

AGENDA PAPER

Item Number: 4.4
Date of Meeting: 9 August 2010
Subject: ED 01/10 Dealing with Client Monies

Action Required **For Information Only**

Purpose

To provide the Board with an update on the *APES 310 Dealing with Client Monies* Project and to seek feedback from the Board on any of the comments received from respondents in response to ED 01/10 *Proposed Standard: APES 310 Dealing with Client Monies (Supersedes APS 10)*.

Background

APS 10 *Trust Accounts* (APS 10) was issued in December 2003 by the National Councils of the Institute of Chartered Accountants in Australia and the Australian Society of Certified Practising Accountants (CPA Australia) to establish the responsibility of members who hold or receive Trust Money. To assist members with APS 10 compliance, the professional bodies also issued GN3 – Operation of Trust Accounts.

At the September 2009 Board Meeting, the Board agreed that a working party be formed to progress the development of an Exposure Draft. The Board discussed draft versions of the APES 310 ED at its meetings on 8 February 2010, 10 March 2010 and 23 March 2010.

At the 23 March 2010 Board Meeting the Board agreed that:

- Paragraph 1.9 pertaining to Members in Business be deleted;
- Definitions for “assurance engagement”, “engagement” and “reasonable assurance engagement” be removed; and
- The most appropriate engagement to be undertaken of a Member’s dealing with client monies is an audit, not a review nor an agreed upon procedures engagement.

Subject to the above matters and other editorial changes, Exposure Draft ED01/10 was approved for issue via circulating resolution in April 2010 with a comment period closing 31 May 2010.

August 2010 Update

APESB received six submissions on ED 01/10 from the following respondents:

1. Australian Bankers' Association Inc;
2. Joint Accounting Bodies – CPA Australia, The Institute of Chartered Accountants in Australia and the National Institute of Accountants;
3. Deloitte;
4. Grant Thornton;
5. KPMG; and
6. William Buck.

Technical Staff are progressing consideration of these responses and the attached tabulation of general and specific comments represents a working draft with several issues yet to be resolved.

An overview of the substantive issues raised includes:

Definitions

- Auditor – the Joint Accounting Bodies have raised concerns about the definition of “Auditor”. This term is presently not defined in other APES pronouncements and the definition as drafted may create problems for future pronouncements. The Joint Accounting Bodies have suggested either amending the defined term to “Auditor of Client Monies” or to note that the term “Auditor” is only defined this way “for the purposes of APES 310”. The Technical Staff view is to amend the defined term to “Auditor of Client Monies” or a similar term.
- Trust Accounts – the Joint Accounting Bodies have advised that some Members in Public Practice are utilising outsourced service providers to manage their trust account affairs and these arrangements should be addressed within the scope of APES 310. To address this concern, the Technical Staff view is to modify the definition of “Trust Accounts” to include outsourced arrangements.
- Client Monies – the Joint Accounting Bodies have suggested that the definition of “Client Monies” be extended to Monies which have a connection with a Client, even though they may not be the property of the Client. Technical Staff support this view.
- Financial Institution – the Joint Accounting Bodies have advised that this term is not defined in the *Banking Act 1959* and that the term that is used in section 5 of the Act is “authorised deposit-taking institution”. At the July 2010 Board Meeting the Board decided to remove the definition of “financial institution” from the proposed revised APES 110 in preference to the undefined IESBA reference “bank, broker or similar institution”. Given the proposed removal of the defined term “financial institution” from APES 110, the Board could replace the proposed defined term “financial institution” with “Authorised Deposit-Taking Institution” or insert the undefined reference to “bank or similar institution” in place of the currently defined term “Financial Institution”. This issue is under review.

Scope – Extending requirements from Trust Accounts to Client Bank Accounts

Respondents have expressed concern about extending the requirements of APS 10 from Trust Accounts to Client Monies, including in particular Monies transacted through a Client Bank Account. Comments included:

- Grant Thornton: check if application to Client Banks Accounts is always appropriate – for example paragraphs 5.6, 7.2 and 7.5.
- Deloitte were of the view that the requirements of paragraphs 6.5, 7.2, 7.6(b) and 7.8 should only apply to Client Monies dealt with via a Trust Account.
- KPMG: in relation to paragraph 7.2 – recommend that the Member is responsible for ensuring interest earned is credited to the relevant Client's account in respect of Client Monies held in Trust Accounts and Client Bank Accounts which the Member has full oversight, operation and control of. Similar concerns were raised in relation to paragraph 7.3

These matters are under review.

Opening a Trust Account

Concerns have been raised by the Australian Bankers' Association (ABA) regarding the proposed requirement in sub-paragraph 5.5(c) "that the Financial Institution acknowledge in writing that it accepts the terms of notice, and confirm its understanding that Monies held in a Trust Account are Client Monies and are the property of the Client. The ABA has indicated that this proposal would create numerous legal and practical problems for banks.

From a legal perspective, the ABA has indicated that the proposed requirement would mean that financial institutions are taking on increased liability in terms of handling client monies. ABA have noted that under existing regulated trust accounts for other industries, no acknowledgement of this type is required.

Practical concerns raised by the ABA include:

- Changes to processes and IT systems would be required to manage the interest payment requirements in sub-paragraph 5.5(b) as well as updates to new application forms – this would come at a cost for little perceived benefit, and would not be without risk.
- In relation to sub-paragraph 5.5(c), while the acknowledgement by a financial institution would reflect existing banking practices in relation to excluding trust monies from account set-off and bankers' right of combination, it would require new processes and systems to issue an acknowledgement. Further, the timeframe around the acknowledgement has not been specified, which creates further risk of uncertainty around the process.
- Given that the intended objective of the APESB appears to be acknowledgement by financial institutions of the requirements around client monies in trust accounts, if these requirements do proceed, we suggest this could be better addressed more simply by updating the account application form and/or terms and conditions, rather than the approach proposed in sub-paragraph 5.5(c).

The issues raised by the ABA are under review and Technical Staff propose to liaise with the ABA to resolve this issue.

Delegation – paragraph 6.12

The Joint Accounting Bodies and KPMG have raised concerns about the delegation requirements in paragraph 6.12. The Joint Accounting Bodies noted in their submission that it is not clear why another Member in Public Practice is treated differently from solicitors or financial institution members when a Member in Public Practice delegates authority to transact on Trust Accounts to another party. There appears to be no logic to allowing a delegation to only one Member in Public Practice, whereas a delegation to a solicitor or financial institution manager requires two persons. Currently APS 10 requires that the delegation be made to two persons, including where the delegation is made to another Member in Public Practice. From a public interest perspective this may be seen as a reduction in the responsibilities attaching to Members in respect of Clients' Monies. Refer further discussion at item 16 of Constituents' Submissions – Specific Comments.

Technical Staff agree with the concerns raised and propose redrafting paragraph 6.12 to cater for any person from the stipulated categories being able to authorise transactions. In addition, it is proposed that a new guidance paragraph be inserted to suggest it is preferable to have two people.

Time Periods

Some concerns were raised by respondents about the time periods to undertake particular obligations. Technical Staff will undertake a review of all suggested time periods.

Audit Obligations

Respondents expressed concerns about the extension of audit obligations from Trust Accounts to dealing with Client Monies via a Client Bank Account. Views include:

- Deloitte – section 8 should apply solely to Client Monies dealt with through a Trust Account;
- KPMG – do not consider it appropriate to extend the requirement to dealings with Client Monies through Client Bank Accounts, especially where Members do not have full operation and control of a Client Bank Account.
- William Buck – questions the applicability of APES 310 requirements to circumstances where the CFO role is outsourced to a Member in Public Practice and the Member operates Client Bank Accounts on behalf of the Client's on the instruction of duly authorised directors or management. In particular, if the Client's financial statements, including banks accounts, are already subject to audit, would a separate audit be required on the same transactions administered by the Member?

The Joint Accounting Bodies and KPMG have commented that clarification is required about what is meant by "applicable year end". This could be interpreted by Members to be 31 March, 30 June or 31 December. In addition, it may allow a Member to vary their year-end from year-to-year. The Joint Accounting Bodies have suggested that the applicable year-end must occur within 12 months of the month-end following the opening of a Trust Account or the Member first becoming a signatory to a Client Bank Account. There is also an issue about whether a Member should be allowed to vary their year-end from 31 March (as per the existing requirements of APS 10) to say 30 June on transition to APES 310.

The Joint Accounting Bodies have questioned why there is no obligation on the auditor to seek approval from the Professional Body to resign as the auditor of a Member's Trust Account. However, a Member in Public Practice must seek approval from the Professional Body to change the existing auditor.

The Joint Accounting Bodies have questioned why paragraph 9.2 requires all audit reports to be lodged with the applicable Professional Body, whereas APS 10 only requires lodgement of qualified audit reports. The Joint Accounting Bodies have indicated that only modified audit reports be lodged with the applicable Professional Body.

The matters noted above are under review.

Staff Recommendation

The Board note the progress of the Client Monies Project and provide Technical Staff with feedback on any of the comments received from respondents on ED 01/10.

Materials Presented

- Working Draft [3 August 2010] Constituents' Submissions General Comments – Exposure Draft ED 01/10 Proposed Standard: APES 310 *Dealing with Client Monies*; and
- Working Draft [3 August 2010] Constituents' Submissions Specific Comments – Exposure Draft ED 01/10 Proposed Standard: APES 310 *Dealing with Client Monies*.
- ED 01/10 *Proposed Standard: APES 310 Dealing with Client Monies (Supersedes APS 10)*.

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Date: 3 August 2010