

AGENDA PAPER

Item Numbers: 11
Date of Meeting: 21 – 22 November 2011
Subject: APES 230 ED *Financial Advisory Services* Project

Action Required

For Information Only

Purpose

To obtain the Board's direction on the key issues of the APES 230 ED project to complete the drafting of the proposed revised Exposure Draft.

Background

The professional bodies submitted a project proposal to develop a proposed pronouncement to replace the current APS 12 *Statement of Financial Advisory Services* in August 2007. The Board established the APES 230 *Financial Advisory Services* Taskforce to develop the proposed standard and engaged June Smith of Argyle Partners to prepare a Consultation Paper to inform the development of the proposed standard. APESB released the Consultation Paper *Review of Miscellaneous Professional Statement APS 12: Statement of Financial Advisory Services* in October 2008 for public comment for a period of 3 months. APESB received five submissions from professional bodies, firms and members and the respondents comments were considered at the May 2009 Board meeting.

In February 2009 the Parliamentary Joint Committee (PJC) on Corporations and Financial Services initiated an inquiry in *Financial Products and Services* in Australia to inquire into the issues associated with financial product and services provider collapses that occurred in 2007-08. In August 2009 APESB made a submission to this inquiry and also made representations to the PJC inquiry. The PJC inquiry issued its report in November 2009.

In March 2010, the APES Board approved the *Proposed Principles to be addressed in APES 230 Financial Advisory Services*.

On 26th April 2010 the federal government released an information pack on *The Future of Financial Advice* which is in effect the Government's response to the findings of the PJC inquiry.

At its June 2010 APESB Board meeting the Board approved the issue of ED 02/10 Proposed Standard APES 230 *Financial Advisory Services* for public comment.

APES 230 ED was closed for comment on the 15th October 2010. To date APESB has received 67 submissions from Members, Firms, commercial organisations, professional organisations and the joint accounting bodies.

At the November 2010 APESB Board meeting, the Board agreed to issue a media release to the public advising of the major issues identified by respondents and communicate that there will be an extension of the time frame.

The key issues identified were:

- Operative date of APES 230;
- Definition of Fee for Service;
- Fiduciary duties;
- Application to Members in Business
- Application to insurance and risk products; and
- The retrospective effect of the proposed standard in respect of trailing commissions.

APESB issued a Media release in December 2010 to this effect.

The Board considered the issues identified by respondents in the Specific Comments Table 1, 2 and 5 at the January 2011 Board Meeting. The preliminary analysis of the Specific Comments Tables 3-4, 6-9 and the General Comments table were considered by the Board at its March 2011 Board Meeting. At this meeting the Board determined to invite key stakeholders/respondents to present on the key issues to the Board.

The Board conducted consultations with key stakeholders during the May and August 2011 Board Meetings. Key stakeholders were selected based on the following criteria:

- Organisation type;
- Different sizes of organisations to provide adequate coverage of different issues encountered based on size; and
- Breadth and analysis of the key issues in their respective submissions.

The following key stakeholders presented to the Board:

1. Joint Accounting Bodies;
2. Choice;
3. Quantum Financial;
4. Accountant Financial Adviser Coalition/Count;
5. SMSF Professional Association of Australia Limited;
6. Independent Financial Advisers Association of Australia/Brocktons Independent Advisory;
7. Moore Stephens;
8. Noble Chartered Accountants;
9. Roskow Independent Advisory;
10. Pitcher Partners Advisory;
11. KPMG;
12. Suzanne Haddan & Robert M.C. Brown;
13. Industry Super Network;
14. William Buck;
15. Hewison Private Wealth; and
16. Bongiorno Group.

Technical Staff held discussions on common issues raised by the following major accounting firms:

17. PricewaterhouseCoopers;
18. Deloitte Touche Tohmatsu;
19. Grant Thornton; and
20. Ernst & Young

Stakeholder views

The following stakeholders who presented to the Board expressed unqualified support of the proposed APES 230 ED. These stakeholders believe that adoption of APES 230 ED will lead to the professionalism of the financial planning industry and overcome the conflicts that are currently embedded within the industry:

- Choice;
- Industry Super Network;
- Independent Financial Advisers Association of Australia;
- Roskow Independent Advisory;
- Quantum Financial; and
- Suzanne Haddan & Robert M.C. Brown.

The following stakeholders who presented to the Board offered qualified support to the principles of APES 230 ED. The key area where they had a different view was in respect of percentage based asset fees:

- Hewison Private Wealth;
- SMSF Professional Association of Australia Limited; and
- Pitcher Partners.

The following stakeholder who presented to the Board showed qualified support. This stakeholder provides Fee for Service in respect of financial advice. However in the areas of insurance and mortgages the stakeholder uses commissions. The stakeholder is of the view in respect of insurance and mortgages that Clients should be offered the choice of how to remunerate the financial adviser either by Fee for Service or Commissions:

- Bongiorno Group;

The following stakeholders who presented to the Board did not support various elements of APES 230 ED which ranged from remuneration methods, exclusions for insurance/ risk products/ mortgages, fiduciary duty, retrospective impact of the proposed APES 230 ED and competitive disadvantages to Members:

- The Joint Accounting Bodies;
- Accountant Financial Adviser Coalition/Count;
- Moore Stephens;
- William Buck; and
- Noble Chartered Accountants.

Accounting Firms

The key issue raised by the accounting Firms relate to the scope of the proposed APES 230 ED and it inadvertently capturing financial advisory work done by the Firms. Refer to the Technical Analysis Paper for potential amendments to address this issue.

Member disadvantage

Some stakeholders note that they will be disadvantaged as their colleagues or an associate who doesn't belong to a professional accounting body can still practice in the financial planning industry without the implication of the proposed APES 230. As a result, these members are of the view that they would have to resign their membership from the professional accounting bodies if the proposed APES 230 goes ahead. Stakeholders also argued that members in smaller financial planning practice will experience difficulties as they do not exert influence over dealer groups who dictate remuneration methods.

Those who have successfully transitioned to a true Fee for Service as proposed in APES 230 ED submitted that:

- They have been trusted by their clients.
- Incomes did not fluctuate with the movement of market, especially during GFC,
- The value of their practices have grown,
- They are not "held hostage" by the commercial requirement to sell products and to accumulate Funds under Management.

Refer to the APES 230 ED Technical Analysis Paper for a discussion of the key issues and matters raised for the Board's consideration.

Material Presented

- APES 230 ED Technical Analysis Paper;
- Preliminary working draft of the proposed revised APES 230 ED;
- Draft minutes of APES 230 Taskforce meeting;
- Residual issues table;
- Explanatory memorandums of the *FoFA Bills 2011*; and
- Recent media articles and publications of interest.

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Date: 10 November 2011