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Dear Ms Munro

### **Code of Ethics for Professional Accountants**

The Committee of European Banking Supervisors (CEBS) welcomes the opportunity to comment on the clarified version of the *Code of Ethics for Professional Accountants*.

Through their opinions on annual accounts and annual reports, external auditors constitute an integral part of the public oversight model and contribute to the financial stability of the market. As banking supervisors we therefore have an interest in ensuring that auditing standards, which are the basis for audit work, are of a high quality and are clear and capable of consistent application.

In the attached appendix we provide answers to the questions raised in the request for specific comments of the explanatory memorandum.

Our comments were coordinated by our Expert Group on Financial Information (EGFI), and especially by its Subgroup on Auditing, which is under the direction of Pat Sucher from the FSA, UK.

If you have any questions regarding our comments, please feel free to contact the chairman of EGFI, Didier Elbaum of the French Commission Bancaire (+33.1.4292.5701) or Miss Pat Sucher (+44.20.7066.5644).



Yours sincerely,  
Kerstin af Jochnick

## Appendix 1 – CEBS comments on the IESBA Clarification of the Code of Ethics

### Request for Specific Comments

**1. The IESBA is of the view that identifying a requirement by the use of the word “shall” clarifies the Code and appropriately brings the language in line with that adopted by the IAASB. Do you agree? If you do not agree please provide an explanation.**

We support the clarification of the Code by the use of the word ‘shall’ to indicate when there is a requirement. However, we would note two caveats to our support for the approach proposed by the IESBA.

(a) The approach of rewriting the Code to use the word ‘shall’ to indicate when there is a requirement in the Code has, as far as we can see, not been undertaken in a comprehensive and consistent manner. There are various instances in the Code where we would understand that there is a requirement, - e.g. when the phrase ‘is required’ is used – but the word ‘shall’ is not used in the text. We would understand that these paragraphs create a requirement, and therefore there should be a ‘shall’ in the paragraph. This could lead to a lack of clarity about what is a requirement and also could hinder appropriate translation. Examples where ‘shall’ has not been used, but there still seems to be a requirement, are as follows:

- a. Para 100.5 ‘A professional accountant is required to comply with the following.....’
- b. Para 130.1 ‘The principle of professional competence and due care imposes the following....’
- c. Para 280.2 ‘A professional accountant...is required to
- d. Para 290.4 ‘Compliance with the fundamental principle of objectivity requires...’

We suggest that the IESBA review the whole of the Code to ensure that ‘shall’ has been used in all circumstances where a requirement is identified.

(b) Reading through the Code it is not always immediately clear where the requirements are noted. IESBA may want to give consideration to highlighting the word ‘shall’ when it is used in a paragraph to identify a requirement.

**2. The IESBA is of the view that separately presenting the objective to be achieved, the requirements designed to achieve that objective, and the application guidance as in the ISAs would not further improve the clarity of the Code. Do you agree? If you do not agree, please provide an explanation and an example of the separate presentation that you recommend.**

Though generally we could support the IESBA’s approach, it would be helpful if IESBA could demonstrate more clearly why its position is appropriate.

**3. The IESBA is of the view that in exceptional and unforeseen circumstances that are outside the control of the professional accountant, the firm or employing organization, and the client, the application of a specific requirement in the Code may result in an outcome that a reasonable and informed third party would not regard as being in the interest of the users of the output of the accountant's professional services. Therefore, the Board is proposing that the Code include a provision that would permit a professional accountant, in such circumstances, to depart temporarily from that specific requirement. This would not be the same as provisions in the Code that address situations in which a professional accountant has inadvertently violated a provision of the Code. The departure would only be acceptable if all of the conditions set out in paragraph 100.11 are met.**

**(a) Do you agree that the Code should contain a provision that permits any exception to compliance with a requirement set out in the Code? If you do not agree, please provide an explanation.**

**(b) If you believe that the Code should contain a provision that permits an exception to compliance, are the conditions under which the exception would apply appropriate?**

**Should there be additional or fewer conditions and, if so, what are they?**

**(c) If you believe that the Code should not contain a provision that permits an exception, please explain how you would deal with the types of exceptional and unforeseen situations that may be covered by paragraph 100.11.**

**(d) Are there any other circumstances where you believe a departure from a requirement in the Code would be acceptable? For example, should an event that is within the control of one of the relevant parties qualify for an exception? If so, please provide an explanation and specific examples of the circumstances where you believe a departure would be acceptable.**

We are not convinced that creating an exception to the 'shall' requirement which will allow a professional accountant, in some circumstances, to depart temporarily from that specific requirement will contribute to strengthening and clarifying the code. Creating an overarching exception to all requirements as part of the Code, despite the setting of various conditions, could be seen to undermine the obligation which a 'shall' requirement is supposed to signify.

We appreciate that there could be extreme and unforeseen circumstances which may mean an auditor has to depart from a requirement however, as noted in the explanatory memorandum, it is anticipated this would be very rare and temporary. It would therefore seem appropriate that the auditors should deal with their local regulator on a 'facts and circumstances' basis for any such extreme and rare circumstances. This should also ensure that there

could be a full and impartial appraisal of what approach may be in the public interest.

**4. The IESBA is of the view that the proposed modification to focus the application of the conceptual framework throughout the Code, and the related documentation requirements in Sections 290 and 291, on threats that are not at an acceptable level will result in a more efficient and effective application of the framework approach. Do you agree? If you do not agree, please provide an explanation.**

There are two issues here: the removal of 'clearly insignificant' from the Code with its replacement by what is acceptable, and documentation.

*Removal of 'clearly insignificant'*

We understand that the introduction of a definition of an "acceptable level" clarifies the requirement to apply safeguards and together with the removal of clearly insignificant eliminates some of the uncertainty surrounding the notions of "clearly insignificant" and "acceptable level". At the same time we urge the IESBA to ensure that the changes made in parts A, B and C in that respect are made consistently and do not reduce the robustness of the requirements.

*Documentation*

The documentation requirement is covered in paragraph 290.29. This paragraph is not very clear and we are concerned whether it requires that auditors prepare the appropriate level of documentation given the amount of professional judgement that may be involved in assessing threats and applying appropriate safeguards.

The auditor has to exercise professional judgment in assessing the threats and appropriate safeguards that should be in place to reduce any threat to an acceptable level in those circumstances where provision of the service is not prohibited. It is important that any requirement to document this exercise of professional judgment is clear both for the auditor and for those exercising oversight of the auditor.

We are not clear from this paragraph 290.29 whether the auditor has to document his/her assessment of threats and safeguards even when the auditor has decided that the threat is at an acceptable level and no safeguards are necessary. It would seem that documentation is only necessary where the auditor believes that a safeguard is needed. However, it would seem more robust to us if the auditor had to document the whole assessment, not just when safeguards are applied. And if this is what is intended it should be clearer in the paragraph.

We also note that para 290.29 has a rather defensive introduction, 'Even though documentation is not, in itself, a determinant of whether a firm is independent....', which could set the scene for suggesting that documentation is not important.

**5. The IESBA is of the view that the selected point-in-time effective date with the proposed transitional provisions will provide the appropriate balance between firms and member bodies having sufficient time to implement the new standards and effecting change as soon as possible. Do you agree? If you do not agree, please provide an explanation of how you would revise the effective date or transitional provisions to achieve that balance.**

Though we could support the IESBA's position as an appropriate, pragmatic, response, we would note that the implementation of the clarity changes would take place at the same time as the other changes which are taking place to make the Code more robust, through Independence I and II. We would therefore have a marginal preference for an earlier adoption date for the revised, clarified, Code.

### **Other comments**

In applying the clarity convention, we note that the verb in paragraph 250.2 has been changed from 'should consult' to 'shall consider consulting'. It would seem to us that it the verb should have been changed to 'shall consult'.

In paragraph 290.7, one of the changes has been to remove 'eliminating the activity' and replace it with, 'eliminate the circumstances.' We would just question whether this has made the Code less clear and therefore may be weakening the Code. For example, activity seems a more direct word to use rather than 'circumstances'.