

Mrs S D van Esch
The Director - Standards
Independent Regulatory Board for Auditors
PO Box 751595
Gardenview
2047

24th March 2010

Dear Sandy:

Request for comment: Exposure Draft of Rules Regarding Improper Conduct and Code of Professional Conduct

We welcome the opportunity to comment on the Independent Regulatory Board of Auditors' ("IRBA's") Exposure Draft of Rules Regarding Improper Conduct ("The Rules") and Code of Professional Conduct ("The Code")

Our detailed comments are set out in the Appendix to this letter. These address, amongst others, the following key issues:

- The proposed effective date of implementation of The Code
- The proposed adoption of appropriate transitional provisions
- Comments, and requests for clarity, on various definitions contained in The Rules
- The inclusion of joint & vicarious liability provisions in The Code
- Comments, and requests for clarity, on various definitions contained in The Code
- Certain sections relating to professional appointment, particularly as regards communication between the existing and proposed auditor

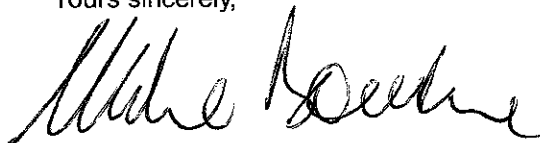
Should you wish to discuss our comments or require clarity on any matters raised, please do not hesitate to contact me at:

Ernst & Young Inc
P.O. Box 656
Cape Town
8000

or,

Telephone: 021-443 0258/082 603 0772
Email: michael.bourne@za.ey.com

Yours sincerely,



Michael Bourne
Professional Practice Director

Commentary on exposure draft of Rules regarding Improper Conduct and Code of Professional Conduct

Our commentary is divided into the following main headings:

1. General comments
2. Comments on the Rules regarding improper conduct
3. Comments on the Code of professional conduct

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1. General comments:

Reference / paragraph	Detail	Reason for comment	Proposed amendment
Effective date	<i>The effective date of implementation of the Code is still to be determined. Comments received in this regard will be considered by the CFAE in determining the effective date.</i>	<ul style="list-style-type: none"> • RAs in South Africa presently have to deal with a significant amount of change which is having a negative effect on the public accounting profession. Changes resulting from a new IFAC Code of Ethics, Corporate Law reform (audit exemption, partner rotation without clock reset, complex regulations); Financial Reporting Standards' changes and Auditing Standards changes are just a few which are having a profound effect on the profession at present. • If SAICA adopt the revised IFAC code all CAs will need to comply with that code 	<p>We recommend very emphatically that the effective date be the same as that chosen by the International Federation of Accountants, namely 1 January 2011, so that:</p> <ul style="list-style-type: none"> • South Africa will be in line with international practice • RA's/ practitioners will have sufficient time to <ul style="list-style-type: none"> o a) assess the impact of the changes to the various Codes, o b) attend required training courses ; and o c) make the requisite

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<p>changes to their practices in order to comply with the provisions contained therein.</p>	<p>in addition to the IRBA code</p> <ul style="list-style-type: none"> The IFAC Code of Ethics for Professional Accountants (on which the IRBA Code is based) has an effective date of <u>1 January 2011</u>. 	<p>Transitional provisions</p>	<p>changes to their practices in order to comply with the provisions contained therein.</p>
<p>We emphatically recommend that IRBA include the same transitional provisions, with the same effective dates. This will give practitioners the requisite amount of time to understand, evaluate and appropriately respond to the changes. It will also ensure alignment with the IFAC Code.</p>	<p>The new IFAC Code of Ethics has transitional provisions dealing with:</p> <ul style="list-style-type: none"> Public Interest Entities (PIE): companies have until <u>1 January 2012</u> to comply with the additional independence provisions arising from the introduction of the PIE concept Partner Rotation: the new provisions, arising from the concept of Key Audit Partner (KAP) are effective for the audits of companies with a year end on or after <u>15 December 2011</u> Non-assurance services: Where services were permitted under the "old" Code, but are no longer permitted i.t.o the revised Code, and audit firm may continue providing such services until <u>1 July 2011</u> Fees – relative size: the requirement that a pre- or post-issuance review be performed on PIE's meeting certain fee thresholds will be implemented, at the earliest, in <u>2012</u> Compensation & Evaluation Policies: A KAP may not be evaluated on, nor compensated for, providing non-assurance services, after <u>1 January 2012</u> 	<p><i>There are no transitional provisions in the IRBA Code</i></p>	<p>We emphatically recommend that IRBA include the same transitional provisions, with the same effective dates. This will give practitioners the requisite amount of time to understand, evaluate and appropriately respond to the changes. It will also ensure alignment with the IFAC Code.</p>

2. Commentary on Rules Regarding Improper Conduct

Reference / paragraph	Detail	Reason for comment	Proposed amendment
<p>Definition of "Professional Services" : Audit and other assurance service</p>	<p><i>"professional services" in the context of these Rules means services requiring a registered auditor including accounting, auditing, taxation, management consulting and financial management services. These are regarded as relating to, but not limited to:</i></p> <ul style="list-style-type: none"> <li data-bbox="760 1377 932 1814"><i>(a) Audit and other assurance services</i> <ul style="list-style-type: none"> <li data-bbox="791 1377 964 1736"><i>i. Financial statement audit and reviews, other assurance services such as regulatory reporting, sustainability and performance reporting</i> <li data-bbox="987 1377 1160 1736"><i>ii. Company accounting advisory services such as preparation of accounting records and financial statements in accordance with recognised financial reporting standards and applicable statutes; and</i> <li data-bbox="1183 1377 1270 1736"><i>iii. Company statutory services</i> 	<p>We suggest that the definition of "audit" should correlate with that in the Auditing Profession Act.</p> <p>"Assurance services / engagement" is defined in the IFAC Code. However, it should be noted that there is no consensus on the examples quoted.</p> <p>The current definition does not include related services such as Agreed-upon procedures</p>	<p>Definition of "Audit" to be replaced with that in the Act, namely:</p> <p><i>"audit" means the examination of, in accordance with prescribed or applicable auditing standards- (a) financial statements with the objective of expressing an opinion as to their fairness or compliance with an identified financial reporting framework and any applicable statutory requirements; or (b) financial and other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on the financial and other information;</i></p> <p>Definition of "Assurance services / engagement" to be considered further. Should use the definition of Assurance Services as defined in the ISA's.</p>
<p>Definitions: Professional</p>	<p>See above</p>	<p>The current definition does not include related services such as Agreed-upon procedures</p>	<p>This should be amended to read as follows: "Financial statement audit and reviews,</p>

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Reference / paragraph	Detail	Reason for comment	Proposed amendment
Services (a) (i) Definitions: Professional Services (a) (ii) and (iii)	See above	In light of the above proposed change, these two bullet points do not fit under the heading	other assurance and related services including regulatory ... Consideration should be given to these sections appearing under a separate heading (perhaps (d)?) called "accounting services" or something similar?

3. Commentary on Code of Professional Conduct

Reference / paragraph	Detail	Reason for comment	Proposed amendment
Para 3: Joint and Vicarious Liability	Refer to Code	In principle, we don't object to inclusion of "joint and vicarious liability" concepts in the Code, provided these are based on well established legal principles in law. However, the way the power has been documented in the Code is such that there are very broad and unfettered powers to invoke this liability on persons and bodies which, in certain circumstances, may have had no direct nor indirect responsibility for the matter being prosecuted.	We would, therefore, suggest that a legal opinion be obtained on inclusion and, <i>inter alia</i> , applicability and enforceability in the Code, with a view to establishing guiding principles or guidelines or criteria which will govern the circumstances in which this power can be invoked.
Definition of "Assurance Engagement"	<i>An engagement in which a registered auditor expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria</i>		The <i>full</i> definition should be shown, as it appears in the IFAC Code.
Definition of Client	<i>A person or an undertaking to whom a registered auditor is performing or has performed professional services including, but not limited to, an assurance client, an audit client or a review client</i>	What time period is encompassed by the words "has performed"? An RA may, for example have been an auditor in the year 2005, and resigned the year thereafter. In such a case this would be a "client" by definition in the year 2011. In view of this the rules for example dealing with non-audit services (para 290.156 et seq) would then have	Remove the definition of, or redefine, the word client.

Reference / paragraph	Detail	Reason for comment	Proposed amendment
<p>Definition: "Director of officer"</p>	<p>A director or officer includes:</p> <ul style="list-style-type: none"> Those charged with the governance of an entity, or acting in an equivalent capacity, regardless of their title, which may vary from jurisdiction to jurisdiction, and A director or officer of a company appointed in accordance with the Companies Act 1973 in South Africa, or in the case of a public entity or government department, the individual with the equivalent position appointed in accordance with the Public Finance Management Act or Municipal Finance Management Act 	<p>to be observed by that person even though he or she is no longer the auditor. This is surely not the intention. We are not sure whether there is a need to define the word "client".</p> <p>We believe the additional bullet point will result in a more extensive application of the definition, than might have been intended. This appears to be contrary to the intention and spirit of the Code.</p> <p>In terms of the draft Companies Act Regulations, regulation 45 proposes to include many persons as "prescribed officers" of companies which should not fall into the ambit of the Code. For example a prescribed officer will now be a person (c) (who) has general responsibility for management of the legal affairs of the company, (such as general secretary, general counsel or similar office holder)..." and so on.</p>	<p>We suggest removal of the underlined bullet point.</p>
<p>Definitions: "Key Audit Partner"</p>	<p>The engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the engagement team who make key decisions or judgments on significant matters with respect to the</p>	<p>This important new definition raises some questions:</p> <ol style="list-style-type: none"> what would constitute a "significant" subsidiary or division? Would this be a company which is 20% of group assets or turnover? or 10% or 5%? 	<p>We recommend that the Code provides more guidance in determining what is meant by the term "significant" and "other audit partners"</p> <p>In our opinion, a significant subsidiary or division would be one which constitutes</p>

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	<p><i>audit of the financial statements on which the firm will express an opinion. Depending upon the circumstances and the role of the individuals on the audit, "other audit partners" may include, for example, audit partners responsible for significant subsidiaries or divisions</i></p>	<p>2. Would a specialist tax or forensic partner who plays an advisory role on the audit engagement, and in so doing plays a significant role in the RA audit partner coming to a key decision or judgement on significant matters, be an audit partner for the purposes of this definition?</p>	<p>10% or more of Group assets or turnover.</p> <p>In our opinion, specialist expert or advisory partners would NOT form part of the definition of "Other audit partners".</p>
<p>Definitions: "Professional services"</p>	<p>See definition under the Rules Regarding Improper Conduct section above</p>		<p>Our comment under the Rules in respect of "Professional services: Audit and other assurance services" apply <i>mutatis mutandis</i>.</p>
<p>Definitions: "Professional"</p>	<p>An individual "audit" professional or an individual with other professional qualifications who is employed by a firm and who is a member of the audit, review or assurance engagement team, or who provides other professional services to clients of the firm</p>	<p>With reference to para 290.191 of the draft Code, we believe that it would be inappropriate to have professionals act in the capacity envisaged as a safeguard. The reason for this is that the word "professional" is defined to include persons with non-audit professional qualifications. The word "professional" appears infrequently in the Code and in our view does not require definition.³</p>	<p>We question whether this definition is necessary.</p>
<p>Definitions: "Public Interest Entity"</p>	<p>(a) A listed entity; or (b) An entity defined by regulation or legislation as a public interest entity; or (c) An entity for which the audit is</p>	<p>The definition of public interest entity seems to suggest that all companies audited in terms of international standards of auditing would be regarded as public interest entities – even those which are small, dormant and have one</p>	<p>We suggest in the first instance obtaining clarity from IFAC on what they had intended by their definition and then ask them to amend it, if appropriate.</p>

Reference / paragraph	Detail	Reason for comment	Proposed amendment
	<p><i>required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities.</i></p>	<p>shareholder who is also a director.</p> <p>The same independence requirements followed when conducting an audit of a listed entity is required when performing an audit of a non-listed entity in South Africa.</p> <p>This seems to imply that all entities that are required to be audited or that are being audited constitute Public Interest Entities?</p> <p>What about companies which are not listed, and which do not need to be audited, but which choose to be audited?</p> <p>In these circumstances and in view of the fact that there is no differentiation of “independence requirements” which apply to small private companies as opposed to listed companies, the partner(s) would then be subject to the rotation requirements in S290.151? This is surely not the intention of IFAC, nor of IRBA?</p> <p>Furthermore in the IFAC Code, the definition is (a) (a listed entity) AND either (b) or (c) on page 56, paragraph 290.25. But on page 16 of the draft IRBA code the definition says “OR”. Then, in addition, the definition on page 16 does not</p>	<p>Alternatively, they should provide further guidance.</p> <p>Propose we adopt the IFAC definition with suitable guidance material to ensure that the definition does not result in more entities requiring rotation than was intended.</p> <p>Either way the definitions on page 16 and page 56/57 of the IFAC code should be the same.</p>

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		include the last sentence "Such regulation.....such as the Board." Whilst it does not appear to materially alter the impact of the definition we do not believe it is sensible to deviate from the wording in the IFAC definition.	
Definition of Registered Auditor Para 210.15	An individual or firm registered as an auditor with the Board. <i>Where the proposed client refuses to give permission for the proposed registered auditor to communicate with the existing auditor, or fails to do so, the proposed registered auditor shall decline the appointment, unless there are exceptional circumstances of which the proposed registered auditor has full knowledge, and the proposed registered auditor has satisfied themselves regarding all relevant facts, by some other means. If permission is not granted, the existing auditor shall report that fact to the proposed registered auditor.</i>	Does this include persons registered with IRBA in a non-attest capacity? What sort of exceptional circumstances are being envisaged? If the incoming auditor cannot speak to the outgoing auditor there is no way in which the successor can know what the outgoing auditor would have said had he or she been approached?	Guidance is required. We recommend that the words in bold be deleted as they add no value whatsoever. Alternatively the whole paragraph 210.15 should be deleted.
Para 240.7	The section deals with disclosures to be made to the client, in advance, of any threats the registered auditor's objectivity.	We believe that the last sentence places an onus on the incorrect party, since the existing auditor may not even know who the "proposed registered auditor" is.	We suggest the last sentence be deleted as it serves no purpose.
Para 290.36(b)	Complies with the requirements of	There are no sections (ii) or (iii)	Propose the insertion of "in writing" after the word "disclose" in each of the bullet points. Suggest it be replaced with (b) and (c)

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Reference / paragraph	Detail	Reason for comment	Proposed amendment
Para 290.121	<p><i>paragraph 290.36 (ii) – (iii)</i> <i>If the firm or a member of the audit team, or a member of that individual’s immediate family, accepts a loan from, or has a borrowing guaranteed by, and audit client, that is not a bank or similar institution, or any director, officer of principal shareholder of the audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both (a) the firm or the member of the audit team and the immediate family member, and (b) the client.</i></p>	<p>“Principal shareholder” is not defined elsewhere and is not a term commonly used.</p>	<p>We would suggest that the word “principal” be deleted, since the term “audit client” is already defined and includes reference to “related entity/ies” which addresses the concept of principal shareholder.</p>
Para 290.155	<p><i>“The Board has not yet provided such exemption from partner rotation or specified alternative safeguards”.</i></p>		<p>Suggest this sentence be removed. Otherwise the Code will need to be updated at the time at which exemption IS provided?</p>
Section 291	<p>General comment relating to the whole of this section.</p>	<p>Section 290 contains certain additional provisions over and above those contained in the IFAC code. Similar additions do not appear in section 291.</p>	<p>Where insertions and/or amendments have been made in section 290, such amendments and insertions should be consistently applied in section 291, where applicable.</p>
Para 291.116	<p>See comments above re: principal shareholder.</p>		<p>Our comment under Para 290.121 apply <i>mutatis mutandis</i>.</p>