

8 December 2017

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

submitted electronically through the IESBA website

Institut der Wirtschaftsprüfer
in Deutschland e.V.

Wirtschaftsprüferhaus
Tersteegenstraße 14
40474 Düsseldorf
Postfach 32 05 80
40420 Düsseldorf

TELEFONZENTRALE:
+49 (0) 211 / 45 61 - 0

FAX GESCHÄFTSLEITUNG:
+49 (0) 211 / 4 54 10 97

INTERNET:
www.idw.de

E-MAIL:
info@idw.de

BANKVERBINDUNG:
Deutsche Bank AG Düsseldorf
IBAN: DE53 3007 0010 0748 0213 00
BIC: DEUTDE33XXX
USt-ID Nummer: DE119353203

Re.: Proposed Revisions to the Code Pertaining to the Offering and Acceptance of Inducements

Dear Mr. Siong,

The IDW appreciates the opportunity to comment on the above mentioned Exposure Draft hereinafter referred to as “the ED”.

The comments in this letter focus on professional accountants in practice, as IDW membership principally comprises professional accountants in private practice. Indeed, Wirtschaftsprüfer [German public auditors] are currently required to relinquish their professional designation, should they move from private practice to work in business.

We submit general comments and then respond to the questions raised within the IESBA’s request for comments in the appendix attached to this letter.

General Comments

Adherence to the Principles of Integrity and Objectivity

The IDW agrees that in adhering to the principles of integrity and objectivity, professional accountants should neither accept nor offer inducements that would improperly influence another individual’s behavior. However, as we

GESCHÄFTSFÜHRENDER VORSTAND:
Prof. Dr. Klaus-Peter Naumann,
WP StB, Sprecher des Vorstands;
Dr. Klaus-Peter Feld, WP StB;
Dr. Daniela Kelm, RA LL.M.

page 2/7 to the comment letter to the IESBA dated 8 December 2017

discuss below, we question the practical impact of the use of the term “intent” and the specific inclusion of trivial and inconsequential matters in this context.

From a theoretical viewpoint, we also sympathize with the notion of no tolerance in this area, since this conveys the message that professional accountants are not corruptible. However, we believe that an international Code needs to adopt an approach that more clearly recognizes jurisdictional social norms, including what is generally accepted as constituting polite behavior in regard to offers of hospitality. Without a more common sense approach, uncertainties could result in excessive documentation should professional accountants feel driven to record every possible scenario in order to evidence their compliance to regulators. Furthermore, cross-border application may be highly problematical.

We also agree that, even when there is no apparent intent to improperly influence behavior, professional accountants who perform audit, review and other assurance engagements should neither accept nor offer gifts and hospitality beyond those that are trivial and inconsequential, when – taking account of the individual circumstances – these would reasonably be expected to give rise to perceptions of impaired integrity or objectivity.

We comment below on the need for further clarification of the factors a reasonable and informed third party ought to weigh up in this context.

Threats and Safeguards Approach vs. Rules-Based Requirements

In our view, the current principles-based threats and safeguards approach is sufficiently clear as far as professional accountants are concerned. We are not convinced that the proposed move to a far more rules-based approach is either needed or appropriate, other than to indicate the intentions of the IESBA Code to the public at large.

When a professional accountant in practice has either accepted or offered an inducement, it is unlikely to be because of any real misunderstanding as to the application of the extant Code. Indeed, a more rules-based approach carries the danger of being followed to the letter, such that those seeking to improperly influence the behavior of another individual will seek ways around the rules.

We would support retention of the threats and safeguards approach together with some revision of terminology accompanied by additional guidance as to the possible nature of actions that might constitute inducements. This would clarify that inducements are not necessarily limited to gifts and hospitality offered to the individual whose behavior is intended to be influenced.

page 3/7 to the comment letter to the IESBA dated 8 December 2017

Proposed Criteria “Intent” and “Trivial and Inconsequential”

As explained above, we question whether a reason to believe mere “intent” on the part of the individual offering the inducement is the right criterion (R340.7 and R340.8).

A professional accountant cannot know with certainty the actual intent of any other individual, unless explicitly informed thereof. Also, due to their covert nature, inducements may often be subtle rather than explicit. Furthermore, intent may be misplaced, such that it does not have the desired impact on the other individual's behavior. Indeed, a misplaced attempt could have the opposite effect than intended, because it would alert the professional accountant to a lack of integrity on the part of the inducing party.

The requirement regarding immediate or close family members (R340.13) is problematical in terms of its practical application. Given the threshold of “has reason to believe” the obligation is placed on the professional accountant, and could be based on the presumption of a degree of access to relevant facts and circumstances, that may not actually be available. Our concern is that with the benefit of hindsight, a professional accountant may be placed under pressure to demonstrate that he or she had no reason to believe there was intent.

As also explained above, whilst we sympathize from a theoretical viewpoint with a no tolerance stance, we have difficulties in understanding how an inducement that is trivial and inconsequential would even be perceived as realistically having the intended influence on the recipient's behavior. This seems to be a somewhat far-fetched perception that even a reasonable and informed third party ought to reject in those jurisdictions that take a common sense rather than a no tolerance stance.

Reasonable and Informed Third Party

On the basis of the issues discussed above, we believe that – should the IESBA retain the proposals – clarification within the Code would be useful in respect of the so-called reasonable and informed third party test. Specifically such a “test” should take into account the offering party's intent, the likely impact of the inducement on the recipient and the relative magnitude of the inducement. Unless there are contrary indications, professional accountants ought to be assumed to possess sufficient integrity as not to be influenced by any inducement that is trivial and inconsequential. The timing of the offer of an inducement ought to be a further factor (i.e., was it a token of appreciation or an inducement to repeat or enhance (improper aspects of) past behavior), and the

page 4/7 to the comment letter to the IESBA dated 8 December 2017

general level of incidence of inducements in the specific business and cultural environment is also relevant (if trivial and inconsequential inducements are available to all, they lack any real influential power).

Professional Education and Continuing Professional Development

We agree that, in facing a possible inducement scenario, a professional accountant should have a full understanding of any inducements prohibited by relevant laws and regulations in the jurisdiction in which that accountant is working in a professional capacity (R340.5). This requirement will, of course, only apply to jurisdictions that have such laws and regulations. Therefore, some guidance is needed in other jurisdictions if professional accountants are to fully understand so as to be able to comply with the underlying aims of the Code in this context.

This is also a matter for professional education and continuing professional development and so should also be specifically addressed by the IAESB.

Currently initial education requirements appear to deal with the need for an appreciation of relevant laws and regulations, as IES 2 specifies an intermediate level of proficiency in relation to business laws and regulations applicable to the environment in which professional accountants operate and IES 4 an intermediate level of proficiency in relation to the interrelationship between ethics and laws, regulations and the public interest. IES 7 and IES 8 are not specific as to the scope of continuing professional development in relation to this area.

We encourage the IESBA to coordinate further with IAESB in this regard.

Small and Medium-Sized Practices

Professional accountants in smaller practices may find some aspects of the proposals extremely challenging, particularly due to a limited availability of safeguards compared to a larger firm environment. Also, without additional clarification of the so called reasonable and informed third party test as discussed above, perceptions of fictional third parties could, over time, come to be based on expectations prevalent in no-tolerance jurisdiction. This could severely curtail many (harmless) interactions of a social nature in smaller communities in particular. We draw the IESBA's attention to the fact that the safeguards listed in 340.11A3 are, on the whole, not practicable in a smaller firm environment and not at all for sole practitioners. A common sense application of

page 5/7 to the comment letter to the IESBA dated 8 December 2017

the extant threats and safeguards approach would seem to us to be preferable in terms of practicalities.

We trust that our comments will be received in the constructive manner in which they are intended. If you have any questions relating to our comments in this letter, we should be pleased to discuss matters further with you.

Yours truly,

Klaus-Peter Feld
Executive Director

Helmut Klaas
Director European Affairs

page 6/7 to the comment letter to the IESBA dated 8 December 2017

Appendix

Request for Specific Comments

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 behavior, and how it is articulated in the proposals?*

As explained in the covering letter, the IDW has chosen not to comment specifically on the potential impact of the proposed revisions in relation to professional accountants in business. However, the general comments made in our covering letter likely apply to all professional accountants alike.

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?*

In general we agree that all professional accountants, irrespective of whether in business or in private practice, should neither accept nor offer inducements of a nature intended to incite improper behavior. As noted in our covering letter we believe the third party test needs to be clearly aligned to the business environment and so there could be a difference in this area. Specifically, in many jurisdictions, it might be more likely that a professional accountant in private practice would offer and receive “normal” hospitality such as working lunch etc. than would many professional accountants in business, where this is a social norm and part of day to day business practice. The Code should be clear about this in regard to the criteria a reasonable and informed third party should be deemed to take into account.

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

We support the restructuring changes and proposed conforming amendments.

page 7/7 to the comment letter to the IESBA dated 8 December 2017

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.*

We do not see any urgent need for a project to align Sections 420 and 960 with Section 340. In line with the IDW's response to the IESBA Strategy Survey we would urge the IESBA to conduct a post implementation review before initiating a new project in this area.