

Proposed Standard: APES 230 Financial Planning Services

Prepared and issued by
Accounting Professional & Ethical Standards Board Limited

EXPOSURE DRAFT **02/12**
ISSUED: (May 2012)

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Commenting on this Exposure Draft

Comments on this Exposure Draft should be forwarded so as to arrive by **6 July 2012**.

Comments should be addressed to:

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A copy of all submissions will be placed on public record on the APESB website: www.apesb.org.au.

Obtaining a copy of this Exposure Draft

This Exposure Draft is available on the APESB website: www.apesb.org.au. Alternatively, any individual or organisation may obtain one printed copy of this Exposure Draft without charge until **6 July 2012** by contacting:

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Reasons for issuing Exposure Draft 02/12

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to issue the Standard APES 230 *Financial Planning Services* setting out mandatory requirements and guidance for Members who provide Financial Planning Advice. The proposed standard will supersede the existing APS 12 *Statement of Financial Advisory Standards* which was issued jointly by CPA Australia and the Institute of Chartered Accountants in Australia in 2005.

Key requirements and guidance in ED 02/12

The proposed APES 230 includes mandatory requirements and guidance in respect of:

- Fundamental responsibilities of Members;
- Professional Independence;
- Terms of the Financial Planning Service;
- The basis of preparing and reporting Financial Planning Advice;
- Client's information, monies and other property;
- Professional Fees;
- Third party payments and Soft Dollar Benefits;
- Documentation and quality control; and
- Transitional Provisions.

Stakeholders should refer to the accompanying *Explanatory Memorandum of APES 230 Financial Planning Services* to gain an understanding of the development process undertaken by the APESB in the revision of this Exposure Draft. The Explanatory Memorandum also considers the matters raised by respondents during the initial exposure of APES 230 in June 2010, the matters considered during the Board's 2011 public consultations with key stakeholders and the rationale for the Board's decisions on the key issues.

Proposed operative date

It is intended that this Standard will be operative from **1 July 2013** subject to the Transitional Provisions in paragraph 11 of the proposed Standard.

Request for comments

Comments are invited on this Exposure Draft of APES 230 *Financial Planning Services* by **06 July 2012**. APESB would prefer that respondents express a clear overall opinion on whether the proposed Standard, as a whole, is supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed Standard.

APESB also request comments in respect of the proposed timeline for the implementation of the proposed APES 230 and any other implementation issues that stakeholders would like to bring to the Board's attention.

APES 230 Financial Planning Services

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APES 230
Financial Planning Services

(Issued XXXX 2012)

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1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional standard APES 230 *Financial Planning Services (the Standard)*, which is effective from 1 July 2013 subject to the transitional provisions in paragraph 11. This Standard supersedes APS 12 *Statement of Financial Advisory Services*. Earlier adoption of this Standard is permitted.
- 1.2 APES 230 sets the standards for Members in the provision of quality and ethical Financial Planning Services. The mandatory requirements of this Standard are in **bold-type (black lettering)**, preceded or followed by discussion or explanations in normal type (grey lettering). APES 230 should be read in conjunction with other professional duties of Members and any legal obligations that may apply.
- 1.3 **Members in Australia shall follow the mandatory requirements of APES 230 when they provide Financial Planning Services.**
- 1.4 **Members practising outside of Australia shall follow the mandatory requirements of APES 230 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**
- 1.5 **Members shall be familiar with relevant Professional Standards and guidance notes when providing professional services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.6 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.7 All references to Professional Standards are references to those provisions as amended from time to time.
- 1.8 In applying the requirements outlined in APES 230, Members should be guided not merely by the words but also by the spirit of the Standard and the Code.

2. Definitions

For the purpose of this Standard:

Acceptable Level means a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the Member at that time, that compliance with the fundamental principles is not compromised.

Australian Credit Licence means a licence that authorises the licensee to engage in particular credit activities as defined in the *National Consumer Credit Protection Act 2009*.

Australian Financial Services Licence means a licence to provide financial services under Chapter 7 of the *Corporations Act 2001*.

Best Interests of the Client means the obligations defined in Division 2 of Part 7.7A of the *Corporations Act 2001*.

Client for the purposes of this Standard means a natural person (whether the person operates as a sole trader, partnership, corporation or trust) to whom or to which Financial Planning Services are provided by a Member.

Code means APES 110 *Code of Ethics for Professional Accountants*.

Commissions means all monetary amounts received by a Member or Firm other than from a Client in respect of the placement or retention of the Client's funds or purchases or sales of financial or risk products. Commissions includes trailing commissions and income, and amounts received from an Australian Financial Services Licensee, product provider, or other party.

Financial Planning Advice means advice in respect of a Client's personal financial affairs specifically related to wealth management, retirement planning, estate planning, risk management and related advice, including:

- (a) advice 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;
- (b) advice and dealing in financial products as defined in section 766C of the *Corporations Act 2001*;
- (c) taxation advice which is related to advice provided under (a) or (b);
- (d) advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and
- (e) advice that does not require an Australian Financial Services Licence, such as real estate and non-product related advice on financial strategies or structures.

Financial Planning Service means a service where a Member provides Financial Planning Advice to a Client.

Financial Services Guide means a financial services guide as defined in the *Corporations Act 2001*.

Financial Services and Credit Guide means a financial services guide combined with a credit guide in a single document as defined in the *Corporations Act 2001*.

Firm means:

- (a) A sole practitioner, partnership, corporation or other entity of professional accountants;
- (b) An entity that controls such parties through ownership, management or other means;
- (c) An entity controlled by such parties through ownership, management or other means; or
- (d) An Auditor-General's office or department.

Member means a Member of a Professional Body that has adopted this Standard as applicable to their membership, as defined by that Professional Body.

Member in Business means a Member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a Member contracted by such entities.

Member in Public Practice means a Member, irrespective of functional classification (e.g. audit, tax or consulting) in a Firm that provides professional services. The term is also used to refer to a Firm of Members in Public Practice and means a practice entity as defined by the applicable Professional Body.

Professional Bodies means the Institute of Chartered Accountants in Australia, CPA Australia and the Institute of Public Accountants.

Professional Independence means:

- (a) Independence of mind - the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and
- (b) Independence in appearance - the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a Firm's, or a Member of the engagement team's, integrity, objectivity or professional scepticism has been compromised.

Professional Standards means all standards issued by the Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable Professional Body.

Soft Dollar Benefits means all monetary and non-monetary benefits other than Commissions received by a Member from parties other than the Client in connection with a Financial Planning Service. Soft Dollar Benefits includes:

- Remuneration based on sales volumes, unless they are rebated in full to the Client;
- Remuneration benefits received for the sale of in house financial products;
- Free or subsidised services or equipment such as office, computer hardware, or commercially available computer software; or
- Free or subsidised attendance (including travel and accommodation), at or sponsorship of, conferences or functions of one or more days duration, conducted by a third party, where the principal eligibility is based on or related to business volumes written or held.

Soft Dollar Benefits excludes non-recurring fixed referral fees received by a Member as a result of referring a Client to another service/product provider provided that they are not Commissions and are disclosed to the Client by the Member.

Statement of Advice means statement of advice as defined in the *Corporations Act 2001*.

3. Fundamental responsibilities of Members

- 3.1 A Member providing a Financial Planning Service shall comply with Section 100 *Introduction and Fundamental Principles* of the Code and relevant law.**

Public interest

- 3.2 In acting in the public interest a Member shall observe and comply with the Code when the Member provides a Financial Planning Service.**

Integrity

- 3.3 A Member providing a Financial Planning Service shall comply with Section 110 *Integrity* of the Code.**

Objectivity and conflicts of interest

- 3.4 A Member providing a Financial Planning Service shall be objective in accordance with Section 120 *Objectivity* of the Code.**
- 3.5 Members in Public Practice shall comply with Section 220 *Conflicts of Interest* and Section 280 *Objectivity – All Services* of the Code.**

Best Interests of the Client

- 3.6 A Member providing a Financial Planning Service shall act in the Best Interests of the Client in relation to the provision of Financial Planning Advice.**

Professional competence and due care

- 3.7 A Member providing a Financial Planning Service shall maintain professional competence, take due care and act in a timely manner in the performance of the Member's work in accordance with Section 130 *Professional Competence and Due Care* of the Code.**
- 3.8 Where a Financial Planning Service requires the consideration of matters that are outside the professional expertise of a Member, the Member shall seek expert assistance or advice from a suitably qualified third party, or decline to provide the service. Where the Member relies on the advice of a third party, the Member shall disclose in any reports or other relevant communications the name and qualifications of the third party and the areas in which third party advice has been obtained.**
- 3.9 When planning to use the work of a suitably qualified third party, a Member shall assess the professional competence and objectivity of that third party, the appropriateness and reasonableness of the work performed, and the fees charged.**
- 3.10 In undertaking a Financial Planning Service, a Member shall consider any guidance issued by the Professional Bodies and applicable regulatory authorities.**

Confidentiality

- 3.11 In accordance with Section 140 *Confidentiality* of the Code, a Member who acquires confidential information in the course of a Financial Planning Service shall not use that information for any purpose other than the proper performance of that service.
- 3.12 Unless a Member has a legal obligation of disclosure, the Member shall not convey any information relating to a Client's affairs to a third party without the Client's permission.
- 3.13 For the purposes of paragraph 3.12, an Australian Financial Service Licensee or Australian Credit Licensee whom the Member represents is not considered to be a third party.
- 3.14 Where a Client has given a Member permission to disclose confidential information to a third party, it is preferable that this permission is in writing. Where oral permission is obtained, a contemporaneous note should be made and kept on file by the Member recording the relevant details of the Client's approval.
- 3.15 Where a Member provides confidential information in accordance with a legal obligation of disclosure, the Member shall notify the Client, or relevant third party as soon as practicable, provided that there is no legal prohibition against such notification.
- 3.16 Examples of disclosure of confidential information that may in certain circumstances be required or authorised by law include:
- reporting of suspected money laundering activities to AUSTRAC in accordance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); and
 - where a Member in Business is authorised by the Member's Employer to receive whistleblower information, disclosure by the Member of such information to an authorised person under the *Corporations Act 2001* (Cth) (Corporations Act).

Professional appointments

- 3.17 A Member in Public Practice who is approached by a potential Client to undertake a Financial Planning Service shall comply with Section 210 *Professional Appointment* of the Code.

Marketing

- 3.18 A Member in Public Practice providing a Financial Planning Service shall comply with Section 250 *Marketing Professional Services* of the Code.

4. Professional Independence

- 4.1 When engaged to provide a Financial Planning Service, the Member shall comply with Professional Independence as defined in this Standard and where applicable shall comply with the independence requirements contained in laws or regulations, such as the *Corporations Act 2001*.

4.2 Where a Member provides Financial Planning Advice that is restricted in scope, including where the Financial Planning Advice or expertise is restricted to particular areas, financial products or providers, the Member shall disclose the extent of those restrictions and any resulting effect on the Member's objectivity and Professional Independence:

- (a)** prior to undertaking the Financial Planning Advice; and
- (b)** at the time the Financial Planning Advice is provided to the Client.

5. Terms of the Financial Planning Service

5.1 A Member in Public Practice shall document and communicate the terms of engagement to provide the Financial Planning Service in accordance with APES 305 *Terms of Engagement* and this Standard.

5.2 Before commencing a Financial Planning Service, a Member shall disclose in a written form to a Client or a prospective Client the following:

- (a)** the identity of the person or the entity responsible for providing the Financial Planning Advice;
- (b)** the nature and scope of Financial Planning Services to be provided or offered including any limitations of scope;
- (c)** significant factors that affect or may affect the Member's ability to provide Financial Planning Advice to the Client on an objective and independent basis;
- (d)** the details of and the methodology used for determining the professional fees;
- (e)** information about any actual, potential or perceived conflicts of interest that may affect the Member's ability to act in the Best Interests of the Client;
- (f)** where the Member has adopted safeguards to eliminate or reduce to an Acceptable Level any identified threats or conflicts of interest, information about the nature of those safeguards and an explanation of the reasons why the Member considers those safeguards to be effective; and
- (g)** information about the nature and extent of any interests, associations or relationships, including family, contractual or agency relationships, whether of a financial nature or otherwise, that have the potential to affect the Member's ability to comply with the Client's Best Interests .

6. The basis of preparing and reporting Financial Planning Advice

Basis for the Financial Planning Advice

- 6.1 A Member providing a Financial Planning Service shall establish the basis for the Financial Planning Advice to be provided with reference to:**
- (a) information provided by the Client or verified by the Client where otherwise sourced; and**
 - (b) the Member's evaluation of the results of the research of alternative strategies and courses of action that can reasonably be expected to meet the Client's financial needs, objectives and priorities, including the relative effectiveness of the alternative strategies and courses of action.**
- 6.2 A Member providing Financial Planning Advice shall take reasonable steps to ensure that the Financial Planning Advice takes into consideration:**
- (a) the agreed scope of the Financial Planning Advice including any limitations of scope;**
 - (b) the Client's financial needs, objectives and priorities;**
 - (c) the information relating to the Client's relevant circumstances;**
 - (d) significant assumptions used to develop the Financial Planning Advice; and**
 - (e) the analysis and evaluation of the Client's situation at the time of providing the Financial Planning Advice.**
- 6.3 A Member shall gather sufficient appropriate evidence by such means as inspection, inquiry, computation and analysis to establish a reasonable basis for the Financial Planning Advice provided. When determining the extent and quality of evidence necessary, the Member shall exercise professional judgment, considering the nature of the Financial Planning Advice, the Member's understanding of the Client's financial needs, objectives, priorities and the Client's relevant circumstances, and shall act in accordance with the Best Interests of the Client.**
- 6.4 A Member providing Financial Planning Advice shall inform the Client of all significant assumptions and their sensitivities that are reasonably expected to impact upon the Financial Planning Advice. The Member shall agree with the Client to the extent practicable all significant assumptions and their sensitivities that impact upon the advice taking into consideration the Client's relevant circumstances. The Member shall document the significant assumptions used to prepare the advice.**
- 6.5 Where a Member who is providing a Financial Planning Service uses estimates, forecasts or projections in the Financial Planning Advice, the Member shall ensure that those estimates, forecasts or projections are presented and communicated in a manner that avoids the implication of greater certainty than in fact exists.**
- 6.6 A Member shall not provide a Financial Planning Service if the Member finds that information on which the Financial Planning Advice is to be based contains false or misleading information or omits material information.**

- 6.7 If a Member becomes aware within a reasonably short time frame that Financial Planning Advice provided is based on or is likely to have been based on materially false or misleading information, the Member should take reasonable steps to notify the Client and take appropriate steps to revise the advice. Factors to consider in determining appropriate steps include:
- ability to locate the Client;
 - whether the financial product upon which the advice has been provided has been sold; and
 - whether the Client has followed the Member's advice.

Reporting the Financial Planning Advice

6.8 Subject to the Terms of Engagement and the scope of work, a Member in Public Practice who is providing a Financial Planning Service shall report in a written form to the Client:

- (a) The name of the party engaging the Member, if not the Client;**
- (b) The date of the report;**
- (c) The purpose of the Financial Planning Advice;**
- (d) The name and qualifications of the Member(s) responsible for the Financial Planning Service;**
- (e) The scope of the Financial Planning Advice, including any limitations or restrictions;**
- (f) The basis of the Financial Planning Advice, including all significant assumptions on which the Financial Planning Advice is based;**
- (g) The specific information on which the Member has relied and the extent to which it has been reviewed by the Member;**
- (h) The reasons why the Financial Planning Advice is considered appropriate for the Client's financial needs, objectives and priorities taking into consideration the Client's relevant circumstances; and**
- (i) That the Financial Planning Service was conducted in accordance with this Standard.**

6.9 A Member in Business who undertakes a Financial Planning Service should follow the reporting requirements in paragraph 6.8 of this Standard to the extent practicable.

7. Client's information, monies and other property

- 7.1 A Member in Public Practice who holds, receives or disburses Client monies, or operates a Client's bank account(s) shall comply with APES 310 *Dealing with Client Monies*.**
- 7.2 A Member in Business who holds, receives or disburses Client monies, or operates a Client's bank account(s) should comply with Part A of APES 310 *Dealing with Client Monies* to the extent practicable.
- 7.3 A Member shall take reasonable steps to protect the security of a Client's information and property that is within the Member's control in accordance with applicable law, regulations and this Standard.**
- 7.4 A Member shall return a Client's property, including records, to the Client upon request, or in accordance with the terms of the Financial Planning Service.**

8. Professional fees

- 8.1 Charging a Client a professional fee based on the value of the Client's assets or funds under management (or changes in such values) creates the threat of self-interest which impacts on the Member's ability to comply with the following fundamental principles of the Code:
- Integrity;
 - Objectivity; and
 - Professional competence and due care.

No safeguards can reduce this threat of self-interest to an Acceptable Level.

- 8.2 A Member in Public Practice providing a Financial Planning Service to a Client shall not charge a professional fee for that service that is expressed or collected as a percentage of the value of the Client's assets or funds under management (or any component of, or changes in such values).**
- 8.3 A Member in Public Practice shall determine a professional fee that is reflective of the value of the work performed taking into consideration a range factors such as the complexity of the Financial Planning Service, the required skills and knowledge, the level of skills and expertise of the Member and the Member's staff, the degree of responsibility applicable to the work, risk, and the time spent on the Financial Planning Service.**
- 8.4 Nothing in paragraph 8.3 prevents a Member in Public Practice from taking into account the value of the Client's assets or funds under management as one of the factors to consider in determining a professional fee.
- 8.5 If there is a material change to the basis upon which the Member in Public Practice proposes to charge professional fees, the Member shall notify the Client and obtain the Client's written consent to the amended terms in accordance with APES 305 *Terms of Engagement*.**
- 8.6 A Member in Business who undertakes a Financial Planning Service should follow the requirements and guidance of paragraphs 8.1 to 8.5 of this Standard to the extent practicable.

9. Third party payments and Soft Dollar Benefits

9.1 The receipt by a Member in Public Practice of Commissions or other benefits (including Soft Dollar Benefits) in relation to a Financial Planning Service from parties other than the Client to whom the Financial Planning Service is provided creates threats of self-interest and/or advocacy which impact on the Member's ability to comply with the following fundamental principles of the Code:

- Objectivity;
- Integrity; and
- Professional competence and due care.

No safeguards can reduce this threat of self-interest to an Acceptable Level.

9.2 Except as provided for in paragraphs 9.3 to 9.5, a Member in Public Practice shall not accept third party payments or Soft Dollar Benefits in relation to the Financial Planning Services provided by the Member from parties other than the Clients to whom the services are provided.

9.3 With the Client's knowledge and agreement, a Member in Public Practice may accept a payment of all or part of the professional fee in respect of a Financial Planning Service provided to the Client from a party associated with the Client. Such parties may include family members and associated entities.

9.4 Where a Member in Public Practice receives Commissions, production bonuses or other payments from third parties such as product providers and there is no reasonable way of having such payments made directly to the Client by the third party, the Member shall fully rebate any such payments to the Client as soon as practicable. Where a payment by the third party is not related specifically to an individual Client, the Member shall apportion the amount amongst all relevant Clients in a fair and reasonable manner.

9.5 A Member in Public Practice may receive a Soft Dollar Benefit which is trivial or insignificant, provided the Member:

- records it in a register within 10 business days of receipt;
- maintains the records of the Soft Dollar Benefit for 5 years after receipt;
- makes the register available for inspection by the Member's Financial Planning Service Clients and the Member's Professional Body within 2 business days of request or as required by regulatory authorities; and
- includes a specific reference to the availability of these records in the Member's Financial Services Guide and Statement of Advice.

9.6 Trivial and insignificant amounts are monetary amounts less than \$300, or to the value of \$300 in gifts or other incentives as defined in Division 2 of Part 7.7A of the *Corporations Act 2001*.

10. Documentation and quality control

10.1 A Member shall prepare working papers in accordance with this Standard that document the work performed, including aspects of the Financial Planning Service that have been provided in writing. The documentation prepared by the Member shall:

- (a) provide a sufficient and appropriate record of the procedures performed for the Financial Planning Service;**
- (b) evidence that the work undertaken provides a reasonable basis for the Financial Planning Advice provided to the Client, including any recommendations accompanying the Financial Planning Advice;**
- (c) demonstrate that the Financial Planning Service was carried out in accordance with this Standard and other applicable Professional Standards, and ethical, legal and regulatory requirements; and**
- (d) evidence all relevant information concerning the Member's professional relationship with the Client, including:**
 - (i) sufficient information for the Client to assess whether the Member has acted in the Best Interests of the Client; and**
 - (ii) information about how the Member has disclosed and addressed any threats or conflicts of interest arising in the course of the Client relationship or the Financial Planning Service.**

11. Transitional provisions

Professional fees

11.1 The requirements of paragraphs 8 and 9 in respect of professional fees, third party payments and Soft Dollar Benefits are effective for existing Clients from 1 July 2015.

Conformity with International Pronouncements

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 230.