CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

5 July 2016

International Valuation Standards Council
1 King Street
LONDON EC2V 8AU
UNITED KINGDOM

Submission via email: commentletters@ivsc.org

Dear Council Members,

Submission on Exposure Drafts IVS 104, IVS 105 and IVA 210

Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) welcomes the opportunity to provide feedback on the International Valuation Standards Council's (IVSC) exposure drafts IVS 104: Bases of Value, IVS 105: Valuation Approaches and Methods and IVS 210: Intangible Assets.

General Comments

Chartered Accountants ANZ support the Board's move to codify existing best practice to ensure industry standards are raised allowing users of industry reports to receive deliverables from valuation practitioners that are of consistent quality.

We acknowledge the Board's attempt to resolve points of contention between various bases of valuation across the accounting/legal valuation context.

Detailed responses to each of the exposure drafts are provided in Appendices A to C.

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Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

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If you have any questions regarding this submission, please contact Liz Stamford via email; liz.stamford@charteredaccountantsanz.com.

Yours sincerely

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Head of Leadership and Advocacy

APPENDIX A IVS 104: Bases of Value

a) **Do you agree that valuers should be responsible for choosing the appropriate basis (or bases) of value according to the terms and purpose of the valuation assignment, and that the basis of value may not be one defined by the IVSC? If not, why?**

We agree with this proposition and the basis of value may not be one defined by the IVSC.

b) **Prior versions of international valuation standards included Special Value as a separate and distinct basis of value. The Board generally believes that valuers seldom perform valuations using Special Value as a distinct basis of value. Rather, valuations are typically performed using another basis of value predicated on certain hypothetical assumptions ('special assumptions") or a specific purchaser (resulting in synergistic value). Do you agree with the removal of *Special Value* as a separate and distinct basis of value? If not, please describe the circumstances in which you use Special Value as a distinct basis of value?**

We agree with the removal of *Special Value* as a separate and distinct basis of value and, if any "special value" arises in a valuation engagement because of "special assumptions" or the "special attributes" of a specific purchaser, then we consider that the relevant basis of value to be Synergistic Value as defined in the Standard and, therefore, such a basis of value is sufficient.

c) **The IVSC has retitled the previously defined Fair Value as Equitable Value in order to avoid confusion with other definitions of Fair Value. Do you agree with this change, if not why not?**

We agree with the renaming of this existing definition in the Standard. However, valuers are often engaged pursuant to governing documents like company constitutions, trust deeds and shareholders' agreements which generally do not refer to Equitable Value or Market Value but instead often refer to "fair value" or "fair market value", which are generally not defined therein and, therefore, we believe greater commentary is required in the Standard to avoid ongoing confusion and enhance its voluntary adoption.

For example, valuers normally interpret "fair value" based on common law precedent or statute if applicable. Therefore, we consider the section on "Fair Value (Legal/Statutory)" in the Standard should be better connected to the section on Equitable Value by making the following clear: The definition of Fair Value in IFRS has no connection to its generally accepted common law meaning; and Equitable Value in this Standard is a codification of the generally accepted common law meaning of "fair value", a good example of which is found in the 1986 ruling of the Supreme Court of British Columbia (Canada) in *Manning v Harris Steel Group Inc.* which stated that: "Thus 'fair' value is one which is just and equitable. That terminology contains within itself the concept of adequate compensation (indemnity), consistent with the requirements of justice and equity."

On this basis, we consider that the definition of Equitable Value in this Standard should be amended to the following: The estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties <u>and is fair and equitable between those parties in the circumstances.</u>

d) Liquidation Value has been added as an additional basis of value. Do you agree with its inclusion within IVS 2017 and are you in accordance with the definition used? If not, why not?

We agree with the inclusion of Liquidation Value as a separate and distinct basis of value in this Standard and its definition therein.

e) Replacement Value has been added as an additional basis of value. Do you agree with its inclusion within IVS 2017 and are you in accordance with the definition used? If not, why not?

We agree with the inclusion of Replacement Value as a separate and distinct basis of value in this Standard and its definition therein.

However, we consider that it should be emphasised in the Standard that not all assets can be replaced and, therefore, Replacement Value as defined may not be the appropriate basis of value to adopt in all circumstances where someone is deprived of the control of an asset, such as when a unique artwork is stolen or destroyed or land is compulsorily acquired by government or a statutory authority, in which case Market Value or Equitable Value may be the appropriate basis of value for the valuer to adopt.

f) Are there other bases of value defined by other entities/organisations that should be mentioned in IVS 104? Which ones? Why?

Yes as stated in the question on Equitable Value, valuers are often engaged pursuant to governing documents like company constitutions, trust deeds and shareholders' agreements which generally do not refer to Equitable Value or Market Value but instead often refer to "fair value" or "fair market value", which are generally not defined therein.

We have already commented on "fair value". In respect of "fair market value", we apply the definition propagated by the International Glossary of Business Valuation Terms (which are included in the Valuation Standards of the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Business Valuators and are recommended by APES 225 Valuation Services issued by the Australian Professional and Ethical Standards Board), being "the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length <u>in an open and unrestricted market</u>, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts".

This definition is very similar to that of Market Value in this Standard, the substantive difference being the reference to "in an open and unrestricted market", which we interpret to be an attempt to reflect the meaning of "fair" in the title; that is, if the market at the relevant date was not open or unrestricted, then the market value at that date would not be fair. However, we do not consider "fair market value" to be the same as "fair value" per common law / Equitable Value per IVS, because of the inclusion of the word 'market' in the title.

Therefore, we consider Fair Market Value as defined by the International Glossary of Business Valuation Terms to be a separate and distinct standard of value from Market Value and Equitable Value respectively and, in our opinion, it should be added to the Standard.

We also consider that the Organisation for Economic Co-Operation and the United States Internal Revenue Service has caused confusion by promulgating a definition of "fair market value” when they appear to be defining what others consider to be “market value”. Therefore, we consider this Standard should explicitly make this clear, so as to avoid further confusion, like the confusion that has existed from the adoption of “fair value” in financial reporting when it already had a completely different meaning in a legal/statutory context.

Any other bases of value that may exist, in our opinion, such as ‘cultural value’ are not capable of being quantified / reliably measured by a valuer and, therefore, need not be included or defined in this Standard.

We also note that in Australia for the purposes of family law / matrimonial property settlements, the parties’ interests are often valued based on the concept of “value to the owner” in accordance with a line of decisions of the Family Court of Australia culminating in Ramsay (1997 FLC 92-742). However, “value to the owner” is not a separate and distinct basis of value but an objective of the Court to arrive at an equitable outcome and, therefore, should not be included or defined in this Standard. Other valuation issues that commonly often arise in Australian family law contexts are the distinction between an asset and a (mere) financial resource of the parties and between corporate/business goodwill (an asset) and personal goodwill (a financial resource).

APPENDIX B IVS 105: Valuation Approaches and Methods

1. **Do you agree that when selecting an appropriate valuation approaches and methods a valuer should consider the following?**

   (a) the appropriate bases of value, determined by the terms and purpose of the valuation assignment,
   (b) the respective strengths and weaknesses of the possible valuation approaches and methods,
   (c) the appropriateness of each method in view of the nature of the asset, and the approaches or methods used by participants in the relevant market,
   (d) the availability of reliable information needed to apply the method(s), and
   (e) if not, why? What considerations would you add to or remove from this list?

We agree with all of the above. However, in our opinion, the Introduction to this Standard should better reference IVS 104 and the different bases of value defined therein, because the basis of value adopted by the valuer may impact upon the selected valuation approach.

For example, paras 10.7-10.8 of this Standard appear to be written on the assumption that the relevant basis of value is Market Value and, therefore, if the valuer had instead selected say, Equitable Value, the observable market information may not be as relevant to the engagement. For example, the market price information, if adopted by the valuer, may not result in a value that was equitable between the parties or that reflects the respective interests of those parties.

We also consider that a greater distinction should be made in the Introduction to this Standard between market information / valuation inputs and the Market Approach. That is, all three valuation approaches are likely to use market information to some extent, but the emphasis on the use of market information in paras 10.7-10.8 of this Standard should not be interpreted to mean that the Market Approach is superior or preferred to the other valuation approaches in all circumstances, which would be inconsistent with the purpose and intent of IVS 104.

2. **Under each valuation approach, this exposure draft includes criteria for when the approach should be used. Do you agree with the criteria presented under each approach? If no, what changes would you make? Why?**

Para 20.1 to this Standard states that “When reliable, verifiable and relevant market information is available, the market approach is the preferred valuation approach”. In our opinion this statement is too strong and should be clarified. We agree that when valuing a financial instrument that is publicly traded or very similar in nature to a publicly traded financial instrument, the Market Approach prima facie is the preferred approach.

However, most valuers are not engaged to value an asset whose value is readily observable in a public market. Generally valuers are engaged to value businesses and other assets that have no directly comparable market comparators and, therefore, valuers normally apply an Income Approach but, in so doing, use observable market information as inputs to the valuation.

We believe this Standard needs to better differentiate between the Market Approach and market information to be used as a valuation input and better communicate that, in practice, when valuing businesses or equity interests in entities that carry on a business, it is rare that valuers are able to apply the Market Approach because of imperfections in the available data.

The emphasis on the Market Approach in this Standard, in our opinion, is consistent with IFRS for the purposes of impairment testing but not consistent with the intent of this Standard, being the application of IVS 104 by valuers in varied circumstances.

One further issue is the absence of reference to an Asset Based Approach. When valuing a business that is a going concern by way of the Income Approach, we consider that it is best practice to compare such an outcome with an entity's net tangible assets (at market value) employed in carrying on the business ("Net Asset Value on a Going Concern Basis") to assess whether or not the business has any internally generated. If no goodwill exists, we consider that generally this Net Asset Value on a Going Concern Basis establishes the minimum value of the business. For example, if the Net Asset Value was $10m and the Income Approach Value was $8m, we would generally value the business at $10m not $8m, because the business has available assets of the greater amount, and not "badwill". We do not consider the discussion in this Standard under the heading Cost Approach adequately discusses such a scenario. We consider this issue particularly relevant for valuers that often value small and medium-sized enterprises as opposed to large corporates.

3. Are there areas of this chapter that you feel should be expanded upon in future board projects (e.g., discount rates, discounts/premiums, etc)?

We consider these examples (discount rates, discounts/premiums) to be logical and valid topics for future board projects that would benefit valuers.

APPENDIX C IVS 210: Intangible Assets

a) **In IVS 2013, all substantive portions of IVS 210 Intangible Assets were labelled as "commentary" (except for scope and effective date). This label seems to have created some confusion amongst stakeholders as to whether the standard was mandatory. The Board's position is that all aspects of IVS 2017 should be mandatory and this Exposure Draft has removed the "commentary" label for clarity. Do you agree with the removal of the commentary label?**

We agree with the contention that the commentary label introduced ambiguity and the decision to remove the label.

b) **Do you agree with the decision to incorporate relevant portions of TIP 3 into IVS 210 and to eliminate TIP 3 as a standalone document? Are there any other elements of TIP 3 that you believe should be incorporated into IVS 210?**

We agree with the incorporation decision. We do not believe there are other aspects that lend themselves to incorporation in the proposed standard, other than the illustrative examples which add depth to some of the inclusions from the TIP to the revised standard.

c) **In addition to the contents of IVS 105, this Exposure Draft includes criteria that should be used by an appraiser in selecting an appropriate valuation approach and method for the valuation of intangible assets. Do you agree with the criteria presented under each approach? If no, what changes would you make? Why?**

We are comfortable with the proposals within this standard as drafted. Please refer to our responses on the exposure draft IVS 105 Valuation Approaches for discussion on general approach selection.

We consider that the delineation of approaches implies that cross checking between approaches is not desirable. We recommend that cross checking across multiple approaches would increase the robustness and defensibility of the primary approach adopted, and wording to this effect in the proposed standard would be useful.

d) **The Board believes that the standard presented in this Exposure Draft can be applied in the valuation of intangible assets regardless of the purpose of the valuation (financial reporting, tax, transactions, litigation, etc.). Do you agree? If not, for what purpose(s) do you not believe this standard can be applied? Why?**

Generally, this would be a helpful way to think about the application. However, in many contexts, the accounting standards are law. Case law may exist that may be interpreted as contrary to the standard as proposed (for example goodwill is defined under the accounting framework but in legal contexts it is defined as the attractive force that develops custom, which includes some customer related intangibles).

It may be helpful to provide a carve out to enable practitioners to use legally established rules in precedent to the standard (but perhaps require an elaboration of the reason for the departure) in each jurisdiction.