

EXPOSURE DRAFT

ED XX/08
(December 2008)



**Proposed Standard: APES 310 Members' Trust
Accounts (Formerly APS 10)**

Prepared and issued by **Accounting Professional & Ethical Standards
Board Limited**

Commenting on this Exposure Draft

Comments on this Exposure Draft should be forwarded so as to arrive by **XX March 2009**.

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 **XX March 2009** by contacting:

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Reasons for issuing Exposure Draft xx/08

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to issue the Standard APES 310: *Members' Trust Accounts* setting out mandatory requirements and guidance for Members in Public Practice who hold or receive Trust Money.

The predecessor Standard APS 10: *Trust Accounts* was issued in December 2003 to establish the responsibility of Members in Public Practice. As part of the overall review of the existing APS statements and re-branding and re-launching them as APES Standards, a review was carried out to update the existing professional statement dealing with Trust Accounts.

Key requirements and guidance in ED xx/08

The proposed APES 310 includes mandatory requirements and guidance in respect of:

- Fundamental responsibilities of Members in Public Practice
- General Principles of Trust Accounts
- Receipt of Money;
- Establishment of Trust Bank Account(s);
- Operation of Trust Bank Account(s);
- Disbursement of Trust Money;
- Trust Account Records;
- Audit of Trust Account(s);
- Professional obligations of the auditor; and
- Anti-Money Laundering

Some of the key changes from the existing APS 10 *Trust Accounts* are that if the Member delegates his or her authority to operate the Trust Account to another Member then two signatories will not be required And the professional obligations of the Auditor is separately stated in section 11 to the Standard.

Proposed operative date

It is intended that this Standard will be operative from 01 September 2009.

Request for comments

Comments are invited on this Exposure Draft of APES 310: *Members' Trust Accounts* by **XX March 2009**. 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.

ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS BOARD
LIMITED



APES 310
Members' Trust Accounts

(Issued XXXX 2009)

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1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues the Standard APES 310 *Members' Trust Accounts (the Standard)*, which is effective from 1 September 2009.
- 1.2 APES 310 sets the standards for Members in Public Practice who hold or receive Trust Money when they provide Professional Services to Clients. The mandatory requirements of this Standard are in **bold-type** (black lettering), preceded or followed by discussion or explanations in normal type (grey lettering).
- 1.3 **Members in Public Practice in Australia shall follow the mandatory requirements of APES 310 when they hold or receive Trust Money.**
- 1.4 **Members in Public Practice outside of Australia shall follow the mandatory requirements of APES 310 to the extent to which they are not prevented from so doing by specific requirements of local laws and regulations.**
- 1.5 **Members in Public Practice 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 and guidance notes are references to those provisions as amended from time to time.
- 1.8 In applying APES 310 Members in Public Practice should be guided not merely by the words but also by the spirit of the Standard and the Code.
- 1.9 For the purposes of this Standard and subject to paragraphs 10.2 and 10.3, the annual reporting period ends on 31st March in any year or any alternative period as agreed with the respective Professional Body.
- 1.10 For Trust Account (s) maintained by Members in Public Practice and required by law to be audited or subject to regular inspection by the relevant statutory authority pursuant to:-
 - (a) *Trust Accounts Act (Qld) 1973*;
 - (b) *Corporations Act 2001*, in respect of investment advisor, liquidator, administrator, receiver, receiver and manager, scheme manager or such other appointed controller of property; or
 - (c) *Bankruptcy Act 1966*, in respect of registered trustee in bankruptcy or such other appointed controller of property;

a separate audit is not required for the Professional Bodies. The Auditor is, however, bound to report in accordance with paragraph 11.3 of this Standard.
- 1.11 APES GN 31 *Operation of Trust Accounts* (currently GN 3) provides guidance to Members in Public Practice who operate Trust Accounts.

2. Definitions

For the purpose of this Standard:

Auditing and Assurance Standards mean:

- a) in relation to reports for reporting periods and engagements commencing on or after 1 July 2006:
 - i. the AUASB standards, as described in *ASA 100 Preamble to AUASB Standards* and the *Foreword to AUASB Pronouncements*, issued by the AUASB, and operative from the date specified in each standard; and
 - ii. those standards issued by the AuASB which have not been revised and reissued (whether as standards or as guidance) by the AUASB, to the extent that they are not inconsistent with the AUASB standards, and
- b) in relation to reports for reporting periods and engagements commencing prior to 1 July 2006, the auditing and assurance standards issued by the AuASB on behalf of CPA Australia and the Institute of Chartered Accountants in Australia.

AuASB means the Auditing and Assurance Standards Board which issued Australian auditing and assurance standards up to 30 June 2004, under the auspices of the Australian Accounting Research Foundation, a joint venture of CPA Australia and the Institute of Chartered Accountants in Australia.

AUASB means the Australian statutory body called the Auditing and Assurance Standards Board established under section 227A of the *Australian Securities and Investments Commission Act 2001*.

Auditor means a Member of one of the Professional Bodies, who holds a Public Practice Certificate, has adequate training, experience and competence in auditing and who is independent in accordance with paragraph 11.2 of this Standard.

Cheque means a bill of exchange drawn on a Financial Institution by the holder of a current account.

Client means an individual, Firm, entity or organisation to whom or to which Professional Services are provided by a Member in Public Practice in respect of engagements of either a recurring or demand nature.

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

Deficiency means a lack of Trust Money in a Member's Trust Bank Account, generally as disclosed by the Trust Account Records, or lack of funds standing to the credit of a Client's account in the Member's Trust Account, but does not include any deficiency which an Auditor is satisfied was caused solely by an error of a Financial Institution.

Electronic Funds Transfer means a transaction initiated via a communications network which allows the electronic transfer of value from an account at a Financial Institution.

Financial Institution means a bank, building society, credit union or such other financial entity that provides banking facilities to the public.

Firm means (a) a sole practitioner, partnership, corporation or other entity of professional accountants;

(b) an entity that controls such parties;

(c) an entity controlled by such parties; 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 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.

Money means cash, foreign currency, any negotiable instrument and any security, the title to which is transferable by delivery, including delivery by Electronic Funds Transfer but does not include Trade Dollars.

Personnel mean employees, officers, directors, contractors or agents.

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

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

Professional Services means services requiring accountancy or related skills performed by a Member in Public Practice including accounting, auditing, taxation, management consulting and financial management services.

Trade Dollar(s) means an accounting unit with an assigned value used to record the value of goods and services traded between participants of a trade exchange e.g. barter card dollars, or credit units.

Trust Accounts means accounts for the receipt, disbursement, disposal or other dealing of Trust Money. The mere capacity to operate a Client's account with a Financial Institution, either alone or jointly, does not necessarily constitute the operation of a Trust Account.

Trust Account Records means documentation evidencing the receipt, disbursement, disposal or other dealing with Trust Money.

Trust Bank Account means any account with a Financial Institution utilised by the Member or Personnel for the receipt, disbursement, disposal or other dealing of Trust Money.

Trust Money means;

(a) any Money held or received on behalf of any person by the Member in Public Practice or any of the Member's Personnel, in the course of or in connection with offering or performing Professional Services; and

(b) where the Member in Public Practice or the Member's Personnel have no present entitlement to such Money.

Working Day means a day that is not a Saturday, Sunday, public holiday or bank holiday.

3. Fundamental Responsibilities of Members

Public interest

- 3.1 In accordance with Section 100 *Introduction and Fundamental Principles* of the Code, A Member in Public Practice shall observe and comply with the Member's public interest obligations when the Member hold or receive Trust Money.
- 3.2 A Member in Public Practice shall comply with Section 220 *Conflict of Interest* and Section 280 *Objectivity – All Services* in the Code.

Professional competence and due care

- 3.3 A Member in Public Practice who holds or receives Trust Money shall maintain professional competence and due care in the performance of the Member's work in accordance with Section 130 *Professional Competence and Due Care* of the Code.

4. General Principles of Trust Accounts

- 4.1 A Member in Public Practice shall comply with Section 270 *Custody of Client Assets* in the Code.
- 4.2 A Member in Public Practice who receives Trust Money shall maintain Trust Accounts in Accordance with this Standard and applicable laws and regulations.
- 4.3 A Member in Public Practice shall be accountable for all Trust Money that is transacted through the Member's Trust Account.
- 4.4 A Member in Public Practice shall design and implement appropriate internal control safeguards and procedures in respect of the operations of the Trust Accounts.
- 4.5 A Member in Public Practice shall ensure that the Member's Trust Accounts are audited annually in accordance with this Standard, unless exempted under paragraph 1.10.
- 4.6 A Member in Public Practice shall take all reasonable steps to ensure that any Money or instruments held on behalf of Clients are safeguarded from unauthorised use.

5. Receipt of Money

- 5.1 A Member in Public Practice holding or receiving Money payable to a Client, or at the direction of a Client to a third party (for example, tax refund proceeds received as tax agent), in respect of which the Member has no authority to transfer, convert or assign, shall dispatch or refund immediately to the Client or third party as appropriate, or otherwise dealt with it in accordance with the Client's instructions.

- 5.2 **A Member in Public Practice receiving Money where the payee is no longer a Client, or the intended recipient is unknown to the Member, shall forward the Money to the payee. Where the Member in Public Practice is unable to the identity the payee or intended recipient the Member shall return the Money to the drawer or sender as appropriate.**
- 5.3 A Member in Public Practice is directed to relevant State legislation on unclaimed Money for their obligations when unable to discharge Money to the Client, payee, drawer or sender as appropriate.
- 5.4 A Cheque payable to a Client does not constitute Trust Money until it is negotiated. A Member in Public Practice shall be deemed to have negotiated a Cheque when the Member has transferred, converted or assigned the Cheque to himself or another by delivery or endorsement for consideration or otherwise. Where such a transfer, conversion or assignment is completed without the authority of the owner of the Cheque, such actions may amount to a criminal act.
- 5.5 **A Member in Public Practice acting on a written authority to transfer, convert, assign Money on behalf of a Client, shall deposit the proceeds of such transfer, conversion, assignments to the credit of the Member's Trust Bank Account in a timely manner.**

6. Establishment of Trust Bank Account(s)

- 6.1 **A Member in Public Practice shall establish a Trust Bank Account to transact all Money received or held on behalf of Clients.**
- 6.2 **A Member in Public Practice shall comply with all relevant banking and financial laws and regulations relating to the operations of Trust Accounts and ensure that no right of set off is permitted in the Member's Trust Accounts.**
- 6.3 **A Member in Public Practice shall deposit Trust Money held or received to the credit of a Trust Bank Account, within two Working Days of receipt.**
- 6.4 **A Member in Public Practice shall maintain an appropriate register of Trust Money and safeguard from unauthorised use when it is in a form that is not capable of being deposited in a Financial Institution (for example promissory notes and trade dollars).**
- 6.5 A Member in Public Practice should safeguard Trade Dollars held or received on behalf of a Client from unauthorised use and record it in an appropriate register.

7. Operation of Trust Bank Account(s)

- 7.1 **A Member in Public Practice shall ensure that all Trust Money are transacted through the Trust Bank Account.**
- 7.2 **Subject to legal and professional obligations, a Member in Public Practice who hold or receive Trust Money shall take all reasonable steps to protect the Client's interests when operating Trust Accounts.**
- 7.3 **A Member in Public Practice shall ensure that the Client authorises the Member's Professional Body access to all Trust Accounts and Records for the purposes of Trust Accounts inspection, quality review program or the disciplinary proceedings of the Professional Bodies.**

- 7.4 **A Member in Public Practice shall only transact Money through a Trust Bank Account with the authority of the legal owner of the Money, or otherwise by operation of law, subject to paragraph 7.5.**
- 7.5 **Subject to paragraph 7.6, a Member in Public Practice shall debit various Financial Institutions, statutory and other government charges on the Trust Bank Account against the Member's general bank account and not the Trust Bank Account.**
- 7.6 A Member's own funds may be deposited to the Trust Bank Account:
- (a) to meet any charges made to the Trust Bank Account where the Financial Institution has debited such charges to the Trust Bank Account, in error, instead of the Member's general bank account; or
 - (b) to meet a Financial Institution's prescribed minimum requirements for an ongoing account balance.

8. Disbursement of Trust Money

- 8.1 **A Member in Public Practice shall ensure that Trust Money is only disbursed from the Trust Bank Account based on the authority obtained from the Client, or as authorised by the operation of the law and that such withdrawals are done in a timely manner.**
- 8.2 **A Member in Public Practice, or any two persons jointly authorised in accordance with paragraph 8.5, shall sign a Cheque withdrawing Trust Money from a Trust Bank Account.**
- 8.3 **A Member in Public Practice shall ensure that the Member has appropriate documentation to transact Electronic Funds Transfers from a Trust Bank Account.**
- 8.4 The Trust Accounts Act 1973 (Qld) requires certain conditions to be satisfied before an Electronic Funds Transfer from a Trust Bank Account can take place. Members in Public Practice could be held personally liable for any fraudulent withdrawal of Client's Trust Money by Electronic Funds Transfer.
- 8.5 **In certain circumstances, where the Member in Public Practice is not available to effect Trust Account transactions in a timely manner, the Member shall delegate the authority to sign Trust Bank Account Cheques or transact Electronic Funds Transfers from a Trust Bank Account in writing to another Member in Public Practice or to two persons drawn from any of the following categories:**
- (i) **Solicitors holding a current practising certificate; or**
 - (ii) **Personnel of the Member's practice; or**
 - (iii) **Financial Institution managers; or**
 - (iv) **A Member of another Professional Body in a multi disciplinary practice.**
- 8.6 **A Member in Public Practice shall safeguard Trust Bank Account Cheques and Cheques issued by the Member shall be marked "not negotiable."**
- 8.7 A Member in Public Practice can withdraw fees and disbursements payable by a Client from the Trust Bank Account only where the Client has agreed in writing to such withdrawal and where the Client has been notified in writing of the amount of fees and disbursements.

8.8 A Member shall ensure that disbursements from the Trust Bank Account does not exceed the balance standing to the credit of the particular Client.

9. Trust Account Records

9.1 A Member in Public Practice shall maintain Trust Account Records to appropriately record transactions undertaken on behalf of Clients.

9.2 A Member in Public Practice shall only hold Trust Money in a Trust Bank Account for the period that is reasonably necessary to enable the purpose for which the Trust Money was held or received to be discharged.

9.3 A Member in Public Practice maintaining a Client authorised interest bearing accounts shall appropriately record all the transactions that occur in the account.

9.4 Except as may be required by law, all interest earned on Trust Money shall be credited to the relevant Client's account and the Member in Public Practice shall observe any associated income tax compliance requirements.

9.5 A Member in Public Practice shall fully and immediately disclose in writing to the Client any benefit accruing to the Member or the Client, (e.g. commission or other inducements) as a result of receiving, depositing or investing Trust Money.

9.6 Members in Public Practice are referred to Section 240 *Fees and Other Types of Remuneration* of the Code, in respect of such disclosure.

9.7 A Member in Public Practice shall immediately notify the Auditor upon becoming aware of any deficiency of Client Money occurring in the Trust Account and any deficiency in the Trust Bank Account.

9.8 A Member in Public Practice shall provide each Client a statement of transactions, together with the opening and closing balances, on the Client's Trust Account at least annually:

- (a) within one month of the end of financial year ended 31 March of the Trust Account (or an applicable alternative period); or**
- (b) upon completion of the matter requiring the maintenance of the Trust Account; and/or**
- (c) upon written request from the Client.**

9.9 A Member in Public Practice shall maintain records of each Trust Account that enables the Trust Account(s) to be audited and discloses at all times the true position of Trust Monies and clearly identifies the Member's dealings with the Trust Account in general and the Trust Money of each individual Client.

9.10 A Member in Public Practice shall retain all Trust Account Records for five years or longer period as prescribed by legislation.

10. Audit of the Member's Trust Account(s)

- 10.1** A Member in Public Practice shall ensure that Trust Accounts and Trust Account Records are audited annually for each reporting period ending 31 March, within ninety days of that date or other date as determined by legislation or this Standard.
- 10.2** A Member in Public Practice shall ensure that Trust Accounts and Trust Account Records are audited within ninety days of ceasing to operate a Trust Bank Account.
- 10.3** A Member that ceases public practice shall provide the relevant Professional Body, within ninety days, an audit report on the Trust Account(s) prepared in accordance with this Standard and record any Trust Money still held on behalf of Clients.
- 10.4** The Member operating the Trust Bank Account shall bear the cost of the audit of the Member's Trust Account and pay the costs from the Member's general bank account and not from the Trust Bank Account nor from the interest earned on Trust Money.
- 10.5** A Member in Public Practice shall:
- (a)** allow the Professional Bodies or an Auditor access to the Trust Bank Account, Trust Account and Trust Account Records (including those of the Member's practice and files); or
 - (b)** give any information or explanations as and when required; or
 - (c)** not hinder, obstruct or delay the Professional Bodies or an Auditor in the performance of their duties or powers pursuant to this Standard or as required by law.
- 10.6** A Member in Public Practice intending to remove the Auditor of the Trust Bank Account, shall seek the approval of the respective Professional Body to replace the Auditor and provide an explanation of the reasons for the proposed change, together with the Auditor's consent to resign, or the Auditor's reasons opposing the removal.
- 10.7** A Member in Public Practice shall appoint a new Auditor within fourteen days of the resignation or removal of the previous Auditor.

11. Professional obligations of the Auditor

- 11.1** A Member in Public Practice who is acting in the capacity of the Auditor of the Member's Trust Accounts shall perform the audit in accordance with Auditing and Assurance Standards and this Standard. The Member shall prepare the Auditor's report in accordance with Appendix 1 to this Standard.

- 11.2 A Member in Public Practice who is acting in the capacity of the Auditor of the Member's Trust Accounts shall:
- (a) comply with Section 290 *Independence – Assurance Engagements of the Code*; and
 - (b) not accept or continue with an audit where the other Member in Public Practice audits the Auditor's Trust Accounts.
- 11.3 A Member in Public Practice who is acting in the capacity of the Auditor of the Member's Trust Accounts shall report to the respective Professional Body of the Member upon becoming aware of:
- (a) any deficiency, other than those of a trivial nature, of Trust Money or in the Trust Bank Account; or
 - (b) a failure by a Member in Public Practice to pay or deposit any Trust Money within two days of receipt, or in the case of disbursements within two days of the funds becoming available.; or
 - (c) any matter arising in the course of the audit or otherwise that may be considered of significance to the Professional Bodies regarding the Trust Account.
- 11.4 A Member in Public Practice who is acting in the capacity of the Auditor of a Member's Trust Account shall forward a copy of the Auditor's report immediately to the Professional Body of the Member who is subject to the Trust Account audit where the Trust Account is not maintained in accordance with this Standard.
- 11.5 A Member in Public Practice who is acting in the capacity of the Auditor of a Member's Trust Account shall retain working papers for a period of seven years.

12 Anti-Money laundering

- 12.1 A Member in Public Practice shall not be involved in money laundering transactions or in the utilisation of the proceeds of crime or terrorist financing.
- 12.2. Persons and organisations engaged in crime may seek to use Member's Trust Bank Accounts to disguise the criminal origins of funds. Members in Public Practices are referred to the relevant legislation for further advice on their obligations when faced with such circumstances.

Conformity with International Pronouncements

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 310.

Appendix 1 - Auditor's report

[To be completed]