

8 December 2017

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

Dear Ken,

IESBA Exposure Draft – Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements

Thank you for the opportunity to comment on the IESBA exposure draft *Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements*. We submit the feedback from the New Zealand Auditing and Assurance Standards Board (NZAuASB).

The External Reporting Board (XRB) is a Crown Entity responsible for developing and issuing accounting and auditing and assurance standards in New Zealand. The XRB's outcome goal is to contribute to the creation of dynamic and trusted markets through the establishment of an accounting and assurance framework that engenders confidence in New Zealand financial reporting, assists entities to compete internationally and enhances entities' accountability to stakeholders. The NZAuASB has been delegated responsibility by the XRB for developing and issuing auditing and assurance standards, including ethical standards for assurance practitioners.

The NZAuASB's mandate is limited to developing and issuing auditing and assurance standards, including ethical standards for assurance practitioners. This applies only to professional accountants in their role as assurance practitioners. Accordingly, our consideration of the proposals is limited in this regard.

Overall comment

The NZAuASB is supportive of the proposals to enhance the provisions in the Code pertaining to the offering and accepting of inducements.

The NZAuASB agrees with the IESBA that the professional accountant in public practice (PAPP) may encounter similar circumstances to professional accountants in business (PAIB) involving inducements that might create threats to compliance with the fundamental principles. Accordingly, the NZAuASB supports alignment of the provisions for PAPPs with those of PAIBs.

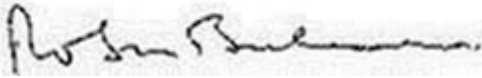
In addition, the NZAuASB fully supports the concept that accepting or offering any inducement with improper intent would create a threat to the fundamental principles that cannot be overcome. The NZAuASB, therefore, agrees that there should be no exceptions for inducements offered or accepted with improper intent, regardless of whether they are considered to be trivial or inconsequential.

As noted in our response to question 3, the NZAuASB does have concerns that the independence provisions in Parts 4A and 4B could be better aligned with the provisions in Section 340.

In formulating this response, the NZAuASB sought input from New Zealand constituents.

Should you have any queries concerning our submission please contact either myself at the address details provided below or Sylvia van Dyk (sylvia.vandyk@xrb.govt.nz).

Yours sincerely,

A handwritten signature in black ink, appearing to read "Robert Buchanan". The signature is written in a cursive style and is positioned above the typed name.

Robert Buchanan

Chairman

Email: robert@buchananlaw.co.nz

Submission of the New Zealand Auditing and Assurance Standards Board

IESBA Exposure Draft *Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements*

Schedule of Responses to the IESBA's Specific Questions

Proposed Section 250

- 1. Do respondents support the proposals in Section 250? In particular, do respondents support the proposed guidance to determine whether there is an intent to improperly influence behaviour, and how it is articulated in the proposals?**

Response:

The mandate of the NZAuASB is to set auditing and assurance standards, including professional and ethical standards, for assurance practitioners in the provision of an assurance engagement. Accordingly, the NZAuASB makes no comment on the provisions applicable to professional accountants in business.

Proposed Section 340

- 2. Do respondents agree that the proposed provisions relating to inducements for PAPPs should be aligned with the enhanced provisions for PAIBs in proposed Section 250? If so, do respondents agree that the proposals in Section 340 achieve this objective?**

Response:

The PAPP may be confronted with similar circumstances relating to inducements as a PAIB. Accordingly, subject to our specific comments below, the NZAuASB agrees with the proposal to align the provisions relating to inducements for PAPPs with the enhanced provisions for PAIBs.

The NZAuASB recognises the challenges faced by the IESBA in developing multi-jurisdictional proposals, recognising that the offering and accepting of inducements is more commonplace, and raises more difficult ethical dilemmas, in some cultures and countries than in others.

New Zealand is a small, relatively open and egalitarian society where low-level inducements can be seen as part of normal business practice but where, at the same time, adverse perceptions about favours and privileges can easily come to public attention and be the subject of adverse comment or criticism. At the same time, New Zealand is a multicultural society where business is conducted under a variety of cultural norms. This emphasises the importance of clearly stated ethical requirements for professionals including PAPPs, but with an element of flexibility for different situations and contexts, and allowance for professional judgement.

The NZAuASB, therefore, supports the inclusion of the "intent" test in the proposals. From the NZAuASB's perspective as the standard setter for an assurance practitioner in the provision of an assurance engagement, the reasonable and informed third party test is critical to the PAPP's consideration of whether an inducement is offered or accepted with an intent to improperly influence.

Trivial and inconsequential

The proposal uses “trivial and inconsequential” to set the bar for determining the professional accountant’s response to the inducement (see paragraph 340.10 A1). However, there is no definition of trivial and inconsequential, and the NZAuASB recommends that the IESBA include some guidance around its meaning.

What is trivial and inconsequential, and indeed whether inducements of any kind are acceptable, will depend on the type of transaction, the broader cultural and business context, and the parties involved. For example, inducements in a procurement situation are neither trivial nor inconsequential, and should be avoided entirely, while the tender process is open or tenders are being evaluated. In other circumstances, hospitality offered to a client (such as tickets to a sporting event) could be considered trivial or inconsequential, unless the situation could be perceived as unacceptable for other reasons (for example, the client is a public sector organisation).

The NZAuASB believes that in determining whether an inducement is trivial and inconsequential, the reasonable and informed third party test is also applicable. Particularly, in an assurance engagement, the perception that the inducement creates is critical to the assurance practitioner’s consideration of whether the inducement is acceptable on that basis. Similarly, in many countries an inducement in a public sector context may be considered as less acceptable, applying the reasonable and informed third party test, than in a private sector context. The reasonable and informed third party test can also provide a basis for exercising professional judgement when cultural practices (such as customary gift-giving) could be seen to conflict with ethical standards.

Safeguards to eliminate threats to independence

Paragraph 340.11 A4 provides an example of an action that might eliminate a threat created by offering or accepting an inducement. Taking an action to eliminate a threat does not absolve the PAPP of the need to disclose the circumstances to management or, where appropriate, those charged with governance. The NZAuASB recommends that guidance be added to this paragraph to remind the PAPP of the required duty to disclose.¹

Proposed Conforming Amendments to Independence Provisions

3. Do respondents support the restructuring changes and proposed conforming amendments in proposed Sections 420 and 906?

Response:

The NZAuASB supports the restructuring changes and proposed conforming amendments in sections 420 and 906, however, the NZAuASB is concerned that the proposed conforming amendments do not adequately create the required linkage with Section 340. Paragraph 41 of the explanatory memorandum clearly explains the interaction between Section 340 and Sections 420 and 906. However, this interaction is not clear from the proposed conforming amendments. The NZAuASB recommends adding a paragraph within the introduction to sections 420 and 906 to create the linkage back to section 340.

The following wording is suggested:

¹ ISA 260, *Communication with Those Charged with Governance*, paragraph 17(a)(ii)

[New] Gifts and hospitality are a form of inducement. When applying the requirements and application material in this section, the professional accountant also needs to consider the requirements of Section 340 relating to the offering and accepting of inducements.

~~R420.4 In addition to complying with the requirements relating to the offering and accepting of inducements set out in Section 340, a~~ firm, network firm or audit team member shall not accept gifts and hospitality from an audit client, unless the value is trivial and inconsequential.

In addition, the NZAuASB recommends adding a reference to Sections 420 and 906 in Section 340 to create a two-way link.

340.4 In addition to complying with Section 340, the professional accountant may also need to consider Section 420 or 906, as applicable, when performing an audit, review or other assurance engagement.

The NZAuASB also recommends that paragraphs R420.4 and R906.4 be amended to explicitly state that when there is improper intent, the firm, network firm or audit (or review) team shall not accept gifts and hospitality even when the value is trivial and inconsequential.

4. Do respondents believe the IESBA should consider a project in the future to achieve further alignment of Sections 420 and 906 with proposed Section 340? If so, please explain why.

Response:

The NZAuASB is of the view that further alignment of Sections 402 and 906 is needed now, rather than in the future. The title of Section 340 is “Inducements, including gifts and hospitality.” Gifts and hospitality are provided as an example of an inducement in paragraph 340.4 A1.

Accepting or offering any form of inducement to an assurance client will create a threat to independence. It is not clear why one type of inducement, i.e., gifts and hospitality, is singled out and treated differently to other forms of inducements. The NZAuASB believes that Sections 402 and 906 should address all inducements, rather than only gifts and hospitality. Expanding Sections 420 and 906 to address all inducements will promote consistent application of the provisions, remove any inconsistency, and create a clear link to Section 340. In the short term, this could be achieved by expanding the scope of Sections 420 and 906 to “inducements, including gifts and hospitality”.