

30 August 2010

The Chairman
Accounting Professional & Ethical Standards Board Limited
Level 7, 600 Bourke Street
MELBOURNE VIC 3000

Dear Sir

APES 230 ED

As requested in Exposure Draft 02/10 at the Request for comments section on page iii this comment should be taken as **not** being in support of the issue of the proposed standard in its current form, nor with its current proposed date of effect.

I make the following key points to support my making this stand before moving to a more detailed commentary on specific provisions of the proposed standard:-

1. timing of the date of effect is a serious concern that will, if proceeded with, lead to another standard that will be observed in the breach by (probably) every member who is a financial planner – or members such as myself (with a strong background of having served CPA Australia in their Ethics and Disciplinary areas) will need to resign so as to avoid breach of a standard that will not be possible to comply with;
2. our firm provides services to corporate superannuation plan sponsors and members under circumstances whereby ongoing services contracted with the employer are provided to the employee members – and whereby the members superannuation accounts are charged a fee for that service based on a percentage of the ever-changing account balances. There is obviously a cross-subsidising of the cost of these services in any one or more financial years, but to structure the fees under current industry circumstances so as to comply with the proposed standard will not be possible within the currently proposed timeframe;
3. personal risk insurance services are vital to the economic well-being of the Australian economy and the level of under-insurance in this country is well documented. Our experience is that the time and cost factors in writing business in the competing scenarios of: a) low-level cover; and b) clients with suspect health history, mean that the determination of an appropriate fee for initial advice is almost, if not impossible to determine at a time to comply with the provisions of the proposed standard – particularly as the industry is not going to be ready with a solution by the July 2011 proposed implementation date.

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Having made those points – and prior to embarking on commentary on specific provisions of the proposed standard – I hasten to add that the format and structure of the proposed standard is preferred to the more prescriptive format found in APS 12. Unfortunately, some of that prescriptive note in APS 12 will be lost when the standard is in force and should perhaps be retained, to the extent that they remain applicable, somewhere in the records by way of a guide as to the 'spirit of the standard'.

Please note my comments in relation to the following paragraphs of the proposed standard:

Paragraph	Comment
2	Definitions: Acceptable Level – consider adding: "Where the issues and concerns that give rise to a concern about the breach of Fiduciary Relationships; and a fully disclosed, open discussion of the facts with the client resolves that the Client is willing to waive those concerns in writing, no such threat, real potential or perceived will exist."
2	Definitions: Commissions – the inclusion of the words 'and income' at the end of this definition leaves the definition way too broad to be able to be applied; the definition generally seems to miss the commercial definition of what constitutes a 'commission'.
2	Definitions: Fee for Service – the second paragraph of this definition seems to leave it open for fees to be collected by reference to a percentage provided that they are not calculated by reference to 'product sales' or to 'the accumulation of FUM'.
2	Definitions: Fiduciary Relationship – the interpretation of the meaning of this term could be quite subjective, particularly the phrases: 'in the utmost good faith in the Client's best interests'
2	Definitions: Professional Independence – the phrase 'the avoidance of facts and circumstances' would appear to preclude any member who is an Authorised Representative (AR) from being able to meet the standard set by this proposed standard. The very process of having an AFSL holder influencing aspects of how a member's financial advisory practice will be financially operated and structured would, unless there are 'safeguards' contemplated that would be 'adequate' for purposes of this definition, be difficult to prove Independence.
2	Definition: Soft Dollar Benefits – this is an onerous and burdensome requirement from an administrative point of view when 'all' benefits which 'may influence or have the perception of influencing' certain advice is so subjective. Movie tickets and sporting event entry are occasionally provided to advisers post-advice events, but may be seen by some clients as potentially having been targeted when the advice was being delivered: these tickets are sometimes of values less than \$25. There needs to be a practical interpretation of how this definition should be applied administratively.
4.2 (a)	As written, I believe that the provision is too open to subjective determination and could be proven against a member who in fact has taken measures 'in good faith' to attain the 'best outcome' for a client: a preferred wording could include the following:- "(a) exercise the utmost good faith to put the client's best interests ahead of all other considerations and interests in the relationship; and"

Paragraph	Comment
4.3	I believe the provision would be enhanced by adding words so that it would then read:- "Where a Member exercising professional judgement identifies an actual, potential, or perceived threat to the Member's fiduciary responsibility to the Client, the Member shall(continuing as currently drafted)." Note also the recommendation for further words to be added to the definition of 'Acceptable Level' above.
5.2	Does the fact that the ASIC precludes ARs from using the term Independent in the marketing and promotion of their services, exempt members of the ascribing professional bodies from obligation under this section?
6.2 (d)	I don't understand the relevance to the Client of disclosing the methodology used in calculating fees: the omission of the phrase 'and the methodology used for' would leave a workable solution.
6.2 (e)	I don't understand the use of this provision unless the client has a right of waiver (refer comments on Acceptable Level definition). Provision 6.2 (f) provides for action to offset/ negate by the Member.
7	Heading: include the word 'quality' before the words 'Financial Advice'. This will give fruition to the desire expressed in provision 1.2 for 'the provision of quality and ethical' services.
7.1 (a)	Consider adding the words 'and/ or verified by the Client where otherwise sourced' after the words 'provided by'; as this covers for Members sourcing information from related records or advisers and allows for the reconciliation of what might otherwise appear conflicting statements 'of facts'.
7.1.1	(your numbering optional): add a provision, not in block type, along the following lines:- "Where a client seeking advice where scope has been limited, the Member will be seen to have complied with this provision if they record that options were precluded by the client (whether raised by the Member or not)."
7.5.1	(your numbering optional): add a provision, not in block type, along the following lines:- "Where a Member discloses the matters in 7.4 and 7.5 in the text of a valid Statement of Advice, they will be seen to have complied with these provisions."
7.8 (i)	I don't understand the need for this provision, particularly in a situation where not all advisers in an office will necessarily be Members of an ascribing professional body. The requirement would add an administrative burden to the compliance regime in such an office. What does the requirement do for the protection of the Client?
9.2	This provision imposes a severe commercial and practical disadvantage on Members of the ascribing professional bodies.


Thank you for the opportunity to comment on the proposed standard. I look forward to receiving your acknowledgement of receipt – and to improvements to any aspect of the proposed standard you consider appropriate based on the above comments.

I am available to discuss the theme of the comments at any convenient time: if requiring such discussion, please contact my office on the numbers and/ or contact details showing in my letterhead.

[Copies of this submission have been made available to the following stakeholders:-

- CPA Australia – Centre Of Excellence: Retirement savings – Chair
- CPA Australia – General Manager, Public Practice: Peter Docherty
- Head of Business – Securitor Financial Group Limited: Neil Younger]

Yours faithfully
Continuum Financial Planners Pty Ltd



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