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200 W. Madison St.
Suite 1500
Chicago, IL 60606

T 312-355-4100
F 312-355-4400
www.appraisalinstitute.org

May 1, 2012

Mr. Gregory Forsythe, Chairman
Professional Board
International Valuation Standards Council
41 Moorgate
London EC2R 6PP
United Kingdom
CommentLetters@ivsc.org

RE: Request for Comments on the Exposure Draft "Procedural Guidelines for Fairness Opinions"
dated March 7, 2012

Dear Mr. Forsythe:

Thank you for the opportunity to comment on Exposure Draft "Procedural Guidelines for Fairness Opinions." On behalf of the Appraisal Institute, the Appraisal Standards and Guidance Committee ("ASGC") submits the following responses to the questions you posed in your request for comment dated March 7, 2012. As is typical, the Appraisal Institute will comment only on issues regarding real estate and in this instance those portions of the exposure draft addressing the valuation of an entity's underlying assets.

Question 1:

The Board recognises that, in many jurisdictions, laws or regulations exist that govern when a fairness opinion is required, who may provide the opinion and matters that the opinion has to address. As indicated in the preamble to the proposed Guidelines, they are intended for use where there are either no equivalent statutory requirements or to supplement statutory requirements where these are silent on matters addressed in the Guidelines. While some jurisdictions may have more prescriptive or additional requirements to those proposed in the Guidelines, the Board is interested in knowing if any of the proposals conflict or contradict national regulatory requirements.

Do these Guidelines contradict any particular regulatory requirements in the jurisdiction within which you operate? If so please provide a brief description of the conflicting provision and a reference to the relevant law or regulation.

Response:

We are not aware of any conflicting US Federal regulatory requirements.

Question 2:

The Board considered whether a distinction should be made between a fairness opinion, contained in a comprehensive and detailed report delivered to the commissioning party (sometimes known as the "Board Book" or "Board Presentation"), and any abbreviated document that is publicly disclosed. It agreed that while it is common practice to prepare a summary of the conclusions reached by the opinion provider for publication or circulation to all stakeholders, a clear line does not exist between the different formats used for reporting, and they are part of the same service.

Do you agree with this conclusion? If not, what distinctions do you believe should be made in the Guidelines between the content of an opinion intended for the commissioning party and one intended for public disclosure?

Response:

We agree that the public disclosure of a valuer's opinions and conclusions subsequent to that valuer's delivery of those opinions and conclusions in a more complete written or oral report may be part of the same assignment. This would depend on whether or not the "abbreviated document" is part of the scope of work for which the opinion provider was engaged. If this document is not part of the original scope of work, it may be considered a "new assignment;" in the alternative the engagement may be modified with mutual agreement.

Further, we recommend that the valuer be given the right to review and comment on the specific language of the public disclosure, so as to minimize the possibility of an inadvertent misstatement, as any such misstatement may be misleading.

Question 3:

Paragraphs 3 & 4 of the Exposure Draft describe what a fairness opinion is and also what it is not.

- a) Is this description consistent with fairness opinions delivered in those jurisdictions within which you operate?

Response:

Yes.

- b) Do you consider it helpful for users and in the wider public interest for the IVSC Guidelines to attempt to define the nature of a fairness opinion?

Response:

Yes.

Question 4:

The Board has tentatively decided that the Guidelines should be confined to the process of establishing independence and objectivity, matters that should be addressed in determining the scope of work, the conditions applicable to the assignment and the matters to be included in a typical fairness opinion. It considered that extending the guidance into matters that might indicate whether a proposed transaction was fair or not, e.g. the nature, extent and timing of a proposed transaction, would be impractical in an international context and could be interpreted as constraining a fairness opinion provider's judgement in certain cases.

Do you agree with the Board's decision to exclude guidance on criteria to be considered in determining whether a proposed transaction can be determined Fair or not? If you disagree, please indicate the types of additional guidance that you believe could usefully be included.

Response:

We agree with this decision as such guidance would likely address matters that are within the professional judgment of the opinion provider.

Question 5:

The Board considers it vital that the provider of a fairness opinion is sufficiently independent to provide, and be seen to provide, an Opinion that is objective and unbiased. These criteria apply to all valuation related services and the *Code of Ethical Principles for Professional Valuers* (the "Code") published by IVSC in 2011 includes discussion and guidance on how professional valuers can identify threats to their independence, and actions that may be taken to avoid or mitigate such threats. Paragraphs 10-18 of these Guidelines supplement the Code by providing some specific examples of threats to a fairness opinion provider's independence.

Do you consider that the Guidelines, when read in conjunction with the Code, adequately cover the threats to independence and objectivity that are likely to arise when considering whether an individual or firm should accept an appointment to provide a fairness opinion? If not please indicate either the additional threats that you believe should be identified or any threats that are identified in the draft that you believe should be modified or excluded.

Response:

We recommend that in addition to "considering" potential impairments to independence (Ethical Considerations, number 13, for example), any relationships that create the appearance of an impairment be disclosed.

Further, it should be made clear that the Guidelines apply to any professionals providing asset valuations to the provider of the fairness opinion.

Lastly, in the US it is not unusual for the FO provider to be indemnified against any costs of a liability claim by the transaction underwriter(s) if the provider is retained by an underwriter. This indemnification must be disclosed, as it at the least creates the appearance of lack of independence.

Question 6:

IVS 101 *Scope of Work* lists matters that should be addressed in agreeing the scope and terms of any valuation assignment. These are applicable to valuation advice contained within a fairness opinion. Paragraphs 19-21 of the draft Guidelines set out some specific matters additional to those in the IVS that should be considered when agreeing the scope and terms for providing a fairness opinion.

Do you consider that the Guidelines, when read in conjunction with IVS 101, adequately identify the principal matters that should be considered in agreeing the scope of work and terms for the provision of a fairness opinion? Please identify any additional matters that you consider should be included.

Response:

We agree that the principal matters have been adequately addressed.

Question 7:

Where a fairness opinion includes a valuation, the principles of IVS 103 Reporting are applicable. Paragraphs 28–32 of these Guidelines discuss the principles that should be considered in determining the content of a fairness opinion and then list matters that it is recommended should be included in a typical Opinion.

Do you consider that this list of recommended contents is a) helpful and b) sufficiently comprehensive? Are there any matters that you believe should be excluded, or additional matters included?

Response:

We consider this information helpful; however, we believe that the requirement that the valuation work comply with IVS that is now stated in paragraph 31 be moved to the beginning of this section

In addition, the recommendation to include the definition of "fairness" and the criteria used to provide an opinion that now appears only in paragraph 32, "Engagement background" should be included as a requirement in the content of all FOs.

With regard to assessing the credibility of other professionals who provide opinions relied on by the FO provider, we recommend that the criteria for such an assessment now included in *The Uniform Standards of Professional Appraisal Practice* (USPAP) be considered for inclusion herein. The following is taken from Standards Rule 10-3 (lines 2600 – 2604), as an example; this language is in each of the report certification Standards Rules in USPAP.

When a signing appraiser(s) has relied on work done by appraisers and others who do not sign the certification, the signing appraiser is responsible for the decision to rely on their work. The signing appraiser(s) is required to have a reasonable basis for believing that those individuals performing the work are competent. The signing appraiser(s) also must have no reason to doubt that the work of those individuals is credible.

Question 8:

Paragraph 31 r) includes some recommended restrictions and limitations for inclusion in a fairness opinion.

Do you consider that these restrictions and limitations are a) reasonable and b) applicable in the jurisdiction in which you operate? Are there any additional restrictions and limitations that you believe could usefully be added to those recommended?

Response:

Based on the broad inclusiveness of Paragraph 31 r) i., these restrictions are both reasonable and sufficient.

Question 9:

The Guidelines are intended to be helpful to those who commission fairness opinions, those who provide them and those who rely on them.

Are there any additional matters that you believe should be addressed in the guidance in order to best meet this objective?

Response:

We believe that the proposed Guidelines sufficiently cover the topic for their purposes.

We trust that you will find our comments helpful. Please do not hesitate to contact me if you have any questions regarding these comments.

Sincerely,



Paula K. Konikoff, JD, MAI
Chair, Appraisal Standards and Guidance Committee
Appraisal Institute
Ph: (212) 308-6676
Email: pkonikoff@psnyc.us