

# COMMENT ON EXPOSURE DRAFT OF RULES REGARDING IMPROPER CONDUCT AND CODE OF PROFESSIONAL CONDUCT

#### **Drafting convention**

The following convention is used throughout this submission, in respect of our comments on the Exposure Draft of Rules Regarding Improper Conduct and Code of Professional Conduct, pursuant to the provisions of sections 4(1)(c) and 44(6) of the Auditing Profession Act, 2005 (Act No. 26 of 2005) (the "Exposure Draft").

Strikethrough Words struck through indicate deletions that we are proposing in respect of the

Exposure Draft.

Red text Words in red indicate insertions that we are proposing to the Exposure Draft.

#### Rules regarding improper conduct

Exposure draft wording	Proposed wording	Comment
2.9 permits their name to be used in connection with any estimate of earnings contingent upon future transactions in a manner which may lead to the belief that they vouch for the accuracy of the estimate;	Proposed wording  2.9 permits their name to be used in connection with any estimate of earnings contingent upon future transactions in a manner which may lead to the belief that they vouch for the accuracy of the estimate. This does not extend to a registered auditor reporting on prospective financial	The additional sentence is proposed to enhance clarity.
	information in accordance with the International Standards on Assurance Engagements;	

#### **Code of professional conduct**

#### 1. Preface

Exposure draft wording	Proposed wording	Comment
1.2. In response to global	1.42. In response to global	Paragraphs
convergence initiatives the Proposed	convergence initiatives the [Proposed]	are
Code of Professional Conduct for	Code of Professional Conduct for	renumbered to
Registered Auditors (this Code) is	Registered Auditors (this Code) is	provide a more
based on Parts A and B of the IFAC	based on Parts A and B of the IFAC	logical
Code of Ethics for Professional	Code of Ethics for Professional	sequence.
Accountants (Revised July 2009) (the	Accountants (Revised July 2009) (the	
IFAC Code) which is adopted by the	IFAC Code) which is adopted by the	
Board and adapted with copyright	Board and adapted with copyright	
permission from IFAC as necessary,	permission from IFAC as necessary, to	
to establish ethical requirements for	establish ethical requirements for	
registered auditors.	registered auditors.	
1.3. The IFAC Code of Ethics for	1.23. The IFAC Code of Ethics for	Paragraphs
Professional Accountants (the IFAC	Professional Accountants (the IFAC	are
Code) establishes ethical	Code) establishes ethical requirements	renumbered to
requirements for professional	for professional accountants (including	provide a more
accountants (including registered	registered auditors). The preface to the	logical
auditors). A member body of IFAC or	IFAC Code states that aA member	sequence.
firm shall not apply less stringent	body of IFAC or firm shall not apply	
standards than those stated in the	less stringent standards than those	
IFAC Code. However, if a member	stated in the IFAC Code. However, if a	
body or firm is prohibited from	member body or firm is prohibited from	



Exposure draft wording	Proposed wording	Comment
complying with certain parts of the	complying with certain parts of the	
IFAC Code by law or regulation, they	IFAC Code by law or regulation, they	
shall comply with all other parts of the	shall comply with all other parts of the	
IFAC Code.	IFAC Code.	
1.4 Some jurisdictions may have	1.34. It is acknowledged in the preface	Paragraphs
requirements and guidance that differ	to the IFAC Code that sSome	are
from those contained in this Code.	jurisdictions may have requirements	renumbered to
Professional accountants (including	and guidance that differ from those	provide a more
registered auditors) in those	contained in this Code the IFAC Code.	logical
jurisdictions need to be aware of those	Professional accountants (including	sequence.
differences and comply with the more	registered auditors) in those	
stringent requirements and guidance	jurisdictions need to be aware of	
unless prohibited by law or regulation.	theose differences and comply with the	
The existing IRBA Code of	more stringent requirements and	
Professional Conduct has a number of	guidance, unless prohibited by law or	
additional sections which were either	regulation.	
of local application or represent an	1.E. The evicting IDDA Code of	
amplification of provisions in the IFAC	1.5. The existing IRBA Code of	
Code. Those comprising more	Professional Conduct has a number of additional sections which were either	
stringent requirements that apply to all registered auditors in South Africa are	of local application or represent an	
incorporated in the relevant sections in	amplification of provisions in the IFAC	
Part A and Part B where they are	Code. Theose sections in this Code	
underlined and in italics. Amendments	that compriseing of more stringent	
incorporated in Parts A and B form an	requirements that that contained in	
integral part of this Code. Registered	Parts A and B of the IFAC Code <del>apply</del>	
auditors need to be aware of those	to all registered auditors in South	
differences and comply with the more	Africa are incorporated in the relevant	
stringent requirements and guidance	sections in Part A and Part B of this	
in the Proposed Code unless	Code, where they are underlined and	
prohibited by law or regulation. The	in italics. Amendments made to the	
adaptation has resulted in a reordering	IFAC Code incorporated in Parts A and	
and renumbering of those sections of	B form an integral part of this Code.	
this Code.	Registered auditors need to be aware	
	of those differences and comply with	
	the more stringent requirements and	
	guidance in theis [Proposed] Code	
	unless prohibited by law or regulation.	
	The adaptation has resulted in a	
	reordering and renumbering of those	
1.5. The Doord requisites and	sections of this Code.	Dorographa
1.5. The Board regulates only	1.65. The Board regulates only	Paragraphs
individual registered auditors and firms	individual registered auditors and firms registered with the Board. Part C of the	are renumbered to
registered with the Board. Part C of the IFAC Code comprises	IFAC Code comprises requirements for	provide a more
requirements for Professional	Professional Accountants in Business,	logical
Accountants in Business, which is	which is regarded by the CFAE as not	sequence.
regarded by the CFAE as not	applicable to registered auditors and	
applicable to registered auditors and	accordingly does not form part of this	
accordingly does not form part of this	Code and is not included.	
Code and is not included.		

<sup>\*</sup> For ease of understanding the complete proposed Preface to the Code of Professional Conduct for Registered Auditors has been presented in **Annexure A** to this document.



#### 2. Definitions

Exposure d	raft wording	Comment
This Code	The Proposed Code of Professional Conduct for Registered Auditors published by the Board.	This definition is not positioned in alphabetical order in the definitions section.

# 3. Confidentiality

Exposure draft wording	Proposed wording	Comment
140.1 The principle of confidentiality	140.1 The principle of	The IFAC Code
imposes an obligation on all registered	confidentiality imposes an	wording in
auditors to refrain from:	obligation on all registered	subparagraph (b)
(a) Disclosing outside the firm	auditors to refrain from:	has been changed
confidential information acquired as	(a) Disclosing outside the firm	by replacing the
a result of professional and	confidential information	word "Using" with
business relationships without	acquired as a result of	"Making proper use
proper and specific authority or	professional and business	of". It is proposed
unless there is a legal or	relationships without proper	that the sentence
professional right or duty to	and specific authority or unless	be changed back to
disclose; and	there is a legal or professional	the original text.
(b) Making improper use of	right or duty to disclose; and	The current
confidential information acquired as	(b) UsingMaking improper use of	wording suggests
a result of professional and	confidential information	that the auditor can
business relationships to their	acquired as a result of	make proper use of
personal advantage or the	professional and business	information
advantage of third parties.	relationships to their personal	acquired in the
	advantage or the advantage of	context of the
	third parties.	paragraph.
140.7 The following are circumstances	140.7 The following are	To ensure clarity it
where registered auditors are or may	circumstances where registered	is proposed that the
be required to disclose confidential	auditors are or may be required	phrase "and the
information or when such disclosure	to disclose confidential	registered auditor
may be appropriate:	information or when such	has received a duly
(a) Disclosure is permitted by law and	disclosure may be appropriate:	authorised and
is authorised by the client;	(a) Disclosure is permitted by law	served court
(b) Disclosure is required by law, for	and is authorised by the client;	document, order or
example:	(b) Disclosure is required by law,	subpoena" is added
(i) Production of documents or	for example:	at the end of the
other provision of evidence in	(i) Production of documents	sentence in
the course of legal	or other provision of	140.7(b)(i).
proceedings; or	evidence in the course of	
	legal proceedings and the	
	auditor has received a	
	duly authorised and	
	served court document,	
	order or subpoena; or	

## 4. Professional Behaviour

Exposure draft wording	Proposed wording	Comment
150.5 Section 44(1) of the Act requires	150.5 Section 44(1) of the Act	This section is dealt
the audit firm, immediately after an	requires the audit firm,	with in the context
audit appointment is made, to advise	immediately after an audit	of the individual
the audit, review or other assurance	appointment is made, to advise	auditor. Reference
client of the name of the individual	the audit, review or other	to the plural should
registered auditor responsible for that	assurance client of the name of	be changed to the



## 5. Professional Appointment

Exposure draft wording	Proposed wording	Comment
210.13 An existing auditor is bound by	210.13 An existing registered	The sentence
confidentiality. Whether that registered	auditor is bound by confidentiality.	added to the IFAC
auditor is permitted or required to	Whether that registered auditor is	Code does not add
discuss the affairs of a client with a	permitted or required to discuss	to the substance of
proposed auditor will depend on the	the affairs of a client with a	the paragraph. It is
nature of the engagement and on:	proposed auditor will depend on	also unclear what is
(a) Whether the client's permission to	the nature of the engagement and	meant by the words
do so has been obtained; or	on:	"give due weight".
(b) The legal or ethical requirements	(a) Whether the client's	
relating to such communications	permission to do so has been	
and disclosure.	obtained; or	
The proposed auditor shall treat in the	(b) The legal or ethical	
strictest confidence and give due	requirements relating to such	
weight to any information provided by	communications and	
the existing auditor. Circumstances	disclosure.	
where the registered auditor is or may	The proposed auditor shall treat in	
be required to disclose confidential	the strictest confidence and give	
information or where such disclosure	due weight to any information	
may otherwise be appropriate are set	provided by the existing auditor.	
out in Section 140 of Part A of the	Circumstances where the	
Code.	registered auditor is or may be	
	required to disclose confidential	
	information or where such	
	disclosure may otherwise be	
	appropriate are set out in Section	
	140 of Part A of the Code.	
210.15 Where the proposed client	210.15 Where the proposed client	This section is dealt
refuses to give permission for the	refuses to give permission for the	with in the context
proposed registered auditor to	proposed registered auditor to	of the individual
communicate with the existing auditor,	communicate with the existing	auditor. Reference
or fails to do so, the proposed	auditor, or fails to do so, the	to the plural should
registered auditor shall decline the	proposed registered auditor shall	be changed to the
appointment, unless there are	decline the appointment, unless	singular.
exceptional circumstances of which	there are exceptional	"Themselves"
the proposed registered auditor has	circumstances of which the	should therefore



Exposure draft wording	Proposed wording	Comment
full knowledge, and the proposed	proposed registered auditor has	read
registered auditor has satisfied	full knowledge, and the proposed	"himself/herself".
themselves regarding all relevant	registered auditor has satisfied	
facts, by some other means. If	himself/herself themselves	
permission is not granted, the existing	regarding all relevant facts, by	
auditor shall report that fact to the	some other means. If permission	
proposed registered auditor.	is not granted, the existing auditor	
	shall report that fact to the	
	proposed registered auditor.	

## 6. Fees and Other Types of Remuneration

Exposure draft wording	Proposed wording	Comment
240.2 The existence and significance	240.2 The existence and	The addition of a
of any threats created will depend on	significance of any threats created	third point to the list
factors such as the level of fee quoted	will depend on factors such as the	of examples does
and the services to which it applies.	level of fee quoted and the	not contextualise
The significance of any threat shall be	services to which it applies. The	the paragraph and
evaluated and safeguards applied	significance of any threat shall be	is not considered
when necessary to eliminate the threat	evaluated and safeguards applied	as an appropriate
or reduce it to an acceptable level.	when necessary to eliminate the	safeguard.
Examples of such safeguards include:	threat or reduce it to an	9
Making the client aware of the terms	acceptable level. Examples of	
of the engagement and, in particular,	such safeguards include:	
the basis on which fees are charged	<ul> <li>Making the client aware of the</li> </ul>	
and which services are covered by the	terms of the engagement and, in	
quoted fee.	particular, the basis on which fees	
Assigning appropriate time and	are charged and which services	
qualified staff to the task.	are covered by the quoted fee.	
Maintaining the appropriate records	Assigning appropriate time and	
of time spent, staff assigned to the	qualified staff to the task.	
engagement and basis of fees	Maintaining the appropriate	
charged.	records of time spent, staff assigned to the engagement and	
	basis of fees charged.	
240.7 The significance of the threat	240.7 The significance of the	It is not clear why
shall be evaluated and safeguards	threat shall be evaluated and	the phrase
applied when necessary to eliminate	safeguards applied when	"Irrespective of the
the threat or reduce it to an acceptable	necessary to eliminate the threat	significance of the
level. Examples of such safeguards	or reduce it to an acceptable	threat evaluated, a
include Irrespective of the significance	level. Examples of such	registered auditor
of the threat evaluated, a registered	safeguards include Irrespective of	shall" has been
auditor shall:	the significance of the threat	introduced. The
Disclose to the client in advance any	evaluated, a registered auditor	introductory
arrangements to pay a referral fee to	shall:	sentence mandates
another registered auditor for the work	Disclose to the client in advance	actions, not
referred.	any arrangements to pay a	portrayed in the
Disclose to the client in advance any	referral fee to another registered auditor for the work referred.	original text that will result in the
arrangements to receive a referral fee for referring the client to another	Disclose to the client in advance	application thereof
registered auditor.	any arrangements to receive a	to insignificant /
Obtain agreement in advance from	referral fee for referring the client	trivial matters.
the client for commission	to another registered auditor.	
arrangements in connection with the	Obtain agreement in advance	
sale by a third party of goods or	from the client for commission	
services to the client.	arrangements in connection with	
	the sale by a third party of goods	
	or services to the client.	



## 7. Independence – Audit and Review Engagements

Exposure draft wording	Proposed wording	Comment
290.114 The holding by a firm, or a member of the audit team, or a member of that individual's immediate family, of a direct financial interest  Where the absence of a conflict of interest cannot be clearly demonstrated, a registered auditor shall:  (a) Avoid appointment as a trustee in any such situation; or  (b) If appointed as a trustee, shall not be involved personally in the audit of the trust.	290.114 The holding by a firm, or a member of the audit team, or a member of that individual's immediate family, of a direct financial interest  Where the absence of a conflict of interest cannot be clearly demonstrated, a registered auditor shall:  (a) aAvoid appointment as a trustee in any such situation; or (b) If appointed as a trustee, shall not be involved personally in the audit of the trust.	The paragraph starting with the wording "Where the absence" is an addition to the IFAC Code. The guidance is incorrect as far as subparagraph (b) is concerned: "involved personally" is not defined and does not assist the registered auditor in any way. The concept of the auditor's failure to become personally involved because of a perceived conflict of interest will not measure up to the principles in law.

## 8. Effective date and transitional provisions

Exposure draft wording	Proposed wording	Comment
The effective date of implementation	The effective date of	It is recommended
of the Code is still to be determined.	implementation of the Code is still	that the effective
Comments received in this regard will	to be determined. Comments	date of the Code,
be considered by the CFAE in	received in this regard will be	and the proposed
determining the effective date.	considered by the CFAE in	transitional
S S	determining the effective date.	provision relating
	The Code is effective on 1	thereto, should be
	January 2011; early adoption is	consistent with the
	permitted. The Code is subject to	effective date of the
	the following transitional	Code of Ethics for
	provision:	Professional
		Accountants, as
	Non-assurance services	issued by the
	Paragraphs 290.156-290.219	International Ethics
	address the provision of non-	Standards Board
	assurance services to an audit or	for Accountants.
	review client. If, at the effective	
	date of the Code, services are	
	being provided to an audit or	
	review client and the services	
	were permissible under the	
	previous Code of Professional	
	Conduct published by the Board,	
	but are either prohibited or subject	
	to restrictions under the revised	
	Code, the firm may continue	
	providing such services only if	
	they were contracted for and	



Exposure draft wording	Proposed wording	Comment
	commenced prior to 1 January 2011 and are completed before 1	
	July 2011.	



# Annexure A – Complete proposed Preface to the Code of Professional Conduct for Registered Auditors

#### 1. PREFACE

- 1.1. The Independent Regulatory Board for Auditors (the Board) is required to prescribe Standards of Professional Competence, Ethics and Conduct of registered auditors. The Committee for Auditor Ethics (CFAE) of the Board is established in terms of section 21(1) of the Auditing Profession Act No. 26 of 2005 (the Act). Section 21(2) requires the CFAE to assist the Board:
- (a) "to determine what constitutes improper conduct by registered auditors by developing rules and guidelines for professional ethics, including a code of professional conduct;
- (b) to interact on any matter relating to its functions and powers with professional bodies and any other organ of state with an interest in the auditing profession; and
- (c) to provide advice to registered auditors on matters of professional ethics and conduct".
- 1.23. The IFAC Code of Ethics for Professional Accountants (the IFAC Code) establishes ethical requirements for professional accountants (including registered auditors). The preface to the IFAC Code states that aA member body of IFAC or firm shall not apply less stringent standards than those stated in the IFAC Code. However, if a member body or firm is prohibited from complying with certain parts of the IFAC Code by law or regulation, they shall comply with all other parts of the IFAC Code.
- 1.34. It is acknowledged in the preface to the IFAC Code that sSome jurisdictions may have requirements and guidance that differ from those contained in this Code the IFAC Code. Professional accountants (including registered auditors) in those jurisdictions need to be aware of those differences and comply with the more stringent requirements and guidance unless prohibited by law or regulation.
- 1.42. In responds to global convergence initiatives the [Proposed] Code of Professional Conduct for Registered Auditors (this Code) is based on Parts A and B of the IFAC Code of Ethics for Professional Accountants (Revised July 2009) (the IFAC Code) which is adopted by the Board and adapted with copyright permission from IFAC as necessary, to establish ethical requirements for registered auditors.
- 1.5. The existing IRBA Code of Professional Conduct has a number of additional sections which were either of local application or represent an amplification of provisions in the IFAC Code. Theese sections in this Code that compriseing more stringent requirements that that contained in Parts A and B of the IFAC Code apply to all registered auditors in South Africa are incorporated in the relevant sections in Part A and Part B of this Code, where they are underlined and in italics. Amendments made to the IFAC Code incorporated in Parts A and B form an integral part of this Code. Registered auditors need to be aware of those differences and comply with the more stringent requirements and guidance in theis [Proposed] Code unless prohibited by law or regulation. The adaptation has resulted in a reordering and renumbering of those sections of this Code.
- 1.65. The Board regulates only individual registered auditors and firms registered with the Board. Part C of the IFAC Code comprises requirements for Professional Accountants in Business, which is regarded by the CFAE as not applicable to registered auditors and accordingly does not form part of this Code and is not included.