

WORKING DRAFT
 Constituents' Submissions – Specific Comments Table 4
 Exposure Draft 02/10: APES 230 Financial Advisory Services

Note: General comments relating to APES 230 Financial Advisory Services are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1		CONFP	Definitions: Acceptable Level – consider adding: “Where the issues and concerns that give rise to a concern about the breach of Fiduciary Relationships; and a fully disclosed, open discussion of the facts with the client resolves that the Client is willing to waive those concerns in writing, no such threat, real potential or perceived will exist.”
2		CONFP	Definitions: Commissions – the inclusion of the words ‘and income’ at the end of this definition leaves the definition way too broad to be able to be applied; the definition generally seems to miss the commercial definition of what constitutes a ‘commission’.
3		HPW	My comments on this proposed standard are as follows: 1. Definitions: Commissions : to save some words on this definition, after word “amounts” in the first line, insert words “howsoever derived” and delete all words occurring after words “respect of” and insert in their stead words “the management of a client’s funds.” I have some doubts as to the need or effectiveness of the long winded definition.
4		AFAC	<p>3. DETAILED COMMENTS</p> <p>3.6. Clarification of definitions</p> <p>The definition of “Commission” is so broad that it captures almost all payments to financial advisers (including payments from financial services licensees to their financial advisers). We note also that a payment from a client to a financial adviser appears to be included in the definition of a commission.</p> <p>In our view, “Commission” should be defined as amounts paid by product providers to financial advisers (or their AFS licensee) out of their own resources (i.e. not out of client funds) for putting clients into (or for keeping them in) their product (i.e. for services provided by the planner to the product provider – not for services provided by the financial adviser to the client).</p> <p>There should also be consistency with the legislation on the definition of commission and what is prohibited e.g. if platform payments are not prohibited on the basis that they recognise the work undertaken by financial advisers and do not cause a conflict (and may just lead to other adverse change such as financial advisers becoming product providers), they should also not be prohibited by APES 230 as it will place accountant financial advisers at a competitive disadvantage with no real benefit to clients.</p> <p>APES 230 also appears to be aimed at prohibiting the receipt of insurance commission – this will have the effect of increasing the cost of insurance advice and so will likely lead to a reduction in the amount of insurance recommended to and taken out by clients. If commission is</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			not prohibited by law on insurance products and if all insurance products on the Approved Product List pay commission at the same rate, APES 230 will only disadvantage clients and accountant financial advisers. This will only serve to exacerbate the widespread under-insurance problem.
5		SPAA	<p>Definitions</p> <p>4. The term “Commissions” is broadly defined in the Exposure Draft and includes all monetary amounts received by a Member¹ from an Australian Financial Services Licensee, Client², or other party, in respect of placement or retention of the client’s funds, or purchase or sales of financial or risk products and includes trailing commissions and income.</p> <p>5. Arguably this definition of commission could include any type of payment including flat dollar fees and other forms of fee for service payments which are received by the Member from a Client or product provider. This definition appears to be inconsistent with references to commission and fee for service payments throughout the Exposure Draft.</p> <p>SPAA considers that the term “Commission” should be defined in the Exposure Draft as a payment from a product provider which is set by the product provider and not the Member or Client. This would include all types of embedded product fees such as up-front commissions and trail commissions.</p> <p>Recommendation No.1 – The definition of “Commission” in the Exposure Draft should be amended and should only include payments which are set by product providers. This definition would incorporate all types of embedded product fees.</p>
6		PB	<p>Summary</p> <p>Other Comments</p> <p>While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted.</p> <ul style="list-style-type: none"> • The definition of Commission be amended to remove reference to ‘risk products’. <p>Detailed Analysis</p> <p>Commissions</p> <p>The definition of Commissions in the APES 230 ED prohibits a Member from receiving a monetary amount from a Client. This may be an oversight and should be amended as follows to ensure that a Member can receive payment from their Client for advice or services provided:</p> <p>Commissions means all monetary amounts received by a Member from an Australian Financial Services Licensee, Client, or other party, in respect of placement or retention of the Client’s funds, or purchases or sales of financial or risk products, and includes trailing commissions and income.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • The word ‘Client’ be removed from the definition of ‘Commissions’ to avoid any confusion that a Member can receive payment from their Client for advice or services provided.

Exposure Draft 02/10: Proposed Standard: APES 230 Financial Advisory Services

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
7		FPAA	Confidential submission
8		CONFP	Definitions: Fee for Service – the second paragraph of this definition seems to leave it open for fees to be collected by reference to a percentage provided that they are not calculated by reference to 'product sales' or to 'the accumulation of FUM'.
9		HPW	<p><i>[Technical Staff Note - Definition for Fee for service is repeated in Specific Comments – Table 8]</i></p> <p>2. Definitions: Fee for Service: The claim that fee for service does not include “percentage based asset fees” is too narrow in its view and should be qualified. I agree that asset based fees such as trail commissions are inappropriate, are not tied to the delivery of service and are little more than loyalty fees paid by the product manufacturers. However, I would submit that true full service and pro-active management of a client’s affairs requires the continuing attention of an adviser to the following:</p> <ul style="list-style-type: none"> # Portfolio re-balancing # Strategic planning – such as withdrawal and re-contribution, contribution splitting, pension administration, cash flow management, taxation issues, legislative change, personal circumstance changes. # Corporate actions, investment management, restructuring, risk management # Maintaining records and reporting # Personal communication, care and attention <p>Bearing in mind the above, asset based remuneration therefore is entirely appropriate given that it is easily understood by the client and transparent, i.e., the client can quite easily calculate the veracity of the fee.</p> <p>Whilst the alternative is a fixed fee, I would argue that such an alternative is not entirely fair nor reasonable as over the past three years we have seen portfolio values that have fallen and in some cases considerably. It would be distasteful in such cases if fees remained static. There are also circumstances where capital withdrawals occur and/or additional deposits are made and where such events occur fees should be adjusted accordingly.</p> <p>I would also argue that scale is an important factor, that is, the relative cost should be scaled according to the size of a portfolio on the basis that automated systems make it more cost efficient to manage a larger portfolio.</p> <p>Therefore, whilst the dollar cost may be greater the relative percentage cost to capital may be significantly lower. To try to base all this on an hourly rate is totally impractical and I would suggest to the point of being administratively impossible.</p>
10		DFP	<p><i>[Technical Staff Note – these paragraphs are repeated in Specific Comment – Table 8]</i></p> <p>While I support all the principles of 'Fee for Service' in APES 230 ED, I believe the definition itself requires further clarification, particularly with regard to percentage based asset fees.</p> <p>There appear to be two separate issues APES 230 ED is trying to address in its definition of 'Fee for Service'. These are:</p> <ol style="list-style-type: none"> 1. Conflicts of interest - there must not be any perceived or actual conflicts of interest (ie: commissions, production bonuses, remuneration related to product sales); and

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>2. The fee should be set in a professional manner (ie: taking into account factors such as the complexity of advice, the required skills, the level of training and experience required and degree of responsibility applicable).</p> <p>As APES 230 ED is currently worded, it suggests that percentage based asset fees are a form or commission and/or give rise to conflicts of interest. Given these fees are paid by the client, not the product provider, I do not believe this is the case.</p> <p>However, percentage based asset fees do not, in my opinion address the second issue of a fee that is set in a professional manner.</p> <p>I believe this standard would benefit from further clarity on this issue and in particular, the reasons for banning percentage based asset fees.</p>
11		AFAC	<p>3. DETAILED COMMENTS</p> <p>3.6. Clarification of definitions</p> <p>The definition of Fee for Service is also not clear. It is also not clear whether accountant financial advisers can continue to receive retrospective commission as the prohibition is only on “charging” clients a particular way (the adviser does not charge “commission” in the true meaning of that term – it is paid by product providers to financial advisers or their AFS licensee).</p> <p>The Government has not proclaimed any changes to the receipt of commissions for life insurance products due to the enormous implications this has for the insurance industry and the community at large. Such as a proposal needs careful consideration and research, to ensure that Australia’s current underinsurance problem is not exacerbated.</p> <p>We acknowledge and agree on changes to the financial advice industry regarding the receipt of commissions. We propose that any fee arrangement suitable for the client’s circumstances be discussed and agreed with the client prior to the implementation of any advice, and disclosed to the client in writing.</p>
12		SPAA	<p>Definitions</p> <p>7. The term “Fee for Service” as defined in the Exposure Draft specifically excludes percentage based asset fees. SPAA considers that a Member’s remuneration regime should provide a range of flexible options for which Clients can pay for advice. Ideally, the term “Fee for Service” should be sufficiently broad and incorporate any remuneration regime which enables the Member to charge a fee which is commensurate with the services provided and reflect:</p> <ul style="list-style-type: none"> · The level of training, skill, knowledge and experience of the person providing the service; · The level of responsibility (in terms of commercial risk) applicable to the services being provided; · The level of complexity applicable to the services provided; · The time commitment which will or, has been made by those providing the service; and · The level of performance provided. <p>8. Specifically excluded from the definition of a fee for service payment, should be commission payments.</p> <p>9. It is not self evident in the Exposure Draft why percentage based fees have been excluded from the definition of “fee for service”.</p>

Exposure Draft 02/10: Proposed Standard: APES 230 Financial Advisory Services

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>Presumably it is because charging an asset based fee could be considered to be a conflict of interest because the product provider is able to influence the Member's recommendations and which would also compromise the Member's professional independence and fiduciary obligation.10. However, by excluding asset based fees which are set by the product provider (i.e. commission payments), it is difficult to see how the charging of an asset based fee (which under the Government's new advisor charging regime, will need to be expressly agreed to by the Client on an annual basis) could be considered to be a conflict of interest. It is also difficult to see how the charging of an asset based fee in these circumstances would compromise the Member's fiduciary duty to the Client.</p> <p>Recommendation No.2 – The definition of the term "Fee for Service" should include the charging of asset based fees and other remuneration models which enable the member to charge a fee commensurate with the services provided. Commission payments should be excluded from the definition of "Fee for Service".</p>
13		PB	<p>Summary</p> <p>Other Comments</p> <p>While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted.</p> <ul style="list-style-type: none"> APES 230 provide principles based guidance for Members on how to charge on a Fee for Service basis for the Financial Advice they provide to their Clients and that this is achieved through deleting the second paragraph from the current definition of Fee for Service.
14		FPAA	Confidential submission
15		CONFP	Definitions: Fiduciary Relationship – the interpretation of the meaning of this term could be quite subjective, particularly the phrases: 'In the utmost good faith in the Client's best interests'
16		GT	<p><i>[Technical Staff Note - the following paragraph repeats in Specific Comment – Table 6]</i></p> <p>The 'Fiduciary Relationship' definition and application needs to be further considered as there does not necessarily need to be restrictions on remuneration, particularly when it is acceptable industry and business practice to charge on say a commission, asset basis, referral, and success fees by way of example, which have not been subject to any adverse public criticism, and consequently is not part of the proposed FoFA legislative response.</p>
17		PB	<p>Summary</p> <p>Other Comments</p> <p>While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted.</p> <ul style="list-style-type: none"> The definition of Fiduciary Relationship and any other references be removed from the standard to avoid unintended consequences of introducing a fiduciary duty that is not clearly defined and may possibly conflict with Member's statutory fiduciary duty once implemented.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
18		CONFP	Definitions: Professional Independence – the phrase ‘the avoidance of facts and circumstances’ would appear to preclude any member who is an Authorised Representative (AR) for being able to meet the standard set by this proposed standard. The very process of having an AFSL holder influencing aspects of how a member’s financial advisory practice will be financially operated and structured would, unless there are ‘safeguards’ contemplated that would be ‘adequate’ for purposes of this definition, be difficult to prove Independence.
19		CONFP	Definition: Soft Dollar Benefits – this is an onerous and burdensome requirement from an administrative point of view when ‘all’ benefits which ‘may influence or have the perception of influencing’ certain advice is so subjective. Movie tickets are sporting event entry are occasionally provided to advisers post-advice events, but may be seen by some clients as potentially having been targeted when the advice was being delivered: these tickets are sometimes of values less than \$45. There needs to be a practical interpretation of how this definition should be applied administratively.
20		HPW	3. Definitions: Soft Dollar Benefits : given that this area is elaborated on further forward in the standard, it is suggested that the words “which may influenceby the member” be deleted without replacement. As “may influence” is not defined, the inclusion of these words add no value to the definition.
21		PB	<p>Summary</p> <p>Other Comments</p> <p>While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted.</p> <ul style="list-style-type: none"> The definition of Soft Dollar Benefits be reviewed to ensure that it does not have unintended consequences, such as preventing a third party from paying for advice where the Client is a Not-for-Profit company. <p>Detailed Analysis</p> <p>Soft Dollar Benefits</p> <p>Member feedback has suggested that the definition of Soft Dollar Benefits may potentially capture circumstances where a third party may pay for the advice of a Client where the client is for example a Not-for-Profit company. Whilst it may not be the intention of the proposed standard to capture these situations, we believe that it warrants further consideration to avoid any unintended consequences.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> The definition of <i>Soft Dollar Benefits</i> be reviewed to ensure that it does not have unintended consequences, such as preventing a third party from paying for advice where the Client is a Not-for-Profit company.
22		DMR	<p>The Exposure Draft includes the following definition of client:</p> <p>Client for the purposes of this Standard means an individual, firm, entity or organization to whom or to which Financial Advisory Services are provided by a Member.</p> <p>Whilst we consider our client to be the company that has retained us, it has retained us to provide advice not to it but to its shareholders. As the advice that we provide is for the benefit of the shareholders, we believe that the above definition can read that our client is the</p>

Exposure Draft 02/10: Proposed Standard: APES 230 Financial Advisory Services

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			shareholder to whom the advice is provided and the company is merely acting as an agent for its shareholders.
23		Deloitte	<p>We are concerned the current definitions of “Client” and “Financial Advice” are too broad and will result in both general advice to retail clients and advice to wholesale clients being caught by the ED which we do not think is the intention.</p> <p>Client</p> <p>We understand it is the intention of the ED to provide extra protection to retail clients who receive personal financial advice from financial advisors in the area of financial planning and wealth management.</p> <p>Currently the ED makes no distinction between retail or wholesale clients - we believe this is a relevant distinction as the obligations placed on financial advisors in relation to retail clients should be greater.</p> <p>We note that the Government is continuing to consult on the appropriateness of the current classification of retail and wholesale clients in relation to the FoFA, and believe consideration needs to be given to a similar distinction for the purposes of this ED.</p> <p>We believe the definition of Client for the purposes of the ED should only extend to retail clients, as defined under the Act, rather than all clients of a Member.</p>
24		GT	<p>Grant Thornton believes that the definitions of ‘Client’ and ‘Financial Advice’ are too broad and will capture advice that does not cover fiduciary relationships that have been subject to adverse public criticism. In particular it is clear that the forthcoming FoFA legislation that the Government has announced as a result of public criticism of commission based remuneration, will be much narrower, and this will stop on-going members of the accounting profession from continuing to provide high quality ethically based professional advice that adds value to clients and stakeholders, for no good reason. Examples of advice that we believe should continue to be able to be provided by members include areas such as: advice to superannuation funds; asset allocation; taxation; valuations; business broking; insurance; real estate; and business structuring.</p>
25		KPMG	<p>Definition of Client and Financial advice – <i>[Technical Staff Note – [Technical Staff note - Definition is repeated in both Client & Financial Advice Section of this table]</i></p> <p>Need for clarity</p> <p>We understand that the overall objective and intention is that the Proposed Standard is to apply only to members who provide financial planning and such related advice, particularly in relation to retail clients.</p> <p>As currently drafted however, the combined effect of the broad definitions of Financial Advice and client in the proposed Standard may unintentionally capture services or advice to clients that would or should be outside the scope of this overall intention, particularly in relation to its applicability to clients and services that would be an “exempt service” under the Corporations Act.</p> <p>For example:</p> <ul style="list-style-type: none"> • advice provided in relation to self managed superannuation funds; • asset allocation advice (which is outside the exemption in Regulation 7.1.33A of the Corporations Act);

Exposure Draft 02/10: Proposed Standard: APES 230 Financial Advisory Services

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<ul style="list-style-type: none"> • advice to superannuation trustees with less than \$10 million in funds under management; • taxation advice that is exempt under Regulation 7.1.29(4) of the Corporations Act s; and • structuring, establishment, due diligence or valuation advice currently exempted under Regulation 7.1.29(3) (c) of the Corporations Act, <p>would be caught by the Proposed Standard.</p> <p>Recommendation</p> <p>Specific statement that Proposed Standard does not apply to certain financial services</p> <p>To avoid all doubt and for clarity, the proposed Statement should specifically state that it does not apply to:</p> <ul style="list-style-type: none"> • An “exempt service” (as defined under the Corporations Act) or a service taken no to be a provision of a financial service under the Corporations Act. <p>This is particularly the case in relation to the provision of financial services or advice relating to self managed superannuation funds that are currently exempt through the combined application of regulations 7.1.29(5) and 7.1.29A of the Corporations Act. We understand that the Cooper review on the Superannuation System recommends removal of these exemptions. However, we submit that it would be better to wait for the outcome and detail of any changes to regulation on this rather than pre-empt possible changes on this issue, not the least so as not to create inconsistencies and unnecessary compliance obligations.</p> <ul style="list-style-type: none"> • Financial services provided to wholesale clients and professional investors (as defined under the Corporations Act). • Financial services provided to retail clients (as defined under the Corporations Act) by virtue or as a result of inclusion in a disclosure or other public document such as an Investigating Expert report or Investigating Expert report or Investigating Accountant report. • Where the financial service does not require the holding of an Australian financial Services Licence or an Australian Credit Licence. • Where a financial service is provided in relation to and for internal firm purposes such as tax or superannuation advice to employees or partners. <p>Adopt or reference definitions of retail and wholesale clients to that in the corporations Act</p> <p>Further, to avoid inconsistencies and implementation difficulties, particularly between the corporations Act and the proposed Standard, and to ensure the appropriate scope, the proposed Standard should adopt or reference definitions of retail and wholesale clients to that in the corporations Act.</p>
26		APPC	<p>Comments on the ED</p> <p>The APPC commends the APESB for being proactive in undertaking work on a replacement for APES12 and for its contribution to the public policy debate on appropriate professional and ethical standards with respect to financial advisory services.</p> <p>We are however aware of a number of concerns within the accounting profession and the broader financial advisory services industry with regard to some elements of the ED.</p>

Exposure Draft 02/10: Proposed Standard: APES 230 Financial Advisory Services

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>These include (but are not limited to):</p> <p>The definition of “Client” in the ED makes no distinction between retail or wholesale clients. We believe this is a relevant distinction to make as the obligations placed on financial advisers in relation to retail clients would be higher. We believe it is the intention of the ED to provide extra protection to retail clients who receive personal financial advice from financial advisers in the area of financial planning and wealth management.</p>
27		Deloitte	<p><u>Financial Advice</u></p> <p>The proposed definition of Financial Advice is broader than both the current definition of Financial Advice under APS 12, and the definition of Financial Product Advice contained in the Act. As drafted, we believe it will result in certain services being classified as financial advisory, which may not have been the intention. An example is tax advice (which does not require an AFSL) and is specifically exempted from the definition of Financial Product Advice under the Act. Furthermore the definition of tax advice in the current APS 12 states “where the member is asked merely to provide tax advice to a client and is not undertaking any other financial advisory services then that member is not deemed to be providing advice as a financial advisor”.</p> <p>Other examples that appear to be unintentionally captured by the ED include:</p> <ul style="list-style-type: none"> • asset allocation advice (which is outside the exemption in Regulation 7.1.33A of the Corporations Act); • advice to superannuation trustees with less than \$10 million in funds under management; • structuring, establishment, due diligence or valuation advice currently exempted under Regulation 7.1.29(3) (c) of the Corporations Act. <p>We believe that the definitions of Financial Advice and Client need to be reviewed to ensure the ED does not capture (i) general advice provided to retail clients and (ii) advice provided to wholesale clients.</p>
28		PWC	<p>For completeness, in section 4 below we note a number of matters that arise from the ED where we do not perceived a significant direct impact on this firm, but recognize a potential impact on the wider accounting profession.</p> <p>1. Definition of “Financial Advice” in the ED</p> <p>1.1 Our first concern is with the service range covered by the ED. We note that in announcing the proposed new standard, you referred to the standard as applying to financial planners. However, our reading of the ED is that it has application to a much wider range of practitioners than accountants acting as financial planners. In our view, the present definition of “financial advice” is far too wide. It has the effect of applying to many situations where ordinary tax and accounting advice might be required by a taxpayer client, but where it could not be said that the accountant is providing “financial planning” services. For example, the proposed statement appears to an accountant advising on matters as diverse as:</p> <ul style="list-style-type: none"> • The accounting and taxation issues inherent in structuring of a complex group of family-controlled companies, where the founder is considering retirement and passing control of the group to the next family generation • The application of the dividend franking system to receipt of dividend income from shares that a client has already purchased

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<ul style="list-style-type: none"> • The applicable tax depreciation rate to a residential property, for a client proposing to acquire such a property as an investment, and • The value of the shares of a family company sought by a controlling shareholder who is considering his estate planning options. <p>1.2 Many more examples could be provided to demonstrate how ordinary professional accounting activities are drawn into the ambit of a proposed standard intended to apply to financial planners. In each of the above mentioned examples, the accountant would not normally be acting as financial planner. We are not aware of any professional or ethical reason to impose further regulation on such activities. Importantly, for the reasons noted below, it could be said that the advisor relationship ordinarily constituted a “fiduciary relationship” as anticipated in the ED.</p> <p>1.3 We note our concerns with the definition do not arise from a preference to receive fees other than on a fee for service basis. The real issue is that the ordinary interaction with our clients, which is already governed by a range of other professional pronouncements, may be dramatically affected. For example, the requirements of paragraph 7.8 in the ED would mean that a simple telephone enquiry about a depreciation rate on an investment property would necessitate a detailed written report in the prescribed form.</p> <p>In our view, the definition of “Financial Advice” within the ED should be amended to make it clear that tax and accounting services, where the accountant is not otherwise providing financial planning services, are expressly excluded. We appreciate that this may be easier in concept than it is to draft. Perhaps the APESB may consider.</p> <ul style="list-style-type: none"> • Limiting the definition to services for which an Australia Financial Services Licence is required. We appreciate that this has the effect of narrowing the application of the standard, but it is still likely to continue to address the majority of APESB’s fundamental reasons for developing the standard. • Providing specific exclusions. For example, exclude “services where both an Australia Financial Services Licence is not necessary and the principal requirement is the application of tax or accounting expertise.” • In addition to the above suggestions, limiting the definition to retail clients this excluding wholesale clients.
29		APPC	<p>Comments on the ED</p> <p>The APPC commends the APESB for being proactive in undertaking work on a replacement for APES12 and for its contribution to the public policy debate on appropriate professional and ethical standards with respect to financial advisory services.</p> <p>We are however aware of a number of concerns within the accounting profession and the broader financial advisory services industry with regard to some elements of the ED.</p> <p>These include (but are not limited to):</p> <ol style="list-style-type: none"> 1. <u>Definition of “Financial Advice” and “Client”</u> <p>We believe the current definitions of “Client” and “Financial Advice” are too broad and will result in both general advice to retail clients and advice to wholesale clients being caught by the standard (with the consequential affect of fiduciary obligations being imposed on members acting as a ‘financial adviser’ in situations where a fiduciary relationship may not ordinarily exist – see further comments</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>under 2. below).</p> <p>The definition of “Financial Advice” in the ED is broader than both the current definition of Financial Advice under APS 12 and the definition of Financial Product Advice contained in the Corporations Act and will result in a wider range of financial advice being caught than we believe is intended.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • Advice in relation to self-managed superannuation funds which are currently regarded as an “exempt service” and exempted as financial advice where provided by an accountant in certain circumstances pursuant to Regulation 7.1.29(5) and 7.1.29A of the Corporations Act; • Asset allocation advice (which is outside the exemption in Regulation 7.1.33A of the Corporations Act); • Advice to superannuation trustees with less than \$10 million in funds under management; • Taxation advice that is exempt under Regulation 7.1.29(4) of the Corporations Act; • Structuring, establishment, due diligence or valuation advice currently exempted under Regulation 7.1.29(3)(c) of the Corporations Act. <p>The broad definition of Financial Advice in the ED also raises the potential for conflict and inconsistency between obligations under APES 230 and other requirements. For example, APES 230 creates new and/or more onerous reporting obligations for tax and valuation services than exist under the specific APES standards covering these services (APES 220 and APES 225 respectively).</p> <p>We believe that the definition of “Financial Advice” in the ED should be revisited to clarify that it does not apply to tax and accounting services where the member is not otherwise providing financial planning services, including services/advice that are subject to the requirements for the <i>Tax Agents Services 2009</i>.</p>
30		EY	<p>The purpose of this letter is to endorse the APPC submission and to emphasise an issue that is of particular concern to Ernst & Young, namely that tax advice provided by Registered Tax Agents, that is now subject to regulation under the Tax Agents Services Act (TASA) 2009, should not fall within the scope of APES 230.</p> <p>Taxation advice provided by Registered Tax Agents</p> <p>The proposed definition of Financial Advice in the ED covers advice in respect of a client’s financial affairs specifically related to wealth management, retirement planning, succession planning, estate planning, personal risk management and related advice. It includes:</p> <ul style="list-style-type: none"> • advice, including related taxation advice [emphasis added], on financial products such as shares, managed funds, superannuation, master funds, wrap accounts, margin lending facilities and life insurance carried out pursuant to an Australian Financial Services Licence; • advice and dealing in financial products as defined in section 766C of the <i>Corporations Act 2001</i>; • advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<ul style="list-style-type: none"> • advice that does not require an Australian Financial Services Licence, such as real estate and non-product related advice on financial strategies or structure. <p>This definition of Financial Advice therefore includes tax advice provided to a client by a Registered Tax Agent, even where the tax agent is only providing tax advice and not also the underlying wealth management advice in relation to the client's financial affairs.</p> <p>We note that the tax advice will be subject to both the requirements of the ED and TASA.</p> <p>In our view this potential double-regulation seems to be in conflict with the government's approach under the TASA, where financial planner were specifically excluded from the operations of the TASA so that there was not dual regulation of financial planners. However, this ED appears to impose a regulatory regime on financial planners which seem to also apply to tax agents and thus imposes a dual regulation on tax agents that in some situations may be inconsistent and/or conflicting.</p> <p>To avoid such double regulation the former Assistant Treasurer Senator Sherry accounted that the TASA oversight for financial planners would be deferred pending consideration of the regulatory regime for financial planners.</p> <p>Our submission</p> <p>For the similar reason of avoiding double-regulation, we submit that the definition of "Financial Advice" in the ED should be revisited to clarify that it does not apply to tax and accounting services where the member is not otherwise providing financial planning services, and specifically where the services or advice are subject to the requirements of the TASA.</p> <p>We would be please to further discuss those issues with the APESB.</p>
31		PB	<p>Summary</p> <p>Other Comments</p> <p>While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted.</p> <p><i>[Technical Staff Note - The following dot point is repeated in Specific Comments – Table 3]</i></p> <ul style="list-style-type: none"> • The scale of legacy products in the market combined with their complexities require appropriate provisions be included in APES 230, including a suitable definition, which should be based on the Government's description and be as follows: <ul style="list-style-type: none"> Legacy Product means a financial product that is closed to new Clients but remains in force due to existing client participation in the product. <p>Detailed Analysis</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>Legacy Products</p> <p>The definition of a legacy product should be based on the Government's description of these types of products¹ and be as follows:</p> <p>Legacy Product means a financial product that is closed to new Clients but remains in force due to existing client participation in the product.</p> <p>Recommendations:</p> <p><i>[Technical Staff Note - this recommendation is repeated in Specific Comments – Table 3]</i></p> <ul style="list-style-type: none"> • The scale of legacy products in the market combined with their complexities require appropriate provisions be included in APES 230, including a suitable definition, which should be based on the Government's description and be as follows: <p>Legacy Product means a financial product that is closed to new Clients but remains in force due to existing client participation in the product.</p>

Staff Instructions

- Comments of a “general” nature should be dealt with first, followed by paragraph specific comments.
- Respondents' comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order.
- Use acronyms only for respondents. Update the attached table with details of additional respondents.

¹ *Product Rationalisation Issues Paper*, The Treasury 2007 p. 11

RESPONDENTS

1	CFP	Crossing Financial Partners
2	DMJ	Daniel Mendoza-Jones
3	DFG	Davidson Financial Group
4	LBA	Lockhart Business Advisors
5	FFA	Fitzpatricks Financial Advisers
6	ORT	Ortmanns Pty Ltd
7	CRA	Cooper Reeves Accountants
8	SG	Surbal Group
9	SD	Shane Dumbrell
10	RMFA	Roberts & Morrow Financial Services P/L
11	FFP	Forsythes Financial Planning Pty Ltd
12	FAA	Forum Accounting & Advisory
13	FMFS	FM Financial Solutions
14	RIA- MR	Roskow Independent Advisory - MR
15	RIA - NS	Roskow Independent Advisory - NS
16	BIA	Brocktons Independent Advisory
17	IFAAA	IFAAA
18	NEX	Nexia Court Financial Solutions Pty Ltd
19	CONFP	Continuum Financial Planners
20	HPW	Hewison Private Wealth
21	DMR	DMR Corporate Pty Ltd
22	AP	Advantage Partners
23	PMHFP	Port Macquarie Hastings Financial Planning Pty Ltd
24	CFS	Colonial First State
25	MFS	Managed. Financial Strategy
26	JR	Johnston Rorke
27	MS	Moore Stephens
28	KEN	Kennas
29	QPPC	Qld Public Practice Committee
30	GBWW	GBW Wealthcare
31	RT	Roland Tan

32	SCT	Strategic Consulting & Training Pty Ltd
33	PPA	Pitcher Partners Advisory Pty Ltd
34	CFPL	Curran Financial Pty Ltd
35	MHGL	McPhail HLG Financial Planning
36	FERB	Ferguson Betts
37	WB	William Buck
38	DFP	Direction Financial Planning
39	PU	Peter Uhlmann
40	BAG	Bosco Accounting Company Aust Ltd
41	GB	Greg Blaskett
42	PWC	PwC Australia
43	LFM	Landmark Financial Management Pty Ltd
44	KHFG	KH Financial Group
45	FPAA	Financial Planning Association of Australia Limited
46	DELOITTE	Deloitte Touche Tohmatsu
47	BG	Bongiorno Group
48	WHK	WHK Group Limited
49	KCA	Kothes Chartered Accountants
50	AMP	AMP Financial Services
51	AFAC	Accountant Financial Adviser Coalition
52	SPAA	SMSF Professionals' Association of Australia
53	Count	Count Financial Limited
54	MSC	Confidential Submission
55	CNIC	Cutcher & Neale Investment Services
56	FTS	Financial & Technical Solution Limited
57	GT	Grant Thornton Australia Limited
58	SHRB	Suzanne Hadden & Robert M. C. Brown
59	NCA	Noble Chartered Accountants
60	ISN	Industry Super Network
61	PB	The Joint Accounting Bodies
62	APPC	Australia Public Policy Committee
63	KPMG	KPMG
64	EY	Ernst & Young

Constituents' Submissions – Specific Comments Table 4

Exposure Draft 02/10: Proposed Standard: APES 230 Financial Advisory Services

65	FSC	Confidential Submission
66	ASIC	Confidential Submission