

The Chairperson  
Accounting Professional & Ethical Standards Board Limited  
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31 May 2010

Dear Kate,

## **Response to Exposure Draft APES 310 – Dealing with Client Monies**

We appreciate the opportunity to respond to the Exposure Draft of Proposed Standard: APES 310 Dealing with Client Monies (“APES 310”) issued by the Accounting Professional & Ethical Standards Board (“the Board”).

Overall, we are supportive of strengthening of professional standards in this area, however we have a number of general and specific comments in respect of Exposure Draft APES 310 which are set out below. Specifically, we are not supportive of extending current audit requirements beyond the audit of Trust Accounts.

### **General Comments**

#### *1. Black letter requirements to perform certain activities within a set number of days*

There are numerous black letter requirements throughout APES 310 requiring the Member to perform certain activities within a set timeframe. For example:

**6.3 A Member in Public Practice receiving Client Monies where the payee is no longer a Client, or the intended recipient is unknown to the Member, shall return the Monies within 10 Business Days to the drawer or sender as appropriate.**

There may be practical reasons why the Member would find it difficult to comply with the requirements in the set timeframes. In addition, many timeframes appear arbitrary in the absence of any legislative requirements. The Member may therefore inadvertently breach the Standard due to circumstances that fall outside of the Member’s control.

We propose the Board consider the following amendment be added to the black letter deadlines within the Standard to recognise a principles-based approach which is more appropriate for an ethical standard than requirements that do not allow for any flexibility:

**6.3 A Member in Public Practice receiving Client Monies where the payee is no longer a Client, or the intended recipient is unknown to the Member, shall return the Monies within 10 Business Days, or as soon as reasonably practicable, to the drawer or sender as appropriate.**

This very clearly provides the timeframe that is considered acceptable, but also allows flexibility without weakening the requirement.

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## 2. *The application of certain requirements to both Client Bank Accounts and Trust Accounts*

APES 310 extends certain current requirements beyond Trust Accounts and Trust Account Records to also include dealing with Client Monies through Client Bank Accounts. However a Trust Account is owned by the Member who establishes it, whereas a Client Bank Account is owned by the Client who provides the authority to the practitioner to action transactions on their behalf - this is an important distinction that is not reflected in the requirements of APES 310.

While we agree that general ethical principles should apply to dealing with Client Monies, whatever the method, there are a number of paragraphs in APES 310 that we believe should only apply to Trust Accounts and should not extend to Client Bank Accounts. A few examples are set out below:

<p><b>5.6 A Member in Public Practice shall inform the Client in writing:</b></p> <p><b>(a) no later than at the time of initial deposit, the details of the Financial Institution at which the Client Monies are to be held; and</b></p> <p><b>(b) if there is a change to the existing Financial Institution arrangements, within 10 Business Days where the Client Monies are held.</b></p>	<p>Control of Client Monies in a Client Bank Account is often limited to cheque signing authority or limited authority over EFT transactions for certain engagement types (i.e. payroll, payment of invoices). In these circumstances, the Client retains ownership and control of the Client Bank Account, including any changes to any financial arrangements.</p> <p>Therefore we do not believe the Member would be in a position to inform the Client of activities that do not form part of the Client instructions and are outside their control, such as a change in financial institution arrangements, the credit of interest, etc.</p>
<p><b>7.2 A Member in Public Practice shall ensure that all interest earned on Client Monies is credited to the relevant Client's account.</b></p>	<p>As above, the Member would not have any control over how and where interest is earned on Client Monies in a Client Bank Account.</p>
<p><b>7.5 Subject to legislative requirements, a Member in Public Practice shall take all reasonable steps to ensure that the Client authorises the Member's Professional Body access to all documentation in respect of Client Monies for the purposes of an inspection, quality review or disciplinary proceedings of the applicable Professional Body.</b></p>	<p>It may not be appropriate for confidentiality and privacy reasons for the Professional Body to have access to "all documentation" in respect of Client Monies, for example, documentation that may relate to a Client Bank Account. We suggest that the Board consider amending the wording to read "<b>access to <u>the Members Records</u> in respect of Client Monies</b>".</p>

We believe several other provisions (see for example paragraphs 6.5, 7.6 (b) and 7.8) should also only apply to Client Monies dealt with via Trust Accounts for the reasons outlined above, and not to Client Monies dealt with via Client Bank Accounts.

We request that the Board to review the requirements and ensure that Trust Account oversight is not extended to Client Bank Accounts where it is not required.

### 3. Section 8: Audit of a Member in Public Practice's compliance with this Standard

It appears from our reading of APES 310 that the current annual audit requirement under section 34.1, APS 10, which only applies to Trust accounts and Trust Account Records, will be extended to include an audit of compliance with APES 310, which includes dealing with Client Monies through Client Bank Accounts.

Section 8.1 states:

**8.1 Subject to legislative requirements, a Member in Public Practice shall ensure that the Member's compliance with the requirements of this Standard is audited annually within 3 months of the applicable year end.**

We are not supportive of the audit requirement being extended beyond what is currently required under APS 10, specifically the audit of the requirements in respect of Trust Accounts.

A Client retains ownership of a Client Bank Account and can oversee the Members actions, withdraw their authority at any time and verify that the Member is executing their instructions. There is no overriding public interest that supports extending the audit requirements beyond Trust Accounts.

We consider this extended audit requirement will cause an unreasonable and new burden on any firm that does not maintain a Trust Account and may only have dealt with Client Monies through Client Bank Accounts on an ad hoc basis.

Further, the intention of the Board and its basis for extending the audit requirement is unclear as the media release issued by the Board in respect of APES 310, dated 6 April 2010, states:

*"...the annual audit requirement for accountants who have dealings with client monies will continue to apply"*

This suggests that the intention was not to extend or change current annual audit requirement beyond Trust Accounts and we therefore believe clarification is required.

We request that the Board consider applying Section 8 solely to Client Monies dealt with through a Trust Account. We are supportive of the annual audit requirement as it currently exists in APS 10, and believe it should continue to apply to Trust Accounts, which are in the sole control of the Member.

### Specific Comments

Section 4: General Principles	
<p><b>4.11 A Member in Public Practice shall not:</b></p> <p><b>a) receive or pay into a Trust Account or a Client Bank Account; or</b></p> <p><b>b) disburse out of a Trust Account or a Client Bank Account</b></p> <p><b>any Monies if the Member believes on reasonable grounds that they were obtained from, or are to be used for, illegal activities or that Dealing with the Monies is otherwise unlawful.</b></p>	<p>APES 110 section 270.3 sets out guidance for Members in relation to making appropriate inquiries about the activities referred to in 4.11. We do not believe the inclusion of 4.11 in the proposed Standard adds any additional guidance for the Member.</p> <p>In addition, a Member would not have control over the "receipt" of funds in to a Client Bank Account so would be unable to comply with this requirement.</p>

Section 5: Opening a Trust Account	
<p><b>5.5 Where a Member in Public Practice opens a Trust Account, the Member shall give a written notice to the Financial Institutions that:</b></p> <p><b>(c) the Financial Institution acknowledge in writing that it accepts the terms of the notice, and confirm its understanding that Monies held in a Trust Account are Client Monies and are the property of a Client.</b></p>	<p>It is not clear what the implication is for the Member if the Financial Institution declines to give such an acknowledgment.</p>
Section 6: Dealing with Client Monies	
<p><b>6.5 A Member in Public Practice shall record the following information for Client Monies received, or Monies received for deposit into a Client Bank Account:</b></p> <p><b>(a) the name of the person from whom Monies were received;</b>  <b>(b) the amount of Monies;</b>  <b>(c) the Client for whose benefit Monies are held;</b>  <b>(d) the purpose for which Monies were received or other description of the Monies;</b>  <b>(e) the date on which Monies were received;</b>  <b>(f) the form in which Monies were received; and</b>  <b>(g) in relation to Client Monies of a kind referred to in paragraph 6.7, the location where the Monies are held.</b></p>	<p>It would seem appropriate to apply this requirement to Trust Accounts, as it is clearly important that the Member have Records to demonstrate what has been done with the Client Monies.</p> <p>With respect to Client Bank Accounts, the requirement does not make sense in certain situations, for example where Client Monies have been received from the Client for deposit into the Client Bank Account and the Monies are deposited in accordance with the Client's instructions.</p>
<p><b>6.11 A Member in Public Practice shall ensure that the Member has appropriate documentation to transact electronic funds transfers from a Trust Account or a Client Bank Account.</b></p>	<p>It is not clear what "documentation" would be appropriate in such case. Perhaps the Member should instead be required to have "appropriate authority".</p>
Section 7: Documentation	
<p><b>7.3 A Member in Public Practice shall maintain documentation that:</b></p> <p><b>(a) enables transactions involving Client Monies to be audited;</b>  <b>(b) discloses the true position of Client Monies; and</b>  <b>(c) clearly identifies the transactions made on behalf of each Client.</b></p>	<p>We believe the Members obligation should be to maintain "Records" (and not documentation) as this is a defined term in the Standard. This comment applies similarly to all references to "documentation" in APES 310.</p> <p>Further, it is unclear what is meant by disclosing the "true position" of Client Monies where such Monies are in a Client Bank Account.</p>

**7.9 A Member in Public Practice shall issue the statements referred to in:**

**(a) paragraph 7.8(a) within 60 Business Days**

The timeframe in respect of the requirement in paragraph 7.8(a) requires clarification. It requires a statement to be made "...in respect of all transactions, at least annually" together with 7.9(a) "within 60 Business Days".

We would be pleased to discuss our comments with members of the Board or its staff. If you wish to do so, please do not hesitate to contact me on 02 9322 5258.

Yours sincerely,

Deloitte Touche Tohmatsu



Marisa Orbea

Partner