

Rio de Janeiro, May 31, 2012

MR. CHRIS THORNE  
CHAIRMAN  
INTERNATIONAL VALUATION STANDARDS COUNCIL

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Email: [CommentLetters@ivsc.org](mailto:CommentLetters@ivsc.org)

Re: Exposure Draft related to Procedural Guidelines for Fairness Opinions

Dear Mr. Thorne,

The Brazilian Committee of Business Valuers from ANEFAC (ANEFAC - CBAN) is pleased to provide the attached comments on the above referenced topic. This Valuers' Committee is recently formed and it's an effort to organize the profession in Brazil and to align our practices with the international ones, in order to strengthen our international market relationship. We appreciate this opportunity to provide you with some information about the state of fairness opinion matters in our country. If you have any questions concerning our comments, please contact us at +55 (21) 2212-6850.

Sincerely,



ANA CRISTINA FRANÇA DE SOUZA  
Managing Partner



LUIZ PAULO CÉSAR SILVEIRA  
Director

# Procedural Guidelines for Fairness Opinions

## Comments and Answers for the Questions for Respondents

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.*

**ANEFAC-CBAN:** There are no contradictions with our regulation. Brazil does not have a specific regulation about fairness opinion - we observe this practice usually identified with valuation practices. An institution called Brazilian Institute of Corporate Governance (IBGC) released a document last year stating their intention to distinguish both, but this practice is still very attached to valuation.

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?*

**ANEFAC-CBAN:** We agree partially because in Brazil, there is a specific set of rules made by Comissão de Valores Imobiliários (CVM) - which is like the SEC for the americans - called 361 instruction. It regulates some specific corporate transactions and they are not flexible about the needed appraisal reports for this cases and do not admit two types of report. As we mentioned, they do not even specify a FO report.

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?

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?

**ANEFAC-CBAN:** We consider it does not contradict with the regulation mentioned, and it can be very helpful in Brazil once this practice becomes more usual in the market and independent from the appraisal report.

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.*

**ANEFAC-CBAN:** Yes we do, though some examples assigned to specific contexts could be very helpful.

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.*

**ANEFAC-CBAN -** We consider that both documents achieve very well the securities for this activity. Additionally, we think the FO provider should consider the specific Ethics' Code of his or her country and of the specific area of expertise.

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.*

**ANEFAC-CBAN :** Yes, we consider it very complete and we did not identify any additional matter on this subject.

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?*

**ANEFAC-CBAN:** As we mentioned, there is no difference between an appraisal report and a FO report in our legislation. This guide will be very helpful here since it can state this difference increasing our economical approximation to international standards (IVSs).

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?*

**CBAN:** a) We consider it reasonable as a minimum content.

b) They are applicable here and we could add only one restriction: the appraiser do not take responsibility with the truthfulness of historic data and information, audited by third parties or unaudited, and unaudited projected data provided in writing or verbally by the company's management or obtained from the sources mentioned.

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?*

**ANEFAC-CBAN:** Our IBGC's guide here suggests the situations that a FO is required and the ethic standards the market should follow for this. The IVSC's Guide on FO could suggest the research in each country about similar documents to promote good corporate governance on this matter.