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Ms Kate Spargo
The Chairperson
Accounting Professional & Ethical Standards Board Limited
Level7, 600 Bourke Street
MELBOURNE VIC 3000

Dear Kate,

Proposed Standard : 230 APES 230 Financial Advisory Services - Submission

I met with you recently at the ICAA Conference convened in Sydney on 23 and 24 September 2010 on Self Managed Superannuation Funds. At this conference you encouraged attendees to make submissions on this Proposed Standard.

As a background I advise that I am a Fellow of the Institute of Chartered Accountants with the designation Financial Planning Specialist, a Certified Financial Planner and a member of the Financial Planning Association, a Fellow of FINSIA (having completed the Graduate Diploma of Applied Finance & Investment), a member of SPAA with the qualification of S.S. Aud. (Specialist Self Managed Superannuation Fund Auditor) as well as being a Fellow of the Taxation Institute and a Registered Company Auditor. I have been in professional practice for in excess of 30 years and have two accountancy practices (one regional and one in Adelaide), a financial planning practice (with Proper Authority through Count Financial Limited) and a company that specialises in the audit of SMSF's for a number of accountancy practices.

As a consequence of my years of experience I am strongly of the view that the Proposed Standard : 230 APES 230 Financial Advisory Services whilst well intentioned as regards the areas where the APES Board should be acting - in particular ethical and practice standards, is not appropriate as regards the proposals in the area of fees. I well understand the background that has lead to this Proposed Standard. The impact of such financial fiasco's as Westpoint, Storm Financial , Opes Prime, Timbercorp, Great Southern etc .... have been well reported in the media.

I consider that the focus is too narrow as regards the issue of fees.

It is my contention that the focus should be on appropriate educational, ethical and moral standards **and not the remuneration model**. As a member of five professional bodies I am well versed in the ethical standards that apply. I have the strong view that the problems that I have referred to above are primarily a result of poor professional advice and lack of application of ethical standards (and possibly knowledge/ educational standards) – not the remuneration model.

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as Trustee for the Noble & Associates Unit Trust
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It is a requirement of legislation that all fees are appropriately disclosed to clients and in my experience this is accepted by clients – I believe that the real issue is the appropriateness and quality of advice given to clients and the monitoring of their investments over time!

I have summarised below the main concerns that I have (and several of my colleagues who have reviewed this Proposed Draft together with me):

Fees

a) Investment and Superannuation

This draft seeks to ban all but fee for service. This seems to assume that in fact any form of commission is BAD – however my experience is that the level of commission does not/ should not influence an investment recommendation (providing that the level is not exhorbitant!). The banning of all but fee for service is impractical and does not recognise what is happening in the commercial and legislative world.

Many areas of government charges are based on some form of asset value linked fee – e.g. Council rates, land tax, various levies, or income linked e.g. income tax, and a number of other taxes. There is no concept of fee for service in such areas – and this is commonly accepted by the public.

My financial planning business is associated with Count Financial Limited and we have a professional and hybrid fee-for-service based business that includes fixed fees upfront, ongoing fixed fees, ongoing commissions and asset based fees. All methods are discussed with clients and fully disclosed in the final Statements of Advice in both dollar cost and percentage terms (as appropriate)

The asset based fee pays for unlimited access by the client to us by phone or in person throughout the year. This gives us a real commitment to the client to grow the funds under our management. Clients understand (due to full disclosure) that if asset values increase we benefit and that if the asset values fall we also share the pain through a reduction in our fee income.

As an FCA Financial Planning Specialist I don't entirely agree with the ICAA's submission that there should be no link between the product advice and remuneration. I have no doubt that a number of our clients could not have afforded their initial advice and ongoing annual review were it not for the ability to have this advice paid for from the investment. Sometimes due to circumstances and the investment being made we charge no upfront fee in return for an ongoing fee or asset based percentage. This is particularly the case for advice on existing super funds, and/or their consolidation where non-super cash is limited. We always provided full disclosure as to both the initial cost of our advice, and ongoing costs. In addition we always give clients the choice to pay the upfront cost from an account separate to the investment or super. Most choose to have the cost deducted from their investment. It is my observation that the general public shuns writing cheques out of their general funds for investment and insurance advice – they have been conditioned over decades primarily by risk insurers to think this way!

Low value investors (e.g.less than $20k) must have an ongoing fee because they simply can't afford to pay a high upfront fee for advice. E.g. 25 year old with $5,000 to invest won't pay 2/3 of their savings to us as an advice fee, yet on an hourly time basis, we spend between 2 – 4 days in interviews, collecting information, preparing strategy and Advice documents, and ensuring the money is invested correctly (rollovers are particularly time-consuming).

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If the ability to deduct advice costs from the product is removed, I see that an inevitable outcome will be that the ability to access appropriate professional financial planning advice will be beyond the reach of the majority of Australians who need it most. ***In fact this is exactly opposite what I believe is a desired goal!***

Being remunerated by the hour (where there is less reward for being efficient) or even an agreed flat fee from a client's bank account no more guarantees good advice than being paid for from a product, as long as the client agrees to the fee. These arrangements are ALWAYS disclosed in the Statement of Advice in percentage and dollar values.

Almost all large Dealer Groups take their remuneration directly from products, before passing on the balance to the Authorised Rep (or in the case of Banks and Insurance companies, build their profit into the MER of the product that they own in-house or as shareholders of Financial Institutions). This makes an unlevel playing field for Planners like me who do not simply receive a salary from a Licensed Dealer who is selling products. It is impractical and inequitable to ask Planners to source their revenue exclusively outside the investment product, when the very organisations ASIC gives the Licences to source their revenue FROM the investment product. If Planners have to use Fee for Service, then Licensed Dealers should have to do the same.

Removing the ability to charge an asset based fee on say Wrap products due to a belief that such a fee can cause conflicts of interest shows a fundamental misunderstanding of how wrap accounts generally work. If we charge a flat percentage fee on the whole investment, and then select underlying funds which have NO entry fee and NO trailing fee or shares which have NO part of the transaction cost coming back to us, how are we conflicted? There is no incentive to choose any one product over the other as we get paid the same whether the investment is in direct shares, funds A BC or XYZ. ***In fact when clients have this explained top them, they actually grasp it and gain confidence that we are not biased in the selection of the underlying fund.***

Industry super funds offer house financial planning for no or very low cost with "restricted" advice options. As usual, those with no fee will not disclose as to who bears the cost, so the "no fee" model is a furphy. As a generalization, Industry funds make it difficult for us to get information on behalf of clients, particularly unit prices, client units held, and asset allocation on a daily basis. Public offer fund managers do provide this information, and also contribute significantly to assisting us in providing ongoing advice to our clients for asset reallocations, and general advice. This support has a cost, and Industry funds are simply providing less Service/advice/support for a lower cost. In addition I add that it is very difficult for Industry Fund members to get appropriate personalized advice from these funds – they do not have many resources as regards appropriately trained and qualified financial planners available for members.

I am disappointed that the ICAA, FPA, FINSIA and other professional bodies that represent Financial Planners have done little to counter the Industry Super fund advertisements that imply commissions to Financial Advisers are a waste of money. I am aware that there are many studies that show the value of Advice in reaching client goals can far exceed the fee cost whether the fees be by way of commission, a hybrid model or asset based (or fee for service).

The real question is for individual investors to ensure that they feel they are getting value for any fees they pay. In addition, a product cannot be judged superior simply because it's fees are

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lower - that's like saying you have a better accountant because you paid less tax - it may simply be because you earned less income in the first place!

One significant factor that has been overlooked in the value that most good planners provide is the unwritten discussions that we have with clients who "have been told about the next best thing.....or a great thing to get into". We save them from themselves and assist in avoiding the sucker schemes. We have never recommended to any of our clients such investments as Westpoint, the various agri- ventures (wine grapes, almond , jojoba, tea tree etc...projects), Timbercorp, Great Southern, Centro, Opes Prime or other tax driven wishful get rich quick schemes. In fact We have all ways held the view that if it looks too good to be true.....it is! We have the added advantage of having extensive rural and agriculture based clients and I am personally involved in family enterprises in citrus and viticulture as a third generation participant – I am acutely aware of the costs and vagaries of the primary production sector and have used this personal knowledge in advising clients.

Yes some companies that have had high recommendation from sharebrokers have failed (e.g.ABC Learning, Babcock & Brown – primarily as a result of excessive gearing) but the thrust of our discussions with clients has always been on the basis of the ethical standards that we are obliged to follow. These standards are echoed on the Proposed Draft. If planners from firms such as Storm Financial (etc) other backgrounds had been appropriately qualified and required to operate under these ethical standards over the years, I have no doubt that some(many) clients in Storm and Opes Prime (etc...) would not have made the investments that they did , or in the manner they did (i.e. with inappropriate margin loans).

It is not the attraction of high fees, commissions or other remuneration that drives the quality of advice that we provide. ***As a financial planner the cardinal principal is KNOW YOUR CLIENT.*** All advice given is based on this and thus ensures that appropriate quality advice is provided to clients.

I have no doubt that some of the commentators and critics of the remuneration models that are currently used in the financial planning profession are ignorant of this basic premis. I recognise that there have been advisors (*who I would not regard as professionals – often only holding say only a PS 146 accreditiation and who are not a member of any of any of the professional bodies specialising in financial planning and investment advising*) who would not even be aware of ethical standards that ought apply – at least this is apparent when viewing the outcomes for many of the investors in Storm Financial!.

I reiterate that it is the appropriateness and quality of advice and not the remuneration model that is the issue!

b) Insurance

Apart from investment and superannuation advice, insurance is an even more delicate area. we have seen one so called fee for service model from a major insurance company representative, whereby the fee set was about the same level of commission that would have been earnt. If this is to be the norm it is a *furphy*. Each client will face varying levels of "fees" as against commissions that would have been earned. Same cost only a different name, so what is achieved.

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Furthermore, if we are forced to charge in only one fashion such as is to be mandated, how am we to compete in insurance. We put to you the following scenario. Firstly we have to educate the client in the fee based model for insurance. We say to a client you need to pay me an upfront fee (which has to be non-rebatable if it a fee in the true sense of the offering), and if the application fails for whatever reason, bad luck because you (the client) have paid us for our valuable time doing the SoA and the application etc, the application has been refused and you are out of pocket. To refund the fee smacks of charging the commission under the guise of a "fee". (we don't think that the hardliner fee modellers have grasped this). In that scenario, the client says thanks but no thanks, there is a firm down the road that will get commission to the same level as the fee based model but will get paid by the insurance company only if the application is successful and the client is not out of pocket. End result – we don't do the business. The standard prevents me competing in the commercial world if I want to be a member of the ICAA.

It is acknowledged that Australians are significantly under insured when compared to other OECD countries – particularly in the area of personal risk insurance. To add to the difficulty of getting them to insure at a reasonable cost by complicating the issue with non competitive fee models will only serve to have them further under insured.

The government report "The future of financial advice" (FOFA) recognises that under insurance, and also exempts insurance from the commission ban for the present. I see no reason why the APES Board should go further.

We believe that to proceed with the Proposed Draft would be extremely counterproductive as regards personal risk insurance at this time.

Costs of Advice

If planners are to reduce the cost of advice then the ICAA, FPAQ FINSIA and other relevant bodies should be lobbying for a reduction in the administrative burden of planners in producing nonsensically long Statements of Advice for lower range investments up to a minimum limit of say $50,000, in conjunction with the implementation of the range of initiatives in the FOFA. It would be a trade off between higher standards and ethical and fiduciary responsibilities (which I support and also comply with through the ICAA standards already) but given that they will be law, I consider that there should be the ability to reduce the size and complexity of SoA's. That would then impose those liabilities on planners but allow access to professional advice for those at the lower end of the investment scale who probably need investment advice and guidance more than some others at a reasonable price.

Other standards

APES 110 does not dictate methods of charging fees. It in fact recognizes that accountants are allowed to charge contingency fees. It seems this in inconsistent with the thrust of the Proposed Draft : 230 Financial Advisory Services as APES 110 by default allows a commission based payment or a success fee because they are not banned. Why is the APES Board so intent on highly regulating the financial planning sector of the profession (generally small firms) when it leaves the other generally larger firms to operate how they like without regulating their method of remuneration, whether they choose to use commission based or success payments or not. The APES Board must be consistent across the whole profession or it will rightly be seen to be unreasonably discriminating against one small sector of the profession

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Small business

Most planners are small businesses. The draft standard assumes that we have the ability to influence what the Dealers do. We cannot dictate to them how to pay us or how to work their remuneration models. That is the job of government, as we have seen in the recent reviews of the industry. Why is the APES board intent on imposing on what are generally small businesses (as defined in the Tax Act) much more restrictive models than the government itself?

This draft will impose on our small business a huge administrative burden in changing procedures, and remuneration models (whilst still trying to run the practice) without any improvement in the service and advice provided to clients. Such a change is unworthy unless it can be demonstrated by anyone in the ICAA or APES board that this change in fees WILL improve advice, not just give the PERCEPTION that advice will be improved. If that can't be demonstrated categorically then the standard in relation to fees must not be approved. The APES board must be accountable here.

Competition

Whilst I am not an expert in competition laws, I wonder if this draft contravenes those laws by not allowing accountants to use the variety of models for charging that are allowed by Government and used by our competitors. The apparent discrimination within the profession as pointed out above would also be of interest. I'm sure that the ACCC would find this of interest.

Timing

There is no justification for the draft to impose a start date of 1 July 2011, one year earlier than the government has advocated. Given the time for the daft to be exposed and commented upon, and the time to consider all those issues, the final will probably not be available until early 2011 giving practitioners little time to change work practices if the fee paragraphs remain the same.

Adoption of new accounting standards generally have a much longer lead time for professionals and their clients to adjust, but we seem to be unfairly singled out here for no demonstrated reason.

Grandfathering

I understand that the fee proposal for Government is to commence with investments made from July 2012, and that existing arrangements will be allowed to remain. There is no such relief in the draft which again shows a lack of understanding of the issues for small businesses such as ours. Such a relief and the extension of the commencement date to coincide with the Government start date whenever that is, is sensible, reasonable and easier to implement if the fee proposal is coordinated with the government position

Overseas Bodies

APES 230 acknowledges that the International Ethics Standard Board for Accountants has not issued a similar standard. Does that by implication mean that Australian Accountants that are financial planners are such rogues compared to the world that we urgently need such regulation that goes beyond government requirements? As I say most of the draft only repeats what is in other standards and really just repeats those standards in a different context, with the exception

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of fees which is draconian compared to APES 110. Has the APES Board investigated what overseas bodies have been doing in this area? If not, why not, and if so why haven't we been informed?

Summary

This draft adds nothing to the ethical standards of the ICAA, FPA, FINSIA or SPAA and really is superfluous. It repeats what we already have as high ethical standards, adds some of the FOFA proposals, and then attacks the fee issue as the only stand out difference.

Unfortunately the APES board has followed the herd with the fee debate and has made proposals above and beyond the governments own reports for no demonstrable result. The fee area is the only discernable area where the APES Board has gone beyond FOFA. Neither the ICAA nor the APES board has shown that this change in fees WILL improve advice, not just give the PERCEPTION that advice will be improved. If that can't be demonstrated categorically then the standard in relation to fees must not be approved. The APES board must be accountable here. The standard should include the FOFA proposals so that there is a level playing field for accountants to compete in the industry, not by just standing out on fees (that's just a cop out) but by complying with the high ethical standards that we have always complied with

I believe that the costs of advice should be investigated to reduce those costs by removing compliance costs that add nothing to the quality of advice, and that there should be a lowered limit where Statements of Advice should be reduced in size and complexity in exchange for increased legal liability.

As I commented at the outset I consider that the issue is not the remuneration model but the appropriateness and quality of advice.

For your information I will be sending a copy of this email to teh ICAA, FPA, FINSIA and SPAA and my dealer group, Count Financial Limited.

Yours Faithfully

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