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Basis for Conclusions: APES GN 40 Ethical Conflicts in the Workplace - Considerations for Members in Business (Formerly GN 1)

Prepared by the Technical Staff of the Accounting Professional & Ethical Standards Board

BASIS FOR CONCLUSIONS:

APES GN 40 Ethical Conflicts in the Workplace - Considerations for Members in Business (Formerly GN1)

This basis for conclusions has been prepared by technical staff of Accounting Professional & Ethical Standards Board Limited (“APESB”). It has been reviewed and approved by the Board of Directors of APESB and is provided for the benefit of stakeholders so they may gain an understanding of the background to the development of APES GN 40 *Ethical Conflicts in the Workplace - Considerations for Members in Business* (the Guidance Note).

The basis for conclusions **does not** form part of APES GN 40 and is not a substitute for reading the Guidance Note.

Background

APESB issued the Guidance Note to provide guidance for Members in Business on the application of the fundamental principles contained within *Part A: General Application* and *Part C: Members in Business of APES 110 Code of Ethics for Professional Accountants* (the Code). The Guidance Note provides Members in Business with examples of situations that require professional judgment in the application of the principles of the Code.

APES GN 40 includes guidance in respect of:

- Fundamental responsibilities of Members in Business;
- Conceptual framework approach;
- Threats and safeguards;
- Overview of APES 110 Part C:Members in Business;
- Potential conflicts arising from responsibilities to the Employer;
- Preparation and reporting of information to be used by internal and external parties;
- Member in Business’s responsibility to act with sufficient expertise;
- Financial interests of a Member in Business;
- Inducements offered to a Member in Business; and
- Disclosure of information and whistleblowing.

The Guidance Note includes 21 Case Studies to illustrate the application of the conceptual framework approach in the Code and to provide guidance to Members in Business to develop potential solutions to address ethical issues.

APESB issued an exposure draft of the proposed guidance note (APES GN 40 ED) in September 2011 with a comment deadline of 16 December 2011. Submissions were received from the professional accounting bodies, Group of 100, Members and other stakeholders. In response to the comments received, APESB has made a number of changes to APES GN 40. The following summarises the significant issues raised by respondents, and how APESB addressed them.

Members in Business in public and not-for-profit sectors (Paragraph 3.5, Case Studies)

A respondent noted that the Guidance Note had been written specifically to apply in “commercial” situations and stated that this could be interpreted as excluding those Members working in the public or not-for-profit sectors. To alleviate this concern, the term “commercial” was removed and the section revised to apply in all situations where Members in Business might encounter threats to compliance with the fundamental principles of the Code. In addition, further case studies were developed to include specific examples in the public and not-for-profit sectors.

Linkage of the conceptual framework approach with the structured approach diagram (Paragraph 4.2)

A respondent noted that the structured approach diagram of the ethical decision making process introduced by APES GN 40 at paragraph 4.2 should be more aligned with the Code’s conceptual framework approach. Another respondent noted that it is advisable to be consistent with the terminology used by the Guidance Note with that of the Code. The benefit of doing so is to eliminate potential uncertainty whether the approach in the Guidance Note is different to the Code and to make it clear that the Guidance Note is complementary and not in addition to the Code. As one purpose of the Guidance Note is to demonstrate the conceptual framework approach of the Code, minor editorial changes have been made to address the respondents’ comments to align the structured approach diagram with the Code’s conceptual framework approach.

Multiple decision making and exit points in the structured approach diagram (Paragraph 4.2)

Some respondents highlighted the need for the structured approach diagram to contain additional decision making and exit points. This would then allow the Member in Business to use appropriate judgment when adopting the model and tailor the steps taken to the particular circumstances. Accordingly amendments have been made to the diagram to include multiple decision making and exit points.

Materiality reference (Paragraph 4.3)

A number of respondents raised concern over use of the term “materiality” in paragraph 4.3 of the Exposure Draft. APESB agreed that when providing guidance on ethical decision making, the more appropriate reference is to qualitative and quantitative factors as opposed to materiality. Accordingly paragraph 4.3 was amended.

Discussion of circumstances where refusal to perform tasks or resignation may be necessary (Paragraph 6.2)

In a number of sections of the Code there are discussions of circumstances where the Member should consider whether to continue with an engagement, assignment or service once all reasonable ethical conflict resolution actions have been exhausted. Some respondents noted the benefit of providing additional detail of options such as refusal to perform tasks allocated to the Member in Business or resignation in a manner consistent with the Code. As a result, additional guidance on these matters was included in APES GN40.

Additional Case Studies

The Exposure Draft included 17 Case Studies for consideration by Members in Business. There were a number of respondents who suggested that the Guidance Note would benefit through the inclusion of Case Studies covering other sectors where Members in Business are active. These include the not-for-profit, charitable and public sectors. Another respondent noted that an example referenced on recent Australian case law should be included.

In response to these respondents' comments APESB developed four additional Case Studies, bringing the total number of Case Studies in APES GN 40 to 21.