

May 30, 2012

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 IVSC Professional Board Exposure Draft – Procedural Guidelines for Fairness Opinions

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

Responses to Questions posed in the Exposure Draft

Question 1

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.

CICBV Response

To the best of our knowledge and understanding, the Guidelines do not contradict regulatory requirements for any Canadian jurisdiction as they relate to Fairness Opinions. While Canadian securities regulations (for example Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions and Companion Policy 61-101 CP issued by the Ontario Securities Commission and Autorité des marchés financiers) require Valuation Reports in the context of non-arm's length transactions, these reports are not Fairness Opinions and require a greater level of disclosure than is cited in the Guidelines or is referred to in the IVS.

Question 2

...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?

CICBV Response

The practice in Canada is that Fairness Opinions (reference can be made to CICBV Practice Standard Nos. 510, 520 and 530) are not generally intended for public disclosure, however where they are and a summary is provided, the full Fairness Opinion is usually attached to such document as well.

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? (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?

CICBV Response

- (a) Yes, the description is consistent;
- (b) Yes, we do consider it to be helpful.

Question 4

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.

CICBV Response

Yes. We concur with the approach taken.

Question 5

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.

CICBV Response

Yes. We concur that the treatment of possible threats to independence and objectivity is adequately covered. The CICBV Fairness Opinion standard requires the following disclosure with respect to the independence and objectivity of the provider “A statement that the Fairness Opinion was prepared by the Fairness Opinion issuer acting independently and objectively or facts that might results in the possible actual or perceived lack of independence and objectivity”.

Question 6

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.

CICBV Response

Yes. The principal matters that should be considered are adequately identified.

Question 7

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?

CICBV Response

We consider that the list of recommended contents is helpful. Consideration might be given to including disclosure of (a) the identity and credentials of the Fairness Opinion provider; (b) a statement that the Fairness Opinion was prepared in conformity with the Guidance; and (c) a discussion of the factors considered to be important by the Fairness Opinion provider in performing the Fairness Opinion analysis.

Question 8

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?

CICBV Response

We consider the recommended restrictions and limitations disclosures to be reasonable and applicable to Canadian jurisdictions.

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?

CICBV Response

Other than as set out in response to question 3 and in our general comments below, there are not any additional matters that we believe should be addressed in order to meet the stated objective of the Guidelines.

General Comments

1. The use of the word “Procedural” in the title of the Guidelines does not seem to be an accurate reflection of the contents of the Guidelines; perhaps the word could just be dropped from the title.
2. The title “When is a Fairness Opinion Required?” before paragraph 5; the use of the word “would” in the sentence at paragraph 5 “Examples for fiduciaries would commission a FO include ...”; and the examples that follow, create the impression that a Fairness Opinion must be completed in these circumstances. When a Fairness Opinion is required will vary by jurisdiction, is a matter that should be commented on by members of the legal profession and therefore should not be commented on in the Guidelines.
3. The comments at paragraphs 7 and 8 seem to be commenting on matter beyond the scope of professional valuers and are likely best left to members of the legal profession.
4. The section on ethical considerations indicates that a Fairness Opinion must be prepared in an objective and unbiased manner (paragraph 12) and that the onus is on the Fairness Opinion provider to demonstrate their impartiality (paragraph 14). We are of the view that the issue of whether or not a Fairness Opinion provider is required to be independent is ambiguous. It would seem from the questions posed in the Exposure Draft and the wording provided in paragraphs 12, 13 and 27 that the independence of the Fairness Opinion provider is a requirement while the report disclosure requirement at paragraph 32 (f), requires “A statement as to whether the FO provider has knowledge of any material relationships with the client, management, or other interested parties that might reasonably give rise to a perception that the FO provider’s independence is compromised”. This disclosure requirement would seem to allow for the possible perception that the Fairness Opinion provider is not independent. We would suggest that the issue of independence be dealt with through the disclosure

of facts that might result in the possible actual or perceived lack of independence and objectivity so that the Fairness Opinion user is aware of all relevant facts and considerations and is in a position to make their own assessment as to how such matters will affect their reliance on the Fairness Opinion. Such disclosure would mean that the Fairness Opinion provider would not be required to be independent and the ambiguity that seems to exist in the Exposure Draft as to whether a Fairness Opinion provider does or does not have to be independent can be eliminated. A requirement of independence will be a matter of concern to valuers who operate in jurisdictions where the independence of the Fairness Opinion provider is not currently a regulatory or commercial requirement and who also provide financial advisory services. Given the ambiguity in the Guidance, we do not believe that the Guidance will be helpful on this issue.

5. Paragraph 17 indicates that limiting the dissemination of information within the Fairness Opinion provider's firm with colleagues who might represent or be perceived by a reasonable person to have conflicting interests to be a safeguard to eliminate or significantly mitigate threats to integrity or objectivity. It is our view that the Guidelines should not provide specific advice on such matters.
6. If there is to be a requirement that a Fairness Opinion provider be independent, then we would recommend that there be a requirement for disclosure of independence in the Fairness Opinion.
7. It would appear that the reference to paragraphs 16 and 19 at paragraph 32 (f) should be to paragraphs 16 to 18.
8. At paragraph 32 (j) we would suggest that the disclosure requirement "A description of the relevant business, assets or securities" be expanded to add "sufficient to allow the reader to understand the rationale of the Fairness Opinion and the approach and various factors influencing financial fairness that were considered".

As previously mentioned, the CICBV has Practice Standards in respect of Fairness Opinions. We are pleased to note that, with respect to disclosure requirements, the Guidance and the CICBV Standards are substantially similar.

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 'Gordon G. McFarlane', with a long horizontal flourish extending to the right.

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