



European Banking Authority
Tower 42 (level 18)
25 Old Broad Street
London EC2N 1H

10 October 2014

Dear Sirs,

Consultation Paper - Draft Regulatory Technical Standards on Independent Valuers

The IVSC is an independent, not-for-profit, private sector organisation formed with the objective of strengthening worldwide valuation practice in the public interest. It achieves this objective by:

- Developing high quality international standards and supporting their adoption and use;
- Facilitating collaboration and cooperation among its member organisations;
- Collaborating and cooperating with other international organisations; and
- Serving as the international voice for the valuation profession

The membership of IVSC comprises nearly sixty professional valuation bodies from fifty countries. The IVSC also receives financial and logistical support from a number of the global valuation firms and banks.

The IVSC has commenced a project to develop common principles for the valuations that are required to support recovery and resolution. This project is supported by a working group formed from representatives of a number of global banks and prudential regulators from different jurisdictions. Since the IVSC already has in place a Code of Ethical Principles for Professional Valuers it sees this code as being as applicable to valuations for recovery and resolution as it is to other types of valuation and therefore consideration of the attributes of an independent valuer are not within the scope of this project. Nevertheless the working group has reviewed this comment letter.

If you would like to discuss any aspects of this comment letter further please do not hesitate to contact the writer.

Yours faithfully

A handwritten signature in black ink, appearing to read 'C G Thorne', with a stylized flourish at the end.

C G Thorne
Technical Director

Responses to Questions raised in Consultation Paper

1: Do you agree that the approach followed in the draft RTS to determine and identify conflicts of interest is the appropriate one?

We broadly support an approach based on considering the materiality of any previous involvement in considering whether these create a threat to the valuer's independence. However, we do have some reservations which are detailed under "Other Points" below.

One significant omission is any guidance on how an interest could be deemed material or how a potential conflict may be actively managed to avoid an actual conflict, for example through appropriate disclosure. We reference the discussion on the identification of threats to objectivity, and safeguards that may be adopted in the IVSC's Code of Ethical Principles for Professional Valuers. This may be downloaded from the IVSC website [here](#).

Q2: Do you agree that three years is the appropriate period of time for the purposes of Article 4(5)?

We appreciate that a specific time limit helps provide certainty in applying the RTSs. However, we believe that this must be linked to the broader discussion on materiality. Something that creates a material conflict after 35 months does not cease to create that conflict one month later. An alternative approach may be to require disclosure of involvements within the past three years both before accepting the assignment and in the published valuation report, ie extending the requirement in Article 4(8).

Q3: Do you agree with the possibility to task the temporary administrator as an independent valuer, subject to the condition set forth in the above provision [art 4(6) of the draft RTS]?

On balance we agree that this should be permitted, although this may not be the norm in all EU states. In many jurisdictions the administrator will be a natural person, not a firm. That person will need different skills from a valuer and both roles would unlikely to be capable of being fulfilled the same person. If an administrator is supported by a large organisation (as is likely) then valuation specialists from that organisation could fulfil the independent valuer role, although some may prefer separation of the roles to ensure independence.

Q4: Do you reckon there are other cases of where independence should be ruled out in any case?

No.

Q5: Do you agree with the approach outlined in the impact assessment and more specifically, with the elements included in the assessment of costs and benefits?

We agree with the approach.

Other Points:

1. Preamble (3): We agree that the independent valuer must be competent in the subject of the valuation, ie they should possess the necessary qualifications, ability, knowledge and expertise. However, competency is a distinct concept from independence. Presenting competency as an attribute of independence both compromises and confuses the discussion on independence. We strongly recommend that while the RTS should require the independent valuer to possess the necessary qualifications, ability, knowledge and experience of the subject, this should be presented as a precondition that is quite separate from the regulations for determining independence.

2. Preamble (3): It is further proposed that particular competency is required in “*economics, accounting and finance including banking*”. We find it surprising that “valuation” is not first and foremost in this list. While many valuation specialists working in the financial industry will have backgrounds or academic qualifications in economics, accounting or banking, the reverse is not true. Valuation is a distinct specialism and many accountants and economists working in the finance and banking industry have no experience or knowledge of valuation. We therefore recommend that the primary requirement is experience in valuation.
3. Article 1a: It is stated that a person shall be “*deemed to be independent from both the public, including the resolution authorities and the institution....*” It appears from elsewhere in the draft that this is probably intended to be a reference to “public authorities” rather than to the public at large. We recommend that this is expressly stated to avoid ambiguity. A professional valuer following any code of ethics based on the IVSC’s Code of Ethical Principles (or many other professional codes) is specifically required to act in the public interest. In practice it is also difficult to see how any valuer can be independent from the public at large. This also applies to Article 4.
4. Article 1 (a): See point 1 above. Expertise and resources are not attributes of being independent from both the resolution authority and the institution.
5. Article 2 (1): See point 2 above.
6. Article 3 (3) and (4): We are concerned that the preclusion of the independent valuer from receiving instructions or guidance from the resolution authority or the institution is too broadly drawn and may create difficulties in practice. It is obviously important that the independent valuer is not instructed on what their valuation conclusion should be. However, without further explanation the exclusion of “guidance” may be problematic.

It is normal for any independent valuer to receive information from others, eg their client, the entity that is the subject of the valuation or another specialist which they then rely on in the valuation. This can include information on asset inventories, contracts in place or pending, legal and other expert opinions received on any matter relating the business or its assets that could affect value. For reasons of time and cost it is normal for the independent valuer to agree in their terms of reference that they may either rely on such information in arriving at their valuation opinion and have no duty to independently verify it or if they have a duty to investigate, what limits should apply. Given the speed at which a valuation to support recovery or resolution action will be required it is particularly important that the valuer is able to draw on all available sources in order to understand the extent and detail of what has to be valued. Clearly it would be unfortunate if “guidance” were deemed to include the provision of the facts and other information relevant to the subject of the valuation. We therefore recommend that this proviso be extended to clarify this point, perhaps by adding words to (4) to make it clear that (3) does not apply to the provision of information about the subject of the valuation by either the resolution authority or the institution.