

**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**

<b>Exposure draft wording</b>	<b>Proposed wording</b>	<b>Comment</b>
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;	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. <b>This does not extend to a registered auditor reporting on prospective financial information in accordance with the International Standards on Assurance Engagements;</b>	The additional sentence is proposed to enhance clarity.

**Code of professional conduct**

**1. Preface**

<b>Exposure draft wording</b>	<b>Proposed wording</b>	<b>Comment</b>
1.2. In response 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.	1.42. In response 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.	Paragraphs are renumbered to provide a more logical sequence.
1.3. The IFAC Code of Ethics for Professional Accountants (the IFAC Code) establishes ethical requirements for professional accountants (including registered auditors). A 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	1.23. The IFAC Code of Ethics for Professional Accountants (the IFAC Code) establishes ethical requirements for professional accountants <del>(including registered auditors)</del> . <b>The preface to the IFAC Code states that a</b> A 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	Paragraphs are renumbered to provide a more logical sequence.

Exposure draft wording	Proposed wording	Comment
<p>complying with certain parts of the IFAC Code by law or regulation, they shall comply with all other parts of the IFAC Code.</p>	<p>complying with certain parts of the IFAC Code by law or regulation, they shall comply with all other parts of the IFAC Code.</p>	
<p>1.4 Some jurisdictions may have requirements and guidance that differ from those contained in this 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. 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. Those comprising more stringent requirements that apply to all registered auditors in South Africa are incorporated in the relevant sections in Part A and Part B where they are underlined and in italics. Amendments 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 the Proposed Code unless prohibited by law or regulation. The adaptation has resulted in a reordering and renumbering of those sections of this Code.</p>	<p>1.34. <del>It is acknowledged in the preface to the IFAC Code that s</del>Some jurisdictions may have requirements and guidance that differ from those contained in <del>this Code</del> <b>the IFAC Code</b>. Professional accountants (<del>including registered auditors</del>) in those jurisdictions need to be aware of <del>these</del> differences and comply with the more stringent requirements and guidance, unless prohibited by law or regulation.</p> <p><del>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. These sections in this Code that comprising of more stringent requirements that n 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.</del></p>	<p>Paragraphs are renumbered to provide a more logical sequence.</p>
<p>1.5. 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.</p>	<p>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.</p>	<p>Paragraphs are renumbered to provide a more logical sequence.</p>

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

## 4. Professional Behaviour

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

Exposure draft wording	Proposed wording	Comment
<p>engagement. The individual registered auditor responsible for the engagement shall, when signing any audit, review or assurance report, reflect the following:</p> <p>(a) their full name;</p> <p>(b) if not a sole proprietor, the capacity in which they are signing, namely as the 'partner' or 'director';</p> <p>(c) the designation 'Registered auditor' underneath their name; and</p> <p>(d) if not set out on the firm's letterhead, the name of their firm on the signature line.</p>	<p>the individual registered auditor responsible for that engagement. The individual registered auditor responsible for the engagement shall, when signing any audit, review or assurance report, reflect the following:</p> <p>(a) <b>His/her</b> <del>their</del> full name;</p> <p>(b) if not a sole proprietor, the capacity in which <b>he/she</b> <del>they</del> <b>is</b> <del>are</del> signing, namely as the 'partner' or 'director';</p> <p>(c) the designation 'Registered auditor' underneath <b>his/her</b> <del>their</del> name; and</p> <p>(d) if not set out on the firm's letterhead, the name of <b>his/her</b> <del>their</del> firm on the signature line.</p>	<p>singular. "They" should therefore read "he/she" and "their" should read "his/her".</p>

## 5. Professional Appointment

Exposure draft wording	Proposed wording	Comment
<p>210.13 An existing auditor is bound by confidentiality. Whether that registered auditor is permitted or required to discuss the affairs of a client with a proposed auditor will depend on the nature of the engagement and on:</p> <p>(a) Whether the client's permission to do so has been obtained; or</p> <p>(b) The legal or ethical requirements relating to such communications and disclosure.</p> <p>The proposed auditor shall treat in the strictest confidence and give due weight to any information provided by the existing auditor. Circumstances where the 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.</p>	<p>210.13 An existing <b>registered</b> auditor is bound by confidentiality. Whether that registered auditor is permitted or required to discuss the affairs of a client with a proposed auditor will depend on the nature of the engagement and on:</p> <p>(a) Whether the client's permission to do so has been obtained; or</p> <p>(b) The legal or ethical requirements relating to such communications and disclosure.</p> <p><del>The proposed auditor shall treat in the strictest confidence and give due weight to any information provided by the existing auditor.</del></p> <p>Circumstances where the 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.</p>	<p>The sentence added to the IFAC Code does not add to the substance of the paragraph. It is also unclear what is meant by the words "give due weight".</p>
<p>210.15 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</p>	<p>210.15 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</p>	<p>This section is dealt with in the context of the individual auditor. Reference to the plural should be changed to the singular. "Themselves" should therefore</p>

Exposure draft wording	Proposed wording	Comment
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.	proposed registered auditor has full knowledge, and the proposed registered auditor has satisfied <del>himself/herself themselves</del> 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.	read "himself/herself".

## 6. Fees and Other Types of Remuneration

Exposure draft wording	Proposed wording	Comment
240.2 The existence and significance of any threats created will depend on factors such as the level of fee quoted and the services to which it applies. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include: <ul style="list-style-type: none"> <li>• Making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee.</li> <li>• Assigning appropriate time and qualified staff to the task.</li> <li>• Maintaining the appropriate records of time spent, staff assigned to the engagement and basis of fees charged.</li> </ul>	240.2 The existence and significance of any threats created will depend on factors such as the level of fee quoted and the services to which it applies. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include: <ul style="list-style-type: none"> <li>• Making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee.</li> <li>• Assigning appropriate time and qualified staff to the task.</li> <li>• <del>Maintaining the appropriate records of time spent, staff assigned to the engagement and basis of fees charged.</del></li> </ul>	The addition of a third point to the list of examples does not contextualise the paragraph and is not considered as an appropriate safeguard.
240.7 The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. <del>Examples of such safeguards include</del> Irrespective of the significance of the threat evaluated, a registered auditor shall: <ul style="list-style-type: none"> <li>• Disclose to the client in advance any arrangements to pay a referral fee to another registered auditor for the work referred.</li> <li>• Disclose to the client in advance any arrangements to receive a referral fee for referring the client to another registered auditor.</li> <li>• Obtain agreement in advance from the client for commission arrangements in connection with the sale by a third party of goods or services to the client.</li> </ul>	240.7 The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. <b>Examples of such safeguards include</b> <del>Irrespective of the significance of the threat evaluated, a registered auditor shall:</del> <ul style="list-style-type: none"> <li>• Disclose to the client in advance any arrangements to pay a referral fee to another registered auditor for the work referred.</li> <li>• Disclose to the client in advance any arrangements to receive a referral fee for referring the client to another registered auditor.</li> <li>• Obtain agreement in advance from the client for commission arrangements in connection with the sale by a third party of goods or services to the client.</li> </ul>	It is not clear why the phrase "Irrespective of the significance of the threat evaluated, a registered auditor shall" has been introduced. The introductory sentence mandates actions, not portrayed in the original text that will result in the application thereof to insignificant / trivial matters.

## 7. Independence – Audit and Review Engagements

Exposure draft wording	Proposed wording	Comment
<p>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...</p> <p>Where the absence of a conflict of interest cannot be clearly demonstrated, a registered auditor shall:</p> <p>(a) Avoid appointment as a trustee in any such situation; or</p> <p>(b) If appointed as a trustee, shall not be involved personally in the audit of the trust.</p>	<p>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...</p> <p>Where the absence of a conflict of interest cannot be clearly demonstrated, a registered auditor shall:</p> <p><del>(a) Avoid appointment as a trustee in any such situation; or</del></p> <p><del>(b) If appointed as a trustee, shall not be involved personally in the audit of the trust.</del></p>	<p>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.</p>

## 8. Effective date and transitional provisions

Exposure draft wording	Proposed wording	Comment
<p>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.</p>	<p><del>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.</del></p> <p>The Code is effective on 1 January 2011; early adoption is permitted. The Code is subject to the following transitional provision:</p> <p><i>Non-assurance services</i> Paragraphs 290.156-290.219 address the provision of non-assurance services to an audit or 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</p>	<p>It is recommended that the effective date of the Code, and the proposed transitional provision relating thereto, should be consistent with the effective date of the Code of Ethics for Professional Accountants, as issued by the International Ethics Standards Board for Accountants.</p>

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** a 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 s**Some 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. These sections in this Code that comprising more stringent requirements than 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 the is [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.