

Proposed Standard: APES 230 Financial Advisory Services

Prepared and issued by
Accounting Professional & Ethical Standards Board Limited

EXPOSURE DRAFT **02/10**
ISSUED: (June 2010)

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Commenting on this Exposure Draft

Comments on this Exposure Draft should be forwarded so as to arrive by **15 September 2010**.

Comments should be addressed to:

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A copy of all submissions will be placed on public record on the APESB website: www.apesb.org.au.

Obtaining a copy of this Exposure Draft

This Exposure Draft is available on the APESB website: www.apesb.org.au. Alternatively, any individual or organisation may obtain one printed copy of this Exposure Draft without charge until **15 September 2010** by contacting:

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Reasons for issuing Exposure Draft 02/10

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to issue the Standard APES 230 *Financial Advisory Services* setting out mandatory requirements and guidance for Members who provide Financial Advice. The proposed standard will supersede the existing APS 12 *Statement of Financial Advisory Standards*.

Key requirements and guidance in ED 02/10

The proposed APES 230 includes mandatory requirements and guidance in respect of:

- Fundamental responsibilities of Members;
- Fiduciary responsibilities of Members;
- Professional Independence;
- Terms of the Financial Advisory Service;
- The basis of preparing and reporting Financial Advice;
- Client's information, monies and other property;
- Fee for Service;
- Soft Dollar Benefits; and
- Documentation and quality control.

The fundamental principles in the proposed APES 230 ED are that Members who provide Financial Advisory Services act in a Fiduciary Relationship (putting their Clients' best interests ahead of their own interests) and that in so doing they must remove conflicts of interest, particularly those conflicts caused by certain types of fees and remuneration.

This standard proposes that Members who provide Financial Advisory Services must only charge Clients on a Fee for Service basis (as defined in the standard). Such a Fee for Service minimises conflicts of interest because it is not calculated by reference to products sales or the accumulation of funds under management.

Consequently, this standard proposes that Members who provide Financial Advisory Services must not use practices that cause conflicts of interest (or perceptions of conflicts of interest) such as Commissions, percentage-based asset fees, production bonuses and other forms of fees and remuneration that are calculated by reference to product sales or the accumulation of funds under management.

As a result, Members create relationships of trust with their Clients, which is the central feature of any professional relationship.

It is proposed that these requirements will apply to all new and existing Clients (including those from whom trailing income is being received) of Members from the commencement date of this standard.

Proposed operative date

It is intended that this Standard will be operative from **1 July 2011**.

Request for comments

Comments are invited on this Exposure Draft of APES 230 *Financial Advisory Services* by **15 September 2010**. APESB would prefer that respondents express a clear overall opinion on whether the proposed Standard, as a whole, is supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed Standard.

APES 230 Financial Advisory Services

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ISSUED: [DATE]

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APESB



Accounting Professional & Ethical Standards Board

APES 230 **Financial Advisory Services**

(Issued XXXX 2010)

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1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional standard APES 230 *Financial Advisory Services (the Standard)*, which is effective from 1 July 2011. This Standard supersedes APS 12 *Statement of Financial Advisory Services*. Earlier adoption of this Standard is permitted.
- 1.2 APES 230 sets the standards for Members in the provision of quality and ethical Financial Advisory Services. The mandatory requirements of this Standard are in **bold-type (black lettering)**, preceded or followed by discussion or explanations in normal type (grey lettering). APES 230 should be read in conjunction with other professional duties of Members and any legal obligations that may apply.
- 1.3 **Members in Australia shall follow the mandatory requirements of APES 230 when they provide Financial Advisory Services.**
- 1.4 **Members practising outside of Australia shall follow the mandatory requirements of APES 230 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**
- 1.5 **Members shall be familiar with relevant Professional Standards and guidance notes when providing professional services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.6 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.7 All references to Professional Standards are references to those provisions as amended from time to time.
- 1.8 In applying the requirements outlined in APES 230, Members should be guided not merely by the words but also by the spirit of the Standard and the Code.

2. Definitions

For the purpose of this Standard:

Acceptable Level means a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the Member at that time, that compliance with the fundamental principles is not compromised.

Australian Credit Licence means a licence that authorises the licensee to engage in particular credit activities as defined in the *National Consumer Credit Protection Act 2009*.

Australian Financial Services Licence means a licence to provide financial services under Chapter 7 of the *Corporations Act 2001*.

Client for the purposes of this Standard means an individual, firm, entity or organisation to whom or to which Financial Advisory Services are provided by a Member.

Code means APES 110 *Code of Ethics for Professional Accountants*.

Commissions means all monetary amounts received by a Member from an Australian Financial Services Licensee, Client, or other party, in respect of placement or retention of the Client's funds, or purchases or sales of financial or risk products, and includes trailing commissions and income.

Fee for Service means fees determined by taking into consideration factors such as the complexity of the Financial Advisory Service, the required skills and knowledge, the level of training and experience of the Member and the Member's staff, the degree of responsibility applicable to the work such as risk and the time spent on the Financial Advisory Service.

Fee for Service does not include Commissions, percentage based asset fees, production bonuses, or other forms of fees or remuneration that are calculated by reference to product sales or the accumulation of funds under management, whether paid by the Client or a third party such as a product manufacturer.

Fiduciary Relationship means the relationship of trust created by a Member acting as a fiduciary which requires the Member to act in the utmost good faith in the Client's best interests and to always put the Client's interests ahead of the Member's interests.

Financial Advice means advice in respect of a Client's financial affairs specifically related to wealth management, retirement planning, succession planning, estate planning, personal risk management and related advice. It includes:

- (a) advice, including related taxation advice, on financial products such as shares, managed funds, superannuation, master funds, wrap accounts, margin lending facilities and life insurance carried out pursuant to an Australian Financial Services Licence;
- (b) advice and dealing in financial products as defined in section 766C of the *Corporations Act 2001*;
- (c) advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and
- (d) advice that does not require an Australian Financial Services Licence, such as real estate and non-product related advice on financial strategies or structures.

Financial Advisory Service means a service where a Member provides Financial Advice to a Client.

Financial Services Guide means a financial services guide as defined in the *Corporations Act 2001*.

Firm means:

- (a) A sole practitioner, partnership, corporation or other entity of professional accountants;
- (b) An entity that controls such parties through ownership, management or other means;
- (c) An entity controlled by such parties through ownership, management or other means; or
- (d) An Auditor-General's office or department.

Member means a Member of a Professional Body that has adopted this Standard as applicable to their membership, as defined by that Professional Body.

Member in Business means a Member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a Member contracted by such entities.

Member in Public Practice means a Member, irrespective of functional classification (e.g. audit, tax or consulting) in a Firm that provides professional services. The term is also used to refer to a Firm of Members in Public Practice and means a practice entity as defined by the applicable Professional Body.

Professional Bodies means the Institute of Chartered Accountants in Australia, CPA Australia and the National Institute of Accountants.

Professional Independence means:

- (a) Independence of mind - the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and
- (b) Independence in appearance - the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a Firm's, or a Member of the engagement team's, integrity, objectivity or professional scepticism has been compromised.

Professional Standards means all standards issued by the Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable Professional Body.

Soft Dollar Benefits means all monetary and non-monetary benefits received by a Member from parties other than the Client in connection with a Financial Advisory Service which may influence or have the perception of influencing the provision of Financial Advice by the Member. They do not include:

- (a) fees derived directly from the Client in respect of the Financial Advisory Service; and
- (b) non-recurring fixed referral fees received by a Member as a result of referring a Client to other service/product providers provided that they are not Commissions and are disclosed to the Client by the Member.

Statement of Advice means statement of advice as defined in the *Corporations Act 2001*.

3. Fundamental responsibilities of Members

3.1 A Member providing a Financial Advisory Service shall comply with Section 100 Introduction and Fundamental Principles of the Code and relevant law.

Public interest

3.2 In accordance with Section 100 Introduction and Fundamental Principles of the Code, a Member shall observe and comply with the Member's public interest obligations when the Member provides a Financial Advisory Service.

Integrity

3.3 A Member providing a Financial Advisory Service shall comply with Section 110 Integrity of the Code.

Objectivity and conflicts of interest

3.4 A Member providing a Financial Advisory Service shall be objective in accordance with Section 120 Objectivity of the Code. The Member shall maintain an impartial attitude and recommend options that reasonably meet the Client's best interests consistent with this Standard and the requirements of the law.

3.5 Members in Public Practice shall comply with Section 220 Conflicts of Interest and Section 280 Objectivity – All Services of the Code.

Professional competence and due care

- 3.6** A Member providing a Financial Advisory Service shall maintain professional competence, take due care and act in a timely manner in the performance of the Member's work in accordance with Section 130 *Professional Competence and Due Care* of the Code.
- 3.7** Where a Financial Advisory Service requires the consideration of matters that are outside the professional expertise of a Member, the Member shall seek expert assistance or advice from a suitably qualified third party, or decline the Financial Advisory Service. Where the Member relies on the advice of a third party, the Member shall disclose in any reports or other relevant communications the name and qualifications of the third party and the areas in which third party advice has been obtained.
- 3.8** When planning to use the work of a suitably qualified third party, a Member shall assess the professional competence and objectivity of that third party, the appropriateness and reasonableness of the work performed, and the fees charged.
- 3.9** In undertaking a Financial Advisory Service, a Member should consider any guidance issued by the Professional Bodies and appropriate regulatory authorities.

Confidentiality

- 3.10** In accordance with Section 140 *Confidentiality* of the Code, a Member who acquires confidential information in the course of a Financial Advisory Service shall not use that information for any purpose other than the proper performance of that Financial Advisory Service.
- 3.11** Unless a Member has a legal obligation of disclosure, the Member shall not convey any information relating to a Client's affairs to a third party without the Client's permission.
- 3.12** For the purposes of paragraph 3.11, an Australian Financial Service Licensee whom the Member represents is not considered to be a third party.
- 3.13** Where a Client has given a Member permission to disclose confidential information to a third party, it is preferable that this permission is in writing. Where oral permission is obtained, a contemporaneous note should be made and kept on file by the Member recording the relevant details of the Client's approval.
- 3.14** Where a Member provides confidential information in accordance with a legal obligation of disclosure, the Member shall notify the Client, or relevant third party as soon as practicable, provided that there is no legal prohibition against such notification.

Professional appointments

- 3.15** A Member in Public Practice who is approached by a potential Client to undertake a Financial Advisory Service shall comply with Section 210 *Professional Appointment* of the Code.

Marketing

- 3.16** A Member in Public Practice providing a Financial Advisory Service shall comply with Section 250 *Marketing Professional Services* of the Code.

4. Fiduciary responsibilities of Members

- 4.1 Where a Member provides a Financial Advisory Service, a Fiduciary Relationship will exist between the Member and the Client. The relationship between the Member and the Client arises from the agreement reached between the two parties concerning the nature and scope of the Financial Advisory Service. This relationship is characterised by the trust created by the Member's duty to act in the Client's best interests. The respective positions of strength and vulnerability within this relationship place fiduciary responsibilities upon the Member.
- 4.2 **A Member providing a Financial Advisory Service shall comply with the Member's fiduciary responsibilities to the Client. The Member shall:**
- (a) **put the Client's best interests ahead of the Member's interests and the interests of any third party; and**
 - (b) **disclose to the Client matters relevant to the Fiduciary Relationship, including disclosure of any actual, potential or perceived conflict of interests.**
- 4.3 **A Member providing a Financial Advisory Service shall assess the potential threats created by personal or business relationships and including the relationship with a third party expert engaged in accordance with paragraph 3.7, which by reason of their nature or degree threaten the Member's objectivity or Professional Independence.**
- 4.4 **Where a Member identifies an actual, potential, or perceived threat, the Member shall implement appropriate safeguards to eliminate the threat or reduce it to an Acceptable Level. Where appropriate safeguards are not available to reduce the threat to an Acceptable Level, the Member shall decline to perform the Financial Advisory Service.**
- 4.5 The extent of a Member's responsibilities deriving from a Fiduciary Relationship will depend on the particular circumstances of the Financial Advisory Service, the specific facts of the relationship, the extent of reliance and trust, and the nature and scope of the Financial Advisory Service.

5. Professional Independence

- 5.1 **A Member shall comply with the independence requirements contained in laws or regulations, such as the *Corporations Act 2001*.**
- 5.2 **When engaged to provide a Financial Advisory Service which purports to be independent, the Member shall comply with Professional Independence as defined in this Standard.**
- 5.3 **Where a Member provides a Financial Advisory Service that is restricted in scope, including where the Financial Advice or expertise is restricted to particular areas, financial products or providers, the Member shall disclose the extent of those restrictions and the resulting effect on the Member's objectivity and Professional Independence:**
- (a) **prior to undertaking the Financial Advisory Service; and**
 - (b) **at the time the Financial Advice is provided to the Client.**

6. Terms of the Financial Advisory Service

- 6.1** A Member in Public Practice shall document and communicate the terms of engagement to provide the Financial Advisory Service in accordance with APES 305 *Terms of Engagement* and this Standard.
- 6.2** Before commencing a Financial Advisory Service, a Member shall disclose in a written form to a Client or a prospective Client the following:
- (a)** the identity of the person or the entity responsible for providing the Financial Advice;
 - (b)** the nature and scope of Financial Advisory Services to be provided or offered;
 - (c)** significant factors that affect or may affect the Member's ability to provide Financial Advice to the Client on an objective and independent basis;
 - (d)** the details of and the methodology used for determining the Fee for Service;
 - (e)** information about any actual, potential or perceived conflicts of interest that may affect the Member's Fiduciary Relationship with the Client;
 - (f)** where the Member has adopted safeguards to manage or control any identified threats or conflicts of interest, information about the nature of those safeguards and an explanation of the reasons why the Member considers those safeguards to be effective; and
 - (g)** information about the nature and extent of any interests, associations or relationships, including family, contractual or agency relationships, whether of a financial nature or otherwise, that have the potential to affect the Member's Fiduciary Relationship with the Client, or the Financial Advice provided to the Client.
- 6.3** Where a Financial Advisory Service is provided to a Client on an ongoing basis, the Member shall disclose and agree with the Client in writing on an annual basis the matters referred to in paragraph 6.2(d).
- 6.4** The obligations in paragraphs 6.2 are deemed to have been met where a Member who holds an Australian Financial Services Licence or represents an Australian Financial Services Licensee provides a compliant Statement of Advice containing the relevant information.

7. The basis of preparing and reporting Financial Advice

Basis for the Financial Advice

- 7.1** A Member providing a Financial Advisory Service shall establish the basis for the Financial Advice to be provided with reference to:
- (a)** information provided by the Client; and
 - (b)** evaluation of the results of the research of alternative strategies and courses of action that can reasonably be expected to meet the Client's financial needs, objectives and priorities, including the relative effectiveness of the alternative strategies and courses of action.

- 7.2 A Member providing a Financial Advisory Service shall take reasonable steps to ensure that the Financial Advice takes into consideration:**
- (a) the agreed scope of the Financial Advisory Service;**
 - (b) the Client's financial needs, objectives and priorities;**
 - (c) the information provided by the Client;**
 - (d) significant assumptions used to develop the Financial Advice; and**
 - (e) the analysis and evaluation of the Client's situation at the time of providing the Financial Advice.**
- 7.3 A Member shall gather sufficient appropriate evidence by such means as inspection, inquiry, computation and analysis to establish a reasonable basis for the Financial Advice provided. When determining the extent and quality of evidence necessary the Member shall exercise professional judgment, considering the nature of the Financial Advisory Service, the Member's understanding of the Client's financial needs, objectives, priorities and the Client's circumstances.**
- 7.4 A Member providing a Financial Advisory Service shall agree with the Client all significant assumptions and their sensitivities that are reasonably expected to impact upon the Financial Advice. The Member shall document the significant assumptions used to prepare the Financial Advice.**
- 7.5 Where a Member who is providing a Financial Advisory Service uses estimates, forecasts or projections in the Financial Advice, the Member shall ensure that those estimates, forecasts or projections are presented and communicated in a manner that avoids the implication of greater certainty than in fact exists.**
- 7.6 A Member shall not provide a Financial Advisory Service if the Member finds that information on which the Financial Advice is to be based contains false or misleading information or omits material information.**
- 7.7 If a Member subsequently becomes aware that Financial Advice provided is based on or is likely to have been based on false or misleading information, the Member shall take reasonable steps to withdraw the Financial Advice from use by the Client. The Member shall notify the Client that the Financial Advice has been withdrawn.**

Reporting the Financial Advice

- 7.8 A Member who is providing a Financial Advisory Service shall report in a written form to the Client:**
- (a) The name of the party engaging the Member;**
 - (b) The date of the report;**
 - (c) The purpose of the Financial Advisory Service;**
 - (d) The name and qualifications of the Member(s) responsible for the Financial Advisory Service;**
 - (e) The scope of the Financial Advisory Service, including any limitations or restrictions;**
 - (f) the basis of the Financial Advice, including all significant assumptions on which the Financial Advice is based;**
 - (g) The specific information on which the Member has relied and the extent to which it has been reviewed by the Member;**

- (h) **The reasons why the Financial Advice is considered appropriate for the Client's financial needs, objectives and priorities taking into consideration the Client's circumstances; and**
- (i) **A statement that the Financial Advisory Service was conducted in accordance with this Standard.**

8. Client's information, monies and other property

- 8.1 A Member in Public Practice who holds, receives or disburses Client monies, or operates a Client's bank accounts shall comply with APES 310 *Dealing with Client Monies*.**
- 8.2 A Member in Business who holds, receives or disburses Client monies, or operates a Client's bank accounts should comply with Part A of APES 310 *Dealing with Client Monies* to the extent practicable.
- 8.3 A Member shall take reasonable steps to protect the security of a Client's information and property that is within the Member's control in accordance with applicable law, regulations and this Standard.**
- 8.4 A Member shall return a Client's property, including records, to the Client upon request, or in accordance with the terms of the Financial Advisory Service.**

9. Fee for Service

- 9.1 A Member who provides a Financial Advisory Service has fiduciary responsibilities and shall only charge Clients on a Fee for Service basis as defined in this Standard.**
- 9.2 A Member who provides a Financial Advisory Service shall comply with the requirements of paragraph 9.1 in respect of new and existing Clients, including those from whom trailing income is being received, from the date of commencement of this Standard.**
- 9.3 If there is a material change to the basis upon which the Member proposes to calculate the Fee for Service, the Member shall notify the Client and obtain the Client's written consent to the amended terms.**

10. Soft Dollar Benefits

- 10.1 Unless they are trivial or insignificant, a Member shall not accept any Soft Dollar Benefits, gifts or other incentives from a third party related either directly or indirectly to the provision of Financial Advice, which include but not limited to:**
 - Additional remuneration based on sales volumes, unless they are rebated in full to the Client;**
 - Preferential remuneration benefits received for the sale of in house financial products;**
 - Free or subsidised office rental or equipment;**
 - Free or subsidised computer hardware;**
 - Free or subsidised computer software which is commercially available;**

- **Free or subsidised attendance (including travel and accommodation), at or sponsorship of, conferences or functions of one or more days duration, conducted by a third party, where the principal eligibility is based on or related to business volumes written or held.**

10.2 Where a Member receives a Soft Dollar Benefit which is trivial or insignificant from a third party related either directly or indirectly to the provision of Financial Advice, the Member shall record in a register the benefit within 10 business days of receipt. The Member shall maintain the records for five years after the receipt of the Soft Dollar Benefit.

10.3 A Member shall make the register referred to in paragraph 10.2 available for inspection by the Client or Professional Body within 2 business days of request or as required by regulatory authorities. A Member shall include a specific reference to the availability of these records in the Member's Financial Services Guide and Statement of Advice.

10.4 Members will be deemed to have satisfied the requirements of paragraph 10.3 if they use or rely on an equivalent document provided by the Australian Financial Services Licensee they represent.

11. Documentation and quality control

11.1 A Member shall prepare working papers in accordance with this Standard that appropriately document the work performed, including aspects of the Financial Advisory Service that have been provided in writing. The documentation prepared by the Member shall:

- (a) provide a sufficient and appropriate record of the procedures performed for the Financial Advisory Service;**
- (b) evidence that the work undertaken provides a reasonable basis for the Financial Advice provided to the Client, including any recommendations accompanying the Financial Advice;**
- (c) demonstrate that the Financial Advisory Service was carried out in accordance with this Standard and other applicable Professional Standards, and ethical, legal and regulatory requirements; and**
- (d) evidence all relevant information concerning the Member's professional relationship with the Client, including:**
 - (i) information relevant to the Fiduciary Relationship with the Client; and**
 - (ii) information about how the Member has disclosed and addressed any threats or conflicts of interest arising in the course of the Client relationship or the Financial Advisory Service.**

Conformity with International Pronouncements

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 230.