

19 December 2011

The Chairperson  
Accounting Professional & Ethical Standards Board Limited  
Level 7, 600 Bourke Street  
MELBOURNE, VIC 3000  
Email: [sub@apesb.org.au](mailto:sub@apesb.org.au)

Dear Ms Spargo

**Exposure Draft 04/11 Proposed Guidance Note: APES GN 40 Ethical Conflicts in the Workplace - Considerations for Members in Business**

Thank you for the opportunity to comment on the Exposure Draft of the APES GN 40 Ethical Conflicts in the Workplace - Considerations for Members in Business. CPA Australia, the Institute of Chartered Accountants in Australia and the Institute of Public Accountants (the Joint Accounting Bodies) have considered the exposure draft and our comments follow. The Joint Accounting Bodies represent over 190,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

The Joint Accounting Bodies support the issue of the proposed guidance note that supersedes GN1 Members in Business Guidance Statement.

**General Comments**

The Joint Accounting Bodies consider APES GN 40 Ethical Conflicts in the Workplace – Considerations for Members in Business as important guidance for Members who are employed in a diverse range of organisations and in a variety of roles.

We note that paragraph 3.3 introduces the concept of Professional Services, and paragraphs 3.4 and 3.5 discuss those parts of APES 110 with which a Member in Business who provides Professional Services is required to comply. The Joint Accounting Bodies consider that there is no reason to restrict the guidance in GN 40 to those members who are providing Professional Services. Members in Business, as defined, may work in a wide variety of roles, some of which will not technically fall within the definition of Professional Services. All such members will be subject to the provisions of APES 110, in particular Part C, and we consider that the guidance note should therefore be drafted to address all Members in Business.

**Specific Comments**

We offer the following specific comments about the draft guidance note for your consideration.

➤ *Paragraph 3.3*

For the reasons outlined in our general comments, we consider that paragraph 3.3 is not required. In

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addition, the reference to Professional Services in paragraph 1.7 and the definition of the term would also not be required.

➤ *Paragraph 3.4*

We are of the opinion that this paragraph can be merged with paragraph 3.5. Paragraph 3.5 specifies that Part A and Part C of the Code apply to Members in Business. We suggest that Section 100 is therefore covered in 3.5. The contribution of paragraph 3.4 that Members also have to comply with relevant law or regulation can be added in paragraph 3.5.

➤ *Paragraph 3.5*

We are of the opinion that the term “commercial situations” is too general and should be deleted, as the Code describes situations that may create threats to compliance with the fundamental principles not general commercial situations. The term “commercial situations” also may create some confusion for Members in the public and the not-for-profit sectors who may not consider themselves to operate in “commercial situations”.

Following our comments above, we propose that paragraph 3.5 replaces 3.4 and reads:

A Member in Business is required to comply with Part A – General Application of the Code, Part C – Members in Business and any relevant law or regulation. Part C is specific to Members in Business and describes the application of the fundamental principles to some of the more commonly encountered situations that may create threats to compliance with the fundamental principles.

➤ *Paragraph 4.1*

We are not certain that the word “environment” in the beginning of this paragraph accurately describes the causes of potential threats as threats may, for example, be created by the Member’s actions. As a consequence, we suggest that the first sentence of this paragraph reads:

Members in Business may encounter situations that give rise to threats to compliance with the fundamental principles.

➤ *Paragraph 4.2*

The model provided in this paragraph, while it further develops the Ethical Conflict Resolution part of the Code, alters the terminology. This may not assist in the perception that the Guidance is complementary not additional to the Code. To promote consistency we suggest that the model adopts the language used in the process developed in section 100.18 of the Code.

We also think that while the Code refers to the whole process as the ethical conflict resolution process, the Guidance Note treats conflict resolution as a stage in the process. This may lead to unnecessary confusion.

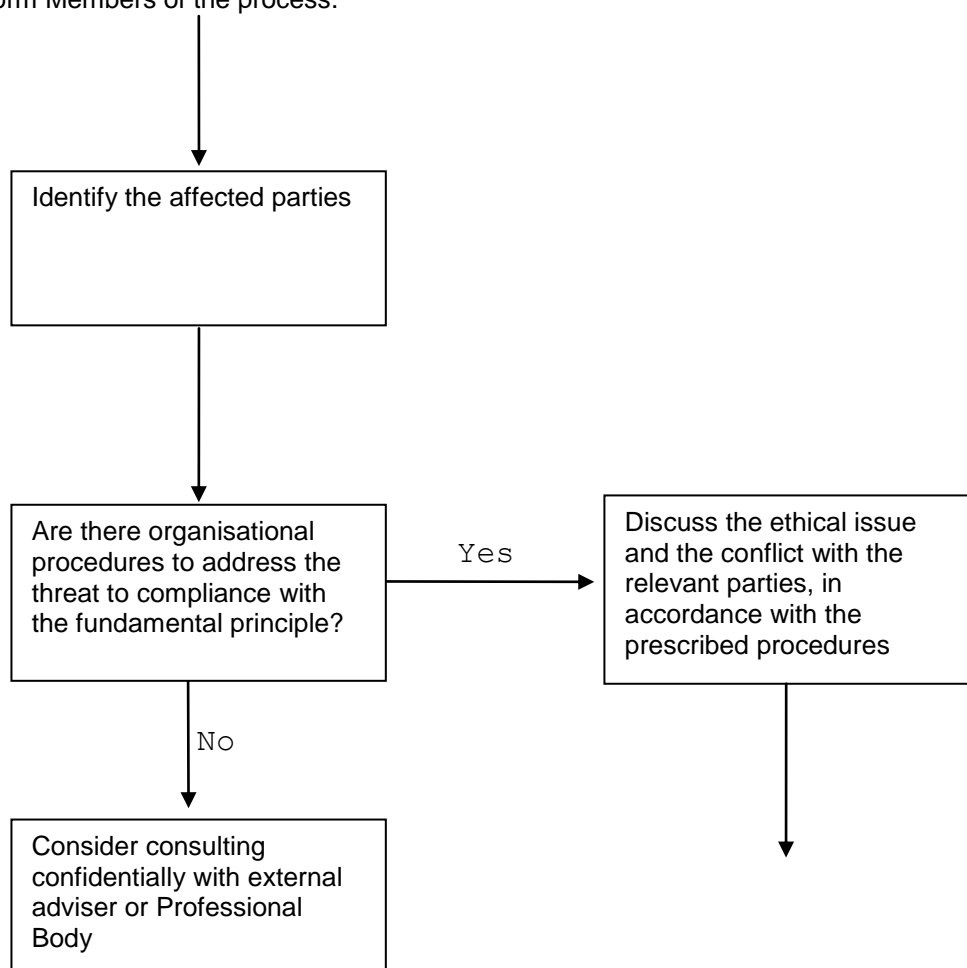
We suggest the model, in line with Code, be developed along the following steps:

- Gather the facts and identify the problem;
- Identify the ethical issues;
- Define the fundamental principles involved;
- Identify the affected parties;
- Determine whether established organisational procedures exist to address the threat to compliance with the fundamental principles;
- Discuss the ethical issue and the conflict with the relevant parties, in accordance with the prescribed procedures;
- Consider courses of action and associated consequences;
- Consider whether to consult confidentially with external advisers such as an independent legal adviser and/or the Professional Body to which the Member belongs;
- Consider whether to consult Those Charged with Governance;
- Decide on a preferred course of action; and
- Implement the appropriate course of action.
- Document all enquiries and conclusions reached

If the matter cannot be resolved

- The Member should determine whether it is appropriate to resign.

The Diagram offered can be more valuable if it develops the different possibilities in the process and not merely list all possible steps that may not be necessary or applicable in all circumstances. A flowchart, similar to the example below, that provides the possible outcomes of each step may better inform Members of the process.



➤ *Paragraph 7.1*

This paragraph specifies that it is possible that in the course of fulfilling the legitimate and ethical objectives of the Employer, the Member may be under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles of the Code. The Code refers to the legitimate objectives of the Employer but it does not go as far as to say that there may be an explicit conflict between those and compliance with fundamental principles. We are of the opinion that the pursuit of legitimate and ethical objectives are unlikely to create threats.

We propose that the current statement: ‘However, as a consequence of these obligations, a Member in Business may be under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles of the Code’ be replaced with the statement: ‘However, certain relationships or circumstances may create a threat to compliance with the fundamental principles of the Code’. This will ensure the statement is better aligned with section 310.1 of the Code.

➤ *Paragraph 10.1*

In the sentence: ‘A Member in Business should examine the nature of the financial interest which includes considerations such as the nature of the interest and whether it is direct or indirect’ we suggest that the ‘nature of the interest’ be replaced with the ‘significance of the interest’ or the ‘value of the interest’. So the sentence would then read: ‘A Member in Business should examine the nature of the financial interest which includes the significance of the interest and whether it is direct or indirect, as well as the value of the interest.’

➤ *Paragraph 12.8*

This paragraph provides a list that Members should consider in the absence of appropriate policies. While we think that the list is useful in motivating members to think about pertinent issues not all of

them are relevant or appropriate considerations in all cases. For example part (f) lists the possibility or likelihood of repetition as one consideration. While this may be appropriate in some instances there are others where even if there is no likelihood of repetition the potential consequences of a single event may be of such magnitude that would require the consideration of a disclosure. To overcome such issues, we are of the opinion that the list should be identified as 'possible considerations' that may be appropriate in certain circumstances.

➤ *Case Studies*

The case studies all refer to commercial operations. While the title of the Guidance Note is Members in Business, the definition of a Member in Business includes not-for-profits, government and academia. It therefore may be prudent to review some of the case studies such that they encompass the not-for-profit, government and academic fields. To not do so may reinforce the view that the guidance only relates to those in business in a commercial sense.

We suggest that the ethical decision making approach used in the case studies is amended to reflect the proposed changes in Paragraph 4.2 above.

We also suggest that where certain courses of action would mean that a member would be in breach of the requirements of the Code, this should be expressly identified. For example, in Case Study 9, the following statement appears:

"... a report that satisfies the bank's criteria however this would be materially misrepresenting the company's position ."

We suggest that additional wording be added:

"... a report that satisfies the bank's criteria however this would be materially misrepresenting the company's position, which would mean that the member would be in breach of the Code if they prepared or were associated with it."

In Case Study 5, the first sentence should be reworded to read 'Robyn (Member in Business) is the financial accountant in a company and is preparing the quarterly accounts.

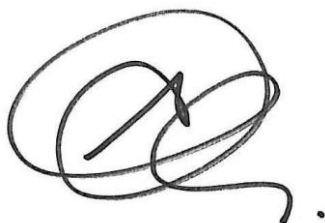
In Case Study 6, the outline should be reworded to read: 'Nathan, the finance director...of ABC Ltd, has become aware of a \$1.5 million investment in a research and development project'. We also suggest that the reference to 'little success criteria' be revised.

In Case Study 9, the word "on" should be removed from the phrase "a large on ongoing order" in the Case Outline.

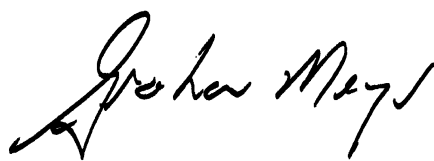
In case Study 10, the first sentence should read 'Olivia's Employer has requested that she performs a ...'.

If you have any questions regarding this submission, please do not hesitate to contact either Eva Tsahuridu (CPA Australia) at [eva.tsahuridu@cpaaustralia.com.au](mailto:eva.tsahuridu@cpaaustralia.com.au), Paul Meredith (The Institute of Chartered Accountants in Australia) at [paul.meredith@charteredaccountants.com.au](mailto:paul.meredith@charteredaccountants.com.au) or Reece Agland (The Institute of Public Accountants) [reece.agland@publicaccountants.org.au](mailto:reece.agland@publicaccountants.org.au).

Yours sincerely



**Alex Malley**  
Chief Executive Officer  
CPA Australia Ltd



**Graham Meyer**  
Chief Executive Officer  
Institute of Chartered Accountants  
in Australia



**Andrew Conway**  
Chief Executive Officer  
Institute of Public Accountants