

August 29, 2011

Sent via email to CommentLetters@ivsc.org

International Valuation Professional Board
International Valuation Standards Council
41 Moorgate
London EC2R 6PP
United Kingdom

Dear Sirs:

Re: Comments on IVPB Second Exposure Draft – Proposed Code of Ethical Principles for Professional Valuers

The Canadian Institute of Chartered Business Valuators (CICBV) is pleased to provide our comments on the above noted IVPB Exposure Draft.



Overall Comments on Proposed Code of Ethical Principles for Professional Valuers

Overall, we believe that the Second Exposure Draft comes closer to meeting its objective of promoting principles of ethical conduct by professional valuers than did the First Exposure Draft. We agree with the objectives set out in the Note for Respondents.

We do however continue to have concerns with the Second Exposure Draft which are of a fundamental nature. We have addressed these below.

Comments on the Document's Title

Calling the document a code of ethical principles for professional valuers implies that the Exposure Draft is the Code of Ethics that is applicable to members of IVSC member organisations. The intent of the document should be to assist developing professional valuation organisations in developing a Code of Ethics for their organisation. Calling the document a code seems to go beyond this objective. We suggest that the title be modified to "Guidance on Developing a Code of Ethics for Professional Valuers".

Comments on Purpose and Authority

The Note for Respondents section of the Exposure Draft indicates that "the purpose of the IVSC publishing a Code of Ethics was to promote principles of ethical conduct by professional valuers" and that "the IVSC has no remit to compel member organisations or others to adopt or follow any such code".

We agree with the notion that the purpose of the endeavor by the IVSC should be to aid the development of codes of ethical conduct by developing professional valuation organisations¹. IVSC member organisations that are Professional Valuation Organisations are, by the IVSC's membership requirements, an organisation "that sets minimum education and ethical standards for individual valuers".

The Exposure Draft uses terminology that is at odds with the notion expressed in the Note for Respondents and thereby contradicts its objective and encroaches on the purview of the IVSC member organisations that are already a professional valuation organisation.

Specific examples of these contradictions are noted below. The contradictory terminology is underlined:

Page 1 – paragraph three

"This Code of Ethical Principles sets out principles of ethical behaviour that member bodies are expected or encouraged to reflect in their own ethical and conduct regulations"

The IVSC, by expecting reflection of the IVSC Code of Ethical Principles in member bodies' ethical conduct regulations, is mandating adoption of the guidance it is offering. We respectively suggest removal of the words "expected or" from the sentence noted above, as the IVSC should simply be encouraging the use/adoption of the ethical principles.

Page 1 – fourth paragraph

"The Fundamental Principles set out five principles of conduct that a professional valuer is expected to adhere to when providing a valuation service. These principles should be reflected in any code of ethics maintained by a Professional Valuation Organisation."

Again, the term "expected" indicates mandatory adoption. We respectively suggest replacing the word "expected" with "encouraged" in the first sentence noted above. We suggest that the second read as follows – "Professional Valuation Organisations are encouraged to include these principles in their own code of ethics."

Page 2 – first paragraph

"Accordingly a Professional Valuer shall comply with [the] following ethical principles"

As stated in the introduction to the Exposure Draft, the IVSC has no remit to compel member organisations or others to adopt or follow any code. In addition, the IVSC has no authority over individual professional valuers. We suggest that the sentence read "Accordingly, Professional Valuation Organisations are encouraged to include these principles in their own code of ethics." We note that this is somewhat repetitive, given the suggested wording for the fourth paragraph on Page 1.

¹ The IVSC membership criteria refer to such organisations as "Associate Valuation Organisations" (http://www.ivsc.org/members/apps/valuation_org.html).

Page 3 – Conceptual Framework

We are unclear as to what this section is trying to achieve. We suggest that it be reviewed and re-written bearing in mind that the IVSC has no pervue over Professional Valuers and there is no requirement for Professional Valuers or Professional Valuation Organisations to comply with “this code” or the “Fundamental Principles”. In addition, the IVSC has no authority to enforce compliance on Professional Valuers. Some specific examples of problematic wording are set out below:

Page 3 – paragraph number 3

“The conceptual framework approach assists professional valuers in complying with the ethical requirements of this Code...”

This phrase indicates that the Exposure Draft is actually a Code of Ethics that must be complied with by Professional Valuers. For example, as the Exposure Draft defines Professional Valuers as members of a Professional Valuation Organisation, this would mean that all Members of the CICBV would be required to comply with the IVSC Code of Ethics as represented by this Exposure Draft and that in order to achieve this, the CICBV would be required to adopt the IVSC Code of Ethics either in addition to or in lieu of its own. Such mandatory adoption is clearly not the stated intent of the Exposure Draft.

Page 3 – paragraph number 4

“The circumstances in which professional valuers operate may create specific threats to compliance with these Fundamental Principles.

The word “compliance” indicates that valuers must comply with these Fundamental Principles and that they are a Code of Ethics. We suggest replacing “compliance with” with “adhering to”.

Page 3 – paragraph number 5

“the professional valuer shall take into account whether ...”

The use of the term “shall” is prescriptive and implies mandatory compliance by the valuer and adoption of the IVSC Code of Ethics by the member organisation.

Page 3 – paragraph number 6

“the valuation assignment shall be declined or discontinued”

The use of the term “shall” is prescriptive and implies mandatory compliance by the valuer and adoption of the IVSC Code of Ethics by the member organisation.

Page 3 – paragraph number 7

“A professional valuer may inadvertently violate a provision of this Code”

The current terminology is at odds with the stated purpose of the Exposure Draft.

Page 4 – paragraph number 11

“a professional valuer shall, where possible, refuse ...” and “The professional valuer shall determine whether ...”

The use of the term “shall” is prescriptive and implies mandatory compliance by the valuer and adoption of the IVSC Code of Ethics by the member organisation.

Page i – second paragraph

“A2: A discussion of the Fundamental Principles giving specific illustrations of actions that a professional valuer should take or avoid in order to comply with those principles.”

The word “comply” indicates that valuers must comply with these Fundamental Principles and that they are a Code of Ethics. We suggest replacing “comply with” with “adhere to”.

“This Appendix does not have mandatory status...”

The phrase “mandatory status” raises the question as to whether any part of the Exposure Draft has mandatory status. The phrase would seem to imply that the Appendix is somehow different than other parts of the Exposure Draft and that those other parts have mandatory status. This seems to be at odds with the stated purpose of the Exposure Draft. Having stated that it is not mandatory, this Appendix includes the use of the word “shall” on numerous occasions. The first paragraph of each section within Appendix A.2 includes the phrase “imposes an obligation on [all] professional valuers”. We suggest that this be re-worded.

Page v – first paragraph

“A2.13 If no satisfactory safeguards to eliminate or minimise the threat to objectivity can be identified the professional valuer shall decline the assignment.”

The use of the term “shall” is prescriptive and implies mandatory compliance by the valuer.

Specific Comments on Proposed Code of Ethical Principles for Professional Valuers**Page 3 – paragraph number 7**

This paragraph indicates that a violation of a code of ethics may be deemed (we presume by the valuer) not to compromise the fundamental principles set out in the Exposure Draft if such violation was inadvertent and corrective action is taken once the violation is discovered.

It is our view that deeming a violation not to be a violation because of lack of intent or knowledge of the act is not appropriate. If a valuer violates a code of ethics it matters not that they did not know that they were committing the violation. Deeming it not a problem does not, by way of example, enable someone who has lost their objectivity to somehow have regained it.

Page iii – paragraph A2.6

This paragraph indicates that a threat to a valuer’s objectivity can be eliminated by disclosing the threat to the relevant parties and obtaining their consent. This consent would presumably be to the lack of the valuer’s objectivity.

It is our view that a valuer can undertake an engagement in circumstances where their lack of independence would bring their objectivity into question. In some circumstances business valuers act as advocates for their client, an example of this would be a corporate finance engagement where a business valuer is advising a client on the sale or purchase of a business. In these types of engagements the business valuer makes disclosure of their lack of independence and that they are acting in a non-independent manner. This is not the same as disclosing a threat to objectivity and then proceeding on the basis that the valuer is acting objectively. It is our view that if a valuer is not objective then the valuer cannot undertake an engagement which requires them to be objective.

Page iv – paragraph A2.9

This paragraph is similar to the paragraph noted above in that it makes the assertion that disclosure of a situation that could cause a perception of bias is an effective means of avoiding that perception.

Disclosing a threat to objectivity does not make a possible bias go away. Again, it is our view that if a valuer is not objective (and this must include a possible perception of such by a reasonable observer) then the valuer cannot undertake an engagement which requires them to be objective.

Page v – paragraph A2.19

This paragraph indicates that “A professional valuer shall apply the International Valuation Standards to the extent that they are applicable to the valuation assignment, subject to any statutory or regulatory requirements relevant to the assignment ...”.

Our concern with this paragraph is that it is holding the Professional Valuer to a higher standard of compliance with the IVS than is required of the Professional Valuer’s Professional Valuation Organisation. A Professional Valuer is defined in the Exposure Draft as one who is a member of a Professional Valuation Organisation that is in turn a member of the IVSC. One of the criteria for membership in the IVSC, under the category of Professional Valuation Organisation, is that the applicant be able to demonstrate “That it requires or actively encourages its members to adopt IVS in so far as is consistent with the law in the State or States in which they operate”². There is a significant difference between actively encouraging adoption of IVS (as required of the member organisation) and requiring application of IVS (as is being required of the Professional Valuer). This “code” requirement would make adoption of IVS by Professional Valuers mandatory. It is not appropriate for a member organisation to have a code of ethics that requires compliance with IVS in circumstances where the member organisation itself has not “adopted” IVS.

² IVSC website, Membership Criteria section (http://www.ivsc.org/members/apps/valuation_org.html)

We hope that this submission is helpful to you. If you have any questions regarding our comments, please do not hesitate to contact Robert H. Boulton, CA, CBV, CICBV Director, Education and Standards.

Yours truly,

A handwritten signature in black ink, appearing to read 'G. McFarlane', written in a cursive style.

Gordon G. McFarlane, CA, CBV
Chair, Professional Practice and Standards Committee