



**The Institute of
Chartered Accountants
in Australia**



**AUSTRALIAN SOCIETY OF CERTIFIED PRACTISING ACCOUNTANTS
AND
THE INSTITUTE OF CHARTERED ACCOUNTANTS IN AUSTRALIA**

APS 12 Statement of Financial Advisory Service Standards

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PART 1 – INTRODUCTION

1. Scope

- 1.1 CPA Australia and the Institute of Chartered Accountants in Australia (“the Institute”) issue the following Statement of Financial Advisory Service Standards (“APS 12”) which will become operative from 1 November 2005.
- 1.2 **Members of CPA Australia and/or the Institute in public practice in Australia must follow the provisions of APS 12 when they provide *financial advice*.**
- Members in public practice outside Australia must follow the provisions of APS 12 to the extent that the provisions of APS 12 are not inconsistent with their local regulations and laws.**
- All other *members* (including those outside of Australia) must follow the provisions of APS12 to the extent to which they are not prevented from so doing due to the specific requirements of an employer, AFS Licensee or local regulations and laws.**
- Where a *member* does not comply with a provision of APS 12, the *member* must document the departure from the Standard and note the reason/s for the non-compliance.** In the case of a *member* not in public practice, the *member* should also bring the departure to the attention of their Employer or Licensee with a view to encouraging the Employer or Licensee to comply with the provisions of the Standard.
- 1.3 APS 12 covers the professional aspects of *financial advice* undertaken by a *member*, whether they are an AFS licensee or a *representative* in the provision of financial services under the Corporations Act (2001), or give *financial advice* which is not subject to licensing requirements.
- 1.4 *Members must be also familiar with all the other standards and By-laws applicable.*
- 1.5 *The Statement is not intended to detract from any responsibilities which may be imposed by law.*
- 1.6 *Members must also be familiar with and comply with any duties, obligations and responsibilities that apply under common law, the Corporations Act (2001) and other relevant legislation and the principles and practices of the AFS license holder, if any, whom the member represents.*
- 1.7 *Members providing advice in the areas of mortgage broking, finance broking or the procurement of loans on behalf of clients, with the exception of gearing facilities arranged as a consequence of other *financial advisory services*, will not initially be required to meet the standards contained herein but are encouraged to use these standards as a guide to professional practice in these areas. Notwithstanding the above, APS 12 will still apply to all other areas of *financial advice* provided by the *member*. In addition, the Joint Code of Professional Conduct will continue to apply to all members.*
- 1.8 All references to By laws, constitution, professional standards and legislation are references to those provisions as amended from time to time.

2. Purpose

- 2.1 All *members* are bound by the fundamental principles outlined in the Joint Code of Professional Conduct. This Statement has been developed to amplify the meaning of these principles as they apply to a *member’s* role in the provision of financial advisory services.
- 2.2 The purpose of the Statement is to set a standard of professional best practice for *members* in the provision of quality and ethical financial advice to *clients*.

2.3 Members must follow the standards outlined in the Statement. Members should be guided in this regard not merely by the terms of the Statement, but also by its spirit.

3. Definitions

For the purpose of this Statement:

Australian Financial Services (AFS) License means the license granted by the Australian Securities and Investment Commission (ASIC) to a natural person or corporation to perform financial services, including the provision of financial product advice, within the scope of the specific license conditions attaching to that license.

Authorised Representative means a person or a corporation who is authorised by an AFS licensee to perform or deliver *financial advisory services* on its behalf.

Client means an individual, firm, entity or organisation to which *financial advisory services* are provided on a recurrent or an on demand basis.

Engagement means an agreement, whether written or otherwise, between a *member* and a *client* relating to the provision of professional services by the *member*. However, consultations with a prospective *client* prior to such agreement are not part of an *engagement*.

Fee for Service means a charge to clients based on the criteria as specified in Professional Statement F6 – Professional Fees, that being all of the following:

- the skill and knowledge required for the type of work;
- the level of training and experience of the person necessarily engaged in the work;
- the degree of responsibility applicable to the work, such as risk; and
- the time of all persons engaged in the work.

Financial Advice means any financial advisory service carried out by the *member*. These services include, but are not limited to:

- i. Providing advice on financial products such as shares, managed funds, master funds, wrap accounts and life insurance carried out pursuant to an AFS License;
- ii. The taxation aspects attaching to such advice;
- iii. Dealing in financial products as defined in section 766C of the Corporations Act (2001); and
- iv. The provision of *financial advice* not subject to AFS licensing, such as non product related advice on financial strategies or structures.

Financial Adviser means a natural person who provides *financial advice* to a *client*. The *financial adviser* will usually hold or represent an AFS Licensee in the provision of such advice (see *Representative*).

Financial Advisory Service means the provision of professional services by a *member* in the course of assisting *clients* to manage their financial affairs specifically related to wealth and retirement planning, personal risk management and allied advice. It includes the provision of financial services as defined in Section 766 of the Corporations Act (2001), and other *financial advisory services* for which a license may not be required (see *Financial Advice*).

Member means a *member* of CPA Australia and/or the Institute and where applicable includes his or her firm.

Representative means an *authorised representative* of an AFS Licensee, an employee or director of an AFS Licensee, an employee or director of a related body corporate of the Licensee or any other person acting on behalf of the AFS Licensee.

Statement of Advice (SoA) means any written advice to the *client* within the specific meaning of section 946A of the Corporations Act (2001).

Tax Advice means that where a *member* provides advice to a *client* on tax matters related only to the *financial* advice being provided to that *client*, then the *member* is deemed to be providing advice in their capacity as a *financial adviser*. Where the *member* is asked merely to provide tax advice to a *client* and is not undertaking any other *financial advisory services* then that *member* is not deemed to be providing advice as a *financial adviser*.

PART 2 – ETHICAL CODE

The fundamental principles outlined in the Joint Code of Professional Conduct (“the Code”) must be upheld by all *members*. APS 12 has been developed to amplify the meaning of these principles as they apply to a *member’s* role in the provision of financial advisory services.

4. The Joint Code of Professional Conduct

- 4.1 The Code, which is mandatory for all *members*, recognises that the objectives of *members* involved in providing *financial advisory services* are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement.
- 4.2 These objectives require four basic needs to be met:
- i) **Credibility**
In the whole of society there is a need for credibility in information and information systems.
 - ii) **Professionalism**
There is a need for individuals who can be clearly identified by *clients*, employers and other interested parties as professional persons in the provision of *financial advice*.
 - iii) **Quality of Services**
There is a need for assurance that all services obtained from a *financial adviser* are carried out to the highest standards of performance and place the client’s interests first.
 - iv) **Confidence**
Users of the services of *financial advisers* should feel confident that there exists a framework of professional ethics which governs the provision of those services.

5. Fundamental Principles

The following fundamental principles of the Code form the basis of professional conduct by a *member* in the provision of *financial advisory services* and underpin the Standards that are set out in Part 3 of this Statement.

- B1 The Public Interest;
- B2 Integrity;
- B3 Objectivity;
- B4 Professional Independence;
- B5 Confidentiality
- B6 Technical and professional standards
- B7 Competence and due care; and
- B8 Ethical Behaviour.

PART 3 - THE STANDARDS

The Standards amplify the meaning of the fundamental principles of the Code and govern the professional responsibilities which a *member* must exercise in the course of providing financial advisory services.

The Standards are in **bold** type, followed by discussion or amplification in all other clauses. The Standards must be followed in conjunction with other professional duties of the *member*, any legal obligations that may apply including the Corporations Act (2001) and the principles and practices of the AFS Licensee whom the *financial adviser* may represent.

The appendices to this Statement are provided for assistance and further guidance on its practical application.

6. The Public Interest

- 6.1 *Members must at all times safeguard the interests of their clients and employers provided that they do not conflict with the duties and loyalties owed to the community and its laws.***
- 6.2 A distinguishing mark of the profession is the acceptance of its responsibility to the public. The accountancy profession's public consists of *clients*, credit grantors, governments, employers, employees, investors, the business and financial community and others who rely on the objectivity and integrity of *members* to maintain the orderly functioning of commerce and provide competent advice. This reliance imposes a public interest responsibility on *members*. The public interest is defined as the collective well-being of the community of people and institutions that the *members* serve.
- 6.3 The *member's* responsibility is not therefore exclusively to satisfy the needs of an individual *client* or employer. The standards of the accountancy profession are heavily determined by the public interest. For example, in relation to financial advisory services:
- i) *Members* help the public to identify and achieve their financial objectives through the provision of expert objective advice, so as to assist in the accumulation and protection of financial assets, and to ensure provision for retirement; and
 - ii) *Members* have a responsibility to increase community confidence in *financial advice*. Advice must be of a high quality, objective, ethical and in the best interests of the *client*. The aim is to ensure confident and informed decision making by *clients*.
- 6.4 *Members* have an important role in society. Investors, creditors, employers and other sections of the business community, as well as government and the public at large, rely on *members* for sound financial accounting and reporting, effective financial management and competent advice on a variety of business, financial and taxation matters. The attitude and behaviour of *members* in providing such services have an impact on the economic well-being of the community.
- 6.5 *Members* can remain in this advantageous position only by continuing to provide the public with those unique services at a level which demonstrates that the public confidence is firmly founded. It is incumbent on *members* to ensure those services are executed at the highest level of performance and in accordance with ethical requirements that strive to ensure such performance. It is important that all stakeholders are satisfied that *members* are acting honestly and in good faith.

7. Integrity

7.1 **Members must be straightforward, honest and sincere in their approach to professional work.**

7.2 This includes a duty to be responsive and accountable, committed to acting responsibly, reliably and with respect in all professional relationships.

7.3 **Employed members must observe the terms of their employment, although these cannot require them to be implicated in any dishonest transaction.**

8. Objectivity

8.1 **Members must act fairly and must not allow prejudice, conflict of interest or bias to override their objectivity. When providing financial advice, they must maintain an impartial attitude and recommend solutions that meet the client's situation.**

8.2 *Members* serve in many different capacities and should demonstrate their objectivity in varying circumstances. *Members* in public practice may undertake reporting assignments and render tax and other management advisory services in addition to the provision of *financial advice* in industry, commerce, the public sector and education. They may also educate and train those who aspire to be admitted as *members*. Regardless of service or capacity, *members* should protect the integrity of their professional services, and maintain objectivity in their judgement.

8.3 **Members must identify and manage real and potential conflicts of interest.**

8.4 **A member must ensure that the conflict is disclosed to the client together with a detailed explanation of the circumstances and details of any safeguards that will be adopted to control the conflict. This allows, the client to make an informed decision as to whether to continue with the service. If the conflict cannot be adequately managed through controls and disclosure, the member must avoid the conflict by declining to provide the financial service or referring the client to another financial adviser.**

9. Professional Independence

9.1 **In providing financial advice, a member must uphold the principles of professional independence**

9.2 **Members are reminded that there is a difference between meeting the standards of professional independence under APS 12 and the legal limitations to the use of the words independent, impartial or unbiased under section 923A of the Corporations Act. A member must not claim to be independent, impartial or unbiased or use the term/s independent, impartial or unbiased in their business or in any promotional literature unless their business operations strictly meet the provisions of section 923A Corporations Act (2001).**

9.3 Professional Statement F.1 of the Code applies to *financial advisory services* in the same manner as it applies to other forms of professional practice. Accordingly, APS 12 reiterates the professional aspects of independence as distinct from any requirements imposed by law.

9.4 Professional Independence requires:

Independence of mind: the state of mind that permits the provision of an opinion without being significantly affected by influences that compromise professional judgement, allowing an individual to act with integrity and exercise objectivity and professional scepticism.

Independence in appearance: The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information,

including safeguards applied, would reasonably conclude a *member's* integrity, objectivity or professional scepticism had been compromised.

- 9.5 A *member* providing financial advisory services must recognise the potential threats created by personal and business relationships; the acceptance of commission or other benefits; and financial involvements, which by reason of their nature or degree, might threaten his or her objectivity. In particular, the *member* must not be adversely influenced by third party remuneration in the preparation of advice to their *clients*.
- 9.6 The *member* must ensure that threats to independence are disclosed to *clients* so that the *member* can be seen to be free of any interest which might be regarded, whatever its actual effect, as being incompatible with integrity and objectivity. (*Members* are referred to Professional Statement F1 of the Code and Part 3 of APS 12 for its practical application.)
- 9.7 In accordance with Clauses 20 and 21 of this Statement the *member* must fully disclose all interests, both financial and non-financial earned from the sale of any financial product.
- 9.8 In recommending one financial product in preference to another, the *member* must make a recommendation which is appropriate to achieve the *client's* identified needs and objectives and explain the appropriateness of the recommendation in writing and in clear terms.
- 9.9 Further, the *member* must only recommend one financial product be replaced with another where it is appropriate to achieve the *client's* identified needs and objectives and it benefits the *client*. The reasons for the recommendation, a concise summary of the costs and benefits of the switch and the appropriateness of the transfer must be fully explained to the *client* in writing and in clear terms.
10. Confidentiality
- 10.1 *Members* must respect the confidentiality of information acquired in the course of their work which must not be used for any purposes other than the proper performance of professional duties for the *client*.
- 10.2 Unless there is a legal or professional duty to disclose, a *member* must not convey or disclose any information relating to a *client's* affairs to a third party without the *client's* permission (*Members* are referred to Professional Statement C5 of the Code for further information). When providing financial advisory services, an AFS Licensee whom the *member* represents is not deemed to be a third party.
- 10.3 Tax File Numbers ("TFN's") must only be collected, stored, used and secured in accordance with the Privacy Act 1988 and relevant taxation laws.
- 10.4 *Clients* may only be asked for a TFN where it is permitted by the law. A *member* must advise a *client*, that declining to quote a TFN is not an offence, but explain the consequences of not doing so.
- 10.5 Where a *member* receives a TFN in his/her capacity as a *financial adviser*, they must:
- i) Only use the TFN for a tax related purpose;
 - ii) Ensure that the TFN information is protected and secure;
 - iii) Ensure the TFN is only disclosed in accordance with the law;

- iv) **Ensure that only authorised staff have access to TFN's and that access is restricted to the proper performance of duties;**
- v) **Make all staff aware of the need to protect the privacy of individuals in relation to TFN information; and**
- vi) **Dispose of TFN information, once it is no longer required by law or for the purposes of administration, by appropriate and secure means.**

11. Technical and Professional Standards

- 11.1 **A *member* engaged in *financial advisory services* must apply the same degree of skill, competence and diligence that is required to be exercised in performing any other professional work.**
- 11.2 ***Members* must also carry out their professional work in accordance with the technical and professional standards relevant to that work (*Members* are referred to Section E of the Code for further information).**
- 11.3 **In agreeing to provide *financial advisory services* it is implied that there is a level of competence necessary to perform those services and that the knowledge, skill and experience of the *member* will be applied with reasonable care and diligence and in the best interests of the client. *Members* must therefore refrain from performing any services which they are not competent to carry out unless expert advice and assistance is obtained to ensure that the services are performed to a high standard.**
- 11.4 Further, a *member* has a continuing duty to maintain professional knowledge and skill at a level required to ensure that a *client* or employer receives the advantage of competent professional service based on up-to-date developments in practice, legislation and techniques.
- 11.5 ***Members* of CPA Australia must adhere to the minimum Continuing Professional Development (CPD) standards as outlined in the CPA Australia By-Laws paragraph 102.1(f). In addition, any *member* of CPA Australia who holds the CPA(FPS) specialist designation must meet the CPD standards outlined in By-Laws 802, 803 and 804.**
- 11.6 ***Members* of the Institute must adhere to the minimum Continuing Professional Education (CPE) requirements as set out in the Institute's Regulation 7 paragraph 1002. In addition, any *member* of the Institute holding a statutory registration in terms of Regulation 4 Para 702.1(i) is obliged to undertake at least 40% of this minimum CPE requirement in each of the appropriate speciality areas.**

12. Competence and Due Care

- 12.1 **A *member* engaged in financial advisory services must take reasonable professional care in the performance of their work.**
- 12.2 **A *member* must convey advice and recommendations to a *client* in writing and in a clear concise and effective manner.**
- 12.3 A *member* should communicate with the client in a way that builds a candid and trusting relationship, that assists the client in identifying and understanding his or her needs and objectives and that ensures clear, concise and effective explanations of the reasoning which led to the advice and the appropriateness of recommendations, to that client.
- 12.4 **A *member* must advise their *client* in writing that:**
 - i) **The *member* must make all reasonable enquiries in relation to the client's personal circumstances as required by law prior to the provision of advice, however the**

ultimate responsibility for the accuracy and completeness of the particulars and information supplied by the *client* to the *member*, rests with the *client*;

- ii) **Any advice given to the *client* is an opinion only and is based on the *member's* knowledge of the particular circumstances; and**
- iii) **There are limitations attaching to financial advisory services and the *client* should not misinterpret an expression of opinion by the *member* as an assertion of fact.**

13. Ethical Behaviour and other matters

- 13.1 ***Members* must conduct themselves in a manner consistent with the good reputation of their profession and refrain from any conduct which might bring discredit to their profession. It is important that stakeholders are satisfied that *members* are acting honestly and in good faith.**
- 13.2 It is important that *members* ensure *financial advisory services* are executed in accordance with ethical requirements. Should *members* encounter problems in identifying unethical behaviour and/or in resolving an ethical conflict they should refer to the guidelines for the resolution of ethical conflicts outlined in Joint Guidance Notes (GN1 – *Members in Business Guidance Statement*) and the assistance available from the accounting bodies to support *members* facing ethical dilemmas.
- 13.3 A *client* has an indisputable right to choose their *financial adviser* and to change to others should they so desire. If a *member* in public practice is approached by a potential *client* to take over their financial advisory work from another *member* in public practice the *members* must comply with the requirements of Sections D.6 and F.3 (*Changes in Professional Appointments*) of the Code.
- 13.4 *Members* consulting with each other in relation to their *clients'* affairs must observe the requirements of Sections D.7 and F.4 (*Referrals*) of the Code.

14. Incorrect or Misleading Information

- 14.1 **If a *member* knows or ought to know that *financial advice* is, or is likely to be, based on incomplete or inaccurate information, a *member* must immediately discuss the matter with their *client* and endeavour to persuade the *client* to correct any inaccuracy or omission involved and make reasonable other enquires with a view to ascertaining whether the information is correct in order to have the *financial advice* prepared on a factual basis, or where the financial advice has already been provided, to have it amended.**
- 14.2 **If the inaccuracy or omission is not rectified to the *member's* satisfaction, the *member* must provide a warning to the *client* in writing about the limitations of that advice and that the *client* should consider the appropriateness of the advice before acting on it.**
- 14.3 In those circumstances, the written advice should also contain a general summary of those aspects of the *client's* relevant circumstances that the *member* believes are inaccurate or incomplete. For financial advice given pursuant to an AFS License, the summary should be contained in the Statement of Advice.
- 14.4 If a *member* believes that a *client* has provided misleading information or that the advice will be based on misleading information, the *member* should consider not performing the service.

14.5 *Members* who are AFS Licensees must comply with their obligations under the Financial Transaction Reports Act (1988) in relation to due diligence, record keeping and reporting requirements including;

- i) The reporting of suspicious and other relevant cash transactions;
- ii) Verifying the identity of persons who are signatories to accounts; and
- iii) Preventing accounts from being opened or operated in a false name.

15. Terms of Engagement (Applicable to Members in Public Practice only)

15.1 The *member* must ensure that there is a clear and written understanding between the *client* and the *member* regarding the terms of engagement. Satisfaction of this requirement can be via:

- a Terms of Engagement letter;
- an Authority to Proceed;
- a Client Agreement letter;
- a combination of the above; or
- another form of agreement which meets the criteria outlined in 15.2.

15.2 *Members* must observe the requirement of APS2 Terms of Engagement in this regard when discussing new or recurring work with a *client*. At the very least the written contract for services should include:

- i) Fee and billing arrangements;
- ii) Service deliverables and timeframes;
- iii) Duration of the agreement/period of appointment (if known);
- iv) Expected frequency of contact; and
- v) Confidentiality provisions.

15.3 Where an AFS Licensee whom the *member* represents provides Engagement Letters which do not meet the standards of APS2, they will need to be amended to meet these standards. Where the AFS Licensee's requirements are stricter than the requirements of APS2 then the stricter requirements will prevail.

15.4 Appendix 2 contains a sample Letter of Engagement for use as a guide. It should be used in conjunction with the considerations outlined in APS2 and varied according to individual requirements and circumstances.

16. Estimates and Projections

16.1 A *member* must not prepare or be associated with the preparation of financial or investment projections involving the use of estimates unless their use is generally acceptable, or under the circumstances it is impracticable to obtain exact data.

16.2 When estimates are used, they must be presented in such a manner as to avoid the implication of greater accuracy than in fact exists. The *member* must be satisfied that the estimates are not unreasonable in the particular circumstances. Where estimates and/or projections are used there is to be a clear explanation to the *client*, in writing, as to why the specific estimate or projection rates used are appropriate and on what basis they are calculated.

17 Remuneration

- 17.1 **Members providing financial advice must ensure that the client is clearly advised of the total cost of advice and that the total amount paid by the client by whatever means, fairly reflects the value of the work performed.**
- 17.2 *Members* should adopt a *fee for service* approach as this is considered to be more consistent with the principles of professional independence. This applies to both initial and *ongoing* remuneration. Where the *member* accepts commissions or other incentives, the *member* is to adhere to Clauses 20 and 21 of this Statement. At a minimum, these benefits are to be fully and clearly disclosed to the *client* and the *client* is to receive appropriate advice for the total remuneration received. The *member* is referred to F6 (Professional Fees) of the Code for further information.
- 17.3 **Where, due to unforeseen circumstances, the fee is, or is likely to be, greater than anticipated or expected by the client, the matter must be discussed with the client as soon as practicable, but always prior to billing.**

18 Determining Fees (Applicable to Members in Public Practice only)

- 18.1. **Fees must not be discounted for initial engagements where there is the intention of recovering these discounts through higher charges or the provision of additional services in the future.**
- 18.2 Clause 18.1 does not apply to the following situations:
- Discounted or pro-bono work where there are not further subsequent charges or the subsequent charging level is consistent with the *members* usual fee schedule.
 - Discounts on initial advice where it is expressly agreed with the *client* and the full cost of all initial and *ongoing* advice is disclosed at the time of the initial engagement.
- 18.3 The following would be considered a contravention of Clause 18.1:
- If a *member* were to advertise 'free financial advice' or similar where the clear intention is to charge the client only by way of product placement fees or commissions.
 - If a *member* provides free or heavily discounted financial planning advice where the intention is to recoup the fees through other services such as accounting or taxation services.
- 18.4 A mere standardised percentage basis applied to all funds under management or advice is not a *fee for service*.
- 18.5 In addition to the criteria specified in Professional Statement F6 of the Code - Professional Fees in setting or charging *fees for service*, *members* should consider:
- i) *Client* requirements;
 - ii) Statutory duties;
 - iii) Levels of expertise and responsibility required and the degree of complexity entailed;
 - iv) Amount of time taken and effectively applied by the *member* and staff;
 - v) The professional and financial risk associated with providing the advice; and
 - vi) Any agreed fee basis.

19 Receipt of Fees (Applicable to Members in Public Practice only)

- 19.1 *Members* should not be restricted in how *fees for service* are received as Professional Independence comes from how *fees for service* are determined not how the fee is received. This means that *fees for service* can be collected via direct billing of the client or via the product or platform the client invests in.

- 19.2 Methods of receipt can include:
- Direct billing of client;
 - Automatic debit from financial product, platform or administration service;
 - Commission payments where they are offset against *fees for service* payable by the client;
 - Converting an agreed fee for service into a percentage amount for the purpose of debiting against a financial product, platform or administration service.
- 20 Disclosure and Reporting Fees (Applicable to Members in Public Practice only)**
- 20.1 A member must fully and accurately disclose in writing all interests, financial and non-financial, received or receivable by themselves, their AFS Licensee or a third party relating to the provision of advice given by the member. It includes payments and benefits to or from related parties that influence or might reasonably be capable of influencing advice and referral payments. Disclosure must be at a level of detail that a client would reasonably require for the purposes of deciding whether to act on the advice and must be clear, concise and transparent.**
- 20.2 Members must disclose these interests as an amount in dollars, unless the item to be disclosed is the subject of an ASIC Class order.¹**
- 20.3 *Members* should report at least annually to all clients, all fees, commissions and other remuneration received on behalf of each client to demonstrate how *fees for service* are received and applied.
- 20.4 Where the client accepts the engagement, the member must ensure that the client receives a Client Fee Schedule containing a:**
- Detailed description of all ongoing services offered;**
 - Detailed description of all ongoing fees (including annual estimate);**
 - Basis for the calculation of ongoing fees.
- 20.5 For *members* who hold an *AFS License* or represent an AFS Licensee, the obligation in Clause 20.4 will be deemed to have been met by the provision of a compliant Statement of Financial Advice, containing the relevant information.
- 20.6 If at any time after the initial advice there is a material change to the basis upon which a member's remuneration will be calculated, then a new Client Fee Schedule must be prepared and sent to the client.**
- 20.7 All fees must be disclosed whether they are directly or indirectly paid by the client. Where a percentage calculation of a portfolio value is used for fee payment, an estimate should be used based on the annual opening balance of the client's account.**
- 20.8 If a *member* is subject to a stricter requirement by the AFS Licensee they represent, or by having a stricter standard with the *AFS License* they hold, the *member* should apply that stricter standard.
- 20.9 Appendix 1 contains an example of best practice upfront fee disclosure for use as a guide. This should be varied according to individual requirements and circumstances.

¹ The current ASIC Class Orders are C/O 04/1430 on Unknown facts and circumstances, C/O 04/1431 on Costs of derivatives, foreign exchange contracts, general insurance products and life risk insurance products, C/O 04/1432 on interest payable on deposit products, C/O 04/1433 on monetary benefits and interests and C/O 04/1435 on Amounts denominated in a foreign currency.

21. Non cash and Alternative Remuneration (Applicable to Members in Public Practice only)

21.1 Alternative remuneration benefits, including soft dollar benefits received from third parties that place the interests of the *member* in significant conflict with those of the *client* must be avoided due to their potential to undermine the independence and professionalism of the advice.

21.2 ASIC² defines soft dollar benefits as all monetary and non-monetary benefits except direct client advice fees and basic monetary commissions that financial advisers and their licensees may receive if they recommend certain products. ASIC has identified certain types of soft dollar benefits that are often related to the sale of financial product to *clients* and are usually paid by third parties such as Fund Managers and Platform Providers as follows:

- i) Additional commission or benefits based on sales volumes;
- ii) Free or subsidised benefits such as:
 - Rent for office or equipment,
 - Computer hardware which would otherwise be purchased;
 - Computer software which would otherwise be purchased;
 - Meals or entertainment;
 - Attendance at Adviser Conferences;
 - Travel and accommodation to conferences or for personal use;
 - Subscriptions to magazines, journals etc; and
 - Other gifts or payments which may influence, or have the perception of influencing advice.
- iii) Sponsorship by a third party of an AFS Licensee or *representatives* function, seminar, conference or meeting;
- iv) 'Buyer of Last Resort' agreements;
- v) Cash payments and/or goods not directly attributable to a direct *client* transaction;
- vi) Marketing Support payments;
- vii) Shares or options in the product provider;
- viii) Fee rebates or profit sharing arrangements;
- ix) Differential Splits.

21.3 The receipt of the following benefits, gifts or other incentives by a *member* from a third party related either directly or indirectly to the sale of product are banned:

- **Additional commission or benefits based on sales volumes unless they are rebated in full to the client;**
- **Preferential commission or 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), 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;**
- **Cash payments not directly attributable to a direct *client* action or sales volumes;**
- **Gifts over \$300 in retail value.**

21.4 Alternative remuneration benefits received by a *member* from a third party relating to entertainment, conference attendance or sponsorship which are not volume based, that exceed \$300 on the actual cash value or best estimated retail value, must be recorded by

² Australian Securities and Investment Commission report on Soft Dollar Benefits – July 2004.

the *member* within 14 days of receipt, in an Alternative Remuneration Schedule, kept by them. Members must keep a record for five years after the receipt of a recordable benefit, or for five years after the last date of receiving a continuous or recurrent benefit.

- 21.5 The Alternative Remuneration Schedule must be made available for immediate inspection by *clients* or upon the request of CPA Australia or the Institute with 2 business days notice. Specific reference to the availability of the Alternative Remuneration Schedule is to be included in the *member's* Financial Services Guide and *Statement of Advice*, if a relevant recommendation is made.**
- 21.6 Appendix 3 contains a sample Alternative Remuneration Schedule for use as a guide. The Schedule should be varied according to individual requirements and circumstances, but should record any alternative remuneration benefits that have been received by the *member*. The Schedule should detail the company or provider of the benefit, the type of benefit, its estimated retail value and the date the benefit was received.
- 21.7 *Members* will be deemed to have satisfied the requirements of Clause 21.4 if they use or rely on an equivalent document provided by the AFS Licensee they represent.
- 21.8. Benefits, gifts or other incentives which are not banned under clause 21.3 and which are received by a *member* from one third party source but do not exceed \$300 in total over any rolling 12 month period, will be deemed to be incidental and will not be subject to mandatory disclosure in the Alternative Remuneration Schedule. However, all benefits that influence or are capable of influencing advice, regardless of size, should be disclosed in the Financial Services Guide and *Statement Of Advice* if a relevant recommendation is made. For example, a Buyer of Last Resort agreement with a bias for certain brands must be disclosed in both the Financial Services guide and in the *Statement of Advice* if a relevant recommendation is made, whether or not the agreement is offered by a Product Provider of an AFS Licensee.
- 21.9 Where a *member* attends an educational event which is not subsidised and the event has a genuine educational or training purpose, disclosure is not required. Where the *member* attends an educational event in the capacity of a professional presenter, disclosure is not required.
- 21.10 *Members* should only use the term "Rebate" to describe an amount credited to the account of their *client*. Use of the term Rebate may otherwise be misleading and deceptive. An amount or payment retained by a product provider or an AFS Licensee should be more appropriately named a "Commission Payment."
- 21.11 For the purposes of Clause 21 the standard revenue splits applied by AFS Licensees to their representative will not be banned unless there is a product bias within the Licensees remuneration schedule, wherein the sale of certain products qualify for a higher split or additional benefits in comparison to other products.

PART FOUR – ADMINISTRATION

22. Notification

22.1 *Members* must notify CPA Australia and/or the Institute when they:

- i) Commence the holding of an *AFS License*;**
- ii) Cease to hold an *AFS License*;**
- iii) Become a Representative/Authorised Representative of an *AFS Licensee* ; or**
- iv) Cease as a Representative/Authorised Representative of an *AFS Licensee*.**

This must be done as soon as possible, but no later than the return of their annual membership renewal.

22.2 *Members* must provide the full name of the *AFS Licensee* and the *AFS License* number and the effective date of the change as part of the notification required under Clause 22.1.

23. Monitoring Compliance (Applicable to Members in Public Practice only)

23.1 CPA Australia *members* compliance with this Statement will be assessed as part of CPA Australia's Quality Assessment Program.

23.2 Institute *members* may be subject to review in relation to their obligations under the Institute's Quality Review Program.

24. Enforcement

24.1 The Standards set out in this Statement are mandatory. Non-compliance can lead to disciplinary proceedings as provided in Clause 27 of CPA Australia's Constitution and By-Law 40 of the Institute.

24.2 Complaints regarding alleged breaches of the Statement by *members* shall be accepted from any individual or organisation by CPA Australia or the Institute, as relevant, for investigation and prosecution.

24.3 External complaint resolution schemes may have regard to the Statement when dealing with complaints against a *member*.

25. Transitional Arrangements

25.1 Where the items banned in Clause 21.3 are being received by a *member* as at the commencement date of APS 12, the *member* must by 31 December 2005 cease receipt of these items. In the meantime the *member* must comply with the disclosure and recording standards for these benefits.

Appendix One –Sample Fee Disclosure

- This table shows professional fees and other costs that you may be charged, together with commissions, benefits or interests we may receive from third parties in relation to the provision of services to you.
- We will advise you also of any incentives, bonuses or gifts provided to [the *member/firm/AFS licensee*] by any third party supplier. [the *member/firm/AFS licensee*] maintains an Alternative Remuneration Schedule and is available for you to view.
- Unless otherwise advised, all amounts disclosed are in dollar terms.
- The fees and costs shown may be collected in a number of ways including direct billing of you or received via the product or platform in which you invest.
- We will inform you promptly of any necessary changes to the fee structure or the billing arrangements.
- We will reconcile and report to you at least once yearly on all fees, commissions, remuneration and other benefits received.

Upfront Fees

	How and when paid/collected	Retained by our practice	Remitted to AFS Licensee	Amount/Total
Advice Preparation Fee				
Implementation Fee				
Transaction/ Investment costs. Eg: stockbroker Portfolio service				
Commissions, other benefits or interests				
TOTAL upfront cost of advice				

Annual/Ongoing Service fees

	How and when paid/collected	Retained by our practice	Remitted to Licensee	Total Annual Cost
Annual Service/ Advice fees				
Annual Wrap account fees				
Annual Portfolio management/ Investment Fees				
Annual Transaction costs (\$50 per month)				
Commissions, other benefits or interests				
TOTAL in \$				
TOTAL in % of funds invested				

Additional Fees

	How and when paid/collected	Retained by our practice	Remitted to AFS Licensee	Amount/Total
Switching Fee				
Implementation Fee				

Appendix Two – Sample Terms of Engagement Letter

The following letter is for use as a guide in conjunction with the considerations outlined in this Statement and APS 2 Terms of Engagement. It should be varied according to the individual requirements and circumstances of both the *client* and the AFS licensee. Where appropriate, additional paragraphs may be included to address Limitation of Liability (*members* are referred to APS 2 Appendix 2).

To the *Client*,

Introduction

This letter is to confirm our understanding of the terms of our engagement and the nature and limitations of the services we will provide.

Purpose of the *Engagement*

NOTE: A brief summary of the purposes of the engagement should be included. Examples of sentences which could be included follow:

1. *(Advisor's Licensee) holds an Australian Financial Services Licence to provide financial services and financial product advice and (Advisor) is our representative/authorised representative.*

2. *We have agreed to perform the following services on your behalf:*

Here insert a clear description of the services to be provided which need to be tailored to the client's instructions. For example:

- A. *Advice in relation to.....*
- B. *Advice in relation to.....*

3. *The purpose of these services is to*

4. *The procedures we will perform will be limited to those related to this purpose.*

5. *A. To assist you in understanding our organisation more and the services we provide, we enclose the following information:*

- *Our company brochure; and/or*
- *A Financial Services Guide.*

OR

B. We confirm that we have already provided you with information about our firm/ our Financial Services Guide.

Scope of the *engagement*

NOTE: Here include pertinent details of such matters as:

1. *Time periods covered by the *engagement*;*
2. *Period of appointment and time schedules;*
3. *Applicability of any legislation and of professional standards relevant to the *engagement*;*

An example of a sentence which could be included here follows:

This engagement will be conducted in accordance with the relevant standards and ethical requirements of CPA Australia and/or the Institute of Chartered Accountants in Australia.

4. *Client operations or procedures to be included in the engagement;*
5. *Details of information to be provided by the client;*

An example of a sentence which could be included here follows:

Our advice to you must be based on your personal circumstances and financial objectives. To assist us in providing services to you we need you to provide details of:

- *Your relevant personal circumstances*
- *Your financial objectives and life goals*
- *Your financial situation and financial needs.*

If we believe that you have provided incorrect or incomplete information upon which the advice is to be based, we will immediately discuss the matter with you in order to correct any misstatement or omission involved. Should we continue to believe that our advice is based on information which is incomplete or inaccurate, you shall be warned in writing that the advice might have its limitations and you should consider the appropriateness of the advice before acting on it.

6. *Other matters considered necessary or appropriate.*

Service Deliverables/Timeframes

NOTE: Here you should insert details of statements of advice or other anticipated outputs, including:

1. *Timeframes for the provision of advice;*
2. *The expected frequency of contact;*
3. *The intended use and distribution of written advice; and*
4. *The nature and effect of any anticipated disclaimer or arrangement that limits the liability of the member with respect to the client or any other user of the results of the engagement.*

Example wording to be used under this heading follows:

Our services will be provided for the purposes noted above. We disclaim responsibility for any reliance on our advice for a purpose other than for which it was prepared. Our advice will contain a disclaimer to this effect.

We must also advise you that:

- *Whilst we will make reasonable enquiries as to your personal circumstances, the responsibility for the accuracy and completeness of the particulars and information gathered in order to analyse your financial position and/or to prepare a financial plan or advice rests with you, the client.*
- *Any advice given to you is an opinion only and is based on our knowledge of the particular circumstances.*
- *There are limitations attaching to financial advice so you should not misinterpret an expression of opinion by us as an assertion of fact.*

Relative Responsibilities

NOTE: Example wording to be used in this section follows:

The conduct of this engagement in accordance with the standards and ethical requirements of CPA Australia and the Institute of Chartered Accountants in Australia means that information acquired by us in the course of the engagement is subject to strict confidentiality requirements, in addition to our

obligations under the Privacy Act 1988 (Cth) ('the Privacy Act'). That information will not be disclosed by us to other parties, without your express consent, except as required by law or professional obligation.

Our files may, however, be subject to review as part of the quality control review program of (insert CPA Australia and/or The Institute of Chartered Accountants in Australia as appropriate) which monitors compliance with professional standards by its members. We advise you that by signing this letter you acknowledge that, if requested, our files relating to this engagement will be made available under this program. Should this occur, we will advise you.

(The client) has agreed to arrange for reasonable access by us to the following people and documents, and is responsible for both the completeness and accuracy of the information supplied to us.

Fees and Billing Arrangements

NOTE: Here insert information for the client about fee arrangements.

Example wording to be used in this section follows:

The Financial Services Guide provides general information about our professional fees and how they will be disclosed to you.

Our written advice will provide information to you concerning the remuneration and benefits payable specifically for the services received by you.

In addition, our payment terms are as follows:

- a)
- b)

Where, due to unforeseen circumstances, the fee is or is likely to be, greater than anticipated or expected, we will discuss the matter with you as soon as possible, but always prior to billing.

OTHER MATTERS

Here, information should be included about the following if appropriate:

Governing Law
Jurisdiction
Limitation of Liability
Indemnity
Severability

(Refer optional paragraphs in Appendix 2 of APS 2)

Confirmation of Terms

Please sign and return the attached copy of this letter to indicate that it is in accordance with your understanding of the arrangements. This letter will be effective for xxx (future years) unless we advise you of any change.

Yours sincerely.

Signature of Member
(name and title)

Date

Acknowledged on behalf of (the *client*) by:

Signature of *client*
(name and title)

Date

3. Free or subsidised computer hardware (Banned from 1 November 2005);
4. Free or subsidised computer software which is commercially available (Banned from 1 November 2005);
5. Free or subsidised attendance (including travel and accommodation), 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 (Banned from 1 November 2005);
6. Cash payments not directly attributable to a direct *client* action or sales volumes (Banned from 1 November 2005);
7. Gifts over \$100 in retail value (Banned from 1 November 2005);
8. Entertainment/Meals;
9. Subscriptions to magazines, journals, industry associations;
10. Sponsorship by a third party of licensees, *representatives* or *authorised representatives'* function, seminar or meeting;
11. Other incentives or benefits which may have the ability to influence the advice of a *member*.

4. Description

Include a brief description of the purpose of the payment and/or benefit.

Provider of the Benefit

Include details related to the Provider of the Benefit.

5. Estimated RETAIL value

Include the actual value if known – or estimate the retail value of the benefit received or receivable. For future potential benefits, such as Buyer of Last Resort, a capital value based on the value as at the previous financial year end is to be used.

6. Category of benefit

Include the category of benefit based on the following schedule

- A. Benefits in excess of \$10,000, either in single payment or value of total benefits over a 12 month period.
- B. Benefits between \$2,500 and \$9,999, either in a single payment or value of total benefits over a 12 month period.
- C. Benefits between \$500 and \$2,499 either in a single payment or value of total benefits over a 12 month period.
- D. Benefits between \$300 and \$499 either in a single payment or value of total benefits over a 12 month period.
- E. Benefits less than \$300 (disclosure not mandatory).

7. Transitional Arrangements

Where members are currently receiving benefits banned from 1 November 2005 they will have until 31 December 2005 to cease receiving those benefits. Following 1 November 2005 no new benefits that are banned will be allowed to commence.