause could be read as the professional accountant being prohibited from unduly influencing others, rather than to not being unduly influenced by others as would be the intent. Accordingly, the new clause should say “... without being unduly influenced by others.”

Other examples of where the change from passive to active voice may result in an unintended changes in meaning are included in the attachment to our response.

Request for Specific Comments

Six specific questions were identified on which the Board welcomed respondents’ views. Our comments are set out below.

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?

As we mention above, although we recognize significant progress has been made, we are concerned that understandability of the Code has not yet been enhanced to the extent it could be. Now that the content has been re-organized according to the new structure of the Code, we believe the language should be reviewed again to ensure the content is as clear and unambiguous as possible. We support the introduction of the Guide to the Code and believe it is a useful roadmap for users of the Code.

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

We believe the current proposed approach for distinguishing requirements and application materials is adequate. We still however encourage the Board to consider

the use of bold text for requirements. We understand that in its deliberations the Board considered the use of bold text to highlight requirements but dismissed it as an alternative. Such an approach, which we would support, is used by the UK's independent regulator, the Financial Reporting Council (FRC) and would permit requirements to be clearly highlighted while at the same time allowing both the requirements and explanatory material to be presented in concise and holistic manner.

As mentioned above, we also believe the transition from requirements to application material could be improved by use of bold text to provide better flow between content.

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

We have some concerns around consistency of approach of the linkage between underlying principles and specific requirements across the Code as discussed above under the heading *Conceptual framework*.

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

We support enhanced clarity of responsibility for compliance with the Code and we believe the redrafting evidences improvement in this area.

(e) The clarity of language?

As mentioned above, we do not see substantial improvement in the clarity of language being proposed as part of the Structure Project. The content has been re-organized, but the clarity of the language itself has not been significantly transformed and in many instances we seem to have lost the context in which the Code should be understood. We believe the language could benefit from further time and effort to allow for meaningful improvement to the clarity of language in the Code.

(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 believe the navigability of the proposed restructured Code is good and believe the numbering and layout of the sections makes sense. We consider a pdf text version with easy navigation (e.g. active links from the table of contents to applicable sections) as imperative.

(g) The enforceability of the Code?

Yes, we believe the restructuring of the Code, particularly the focus on distinguishing requirements from application material, should enhance the enforceability of the Code.

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

Yes. We believe clearer delineations of requirements from other interpretive material in the Code will make the adoption of the Code, or discreet requirements of the Code more easily and more effectively implemented and consistently applied.

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.

See discussion above on objectivity and attachment for other specific observations.

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?

No. We have no specific concerns with respect to the term “audit” continuing to include “review” for the purposes of the independence standards.

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?

Although we support the effort to distinguish firms and network firms, we believe additional time is needed to ensure that these distinctions are properly drawn throughout the Code. As mentioned above, we have particular concern with respect to content regarding mergers and acquisitions, breaches, and family and employment matters, but recommend that additional careful review should be undertaken to ensure appropriate use of these respective terms in all sections of the Code where they appear.

Title

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

Although we are in favour of the Code being re-branded as the international standards on ethics, consistent with most other frameworks we believe the title that is being proposed at this time, *International Code of Ethics Standards for Professional Accountants* (the Code), could be improved upon. We suggest that if the entire Code is being re-characterized as standards, we suggest the reference to Code be removed and a title such as International Standards on Ethics be considered. Alternatively, if only the Independence content is being re-framed as

standards, we suggest a title which properly delineates this distinction and believe IESBA Code of Ethics and Independence Standards would be an appropriate title.

We would be pleased to discuss our comments with members of the International Ethics Standards Board or its staff. If you wish to do so, please contact Bob Franchini (+39-02-7221 2014) or Susan Nee (+1-305-415-1720).

Yours sincerely,

Ernst + Young Global Limited

Ernst & Young Global

Structure of the Code – Independence Observations

Exposure Draft Reference	Comments
Throughout the Draft Code	
Multiple instances	<p>We are concerned that certain language being introduced to Code as part of the Structure project may inadvertently impact the way in which the fundamental principle of objectivity and its relationship to independence might be interpreted.</p> <ul style="list-style-type: none"> • We believe the introduction of the concept “independence is a measure of objectivity” in paragraphs 112.3 A1 and 400.1 is inconsistent with how these concepts have been previously described and applied in the Code and could lead to the interpretation that a professional accountant is not objective when deemed not to be independent. • New language has been introduced to the Guide to the Code which too narrowly describes the relevance of the fundamental principle of <i>Objectivity</i>. We believe this statement minimizes the importance of the principle of objectivity for professional accountants providing services other than audits, review and other assurance engagements and suggest this language be revisited to capture is broader applicability.
Multiple instances	<p>We have observed inconsistent use of reference to the conceptual framework from section to section. Many sections begin with the need to apply the conceptual framework and then follow with specific prohibitions. Other sections begin with specific prohibitions followed by the need to apply the conceptual framework, while other sections contain no specific prohibitions and only require the application of the conceptual framework.</p> <p>We believe that the correct order is to first assess whether there exists a specific prohibition in respect of the relationship under review and, where there is none, proceed to an assessment of threats under the conceptual framework.</p> <p>We also believe the reminder to apply the conceptual framework should be removed from the heading sections of the Code.</p>

Multiple instances	As discussed in more detail in our letter, the use of the terms Firm and Network Firm needs to be reviewed closely, particularly in the sections dealing with mergers and acquisitions, breaches and employment and family relationships.
Multiple instances	<p>In some places the term <i>professional accountant</i> is used (which is a defined term) and in other places the term <i>accountant</i> (excluding the adjective <i>professional</i>) is used. One might be confused as to whether there is an intentional distinction to be made by using either the defined term <i>professional accountant</i> or the undefined term <i>accountant</i>.</p> <p>We recommend the Board use the defined term <i>professional accountant</i> consistently throughout the Code.</p>
Multiple instances	The phrase <i>as the case may be</i> has been added to the Code in several sections including sections R510.9, R511.5, R511.6, R520.4 and R520.5. We do not believe this phrase adds value to the understanding of the Code, and in fact, with the focus now on the distinction between <i>may</i> and <i>might</i> could increase confusion. We suggest the Board remove this phrase from wherever it now appears in the draft.
Guide to the Code - Section 100	
Guide to the Code Paragraph 3	<p>The sentence below could make it seem that the fundamental principle of objectivity applies only to audit, review and other assurance engagements when we believe the fundamental principle applies to all professional accountants. Suggest the Board consider different wording.</p> <p><i>In the case of audits, reviews and other assurance engagements, the Code sets out international independence standards established by the application of the fundamental principle of objectivity to these engagements.</i></p>
How the Code is Structured	<p>This section is generally helpful, although suggest clarifying the below sentence as marked:</p> <p><i>Following sentence could be improved. Each part of the Code contains sections which introduce specific topics and each section. Sections might contain have subsections dealing with specific aspects of the topic.</i></p>
How to Use the Code	<p>Missing word:</p> <p><i>9. Where application material includes lists of examples, these lists are not intended to be read as an exhaustive lists of all possibilities or circumstances that might arise.</i></p>

Section 100	<p>Since the use of the conceptual framework is required, we suggest the Board replace <i>an</i> (which could be read to be optional) with <i>the</i>.</p> <p><i>100.2 The fundamental principles of professional ethics set out in the Code establish the standard of behavior expected of a professional accountant. The conceptual framework establishes the an approach which accountants are required to apply to assist them in achieving compliance with those fundamental principles.</i></p> <p>Also, we believe the term <i>accountant</i> should be replaced with <i>professional accountant</i>.</p>
Section 110.1(b)	<p>New provision 110.1(b) (extant 100.5) which is repeated as requirement Bold R112.1 formerly read as "... to not allow.... undue influence of others to override.... judgments." but now reads "... to make judgments without.... undue influence of others."</p> <p>The transition of passive to active voice simultaneously with the reversal of subject and object has resulted in new wording that could be interpreted as prohibiting the professional from unduly influencing others, rather than to not being unduly influenced by others as we believe would be the intent.</p> <p>The new clause should say "... without being unduly influenced by others."</p>

Sections 300 - 350	
320.3 A5	<p>Consider adding a reference to the <i>Using experts where necessary</i> (last bullet point in Section 320.3 A5) to paragraphs R320.7 and 320.7 A1 since there is a specific Requirement and Application Material devoted to this. We suggest the Board review the draft Code and include this reference wherever applicable.</p>
320.4 A4	<p>Consider the following edit to Section 320.4 A4:</p> <p><i>Depending on the nature of the engagement, direct communication with the existing accountant might be needed to establish <u>understand</u> the circumstances <u>or reasons</u> regarding a proposed change in appointment.</i></p> <p><i>Establish</i> might be understood by a non-native English speaker to mean <i>bring about</i>; <i>cause to exist</i>.</p>
310.5	<p>Consider whether the below statement should be rewritten as a Requirement (for example, as part of R310.6).</p>

	<p><i>When a professional accountant provides an audit, review or other assurance service, compliance with the fundamental principle of objectivity also requires independence in accordance with C1 and C2, as appropriate.</i></p>
301.4	<p>Consider the following edits to Section 301.4:</p> <p><i>Providing a transaction advisory service to a client seeking to acquire an audit client <u>of the professional accountant</u>, where the firm <u>professional accountant</u> has obtained confidential information during the course of the audit that might be relevant to the transaction.</i></p>
310.11 A1	<p>To be consistent in style and format, consider using bullet points to list the factors to be considered in Section 310.11 A1.</p> <p><i>Factors to consider include:</i></p> <ul style="list-style-type: none"> • <i>The parties that might be affected;</i> • <i>The nature of the issues that might arise; and</i> • <i>The potential for the particular matter to develop in an unexpected manner.</i>
330.3 A4	<p>Consider whether the adverb “widely” is necessary in the first sentence of Section 330.3 A4.</p> <p><i>Contingent fees are widely used for certain types of non-assurance services. However, contingent fees might create threats to compliance with the fundamental principles, particularly a self-interest threat to objectivity, in certain circumstances. The existence and significance of such threats will depend on factors including:</i></p> <ul style="list-style-type: none"> ▶ <i>The nature of the engagement.</i> ▶ <i>The range of possible fee amounts.</i> ▶ <i>The basis for determining the fee.</i> ▶ <i>Whether an independent third party is to review the outcome or result of the transaction.</i>
330.3 A6	<p>Consider the following edits to Section 330.3 A6:</p> <p><i>Contingent fees for services provided to audit clients and other assurance clients are set out discussed <u>[or addressed]</u> in C1 and C2 of the Code.</i></p>

Sections 400 - 430	
Title C1	<p>We suggest the Board reconsider the title of C1 and how it is referenced. A and C are referred to as parts whereas as C1 is not referred to by any category. Is this also a “Part” or is it a “sub-Part”? We believe it should be clear whether C1 is a part/section/chapter etc., and this complete reference should be used whenever C1 is referenced.</p> <ul style="list-style-type: none"> • Table of Contents • Guide to the Code (substantially new material) • Part A Introduction to the Code and Fundamental Principles (Extant Part A) • Part C Professional Accountants in Public Practice (Part of Extant Part B) • C1 Independence for Audit and Review Engagements (Extant Section 290² excluding the paragraphs concerning Long Association, Non-assurance Services, Reports that Include a Restriction on Use and Distribution) • Glossary
R401.2	<p>Consider whether the below statement from R401.2 is necessary. It should be clear in each section of C1 when independence is also required by a network firm and therefore this sentence seems redundant.</p> <p><i>A network firm shall be independent of the audit clients of the other firms within the network where C1 specifically requires such independence.</i></p>
401.3 A1 and following	<p>Consider whether it would be more user-friendly if the examples of circumstances which create a network are listed separate from those that do not in Section 401.3 A1. Consider whether separate bullet points or table with two columns would be easier to understand.</p>
Sections 510 - 525	
R510.5	<p>Suggest the heading above Section R510.5 might read better as follows:</p> <p><i>Financial Interests Held by the Firm, <u>a</u> Network Firm, Audit Team Members, and Other Partners and Employees of the Firm.</i></p>
R510.9 (a)	<p>It appears that <i>and</i> should appear between (i) and (ii) of Section 510.9 instead of <i>or</i>. We suggest this section be reviewed for consistency with extant Section 290.112.</p>

	<p>R510.9 (a) <i>A firm, or a network firm, or an audit team member, or that individual's immediate family member shall not hold a financial interest in an entity when an audit client also has a financial interest in that entity, unless:</i></p> <p><i>(i) The financial interests are immaterial to the firm, the network firm, the audit team member, that individual's immediate family member and the audit client, as the case may be; <u>or</u></i></p> <p><i>(ii) The audit client cannot exercise significant influence over the entity.</i></p> <p>Extant 290.112 <i>A self-interest threat may be created if the firm or a member of the audit team, or a member of that individual's immediate family, has a financial interest in an entity and an audit client also has a financial interest in that entity. However, independence is deemed not to be compromised if these interests are immaterial and the audit client cannot exercise significant influence over the entity.</i></p>
520.2	<p>The combined net worth can be used to assess materiality to the individual but we question whether it is the appropriate standard for assessing significance. While the initial text mentions both, it does not indicate how significance should be assessed. We have generally understood significance as a qualitative criterion.</p> <p>520.2 Section 520 contains references to the "materiality" or "significance" of a business relationship. For the purpose of determining whether such an interest is material or significant to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.</p> <p>290.101 Paragraphs 290.102 to 290.125 contain references to the materiality of a financial interest, loan, or guarantee, or the significance of a business relationship. For the purpose of determining whether such an interest is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.</p>
520.4	<p>Mention of business relationships of immediate family members of audit team members has been removed entirely. Consider including some discussion of this topic. Although immediate family members are mentioned in 520.1, we suggest that immediate family member considerations should also be included in Section 520.4.</p> <p>R520.4 The firm, a network firm or an audit team member shall not have a close business relationship with an audit client or its management unless the financial interest is immaterial and the business relationship is insignificant to the firm, the network firm or the audit team member, as the case may be, and the client or its management.</p>

	<p>290.123 If the business relationship is between an immediate family member of a member of the audit team and the audit client or its management, the significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.</p>
<p>525.2 A1/ R525.3</p>	<p>We suggest these two sections be reversed. Does not seem appropriate to have the safeguards discussion before the rules.</p>
<p>Examples where language could be further streamlined, clarity could be enhanced and other suggestions for improvement</p>	
	<ul style="list-style-type: none"> • Guide to the Code, paragraph 7 states the following: “The word “shall” in the Code imposes an obligation on the professional accountant or firm to comply with the specific provision in which “shall” has been used. “Shall” is used to indicate a requirement and requirements are designated with an “R”.” <p>This could be in plainer English and suggest the following as an alternative: “A professional accountant or firm shall comply with a requirement. Requirements are designated with an “R” and the use of “shall”.”</p> <ul style="list-style-type: none"> • Clause 113.1 A3 - “encompasses” is one of many uses of less user-friendly vocabulary for those for whom English is not their first language. As an alternative we suggest using the word “includes”. • Clause R113.3 “Where appropriate, a professional accountant shall make clients, employers, or other users of the accountant’s professional services or activities, aware of the limitations inherent in the services or activities.” <p>This is an example of a paragraph which could be more direct. For example:</p> <p>“Where there are limitations inherent in the accountant’s professional services or activities, the professional accountant shall make clients, employers, or other users aware of these limitations as appropriate”</p> <ul style="list-style-type: none"> • In clause R114.1, item (a) “Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or a close or immediate family member.”

This implies that disclosure to family etc. is worse. Consider deleting the word “particularly”.

Also, suggest item (f) in clause R114.1 be worded as:

“Continue to apply (a) to (e) above after the professional or business relationship has ended.”

Again, item (f) seems to duplicate clause 114.1 A1.

- Clause 300.3 A2 - passive language
- Subsection 401 is repetitive in language and style and may be difficult to fully understand for those that do not have English as their primary language.

Section 100 - 103 could be more clearly articulated. The correct analysis probably is that the professional accountant should comply with the five fundamental principles. However sometimes those principles conflict and then you have to determine how to proceed. So, for example, clause R100.3 is not well phrased in saying that the law might stop the accountant complying with the code. Professional behaviour requires the professional accountant to comply with law and regulation. So what you might have is a conflict between complying with law and another principle.

Section 350 is a good example of where more clarity would help. So the structure could be:

- We comply with law.
- Therefore, we don't have custody of client assets if this is not permitted.
- And we comply with law and regulation governing this where relevant including Anti Money Laundering.
- In line with the principle of integrity, we should make enquiries about the source of the assets.
- Where the source is not satisfactory, we may have conflicts between the principles of confidentiality, integrity and professional behavior (which includes a requirement to comply with law and regulation). Consider taking legal advice.
- In line with the principles of professional competence and integrity, we should put appropriate processes in place to safeguard the funds...