

28 May 2010

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

Via email: [sub@apesb.org.au](mailto:sub@apesb.org.au)

Dear Ms Spargo

**ED 01/10: Proposed Standard: APES 310 *Dealing with Client Monies***

Thank you for the opportunity to comment on this Exposure Draft for a new standard APES 310 *Dealing with Client Monies*. CPA Australia, the Institute of Chartered Accountants (the Institute) and the National Institute of Accountants (the Joint Accounting Bodies) have considered the exposure draft and our comments follow. The Joint Accounting Bodies represent over 180,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government, academia throughout Australia and internationally.

The Joint Accounting Bodies support the issue of the proposed standard, recognising the need to revise and update the existing Professional Statement, APS 10 *Trust Accounts*. We welcome the Board's objective of broadening the scope of the existing statement to include dealings involving client bank accounts.

**General Comment**

➤ ***Service Providers Providing Trust Account Management Services***

It has come to the attention of the Joint Accounting Bodies that some members in public practice are utilising outsourced service providers to manage their trust account affairs.

The Joint Accounting Bodies believe that it should be made clear that these arrangements fall under the definition of "Deals (or Dealing) with Client Monies" in this proposed standard. The public interest would be best served where members who utilise these services are audited to ensure that their use of the service is consistent with the principles outlined in APES 310. We note that this may require reconsideration of the definition of Trust Account to extend it to accounts operated by an agent or contractor of the member.

**Specific Comments**

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

Representatives of the Australian Accounting Profession



[cpaaustralia.com.au](http://cpaaustralia.com.au)



The Institute of  
Chartered Accountants  
in Australia

[charteredaccountants.com.au](http://charteredaccountants.com.au)



[nia.org.au](http://nia.org.au)

➤ **Paragraph 1.2**

The first sentence indicates that the standard will set the standards for members in public practice “who act as an Auditor”. We recognise that the term “Auditor” is not defined elsewhere in APESs; it is a defined term in this standard and has application specific to this standard. However, given the Board’s approach to having definitions which are identical across its full suite of standards, we expect that this definition of “Auditor” may create problems for the drafting of future standards where the term may wish to be included. We recommend that the Board consider changing the defined term to “Auditor of Client Monies”, or “Auditor of Members’ Client Monies”. If the Board decides that a longer defined term such as this makes the standard more difficult to read, the first use of the defined term in the standard may be followed by wording in parentheses: “(for the purposes of this standard the term “Auditor” will be used)”.

➤ **Paragraph 1.5**

This paragraph, which is generally a commonly worded paragraph across all APESB standards, has been amended to describe the situation when members in public practice shall be familiar with relevant professional standards and guidance notes. That is, typically in other APESB standards this paragraph requires members to be familiar with relevant professional standards and guidance notes when providing “Professional Services”. This generic term has been replaced by specific wording for the context of this standard noting that such familiarity is required “when Dealing with Client Monies or when they act as an Auditor”. We do not see the benefit of making these changes, and recommend that the Board retain the standard wording for this paragraph.

➤ **Paragraph 2**

▪ **Definition of *Client Bank Account***

We recommend that the Board consider changing “on which” to “for which” in this definition.

▪ **Definition of *Client Monies***

We recommend that the Board consider changing “which is the property of a Client” to “which are the property of a Client” in this definition. Also, we note that this definition is narrower than the APS 10 definition of ‘trust money’, which dealt with the member not being presently entitled to the monies. Under APS 10, trust money could belong to someone other than the client. We consider that the definition of client monies should be extended to monies which have a connection with a client, even though they may not be the property of a client. For example, where a client and a business associate of a client jointly provide money to a member to place in a trust account in respect of some joint business venture. The money from the non-client business associate should also be subject to APES 310. This could be achieved by re-introducing the “present entitlement” test.

▪ **Definition of *Financial Institution***

The term ‘Financial Institution’ is not defined in the *Banking Act 1959*. The term that is used in the Act is “authorised deposit-taking institution” (ADI) (refer s.5 of the *Banking Act 1959*). We recommend that the Board consider using the term which is defined in the Banking Act, and which is now in common use by the regulator APRA.

➤ **Paragraph 4.6**

The wording of this paragraph, which notes that members “shall not obtain any benefit from Dealing with Client Monies”, when read in isolation may be interpreted as meaning that a member is unable to charge a service fee (being a benefit) for maintaining a trust account for a client. Clearly, this is not the case given the wording of paragraph 4.9, which notes that “A Member in Public practice may charge fees in respect of Dealing with Client Monies”. We recommend that the Board consider including the wording used in paragraph 4.9 in paragraph 4.6, using the word “However” to commence what would be the second sentence of that requirement. Alternatively, the entire paragraph 4.9 may be re-positioned as paragraph 4.7.

➤ **Paragraphs 6.6 and 6.7**

These paragraphs require that the member in public practice issues to the client an acknowledgement of receipt of client monies within 21 business days (or as otherwise agreed with the client). With weekends, this effectively means that the member in public practice has nearly four weeks to issue an acknowledgment of receipt to the client. This seems to be an unnecessarily long period of time, especially when acknowledgements can generally be readily computer generated, and considering that client monies need to be deposited within 3 business days. We recommend that the Board consider changing the time period described in these paragraphs to 8 business days, which means that a member in public practice would need to issue an acknowledgement to the client within one week of having deposited the monies.

➤ **Paragraph 6.12**

When a member in public practice delegates authority to transact on trust accounts to another party, it is not clear why another member in public practice is treated differently from solicitors or financial institution managers. There appears to be no logic to allowing a delegation to only one member in public practice, whereas a delegation to a solicitor or financial institution manager requires two persons. Currently APS 10 requires that the delegation be made to two persons, including where the delegation is made to another member in public practice. From a public interest perspective this may be seen as a reduction in the responsibilities attaching to members in respect of clients' monies.

However, we note that in practice, a delegation to two persons can create compliance problems, particularly for members in remote areas. Feedback from members operating in remote areas suggests that this requirement is difficult to fulfil. We recommend that the Board consider rewording this paragraph to require that a delegation be made in writing to any of the four types of persons currently specified. The number of persons to whom the delegation is made need not be detailed in the requirement. Instead, a guidance paragraph can be included immediately following paragraph 6.12 to indicate that best practice suggests having the delegation made to two persons (similar to the manner in which paragraph 4.3 is written in respect to receiving client's instructions).

➤ **Paragraphs 7.3 and 7.6(c)**

In paragraph 7.3 we recommend that the Board consider replacing the reference to the "true position of Client Monies" with a reference to the "financial position of Client Monies". Similarly, in paragraph 7.6 (c), we recommend amending the wording used from "the position" to "the financial position" to provide clarity about this requirement.

➤ **Paragraph 7.5**

We consider that the readability of this paragraph would be improved by adding the words "to have" before the word "access".

➤ **Paragraph 7.9(a)**

This paragraph requires that a member in public practice issues an annual statement to the client within 60 business days. With weekends, this effectively means that the member in public practice has nearly three months to issue an annual statement to the client. This seems to be an unnecessarily long period of time, especially when such statements can generally be readily computer generated. The current requirement in APS 10 is "within one month". This change may be seen as contrary to public interest in respect of it being seen as a reduction in the responsibilities attaching to members in respect of clients' monies.

We recommend that the Board consider changing the time period described in this paragraph to 25 business days, which means that a member in public practice would need to issue the annual statement within one month of the year-end. Furthermore, we consider that this statement should be expanded to read: "within 25 Business Days of the applicable year-end date". (Refer also comments around specifying the year-end date in our comments on paragraph 8.1 below) .

➤ **Paragraph 7.11**

We consider that the meaning of the paragraph would be clarified if the last sentence read: “The Member shall take action to correct any difference or error identified during the reconciliation within 5 business days of such identification.”

➤ **Paragraph 8.1**

This paragraph notes that a member in public practice is required to ensure that compliance with the requirements of this standard is audited annually within 3 months of “the applicable year end”. It is not clear to what “the applicable year end” refers. Feedback from members on this exposure draft has indicated that some members believe it could mean the end of financial year (i.e., 30 June), while others suggest that it could mean the end of the calendar year (i.e., 31 December). Others point to the APS 10 which describes the year end as 31 March. Potentially, these words could also be read to mean that the “applicable year end” date could change from year to year. We understand that the aim of the standard is to permit a member to choose a year end date which is suitable for their own practice. The key principle embodied in this requirement is the need to have compliance audited annually, regardless of the year end date chosen. If this is the intention of the Board, we recommend that consideration be given to making “Applicable Year End” a defined term, with a meaning which recognises that members may choose an appropriate year end date, which once determined cannot be changed without permission from the professional body.

In particular, if it is envisaged that there is some ability for a member to choose a year-end date, then this choice should be curtailed, so as to avoid the situation where a member could simply fail to set the year-end date and thus avoid the audit. We consider that it would be appropriate to specify that the applicable year-end must occur within 12 months of the month-end following the opening of a trust bank account or the member first becoming a signatory to a client bank account.

It would also be appropriate to identify whether a member who is operating to a 31 March year-end under APS 10 has any ability to vary this year-end under APES 310. If this were envisaged, the time-frames contemplated should again not permit a member to delay the occurrence of an audit for an extended period. We would recommend that APES 310 specify either that no variation is possible for former APS 10 trust accounts, or that only a limited ability to vary would exist, say by 6 months.

➤ **Paragraph 8.6**

This paragraph appears to assume that for the purposes of auditing the Trust Account, a member in public practice will have a year-round continuing relationship with the auditor of the trust account. It does not seem to anticipate situations where a trust account is newly established and an auditor has not yet been appointed, or where an engagement is renewed annually (notwithstanding the requirements contained in paragraph 8.7). Paragraph 8.6 requires the member in public practice to advise the auditor within 5 business days of becoming aware of any deficiency in client monies. Furthermore, paragraph 9.6 requires the auditor to report to the professional body any deficiency upon becoming aware of a deficiency. This effectively means that in such situations the member in public practice informs the auditor, who in turn informs the professional body. We recommend that the Board consider changing the requirement in paragraph 8.6 to one whereby a member must inform the professional body within 5 business days of any deficiency and corrective action. The requirement to advise the auditor should be concurrently at the time that the professional body is advised (where an auditor has been appointed), or as soon as an auditor has been appointed.

➤ **Paragraph 8.9(b)**

We consider that the last part of this paragraph should be amended to read: “the Member or their legal representative shall return Client Monies to the Client”. This would accommodate the situation where a member has died or become incapacitated to an extent requiring the appointment of a personal legal representative.

➤ **Section 9**

There is no obligation on the auditor to seek approval from the professional body to resign as the auditor of a member's trust account. However, a member in public practice must seek approval from the professional body to change the existing auditor (paragraph 8.7). Although it is anticipated that the professional body would seek to understand the reasons for changing the auditor, it is not clear that where the change has occurred/is occurring as a result of differences between the member and the auditor, that the views of the auditor will always be obtained. The need to seek approval to resign as an auditor would require that reasons for the auditor's resignation to be identified. Therefore, we recommend that the Board consider including a paragraph in Section 9 of the standard which requires the auditor to obtain approval from the professional body to resign as an auditor.

➤ **Paragraph 9.2**

It is not clear why the Board has chosen to alter the requirement for the submission of audit reports to the professional bodies. APS 10 requires that only qualified audit reports be forwarded to the professional bodies (refer paragraph 35). Paragraph 9.2 requires that all audit reports be lodged with the professional bodies. We believe that the current arrangements are appropriate and hence do not see the need to create additional administrative obligations when the resultant benefits are not clear. We recommend that paragraph 9.2 be amended to require that only modified audit reports (or audit reports including a modified opinion) be lodged with the applicable professional body.

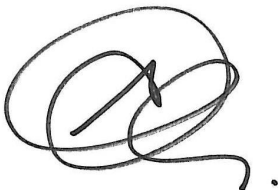
➤ **Appendix 1**

Paragraph 12 of ASAE 3100 requires that the "assurance practitioner shall comply with the fundamental ethical principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour". A guidance paragraph (paragraph 14) within the standard indicates that the applicable code of ethics of a professional body provides a framework of principles that a practitioner can use to evaluate compliance with those fundamental principles. Therefore, the statement in the last sentence of the "Auditor's Responsibility" section of the example audit report that "ASAE 3100 also requires us to comply with the relevant ethical requirements of the Accounting Professional and Ethical Standards Board" is not an accurate representation of the ASAE 3100 requirement. We recommend that the Board consider changing the wording of this sentence to merely state that "ASAE 3100 also requires us to comply with fundamental ethical principles. These principles are described in APES 110 *Code of Ethics for Professional Accountants*". Alternatively, instead of including the second sentence, consideration could be given to changing the heading and wording of the 'Independence' section of the audit report, to include compliance with ethical requirements, including independence, of APES 110.

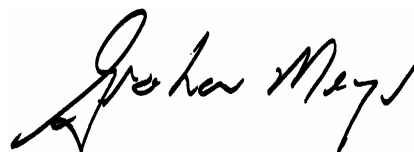
Furthermore, we note that currently where APES 110 is first mentioned in the audit report (i.e., in the 'Independence' section) it should include the title of the standard; *Code of Ethics for Professional Accountants*.

If you have any questions regarding this submission, please do not hesitate to contact either Gary Pflugrath (CPA Australia) at [gary.pflugrath@cpaaustralia.com.au](mailto:gary.pflugrath@cpaaustralia.com.au), Paul Meredith (the Institute) at [paul.meredith@charteredaccountants.com.au](mailto:paul.meredith@charteredaccountants.com.au) or Reece Agland (NIA) at [reece.agland@nia.org.au](mailto:reece.agland@nia.org.au)

Yours sincerely



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