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submitted electronically through the IESBA website

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**Re.: Exposure Draft: Proposed Revisions to Part 4B of the Code to
Reflect Terms and Concepts Used in ISAE 3000 (Revised)**

Dear Ken,

We would like to thank you for the opportunity to provide the IESBA with our comments on the Exposure Draft "Proposed Revisions to Part 4B of the Code to Reflect Terms and Concepts Used in ISAE 3000 (Revised)", hereinafter referred to as "the draft".

We have provided our responses to the questions posed in the draft in the Appendix to this comment letter. In this comment letter and its Appendix, we focus on those areas in which we have concerns, rather than dwelling on those matters with which we agree. We would like to make the following overall observations about the draft in this letter.

We very much welcome IESBA undertaking this project to align the IESBA International Code of Ethics for Professional Accountants (hereinafter, the "Code") with the changes made by the IAASB to ISAE 3000 (Revised) and, in particular, to align the terminology and concepts used. We also support the views expressed by IESBA on independence considerations concerning direct engagements. We also believe that the draft was, for the most part, technically well-written, and we believe that the draft largely reflects the fruitful efforts of IESBA and the IAASB to coordinate their activities to minimize non-alignment between the pronouncements of each body.

However, we have a number of issues of concern. These are addressed in the Appendix to this comment letter, which contains our responses to the questions

GESCHÄFTSFÜHRENDER VORSTAND:
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posed in the Explanatory Memorandum. However, we would like to indicate and summarize in the body of this letter the three most important issues we have identified.

First, we believe that the definition of assurance client for attestation engagements needs to be augmented to include not only the responsible party and the party taking responsibility for the measurement or evaluation (i.e., the subject matter information), but also the party actually measuring or evaluation the underlying subject matter. This, among other matters, would align the independence requirements with the delineation between attestation and direct engagements as set forth in ISAE 3000 (Revised).

Second, we believe that IESBA needs to revisit the categorization of audits or reviews of specific elements, accounts or items of a financial statement, which are currently covered by Part 4B of the Code, rather than Part 4A, which is not aligned with the delineation set forth by the IAASB between audits and reviews, on the one hand, and other assurance engagements on the other hand. We are convinced that an alignment would have virtually no real impact on the actions needed to maintain independence in practice.

Third, the treatment of the modification of independence requirements for assurance reports that are restricted with respect to distribution and use is not aligned with IAASB standards (and a current exposure draft) on this matter. We believe that IESBA's treatment of this matter is based on a misconception of what restrictions on distributions or on use are, and how this differs from a required alert in an assurance report when the applicable criteria have been designed for a special purpose. We recommend that IESBA reconsider its treatment of this matter and align it with that of the IAASB.

We would be pleased to provide you with further information if you have any additional questions about our response and would be pleased to be able to discuss our views with you.

Yours truly,

Melanie Sack
Executive Director

Wolfgang Böhm
Director Assurance Standards,
International Affairs

Appendix 1 to the Comment Letter:
Responses to Questions Posed in the Exposure Draft

Request for Specific Comments

- 1. Do you believe that the changes in the key terminology used in the Exposure Draft, including the definition of ‘assurance client’, are clear and appropriate for use in Part 4B?**

We generally agree with the changes in the key terminology used in the Exposure Draft because these changes are necessary to ensure that ISAE 3000 (Revised) and the Code are appropriately aligned. With the following exception (and the exceptions addressed in our response to Question 3 in relation to the consistency of terms and concepts in Part 4B in relation to the text of ISAE 3000 (Revised)), we also believe that the changes in the key terminology used are clear and appropriate for use in Part 4B.

We do not entirely agree with the new definition of assurance client. Given the definition of “measurer or evaluator” in ISAE 3000 (Revised) paragraph 12 (n) as the party(ies) who measures or evaluates the underlying subject matter against the criteria, and the definition of an attestation engagement in ISAE 3000 (Revised) paragraph 12 (a) (ii) a. as an assurance engagement in which a party other than the practitioner measures or evaluates the underlying subject matter against the criteria, we believe it to be crucial that in an attestation engagement the professional accountant not only be independent of the responsible party and the party taking responsibility for the subject matter information (i.e., the party taking responsibility for the measurement or evaluation), but also be independent of the party actually measuring or evaluating the underlying subject matter against the criteria (defined as the “measurer or evaluator”). If this were not the case, a party from which the professional accountant is not independent would be able to undertake the measurement or evaluation and then have another party independent of the measurement or evaluation take responsibility for the subject matter information. This would essentially undermine the difference between an attestation engagement and direct engagement from an independence point of view.

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For these reasons, we believe the definition of assurance client ought to read as follows:

“The responsible party, and also in an attestation engagement, the party taking responsibility for the subject matter information (who might be the same as the responsible party) and the party undertaking the measurement or evaluation (who might be the same as the party taking responsibility for the subject matter information).

The text in paragraphs 900.14 A1 and 900.14 A2, as well as the last bullet point of paragraph 940.3 A4 and paragraph 940.3 A4, in the draft would need to be amended accordingly.

Since the role of the party actually undertaking the measurement or evaluation is important in this context, we believe that the definition of “measurer or evaluator” from ISAE 3000 (Revised) should also be included in the Glossary of the Code.

2. Do you have any comments on the application of the IESBA’s proposals to the detailed independence requirements and application material as explained above and summarized in the appendix?

We refer to our response to Question 1, in which we explain why we regard it to be important for the professional accountant to be independent of the actual measurer or evaluator in addition to being independent of the party taking responsibility for the subject matter information, and the concomitant changes to the definition of assurance client and paragraphs 900.14A1 and 900.14A2 in the draft.

We are also not convinced that the current and unchanged proposed categorization of engagements between independence requirements for audits and reviews under Part 4A of the Code and assurance engagements other than audits or reviews und Part 4B remains appropriate. In particular, we believe that independence requirements for an audit or review of specific elements, accounts or items of a financial statement ought to be covered under the independence requirements for audits and reviews under Part 4A of the Code, rather than under the independence requirements for assurance engagements other than audits or reviews under Part B of the Code. We note that the same requirements under the ISAs and ISREs apply to audits and reviews of financial statements, respectively, on the one hand, and audits and reviews of

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specific elements, accounts or items of a financial statement, respectively, on the other hand. It is therefore difficult to see why a “narrower scope” should have an impact on independence requirements in this respect. We also note that in the vast majority of cases, the auditors and reviewers of the complete sets or single financial statements are also the auditors and reviewers of the specific elements, accounts or items of a financial statement, respectively, when the latter engagements take place. In those less common engagements where the auditors and reviewers are not the same, the engaging party is virtually always someone other than the responsible party (who almost always the measurer or evaluator) where the engaging party engages a professional accountant because the professional accountant is independent from the responsible party and measurer or evaluator. For these reasons, we expect the change to have virtually no impact on practice and it would align the Code to the categorization used in IAASB standards.

If IESBA were to follow our suggestion, then in addition to deleting the last bullet point of paragraph 900.1, IESBA would need to insert the word “non-financial” between the words “company’s” and “key” in the first bullet point. Furthermore, the sentence added to the definition of the term “financial statements” in the Glossary would need to be changed to include, rather than exclude, elements, accounts or items of a financial statement.

3. Do you have any comments on the other proposed changes, including on the consistency of terms and concepts in Part 4B in relation to the text of ISAE 3000 (Revised)? If so, please specify the area of inconsistency and suggest alternative wording.

We have one comment on another proposed change not related to the consistency of terms and concepts in Part 4B in relation to the text of ISAE 3000 (Revised). We note that the final bullet point of paragraph 940.3 A3 and paragraph 940.3 A4 refers to “underlying subject matter or, in an attestation engagement”. We believe that the “or” needs to be “and” because in an attestation engagement, the professional accountant needs to be independent of not only the party responsible for the underlying subject matter, but also be independent of the party responsible for the subject matter information. Due to our comments on the last bullet point of paragraph 940.3 A3 and on paragraph 940.3 A4 in our response to

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Question 2, the measurer and evaluator also needs to be added in each case.

With respect to the consistency of terms and concepts in Part 4B in relation to the text of ISAE 3000 (Revised), we have the following comments:

- **The definition of assurance engagement in the Glossary** ought to include the text in parentheses in the definition used in ISAE 3000 (Revised) “that is, the outcome of the measurement or evaluation of an underlying subject matter against criteria”. This would ensure that the definition in the Glossary for a direct engagement is covered by the definition of assurance engagement.
- **The definition of responsible party in the Glossary** ought to replace “attestation engagement or direct engagement” with “assurance engagement” in line with the definition in ISAE 3000 (Revised).

4. **Are there any other matters that you consider should be addressed with respect to the alignment with ISAE 3000 (Revised) in Part 4B or in other material, for example in an IESBA Staff publication? If so, please provide sufficient explanation, including practical examples of the matter where available.**

Restrictions on distribution and use

Paragraphs 900.12, 990.1, 990.2, 990.3, 990.6 refer to restrictions on use and distribution in assurance reports and modifications to Part 4B when such restrictions are included in the assurance report. We believe that the treatment in these paragraphs of restrictions on use and distribution is based upon a misconception of what they mean and how they are used in audit, review, assurance and other services reports in the IAASB suite of standards.

A restriction on distribution is a contractual restriction on the parties for whom the report was intended not to distribute the report to other parties without the consent of the practitioner. The reference to a restriction on distribution in the practitioner’s report makes those other parties become aware of when they might have received the report in contravention of contractual terms and reminds the parties that legitimately received the report of their contractual obligations not to provide the report to other parties without the consent of the practitioner. The contractual restriction

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on distribution may also make the parties subject to that restriction liable to damages resulting from the distribution of the report in contravention of the contractual terms.

On the other hand, a restriction on use in a practitioner's report makes parties, other than those for whom the report was intended, who received the report aware of the fact that they were not the intended users and that they therefore cannot use (that is, legally rely on) the report. This often leads to legal restrictions on parties that cannot legally rely on the report in their ability to obtain damages based on such reliance.

In some common law jurisdictions, it is not possible to restrict distribution, but it is possible to restrict use; in some civil law jurisdictions, it is not possible to restrict use, but it is possible to restrict distribution. In some jurisdictions, restricting both is possible; in others, neither can be restricted in some circumstances.

Based upon the work done by the IAASB for ISA 800 for audits of special purpose financial statements, ISRE 2400 for reviews of special purpose financial statements, and ISAE 3000 when the applicable criteria are designed for a specific purpose (see paragraphs 69 (f) and A166-A167), as well as the current exposure draft to agreed-upon procedures engagements (AUP), the only action the practitioner can take in all circumstances is to alert users in the report to the special purpose of the financial reporting framework, the criteria, or the special purpose of the report, and that therefore the financial statements, subject matter information, or practitioner's report, may not be suitable for another purpose. These standards (and the AUP exposure draft) include application material clarifying that practitioners may restrict distribution or use of the report, or both, as applicable. However, the alert is particularly useful when neither distribution nor use can be restricted.

IESBA needs to recognize that there are circumstances around the world in which public institutions are required to have assurance engagements performed and that these public institutions might be required by law or regulation to provide these reports to other parties or to make these reports publicly available. Restrictions on distribution or use may not be possible in those circumstances in the particular jurisdictions in question.

Consequently, we believe that rather than requiring a restriction on distribution or use of the report as a basis for the modification of the requirements in Part 4B, IESBA should be requiring an alert in line with

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IAASB standards and recognize that a restriction on distribution or use, or both, may be included in the report.

Multiple measurers or evaluators

Paragraph 900.16 A1 addresses the fact that there may be multiple responsible parties and the consequences thereof. However, in an attestation engagement there may also be multiple measurers or evaluators, and this may need similar treatment in this section of Part 4B. We disagree with the reasoning and example provided in paragraphs 43 and 45 of the Explanatory Memorandum for not dealing with multiple measurers or evaluators. In that example, the portal provider is responsible for compiling and evaluating the data to produce a summary (subject matter information), presented in accordance with the requirements of the industry regulatory body, from raw data (the underlying subject matter) provided by different operators in that industry. Paragraph 43 claims that there would be a single party responsible for the subject matter information and multiple responsible parties. That is incorrect because raw data can only result from the measurement or evaluation of underlying subject matter (phenomena), which means that the raw data is already subject matter information – not underlying subject matter. Consequently, the example deals with multiple measurers or evaluators – not multiple responsible parties. This does not imply that there may not be multiple responsible parties for the phenomena represented by the raw data. For these reasons, the example needs to be revised and paragraph 900.16 A1 also needs to be augmented to deal with multiple measurers or evaluators.

Significant influence over underlying subject matter

We have difficulty understanding why paragraph 921.4 A1 refers to significant influence over underlying subject matter, but the requirement in R921.5 (a) only refers to “a director or officer of the assurance client”. There seems to be a presumption that only directors or officers can have control over an assurance client and hence over the underlying subject matter. There are, however, other entities that do not have directors or officers (e.g., a partnership or a natural person). Furthermore, the definition of assurance client extends to those taking responsibility for the subject matter information (and, as we suggest above, those who are the measurers and evaluators), so reference to the responsible party is more appropriate because this requirement also applies to direct engagements. It seems to us that (a) therefore needs to be written as follows: “is the

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responsible party, is a director or officer of the responsible party or may otherwise exert significant influence over the responsible party”.

5. Do you agree with the proposed effective date? If not, please indicate why not and explain your reasoning.

We believe that the effective date is reasonable given the limited nature of the changes proposed.

Request for General Comments

a) Small and Medium Practices (SMPs) – The IESBA invites comments regarding the impact of the proposed changes for SMPs.

We have not identified any special issues in relation to the impact of the proposed changes for SMPs.

b) Developing Nations—Recognizing that many developing nations have adopted or are in the process of adopting the Code, the IESBA invites respondents from these nations to comment on the proposals, and in particular, on any foreseeable difficulties in applying them in their environment.

Since we do not represent an organization from a developing nation, we do not respond to this question.

c) Translations—Recognizing that many respondents may intend to translate the final pronouncement for adoption in their environments, the IESBA welcomes comment on potential translation issues respondents may note in reviewing the proposals.

We have not identified any issues related to the translation of the terms used but are not in a position to comment on other translation issues.