



September 30, 2010

International Valuation Professional Board  
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RE: Comments on draft Code of Ethics for Professional Valuers

Dear Board Members:

Thank you for this opportunity to comment on the draft *Code of Ethics for Professional Valuers* (Code of Ethics). These comments were prepared by our Appraisal Standards Committee, whose duties include developing positions on exposure drafts of standards and ethics impacting the appraisal profession; our comments follow.

In addition to responding to the four questions presented in the current exposure draft, we have also offered more specific comments and suggestions on the proposed language of the Code itself and trust you will find that material useful.

### **Responses to Questions**

1 The structure of the Code is clear;

Response: No. While we fully understand that enforcement of the Code of Ethics would be the responsibility of the member organizations, creating a Code of Ethics that is capable of being enforced must be a main consideration of its development. The enforceability of any set of rules depends in large part on whether the terms used have a clear meaning to those who must comply and to those who must enforce. The majority of our specific comments are recommendations for definitions of terms that are either unclear or appear to be in conflict with other terms used in this proposed Code.

In addition, the use of the terms "standards" and "ethics" in the Code of Ethics raises these questions:

- What exactly is the relationship of the Code of Ethics to the International Valuation Standards ("IVS")?
- Is the Code of Ethics meant to be part of the IVS or is it meant to be a separate document?
- What is the difference between a rule in the Code of Ethics and a rule in the IVS?
- Would a violation of a Code of Ethics rule be a more serious offence than a violation of an IVS rule?

More issues are addressed in the specific comments below.

**2** There are any topics that need to be included or deleted from the Code;

Response: Yes; they are included in the specific comments below.

**3** The Code should be more or less expansive to professional needs;

Response: We do not understand this question.

**4** There are any parts of the Code that conflict with your market, local regulations or valuation disciplines.

Response: No.

### **IVSC Proposed Code of Ethics; specific comments**

#### **Preface**

*The International Valuation Standards Council ("IVSC") is the global standard setter for the valuation profession. Its mission is to establish and maintain high quality international valuation standards, to contribute to development of the worldwide valuation profession and to serve the public interest.*

Comment: Clear, enforceable ethical rules and standards are among the bases of any profession. The knowledge among practitioners of what the profession and society expect in terms of ethical behavior and competent performance is the foundation of (for?) professional conduct. Generally, standards rules address competent performance and ethical rules address ethical behavior, although there can be some overlapping. Therefore, we suggest that "ethics" be cited in this opening paragraph.

*IVSC member bodies may not adopt less stringent standards than those in this Code of Ethics.*

Comment: This is confusing. Does it mean that member bodies may not (a) adopt standards rules less stringent than the Ethical Rules contained in this Code of Ethics, or (b) adopt less stringent ethical requirements or (c) both?

Since most IVSC member bodies have already adopted codes of ethics that are less stringent in some aspects, it appears that every member body will be immediately required to rewrite their code of ethics to comply with this provision.

In addition this provision appears to be in conflict with the *Conduct* section of the Code of Ethics, which states in part "*This Code does not have formal authority in law, nor is it*

*intended to be other than complementary to the rules, by-laws, and regulations of national societies or professional organizations that control or monitor the activities of Professional Valuers”.*

*However, if a member body is prohibited by law or regulation from complying with any part or parts of this Code of Ethics, it should comply with all other parts of the Code of Ethics.*

Comment: Is the intent that a "member body" be prohibited by law or regulation from complying or rather that "a member of a member body?"

Also, while this provides a "savings clause," it doesn't provide for an exception; i.e., it doesn't specify that the part of the code that conflicts is excepted.

Finally, should there be a requirement to disclose exceptions whenever invoked?

*It is incumbent upon IVSC member organisations and/or domestic bodies to write supplemental standards to enforce the principles articulated within this Code of Ethics.*

Comment: This is confusing as the document contains separate "ethical principles" and "Rules of Conduct." Are the "supplemental standards" intended to cover the "ethical principles" and/or the "Rules of Conduct?"

Further, does this mean that member organisations need to write "Standards Rules" to enforce "ethical principles?"

### **1. Introduction and Fundamental Ethical Principles**

*A profession requires the acceptance of a responsibility to act in the public interest. The Professional Valuer's responsibility is not only to the client or employer but also to the public interest. Valuations shall be completed by Professional Valuers in compliance with the International Valuation Standards ("IVS") and the following ethical principles:*

Comment: Members of some member bodies may be required to complete valuations under standards other than IVS. This section seems to require that all valuations be completed under these rules. Compliance should be required "when the valuation is completed under these rules." This section seems in conflict with Section 2, below.

*A) Integrity: to be straightforward and honest in professional and business relationships.*

*B) Objectivity: not to allow conflict of interest, or undue influence or bias to override professional or business judgment.*

*C) Professional Competence and Due Care: to maintain the professional knowledge and skill required to ensure that a client or employer receives competent services based on current developments in practice, legislation, and techniques; to act diligently and in accordance with applicable technical and professional standards.*

Comment: Definitions of "Conflict of interest," "undue influence" and "bias" would help to provide clarity and enhance understandability and enforceability.

*D) Confidentiality: to respect the confidentiality of information acquired as a result of professional and business relationships and not to disclose such information to third parties without proper and specific authority (unless there is a legal or professional right or duty to disclose), nor to use information for the personal advantage of a Professional Valuer or third parties.*

Comment: The "Confidentiality" section is much broader than the confidentiality section of standards and ethical rules that many members of member organizations are currently required to follow in which the duty of confidentiality applies to information obtained only from the client. This proposed principle seems to apply to **any** information acquired as a result of professional or business relationships. (emphasis added) This could create undue burden on Professional Valuers as it renders information gained from public sources "confidential" merely because it was used in a valuation, and use of that heretofore public information in the normal course of business now becomes a breach of this Code of Ethics.

*E) Professional Behaviour: to comply with relevant laws and regulations and to avoid any action that discredits the profession.*

Comment: The requirement to avoid any action that discredits the profession is very broad, would be hard to enforce, and goes beyond the requirements of some member organizations.

## **2. Conduct**

*Professional Valuers comply with Standards either by choice or by requirement placed upon them by law or regulation; or at the instruction of clients, intended users, and/or national societies or professional organisations. A valuation prepared under IVS binds the Professional Valuer to follow this Code of Ethics. This Code does not have formal authority in law, nor is it intended to be other than complementary to the rules, by-laws, and regulations of national societies or professional organizations that control or monitor the activities of Professional Valuers.*

Comment: This seems in conflict with section #1 above which provides that "Valuations shall be completed by Professional Valuers in compliance with the IVS;" here, one seems to have an option.

Further, this is confusing: It seems to say that if a valuation is prepared under IVS, one needs to "follow this Code of Ethics," but the Code of Ethics is not "...intended to be other than complementary to..." to other rules.

### **3. Rules of Conduct**

*Professional Valuers must maintain high standards of honesty and integrity, and they must conduct activities in a manner not detrimental to their clients, the public interest, the valuation profession or their respective professional valuation bodies.*

Comment: The other requirements are stated in the singular, rather than the plural. Both for consistency of presentation and clarification of enforceability, this Rule should also be stated in the singular: "A Professional Valuer must act with honesty and integrity, and must refrain from conduct that is detrimental to a client, the public interest, or the valuation profession."

*3.1.3. A Professional Valuer must not contribute to or participate in a valuation service that other reasonable valuers would not regard to be justified.*

Comment: What is meant by "valuation service" here and elsewhere in this Code? Does "valuation service" cover all work performed by a professional valuer such as review work, consulting work, etc? Should "reasonable valuers" opining as to the justification of another's work product have experience in performing similar valuation services? Again, definitions of terms are needed.

*3.1.3. A Professional Valuer must not contribute to or participate in a valuation service that other reasonable valuers would not regard to be justified.*

Comment: Is a "reasonable valuer" different from a "Professional Valuer"? Depending on how these documents are published, these terms could be defined in the Glossary included at the end of the Proposed Standards, or in a Glossary to the Code.

### **3.2. Objectivity**

*3.2.1. A Professional Valuer must not act for two or more parties in the same matter without the written consent of all the parties.*

Comment: This requirement may prove problematic in situations where one client will engage and ask the valuer to also address the valuation to another or multiple parties, which may include unavailable parties. Furthermore, what would one do if they decided to write a friend of the court brief with a valuation component? Or, if a valuer has a client that they do not have individual engagement contracts with?

Also, the language here-- "must not act" -- is problematic as valuers do not "act for" their clients or for any other party. Rather, they are engaged to provide services. This language suggests that advocacy is allowed.

*3.2.2. A Professional Valuer must take all reasonable precautions to ensure that no conflicts of duty arise between the interests of the client and those of the Valuer, his or her firm, relatives, friends, associates, or other clients. Potential conflicts should be disclosed in writing before accepting instructions. Any conflicts of which the Valuer becomes aware must be disclosed immediately. If conflicts come to the attention of the Valuer after completion of the assignment, disclosure must be made within a reasonable time. These may include financial interests, business and personal relationships and provision of other services by either the valuer or the organization in the case of an organization being appointed to do the valuation.*

Comments:

- A definition of "Conflict of duty" would help to clarify this rule.
- A Professional Valuer "must take all reasonable precautions to ensure that no conflicts of duty arise ...." This may be clearer if it first focused on whether a conflict of duty "exists," and then on whether any "arise" in the course of completing the assignment.
- "Potential conflicts" is very vague; the possibilities for such approach infinity.
- "Provision of other services" is also vague and over-broad. Are these valuation services, or any types of services at all? For how long a time in the past?
- If a conflict of duty arises, is the only resulting requirement merely to disclose it?
- What is meant by "instructions?"
- It may be helpful to review how other entities address conflicts. For instance, Rule 12408 developed by the Financial Industry Regulatory Authority (FINRA) for securities arbitrators provides :

(a) Before appointing arbitrators to a panel, the Director will notify the arbitrators of the nature of the dispute and the identity of the parties. Each potential arbitrator must make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, including:

- (1) Any direct or indirect financial or personal interest in the outcome of the arbitration;
- (2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party, any party's representative, or anyone who the arbitrator is told may be a witness in the proceeding, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias;

- (3) Any such relationship or circumstances involving members of the arbitrator's family or the arbitrator's current employers, partners, or business associates; and
- (4) Any existing or past service as a mediator for any of the parties in the case for which the arbitrator has been selected.

(b) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

*3.2.5. Fees must not depend on a predetermined outcome.*

Comment: We suggest broadening the requirement to: "Neither fees nor engagement may depend on a predetermined outcome."

*3.2.6. A Professional Valuer must disclose whether or not his fee is contingent upon any aspect of his or her report*

Comment: Every fee is contingent on something even if it is only the preparation and communication of the report. Therefore, this language is too broad as is and would require disclosure of everyday matters in every engagement.

*3.2.7. Major assumptions in respect of facts that are not known or that cannot be determined must be prominently disclosed and must be reasonable to a group of peer Professional Valuers.*

Comment: What is meant by "peer Professional Valuers?" Rule 3.1.3 references "reasonable valuers." Is there a difference between a peer Professional Valuer and a "reasonable valuer?" The rules for some member organizations would refer to this as an "Extraordinary Assumption."

Again, definitions are needed both for clarity and understandability.

*3.2.8. Unless the nature and extent of such reliance is specified as a limiting condition, the Valuer must not rely upon critical information from a client or other party without appropriate qualification or confirmation from an independent source.*

Comment: This Rule is confusing; what is "such reliance" referencing? In addition, "limiting condition" needs to be defined.

*3.2.9. Projections, assumptions, modeling and methodology used by clients or other parties must be considered by the Professional Valuer and evaluated as to their reasonableness and where material differences exist, an explanation should be provided.*

Comment: This is over-broad and seems to mean that a Professional Valuer must consider, evaluate and explain "everything" a client or any other party provides even if it is not relevant to the assignment. This needs to be more precise.

*3.2.10. A Professional Valuer should not use or rely on unsupported conclusions based on prejudice of any kind or report conclusions reflecting an opinion that such prejudice is necessary to maintain or maximize value.*

Comment: This is confusing. We suggest: "A Professional Valuer should not use or rely on unsupported conclusions."

*3.2.11. A hypothetical condition may be used only if it is required for legal purposes or for purposes of reasonable analysis, or for purposes of comparison. The use of a hypothetical condition must result in credible analysis, and its use must be disclosed and explained.*

Comment: "Hypothetical condition should be defined. Also, if one can use a hypothetical condition in all of these instances – when can a valuer not use a hypothetical condition? The first sentence of this rule should be deleted.

*3.2.12. In a review of another valuer's report, a Professional Valuer must exhibit impartial judgment and justify the reasons for agreement or disagreement with the conclusions of the report.*

Comment: A report of review of another valuer's report could contain hundreds of conclusions. This rule would require a reviewer to provide justification for every single one. The "conclusions" referenced in this Rules need to be more clearly defined or described.

*3.2.13. A Professional Valuer's objectivity may be threatened by a broad range of circumstances, for example, self-interest threats, advocacy threats, familiarity threats, self-review threats, and intimidation threats. Safeguards may eliminate or reduce such threats, and may be created by external structures (e.g. the valuer's professional body, legislation or regulation), or by the valuer's work environment (e.g. quality control policies and procedures). There may also be safeguards specific to the valuation engagement.*

Comment: This is commentary; it is not an Ethical Rule. It should be deleted.

### *3.3. Professional Competence and Due Care*

*3.3.1. A Professional Valuer must conform to the definition of a Professional Valuer in the IVSC definitions and must have the knowledge, skill and experience to complete the assignment in relation to professional standards.*

Comment: This is confusing. The IVSC definitions do not include "Professional Valuer."

*3.3.4. When engaging the services of external assistance, a Professional Valuer should establish that those assisting have the requisite skills and ethical principles.*

Comment: Does this apply to other valuers or to non-valuers who provide assistance? If to non-valuers, how can the valuer evaluate such skills? One way to solve this problem may be to merely require the valuer utilizing external assistance to certify having no valid reason to doubt the credibility of the external assistance provided.

*3.3.5. A Professional Valuer shall obtain the client's consent when external assistance is required. The identity and qualifications of anyone providing assistance and the extent of their role should be disclosed.*

Comment: This requirement is more stringent than the requirements of some member organizations which do not explicitly require client consent. This should be a business decision, not an ethics requirement.

### *3.5 Professional Behaviour*

*3.5.2. Prior to accepting an assignment, a Professional Valuer must work with the client to determine the appropriate scope of work for the assignment. The process is to identify the question to be answered or the problem to be solved and to determine the scope of work necessary to answer the question(s) or solve the problem addressed. The scope of work must produce credible results and must be disclosed in the written or verbal report.*

Comment: "...work with the client..." is vague. Maybe "communicate" would be better.

Another option for this rule would be to allow the valuer to consider "expectations of clients who are regularly intended users" for such assignments in making the scope of work determination, as not all clients want to engage in a scope discussion for every assignment.

*3.5.3. A Professional Valuer must be aware of and understand any standards under which the client operates that may influence the scope of work, e.g. accounting, auditing, securities, lending, etc.*

Comment: "Standards" does not appear to be the right word here. This Rule appears to be very broad. It needs to be limited to the particular assignment.

*3.5.4. A Professional Valuer must not claim or fail to correct erroneous interpretation of the valuer's professional qualifications or expertise.*

Comment: How can a valuer know, or control, another's "interpretation"?

*3.5.5. A Professional Valuer must not knowingly use false, misleading, or exaggerated claims or advertising in an effort to secure assignments*

Comment: This should be reworded; e.g., "must not make false or misleading statements about qualifications." It is very difficult to establish whether one "knowingly" took an action.

*3.5.6. A Professional Valuer must ensure that staff or subordinates assisting with an assignment shall adhere to this Code of Ethics.*

Comment: We suggest that this rule be restated as follows: "A Professional Valuer must supervise and train staff and subordinates assisting with an assignment to ensure that assignments are completed in accordance with this Code of Ethics."

*3.5.10. A Professional Valuer must enter into an agreement with the client/intended user regarding access to the information contained in the valuer's work file. Such agreement shall include provision for access by judicial bodies and the valuers' professional organisation.*

Comment: Other intended users should not be granted access as they cannot be given confidential information without client authorization.

Should you have any questions about these comments, please contact me.

Sincerely,

*(Submitted Electronically)*

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