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Ms Kate Spargo  
The Chairperson  
Accounting Professional & Ethical Standards Board Limited  
Level 7 600 Bourke Street  
MELBOURNE  
VIC 3000

**SUBMITTED VIA THE APESB WEBSITE PORTAL**

21 September 2010

Dear Ms Spargo

**Response to Exposure Draft APES 230 – Financial Advisory Services**

The purpose of this document is to respond to the Exposure Draft of Proposed Standard APES 230 Financial Advisory Services ("APES 230") issued by the Accounting Professional & Ethical Standards Board ("APESB").

Our business, GGBwealthcare Pty Ltd, operates as a Sydney based multi-family office serving the needs of a limited number of ultra high net worth families who are domiciled across Australia and elsewhere in the world.

We have our own AFSL (number 340355), which allows us to advise and deal on a wide range of issues with our clients. Importantly, all our clients qualify as wholesale/sophisticated investors and, in terms of our client engagement documentation, we require client authorisation before we execute any instruction or implement any advice.

As you would expect, independence, objectivity, integrity and respect for privacy and confidentiality are paramount for the success of our business. Accordingly, we accept no rebates, retrocessions, commissions or any other incentives from any financial institution with which we place funds and, more importantly in our view, our advice is entirely unfettered as we are not owned by a financial institution and therefore do not act as a 'Trojan Horse' distribution channel for any manufacturer's financial product. **Accordingly, irrespective of the fact that the bulk of our revenue is determined by reference to the quantum of funds under our influence (a percentage based asset fee arrangement), we believe that our business is absolutely designed to avoid conflict of interest.**

We are a small business employing highly qualified people - 60% of our staff complement is made up of Chartered Accountants – and we consider our culture to be deeply aligned with rendering the highest levels of client service and constantly sensitised to the 'fiduciary duty' we have towards our clients.

**General comments**

Accordingly, whilst we are encouraging of strengthening professional standards in the area of financial advisory services and are, on balance, broadly supportive of the proposed standard's sentiment, we are concerned that insufficient thought has been given to the practical implications and ramifications of certain aspects of the new standard, most notably that of banning percentage based fee arrangements.

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We are of the opinion that APES 230 should focus on enhancing the quality of advice provided and the nature of disclosure required for those Chartered Accountants operating within the financial advisory services industry.

In our opinion, there is no 'silver bullet' in terms the basis on which financial advisory services fees should be levied as every basis, including the accounting profession's classic hourly charge-out rate, is open to manipulation and potential conflict of interest if the DNA and character of the individual or firm is questionable. **The crux of the issue, in our view, is that an advisor should only be paid by the client as this aligns behaviour, avoids conflict and forces a 'conversation' about the fees being proposed.**

Accordingly, we are supportive of the clamping down on sales related commissions, production bonuses and product manufacturer trail fees as these, in our opinion, are designed to inappropriately influence advisor behaviour and do result in recommendations being made which are not in the client's best interest. The common factor here is that the client pays none of these to the advisor – they are all paid out of the product provider or 'house' portion of the fees as an inducement to, or reward for, required advisor behaviour.

We feel that percentage based asset fees are something entirely different and find it difficult to understand why they have been placed in the same category as those mentioned above. **Charging a client based on a percentage of assets is just another way of levying a fee for service.** If the APESB wants to provide some guidance to practitioners in this regard, our thoughts are that the following could be considered:

- invoices be raised by the advisor and specifically paid by the client
- some form of sliding scale, appropriate to that advisor's business, should exist
- an acceptable percentage range be proposed
- it should apply to net and not gross assets in cases where leverage is used

In our view, there has to be a better, fairer and more elegant approach to regulating inappropriate financial advice and conflicts of interest by a small minority of Chartered Accountants to ensure that the public interest is better served than by including the wholesale banning of percentage based asset fees in APESB 230.

Interestingly, if one speaks to the Chief Executive of any listed organisation, who is attempting to put in place a sustainable cultural framework underpinned by ethical behaviour (much as is incorporated in the APESB's mandate), you will find that introducing rules and sanctions which impact everyone in an effort to eradicate the behaviour of the 'delinquent 3%' undermines much of what is being created as it sends the wrong message to the 97% who operate within the framework. The solution is to implement processes which highlight such delinquent behaviour and then to act proactively, decisively and consistently in removing it from the fabric of the organisation.

Additionally, we believe that the proposed requirements of APES 230 extend beyond the requirements of current legislation such that Chartered Accountants will be placed at a distinct competitive disadvantage to those financial service advisors not subject to the requirements of the standard. As we all know, the foundation of the revenues earned by the advisory services divisions of the private banking, asset management and wealth management industries is an asset-based fee charging structure. It is also in these industries that many Chartered Accountants operate as financial advisors.

### **Concluding observations**

Consequently, if one stands in the shoes of the Chartered Accountant who works as a principal, partner or adviser in an organisation in the broader financial advisory services industry where percentage based asset fees are the predominant form of charging, it could reasonably appear that his/her controlling body, via APES230 as currently drafted, may not have taken the necessary time to deeply understand the potential consequences of the proposed standard from their perspective.

Questions, which could potentially be on any such Chartered Accountant's mind, include:

- Am I going to need to resign from my current employer and attempt to get re-employed by a business whose practices are APES 230 compliant so that I can fulfil my KPI's without being in conflict with my regulatory body?
- Why are the real issues that underpin the current environment of conflict of interest within financial services not being proactively addressed?
- Will the banks, wealth managers and product manufacturers which employ Chartered Accountants in advisory positions successfully lobby for some form of exemption for their employees, thereby varying the landscape for fellow Chartered Accountants based on their selected employer?
- Have the ICAA, and the other two accounting bodies, contemplated the potential resignation of a material number of members as a consequence of the implications of APESB 230?
- If such fallout occurs, will the needs of the remaining members be able to be adequately served by a lower membership base and a further fragmentation of the professionally qualified accountant?
- How are the needs of the general public better served by making the most qualified individuals within the financial services industry materially change the structure of their businesses and the basis of their value proposition?

Accordingly, we strongly urge the APESB to reconsider the proposed banning of percentage based asset fee arrangements.

If you have any questions or require clarification on any of the points raised, feel free to contact the writer on 0422 080 902 or [kbetty@ggbwealthcare.com](mailto:kbetty@ggbwealthcare.com)

Yours sincerely



**KEITH BETTY**

Director