



National Association of State Boards of Accountancy

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International Federation of Accountants
545 Fifth Avenue – 14th Floor
New York, NY 10017

By mail and e-mail to: edcomments@ifac.org

RE: Exposure Draft–Code of Ethics for Professional Accountants July 2008

To the Members of the International Ethics Standards Board for Accountants:

We appreciate the opportunity to offer comments to the International Ethics Standards Board for Accountants (IESBA) on the “Exposure Draft July 2008 - Code of Ethics for Professional Accountants” (the Exposure Draft). The National Association of State Boards of Accountancy’s (NASBA) mission is to enhance the effectiveness of state boards of accountancy. In furtherance of that mission, NASBA offers the following comments on the Exposure Draft’s revisions and responses to some of the IESBA’s requests for specific comments.

Request for Specific Comments

Request 3(a) (page xii) - The Exposure Draft proposes that a professional accountant be permitted to depart temporarily from a specific requirement of the Code “in exceptional and unforeseen circumstances that are outside the control of the professional accountant, the firm or employing organization, and the client” (Section 100.11).

NASBA agrees that it is reasonable to include a provision that addresses temporary departures from a code of ethics in exceptional and unforeseen circumstances.

The Exposure Draft states such a departure would be acceptable if: “The nature of the departure and the reasons for the departure are appropriately disclosed to the users of the output of the professional services.”

For users of general purpose reports on financial statements (those reports that are not restricted to a particular user or users), the only way to communicate the departure and reasons therefore is to include an explanatory paragraph in the report of the professional accountant. NASBA recommends that this method of communication be explicitly required by the Code, and that example(s) of appropriate wording for such disclosures be given in the Code.

The Exposure Draft states: “The professional accountant may wish to discuss the matter with the relevant regulatory authority.” Because of the serious nature of any departure and the importance given in the Exposure Draft to communication of such departures to users, the proposal should be modified to require the professional accountant to discuss the matter with the “relevant regulatory body.” Regulators are entitled to know of such departures and to be able to consider whether or not the safeguards proposed by the professional accountant are appropriate in the circumstances.

Request 3(d) (page xii) asks if an event that is “within the control of one of the relevant parties” should qualify for the proposed exemption. NASBA believes that no exemption should be provided for events that are within the control of a party. If it is within the control of a party, the “event” could be modified or avoided by the party.

NASBA also believes that an example of an exceptional and unforeseen circumstance outside of the control of the client should be given in the proposed Section 100.11.

Clearly Insignificant

In the Explanatory Memorandum’s section on “Clearly Insignificant” (page viii), the reason for changing the wording “clearly insignificant” in the Code is explained. The section states that “clearly insignificant” is defined in the Code as “a matter that is deemed to be both trivial and inconsequential.” The Exposure Draft eliminates the words “clearly insignificant” and substitutes “trivial **and** inconsequential” in some Sections (as shown in Section 260.2 on gifts and hospitality; Section 291.28 regarding multiple party threats to independence; and Section 300.12 regarding gifts to the professional accountant or preferential treatment), but in others (see Section 200.7) uses the phrase “trivial **or** inconsequential.” The phrase “trivial **or** inconsequential” is the better one to use because satisfaction of either condition (rather than both) would require that the professional accountant decline the gift or preferential treatment.

NASBA further recommends that there be reconsideration of the use of the word “inconsequential,” since finding something to be “inconsequential” implies judging what may occur in the future. NASBA suggests that only the word “trivial” be used in the sections that address gifts and preferential treatment, as it is in the public interest to limit gifts and preferential treatment to those things that are only trivial.

Other Changes

The Explanatory Memorandum explains that the word “considered” has been replaced because it “could be seen by some as being less robust than intended” (page x). Consequently, throughout the Exposure Draft the word “considered” has been replaced with “deemed” (as shown in Sections 100.10, 110.3 and 290.13). In standard dictionaries, “deemed” is a synonym of “considered”; However, “deemed” is also a synonym of “judged.” The choice of the word “deemed” may be misleading as it connotes that judgment has been made by a third party rather than by the professional accountant.

In Section 100.10 an inadvertent violation of the Code “may not be deemed to compromise compliance [with the Code].” Whether or not an inadvertent violation compromises compliance with the Code is a matter to be decided by a regulator or judicial body. NASBA recommends that the wording be changed to state: “Such an inadvertent violation, depending on the nature and significance of the matter, may not compromise compliance with the fundamental principles provided....”, which is the IESBA’s position. NASBA suggests the same concept be applied in Section 110.2 by deleting the words “deemed to be.” In Section 290.13, just begin the sentence with, “A network firm shall be independent...”

For Additional Consideration

A change in wording to Section 100.22 recommends that the professional accountant discuss a matter with the “relevant professional body on an anonymous basis”. NASBA believes that Section should also recommend that the issue be discussed with the relevant regulatory body.

The Exposure Draft’s proposed change in wording of Section 250.2 significantly weakens the existing Code. The current Code states the professional accountant “should consult with the relevant professional body” if the accountant is in doubt whether a proposed form of advertising or marketing is appropriate. The Exposure Draft proposes to eliminate the requirement to consult by stating that the professional accountant in doubt merely “consider consulting.” If the professional accountant is in doubt, the only way to resolve the doubt is for the professional accountant to consult.” The current wording should not be changed. NASBA also believes that the situation could also be discussed with the relevant regulatory body and that this concept should be added to the Code.

“Professional accountant” is defined in Code (page 267) as: “An individual who is a member of an IFAC member body.” Such definition is appropriate to identify those persons that are subject to the provisions of the Code. However, there are a number of paragraphs in the Code that refer to a third party “professional accountant,” including:

¶Section 200.13 speaks to addressing specific safeguards in the work environment. The second bullet in the section on page 151 provides for: “Consulting an independent third party, such as a committee of independent directors, a professional regulatory body or another *professional accountant*.”

¶Section 290.221 (the last bullet in the paragraph) states: “Consulting a third party, such as a professional regulatory body or another *professional accountant*, on key audit judgments.”

¶Section 291.151 (the last bullet on page 240 in the paragraph) states: “Consulting a third party, such as a professional regulatory body or another *professional accountant*, on key assurance judgments.”

¶Section 291.159(paragraph (b) on page 242) states, “Having a *professional accountant* review the work performed.”

The Code now provides that a “professional accountant,” as defined by the Code, could only look to employ the services of an accountant as a third party if the third party accountant met the definition of a “professional accountant,” a member of an IFAC member body.

Licensing authorities in the United States of America (and possibly other jurisdictions) do not require licensees to be members of any professional association. The American Institute of Certified Public Accountants (AICPA), which is an IFAC member, could not limit one of its members to only use the services of another member of the AICPA. Such provision would likely be considered to be in restraint of trade under U.S. law.

The proposed Drafting Convention Changes do not include any modifications to the existing Code that address the issue of restraint of trade when choosing a third party accounting firm. Notwithstanding, NASBA recommends that changes be made to the above sections to state that the third party accounting firm does not have to meet the Code’s definition of “professional accountant.”

We appreciate the opportunity to comment on the “Exposure Draft July 2008-Code of Ethics for Professional Accountants” of the International Ethics Standards Board for Accountants.

Sincerely,

A handwritten signature in black ink that reads "Samuel K. Cotterell". The signature is written in a cursive style with a horizontal line striking through the middle of the name.

Samuel K. Cotterell, CPA
NASBA Chair

A handwritten signature in black ink that reads "David A. Costello". The signature is written in a cursive style.

David A. Costello, CPA
NASBA President & CEO