

15 October 2010

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The Chairperson
Accounting Professional and Ethical Standards Board
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Dear Board Members

WHK Group Limited
ABN 93 006 650 693

Proposed Standard APES 230

This letter is the submission of WHK Group Limited (**WHK**) into Proposed Standard APES 230.

WHK is a listed Australasian financial services company, the fifth largest accounting business based on annualised fee income and a member of Crowe Horwath International. WHK is the 17th largest provider of financial planning advice in Australia in terms of funds under advice but more importantly, it is the second largest non-affiliated provider in the sector. WHK aims to provide "total financial solutions" to its client base which is focussed on the SME and high net worth sectors.

Set out below are the key aspects that WHK wishes to comment with respect to APES 230. WHK is a member of Accountant Financial Adviser Coalition (**AFAC**) and has also been working with the Mid-Tier Accounting companies on APES230.

1. Alignment with Future of Financial Advice

The Government has established a reform agenda through the Future of Financial Advice (**FOFA**) proposals. The reform agenda, once finalised and implemented, is likely to have a significant, and overall positive, impact on the financial planning industry and consumers. As with any reform agenda, this is likely to involve a period of adjustment and considerable time, resources and cost to implement.

We believe that it is premature to implement APES 230 when the Government has not released legislation and the issues expected to be addressed in the legislation are likely to overlap with the issues dealt with in APES 230. There would appear to be a number of areas where APES 230 and the current FOFA proposals do not align, such as treatment of insurance commissions, retrospectivity, some definitions and the timing of implementation. Inconsistency between the two proposals will add complexity and cost, which ultimately will be passed through to the consumer and is likely to detract from, rather than reinforce, the benefits from the Government's reform agenda. There is also likely to be unintended consequences.

Recommendation: We believe it would be better to understand the Government's changes and to seek consistency between the Government changes and what is proposed under APES 230.

2. Imposition of Prescribed Fee Models

We do not agree with APES 230 seeking to impose prescribed fee models. Our concerns include:

- the model proposed is largely input based and has no consideration to the value delivered to a client; and
- it limits a consumer's choice with no benefit – indeed, providing the consumer with more choice may be in the consumer's best interests.

Furthermore, we would question whether the role of a professional body should encompass imposing fee models to be used by its members.

We are of the view that consumers should be given the choice as to whether a fee for service remuneration model or some other remuneration model is used, provided that the remuneration model is consistent with current legislation. We believe in an open architecture of fee models, as long as the client is fully informed and in agreement with both the amount of the fee and how it is charged.

Recommendation: We recommend that APES 230 should not prescribe fee models as a means of quality advice control.

3. Fiduciary Duty

We agree that financial advisers are under a fiduciary obligation when dealing with their clients. However, we are concerned about the approach taken in APES 230 in seeking to address this issue through, inter alia, the approach to defining "Fee for Service". Our concerns include the exclusion of percentage based asset fees and remuneration based on the accumulation of funds under management and alignment to the FOFA reforms.

A key principle in considering fiduciary duty and remuneration is whether the profit and conflict rules have been breached. Where a fee characterised as a percentage of a portfolio's sum, but nevertheless arrived at by reference to such factors as complexity, degree of difficulty, professional knowledge, risk, time and resources, is fully disclosed to the client, as well as accepted by the client we would contend there is no breach of the profit and conflict rules. Furthermore, asset based fees (when agreed by the client) create a clear alignment in that both the adviser and the client are focussed on the client's portfolio performance being positive.

Additionally, we believe that attempting to define a fiduciary duty ahead of proposed FOFA reforms is premature, and may result in a number of unintended consequences.

Recommendation: We recommend that APES 230 should not seek to define a financial adviser's fiduciary duty ahead of the FOFA reforms. We believe it would be better to understand the Government's changes and to seek consistency between the Government changes and what is proposed under APES 230.

Should you have any questions or wish to discuss any of the matters raised, we would be happy to discuss any aspect of this submission.

Yours sincerely

A handwritten signature in black ink that reads "Kevin White".

**Kevin White
Managing Director**

