

Constituents' Submissions Consultation Paper : APS 12 Specific Comments table

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
1	APS 12 applies to all members. Should APES 335 cover all members who provide financial advice or should it be limited in its application to members in public practice? Please provide reasons for your response	Deloitte	We believe that the proposed APES 335 should apply to all members (irrespective of whether or not the member is in public practice or business) unless the member in business is prevented from complying with any specific obligations due to the requirements of their employer or local regulations and laws. This is consistent with APS12.	<p><u>Summary of respondents comments</u></p> <p>The general consensus from all the respondents is that APES 335 should apply to all members (members in public practice and members in business).</p> <p><u>Proposed recommendation</u></p> <p>The standard should apply to all members, both Members in Practice and Members in Business. Accordingly the standard will be relocated to APES 200 series as applicable to all Members.</p>
		GLW Analysis Services P/L	Application to all members clarifies the position for members not in public practice, who may point out standards expected to their employers.	
		Grant Thornton	We support the proposed APES 335 having the same applicability that APS 12 currently has: applicable to all members in Australian public practice, and applicable to other members as currently appropriate.	
		Mark Shum	APES 335 should cover all members who provide financial advice. Practically, there are many financial institutions and other non-financial institution dealer groups that employ Members in the conduct of their financial planning businesses as financial advisers. The Member should be subject to substantially the same professional requirements.	
		Professional Bodies	APES 335 should be applicable to all members who provide financial advisory services. This is consistent with the current scope of APS 12 as detailed in paragraph 1.3 and paragraph 1.2 respectively: “APS 12 covers the professional aspects of <i>financial advice</i> undertaken by a <i>member</i> , whether they are an	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>AFS licensee or a <i>representative</i> in the provision of financial services under the Corporations Act (2001), or give <i>financial advice</i> which is not subject to licensing requirements.” This should continue to be the scope of APES 335.</p> <p>“All other <i>members</i> (including those outside of Australia) must follow the provisions of APS12 to the extent to which they are not prevented from so doing due to the specific requirements of an employer, AFS Licensee or local regulations and laws.”</p> <p>This should continue to be the scope for APES 335. However, it should be noted that while standards for members refer to black letter law and “...must follow the provisions..” there are also a wide range of influences and potentially competing requirements on members that APES 335 must take into consideration. These are covered in more detail in our responses to later questions.</p>	
2	Should the proposed APES 335 consider during the standard development process the different types of financial advisory service engagements that occur in practice as well as any additional requirements that should be expected of the profession while engaging with members of the public in the delivery of the different types of engagements? Can you suggest an alternative basis for differentiating between the different financial advisory	Deloitte	We are not clear on what the benefit would be of considering the different types of financial advisory service engagements. Therefore we believe further guidance is required to clarify what additional requirements may be expected of members should the proposed APES 335 consider different types of financial service engagements as set out in the “CP”.	<p><u>Summary of respondents comments</u></p> <p>The Professional Bodies do not support the need to differentiate between different types of engagements. However GLW, GT and MS are supportive of the view expressed in the APESB Consultation Paper that there are three different types of Financial Advisory Service (FAS) engagements (Comprehensive Advice, Limited Scope Advice and Execution Only Service) that should be considered during the standard development process.</p> <p>GLW notes that APESB should differentiate between negative and positive advice engagements.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
	service engagements?			
		GLW Analysis Services P/L	<p>Yes to Q1, as otherwise the scope of APES 335 is ambiguous. It would be helpful if APES 335 differentiated between negative and positive advisory services.</p> <p>NEGATIVE ADVICE: A qualified professional accountant has the right and obligation to protect his or her client from financial disasters by expressing advice of a negative nature about a financial product, service or commitment presented to his or her client, without being constrained by the absence of technical qualifications required to market the said financial product, service or commitment. All members, whether in public practice or in business, need to protect their clients' interests as far as they are able. They are justified in asking questions of purveyors of financial schemes, on behalf of their clients, and advising their clients whether they are satisfied with explanations received. They are justified in expressing reservations about advice provided by other members describing themselves as financial advisers, particularly where a commission basis of remuneration is effecting the financial advice provided, and listing the disadvantages of a scheme presented, and if necessary advising their client NOT to invest in the scheme presented.</p> <p>A good example of financial advisors actively promoting investment is Westpoint. In this case any member would arguably be justified in advising a client of strong reservations, out of a sense of responsibility to the client, notwithstanding that the said member has no</p>	<p>MS also addresses reasons why Member's obligations vary depending on the type of engagement and the following factors:</p> <ul style="list-style-type: none"> • Professional relationships with the client • Material benefits received <p><u>APESB Technical staff comments</u></p> <p>The Financial Planning Association (FPA) classifies financial advisory services into two areas, namely general advice and personal advice:</p> <ul style="list-style-type: none"> • The Member provides general advice on financial products but does not take into account the client's personal circumstances. • The Member provides personal advice taking into consideration the client's personal objectives, financial situation and needs. <p>The New Zealand Institute of Chartered Accountants ED (NZICA ED) on 'Engagements to Provide Financial Advice and Related Services' issued in November 2008 defines roles as follows:</p> <p><i>A member or firm may be involved in financial advisory engagements relating to investment, wealth management or wealth protection in various ways. For example, the member or firm may act:</i></p> <p><i>(a) in an advisory role, responsible for advising the client on investment decisions (such as pertaining to savings and retirement investments; risk management; employment remuneration packages including pension and medical benefits), for example as a financial advisor, wealth manager, financial planner. This</i></p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>examination credits in financial planning. Similarly it is argued that a member was justified in advising a client NOT to invest in certain CDOs marketed by the top four banks in Australia, out of a sense of obligation to the client, notwithstanding that the said member is not an authorised financial adviser as defined. In this latter case, the client avoided substantial losses by following the advice of the professional accountant by NOT investing in the CDOs.</p> <p>It may be important that the member expressing negative advice expresses it in terms of the product, service or commitment advocated, not against the character of the advocate of the scheme.</p> <p>It is also reasonable that a member is expected to monitor delivery or performance of a financial scheme on behalf of a client, against what was promised in an initial term sheet or disclosure statement, and report to the client if questions arising are not answered to his or her satisfaction.</p> <p>POSITIVE ADVICE: In contrast, a client has a right to expect the appropriate level of AFP technical expertise to be possessed by a member providing positive advice TO invest in particular financial product, service or commitment. In this case the client has to make a decision that exposes the client to financial loss that it may otherwise not incur, by investing in or committing to the financial scheme advocated.</p> <p>It is also reasonable that a client may expect appropriate technical AFP expertise of a member advocating delivery or performance of a particular financial scheme so that such claims encourage the client to invest further</p>	<p><i>includes financial advice and/or services linked to the purchase or sale of financial products, including taxation advice on use or application of particular financial products, and non-product related financial advice and/or services including taxation advice on financial strategies or structures. Advice provided to the client is intended to affect or influence decisions that are ultimately made by the client.</i></p> <p><i>(b) as an investment manager making investment decisions and selecting individual assets and investments to implement a specific investment mandate agreed with the client.</i></p> <p><i>(c) in a stewardship role, for example as a member of the investment committee of an entity, organisation or fund, or as the professional trustee of a trust. In this role the member or firm has responsibility for making investment decisions for the client.</i></p> <p><i>(d) in an investment monitoring role, for example monitoring the client's investment portfolio's achievement of desired or targeted outcomes.</i></p> <p><i>This Standard applies to members and firms when acting for clients in any of the roles outlined above. The relationship between the member or firm and the client is based on the purpose and context for provision of financial advice and/or related services. Depending on the agreement reached with the client, a member or firm may act in one or more of these roles contemporaneously.</i></p> <p>Each Client has unique needs, investment criteria and investment objectives so that not all investment opportunities are suitable for all Clients. In addition Members may provide more personal, specialised, or in-depth services to Clients who require comprehensive</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>or undertake additional commitments in the said scheme or related schemes.</p> <p>This distinction between Negative and Positive Advice on a financial scheme safeguards the position of the existing accountant with a client. A client is entitled to advice of the disadvantages and risks from the established accountant on a financial scheme, without having that accountant barred from speaking due to lack of AFP qualifications.</p>	<p>advice compared to Clients who may only require limited advice or execution only services. Members and Firms should be able differentiate their services to Clients. In addition, the different service levels should be disclosed to Clients and prospective Clients and the scope of work performed by the Member should determine the level obligations/responsibilities imposed.</p>
		Grant Thornton	<p>We support a wide review of the different types of financial services provided in practice. Whilst a comprehensive review is preferred, the review needs to consider the education needed and options of choice that the client should be able to consider</p>	<p>The proposed standard should:</p> <ul style="list-style-type: none"> • articulate the scope of work and the corresponding professional obligations; and • Impose obligations on the Member to deal fairly and objectively with all Clients when providing FAS or engaging in other professional services.
		Mark Shum	<p>The APESB is correct in identifying the three general types of financial planning engagements, being comprehensive advice, limited scope advice and execution only service. As previously discussed, the APESB should consider introducing standards on the financial planning process to guide its Members in the conduct of a financial planning engagement. It should be noted that the application of such standards will vary amongst the three types of engagements. For example, it is inappropriate to require the Member to undertake a deep analysis of the client's financial situation if the Member is asked to merely execute a transaction by way of purchasing a financial product. Nonetheless, the Member should advise the client that as no advice had been given in this engagement, the client should consider whether the product is suitable to his/her own needs.</p> <p>It is imperative that whilst the Member should not be required to actively analyse the client's circumstances,</p>	<p><u>Proposed recommendation</u></p> <p>The standard should differentiate the different types of FAS engagements/advice provided by Members.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>the Member's obligations to the client may vary subject to the following considerations:</p> <ul style="list-style-type: none"> • The Member's or the Member's employer's relationship with the client, e.g. whether the Member had a professional relationship of the client and/or that the client had been relying on the Member's investment advice; • Whether the Member or the Member's employer will receive a material benefit from executing the transaction. <p>Accordingly, the APESB, in its development of APES 335, should capture the above issues and introduce flexibility for Members in applying the standard.</p>	
		Professional Bodies	The professional accounting bodies do not support the need to differentiate between engagements. It is the view of the professional accounting bodies that the requirements and guidance to be provided should be the same irrespective of the engagement.	
3	Should the current definition of financial advice within APS 12 be expanded to include the provision of advice and services related to matters such as the procurement of loans, margin lending and other gearing strategies?	Deloitte	Yes. We believe it would be in the public interest to extend the current definition to include the provision of these services.	<p><u>Summary of respondents comments</u></p> <p>All respondents agree that the current definition of financial advice within APS 12 be expanded to include the provision of advice and services related to matters such as the procurement of loans, margin lending and other gearing strategies.</p>
		GLW Analysis Services P/L	Yes, otherwise the scope of APES 335 is ambiguous.	<p><u>Proposed recommendation</u></p> <p>The definition of financial advice within the proposed standard to include the provision of advice and services related to matters such as the procurement of loans, margin lending and other gearing arrangements.</p>
		Grant Thornton	We support the expansion of definition of financial advice, subject to the review generally of financial advisory services.	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
		Mark Shum	<p>The definition of “financial advice” should be expanded to include advice in mortgage broking and finance broking including margin lending. Given that the present Federal government’s intention to bring the regulation of credit to be under the control of the Commonwealth with the view of installing ASIC as the national regulator, the proposed standard should include of all types of products as detailed above.</p>	
		Professional Bodies	<p>APS 12 defines both financial advice and financial advisory services. Importantly this clarifies the intent and spirit of APS 12 is to cover a wider range of services than the definition of financial planning advice as set out in the Act. This should be carried through to APES 335.</p> <p>Mortgage broking, finance broking and the procurement of loans (with the exception of gearing facilities) are not specifically included in the scope of APS12, rather members providing these services are encouraged to use APS 12 as a guide to professional practice. It was agreed however that any future reviews of APS 12 would see the inclusion of these services. (In the interim it was our interpretation that these services were indirectly included through the use of the term ‘allied advice’ in the definition of Financial Advisory Services).</p> <p><i>Financial Advisory Service</i> means the provision of professional services by a <i>member</i> in the course of assisting <i>clients</i> to manage their financial affairs specifically related to wealth and retirement planning, personal risk management and allied advice. It includes the provision of financial services as defined in Section 766 of the Corporations Act (2001), and other <i>financial advisory services</i> for which a license may not be required (see <i>Financial Advice</i>).</p>	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>Financial Advice means any financial advisory service carried out by the <i>member</i>. These services include, but are not limited to:</p> <ul style="list-style-type: none"> I. Providing advice on financial products such as shares, managed funds, master funds, wrap accounts and life insurance carried out pursuant to an AFS License; II. The taxation aspects attaching to such advice; III. Dealing in financial products as defined in section 766C of the Corporations Act (2001); and IV. The provision of <i>financial advice</i> not subject to AFS licensing, such as non product related advice on financial strategies or structures. <p>On 2 October 2008 the Government announced its two-phase implementation plan for national consumer credit regulation. Key elements include enacting Commonwealth legislation and establishing a national licensing regime to require providers of consumer credit and credit-related brokering services and advice to obtain a licence from ASIC. This further strengthens the need for the definition of financial advice within APES 335 to be expanded to include the provision of advice and services related to matters such as the procurement of loans, margin lending and other gearing strategies.</p>	
4	Will the proposed expansion of the scope and application of APES 335 noted in question 3 assist members to meet the overarching principle of public interest and the fiduciary nature	Deloitte	Possibly, but this would need to be verified following implementation of APES335. More importantly, the proposed expansion of the scope and application would increase the confidence of users of financial advisory services that the ethical framework is comprehensive	<p><u>Summary of respondents comments</u></p> <p>All respondents agree on this issue.</p> <p><u>APESB Technical staff comments</u></p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
	of the relationship between the member and his or her client?			The recent NZICA ED on 'Engagements to provide Financial Advice and Related Services' state that:
		GLW Analysis Services P/L	Yes. It would be helpful for APES 335 to spell out an obligation on members to provide NEGATIVE advice to clients about a financial product, service or commitment that comes to the notice of the member, where appropriate. It is important that clients are protected from exaggerated sales claims, and that the clients have a right of referral to existing and established accountants preserved.	<i>A fiduciary relationship exists between a member or firm and the client in a financial advisory engagement. This relationship arises because the member or firm has the following professional obligations to the client as part of undertaking such engagements:</i>
		Grant Thornton	Yes.	<i>(a) to act at all times in the best interests of the client, and not in the interests of the member or firm, or a third party; and</i>
		Mark Shum	This was discussed under the heading of Public Interest and Fiduciary Relationship.	<i>(b) to provide full and fair disclosure to the client of all material facts and information relevant to the relationship with the client and to the engagement, including disclosure of any conflict or potential conflict of interest the member or firm may have relating to the relationship or the engagement; and</i>
		Professional Bodies	The expansion of the scope will clarify and ensure consistency in all overarching principles, including public interest and the fiduciary nature of the relationship between the member and the client.	<i>(c) to take appropriate steps to either:</i> <i>(i) manage and control identified actual or potential conflicts of interest, or</i> <i>(ii) avoid conflicts of interest where they are of such significance in terms of their impact on the relationship with the client or the quality of the advice and/or services to be provided that the only way to adequately manage those conflicts is not to accept the engagement.</i>
				FIDUCIARY 360 (FI 360) defines a fiduciary as: <i>Someone acting in a position of trust on behalf of, or for the benefit of a third party. Fiduciary status can be difficult to determine, and is based on facts and circumstances. In general, the issue is whether a person has effective control or substantial influence over investment decisions.</i>
				FI 360 further explain that:

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
				<p><i>The fundamental duty of the fiduciary is to manage investment decisions for the exclusive benefit of another party. He or she should have defined policies and procedures to manage potential conflicts of interest and to avoid breaches of their duties. In addition, fiduciaries have an obligation to employ an objective standard in evaluation of all investment decisions.</i></p> <p>These overseas pronouncements indicate that the role of the Member as a fiduciary in the Financial advisory process is critically important and thus needs to be addressed in the proposed standard.</p> <p><u>Proposed recommendation</u></p> <p>The standard to have a section on Members fiduciary relationship with a Client similar to the sentiments expressed in the NZICA ED adapted to the Australian environment.</p>
5	Is there an alternative application and scope that you consider is appropriate for financial advisory services? Please provide reasons for your response.	Deloitte	Not that we are aware of.	<p><u>Summary of respondents comments</u></p> <p>The consensus view of the respondents is that the proposed scope and application is appropriate.</p>
		GLW Analysis Services P/L	See Q2 above.	GT notes that consideration should be given to remuneration for the different categories of FAS. Remuneration will be addressed in question 14 and 15.
		Grant Thornton	Yes, consideration needs to be given to the commercial remuneration for the 3 broad categories being: Comprehensive Advisory Services; Limited Scope services; and Execution only.	
		Mark Shum	Already discussed	
		Professional	The professional accounting bodies are of the view that	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
		Bodies	<p>the current scope is appropriate and should carry through to APES 335.</p> <p>APS 12 was developed to address both licensed advisory services and other unlicensed advisory services. The objective of the current scope was to be as far reaching as possible, encompassing the services accountants provide overall regardless of regulatory definition. As set out in the current definition – Financial Advisory Services includes “manage their financial affairs” and “allied advice”.</p> <p>Financial Advisory Service means the provision of professional services by a <i>member</i> in the course of assisting <i>clients</i> to manage their financial affairs specifically related to wealth and retirement planning, personal risk management and allied advice. It includes the provision of financial services as defined in Section 766 of the Corporations Act (2001), and other <i>financial advisory services</i> for which a license may not be required (see <i>Financial Advice</i>).</p>	<p><u>Proposed recommendation</u></p> <p>The proposed standard should cover financial advisory services (Comprehensive Advice, Limited Scope Advice, Execution Only Services) including other service such as procurement of loans, margin lending and other gearing strategies [refer question 2 and 3]</p>
6	In the context of financial advisory service engagements do you believe any additional requirements and guidance are required to clarify the fundamental principles (integrity, objectivity, professional competence and due care, confidentiality and professional behavior) outlined in APES 110? Please provide reasons for your response.	Deloitte	No, in our view it would be sufficient to remind members of the application of the fundamental principles outlined in APES 110. APES 110 already provides a comprehensive framework of requirements and guidance.	<p><u>Summary of respondents comments</u></p> <p>All respondents agree that no additional requirements and guidance are required to clarify the fundamental principles of the Code.</p> <p>MS notes that APESB should further clarify the Objectivity principle as there are suggestions in the market that certain remuneration models by Members may not comply with the Objectivity principle. This issue will be addressed in remuneration.</p>
		GLW Analysis	No.	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
		Services P/L		<u>Proposed recommendation</u>
		Grant Thornton	No, we are not aware of any additional requirements or guidance.	No additional requirements or guidance sought to clarify the fundamental principles in the Code.
		Mark Shum	The fundamental principles outlined in APES 110 are adequate in addressing the ethical issues involved in a financial planning engagement. However, it is advised that the APESB should consider developing standards and guidance in clarifying the objectivity principle as there have been suggestions in the market that certain remuneration models by Members (e.g. volume based commission model) may not comply with the objectivity principle	
		Professional Bodies	The professional accounting bodies are of the view that the current principles set out in the Code of Ethics for Professional Accountants do not need further elucidation in APES 335. These principles are the basis for the Code of Ethics for Professional Accountants. They are as applicable and important to the provision of financial advisory services as they are any other services provided by professional accountants.	
7	Are there any other specific principles that are important to be identified in APES 335 in a financial advisory services context and why?	Deloitte	No, we do not support the duplication or extension of existing requirements in APES 110 in other APES's. This can result in contradictory requirements, confusion and may even result in a failure to identify updates to be made to one standard when another is changed.	
		GLW Analysis Services P/L	See Q2 above.	Except for MS, the other respondents do not believe there are other specific principles that require identification in the context of FAS.
		Grant Thornton	No.	MS says that the Professional Competence and Care principle (S 130 of the Code) should be expanded within the context of FAS.
		Mark Shum	It is suggested that the Professional Competence and Care principle should be identified and expanded in the context of financial planning services. There are many instances where financial planners in general, whilst RG146 compliant and duly authorised by an AFS	<u>APESB Technical staff comments</u> Members have an obligation to only take on engagements or assignments for which they have the requisite skills, competence and experience.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			licensee, provide advice on complex financial products or strategies without sufficient knowledge of the specific product or strategy. In addition, there are also scenarios whereby a Member is confined to a narrow approved product list and/or a particular investment strategy. These restrictions on the Member may not produce a positive result for the client. Accordingly, this principle must be elaborated to provide clarification for the Member when he or she encounters these situations.	This will be considered in line with the different types of FAS engagements. <u>Proposed recommendation</u> Consideration will be given to Section 130 in conjunction with the different types of FAS engagements. Except for the issue of competence and due care, respondents have noted that there are no other specific principles that need to be identified in the proposed standard.
		Professional Bodies	There are no other particular principles which require specific identification in APES 335.	
8	Should the proposed APES 335 consider the fiduciary obligations of members when they perform different roles in the investment management process? Please provide reasons for your response	Deloitte	No, we consider that members would be better advised to seek their own legal advice regarding their fiduciary obligations.	<u>Summary of respondents comments</u> All respondents other than Deloitte agree that APES 335 should consider the fiduciary obligations of Members. Professional Bodies notes that: <ul style="list-style-type: none"> • Any role that require licensing or involve client interaction should be included in APES 335 • Fiduciary obligation should be clearly defined
		GLW Analysis Services P/L	Yes, otherwise the scope of APES 335 is ambiguous.	
		Grant Thornton	Yes, just to ensure a comprehensive review has been undertaken. We do not see any reason for financial advisers to receive or hold client monies in Trust, other than for Managed Discretionary Accounts where a Power of Attorney is held.	<u>APESB Technical staff comments</u> The full extent of a Member or Firm's obligations deriving from their fiduciary relationship with a Client will depend on the specific facts of their relationship with each Client, and the nature of the advice and related services provided under the terms of engagement agreed with the Client. A fiduciary should always be asking "who benefits most from this decision? If the answer is any other party than the Client or beneficiary then the Member is likely to be committing a fiduciary breach.
		Mark Shum	Already discussed – please see Public Interest and Fiduciary Relationship	
		Professional Bodies	The professional accounting bodies agree that APES 335 should include the fiduciary obligations of members in the investment management process. However, these need to be clearly defined. It is our view that any roles	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>that require licensing or involve direct client interaction should be incorporated into APES 335.</p> <p>While the objective of APS12 is to cover public practitioners providing financial advisory services, it is deliberately far reaching enough to cover other roles and services provided by members.</p> <p>However, it may be challenging to obtain definitive details of members who operate within the investment management process, which would inhibit the practical application of APES 335 and any subsequent monitoring processes.</p>	<p>FI 360 defines three different roles of a fiduciary:</p> <ol style="list-style-type: none"> 1. Investment Steward – a person who has legal responsibility for managing investment decisions (trustees and investment committee members) 2. Investment Advisor – a professional who is responsible for managing comprehensive and continuous investment decisions (including wealth managers, financial planners, financial advisors, investment consultants etc.) 3. Investment Manager – a professional who has discretion to select specific securities for separate accounts, mutual funds, commingled trusts and unit trusts. <p><u>Proposed recommendation</u> During the development process of the proposed standard consider the role of Members as fiduciaries in the investment management process and the level of professional obligations imposed based on their role.</p>
9	In the context of financial advice, does the public interest principle have specific meaning for members, or does the public interest principle raise specific and unique obligations not currently articulated in APES 110? If so, how should these obligations be articulated in APES 335?	Deloitte	In our view the public interest principle is sufficiently articulated in APES 110.	<p><u>Summary of respondents comments</u></p> <p>All respondents agree that Public Interest is well defined in APES 110 (Code).</p> <p><u>Proposed recommendation</u></p> <p>Public interest is sufficiently articulated in APES 110 and therefore the proposed standard does not need to provide further guidance.</p>
		GLW Analysis	No specific meaning here different to APES 110 is recommended.	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
		Services P/L	It would be helpful if APES 110 included the term "Public Interest" in the Definitions section, page 76.	
		Grant Thornton	We support the current application of APES 110.	
		Mark Shum	Already discussed – please see Public Interest and Fiduciary Relationship	
		Professional Bodies	The term "public interest" is well defined in APES 110 and is a core principle for members of the professional accounting bodies. Therefore, APES 335 does not need to expand further on this principle in relation to financial advisory services. We do note it could be stated that there maybe a conflict between a member's collective obligation to the public interest and the member's obligation to the client – however we do not believe this to be of a significant enough nature to require specific articulation in APES 335.	
10	In relation to the principle of professional competence and due care, are there any specific professional obligations that should be considered for adoption in APES 335 in relation to superannuation advice?	Deloitte	We agree with APS 12 that financial product advice provided by members should be soundly based and appropriate to the client's objectives, needs and circumstances as well as where applicable, in compliance with current AFSL regulations. Furthermore, in the provision of advice, the member should assess the potential impact of inappropriate advice on the client, the complexity of the advice and the financial literacy of the client. This should take into account the relative sophistication of products being considered by the client. However these principles apply to all financial advisory services and we do not consider there are any specific obligations that should be considered in relation to superannuation advice.	<p><u>Summary of respondents comments</u></p> <p>GLW and MS note that the following obligations should be considered.</p> <ul style="list-style-type: none"> Freedom of choice. Also if the member does not have the required knowledge or competence, introduce the client to another competent professional. Independent audit <p><u>Proposed recommendation</u></p> <p>There are no specific additional obligations that should be considered in relation to superannuation advice.</p>
		GLW Analysis Services P/L	Yes. Cases arise where members offer superannuation packages that include standardised trust deed, administration, accounting, and audit facilities, all on	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			one CD. The client should be provided with (a) freedom of choice, so there is introduction to others who arrange superannuation facilities tailored to individual client needs albeit at increased fees, and (b) independent audit.	
		Grant Thornton	We support the on-going application of APES 110 for all financial advisory services including superannuation	
		Mark Shum	In addition to comments made in paragraph 7 of this submission, the APESB may wish to issue guidance on procedures that a Member should adopt if it is later understood, whether impliedly or otherwise, that the client requires more comprehensive financial planning advice that the Member does not have the requisite knowledge or competence to undertake the task, the Member has a specific ethical obligation to refer the client to another legally authorised and competent professional (if available).	
		Professional Bodies	The professional accounting bodies are of the view that there are no specific additional obligations that should be considered in relation to superannuation advice. Superannuation advice is only one component of financial advisory services and the principles of professional competence and duty of care are as applicable to superannuation advice as it is to any other financial advisory services.	
11	In your view to what extent should the concept of independence, as defined in APES 110, apply to financial advisory services? Please provide reasons for your response	Deloitte	Unless a member is providing assurance services then the concept of independence as defined in APES 110 does not apply to financial advisory services.	<u>Summary of respondents comments</u> GLW → Member in Public Practice should not accept commissions while a Member in Business may sell products on a commission basis. A Member in Public Practice who sells products on a commission basis should be considered a sales person. The standard should also prohibit the situation where a Member may undertake both roles.
		GLW Analysis Services P/L	It would be preferable for APES 335 to spell out alternative positions for the member in practice and the member in business.	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>In my view, independence is an essential pre-requisite for POSITIVE financial advisory services (see Q2 above) provided by a member in public practice, in order to safeguard the achievement of the Fundamental Principles in those engagements. It would be a contradiction for a member in public practice to</p> <ul style="list-style-type: none"> a) act as a sales person for particular financial products, deriving a commission or other benefits from the sales, whether disclosed or not; and b) Pretend objectivity, due care, and professional behaviour by offering advice to clients on whether to invest in the said financial products. <p>A member in public practice who obtains a commission or any other significant benefits from selling financial products is in my view a sales person for those products. By passing various technical examinations, the said member may have become an authorised sales person. But it seems a misrepresentation for such a person to use the terminology "authorised financial adviser", because the said person has a strong financial disincentive against providing honest, objective, competent and professional advice, if the financial product vendor offers really significant commissions.</p> <p>A member in business on the other hand should have the freedom to sell his or her employer's financial products, whether or not on a commission basis. It would be preferable for APES 335 to spell out that the member in business may not use signage or stationery indicating independence, and should preferably clearly show "Authorised vendor of (products)" in signage and</p>	<p>MS → Avoid situations where there could material conflicts or influences (eg. Commissions, volume based remuneration arrangements)</p> <p>Deloitte's view is that independence is only applicable for assurance engagements.</p> <p>Professional Bodies → Independence is a fundamental principle and is applicable in FAS as in other services. Remind of the statutory obligations as set out in sec 923A of the Corporations Act.</p> <p><u>Proposed recommendation</u></p> <p>The concept of Independence is applicable to financial advisory service engagements and needs to be addressed in the proposed standard.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>stationery, and in my view there should be a prohibition on the said person describing themselves as an authorised financial adviser.</p> <p>It would be preferable for APES 335 to spell out these alternative positions for the member in practice and the member in business, and to prohibit the situation where a member may undertake both roles viz, operate as a member in public practice purporting to be an independent financial adviser, and operate as a member in business selling investment products.</p>	
		Grant Thornton	We support the current non attest (non audit) requirements of APES 110 applying to financial advisory services.	
		Mark Shum	<p>Independence of Mind – subject to the Member’s employer’s restrictions (if applicable), the Member should avoid any material influences (e.g. volume-based remuneration arrangements, biased remuneration for recommending a particular product) that compromise professional judgment of the Member.</p> <p>Independence of Appearance – avoidance of situations (e.g. having considered threats suggested in paragraph 22 of this submission) that puts the Member in material conflicts that an informed third party would conclude that the Member’s integrity, objectivity or professional scepticism had been substantially compromised.</p>	
		Professional Bodies	The professional accounting bodies are of the view that independence is a fundamental principle for members and is applicable to financial services as to any other services provided by members. The statements in APS12 continue to be applicable for members providing financial advisory services. In particular as stated in paragraph 9.3 “.....the code applies to financial advisory	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>services in the same manner as it applies to other forms of professional practice. APS 12 states:</p> <p>9.1 In providing <i>financial advice</i>, a <i>member</i> must uphold the principles of professional independence</p> <p>9.2 <i>Members</i> are reminded that there is a difference between meeting the standards of professional independence under APS 12 and the legal limitations to the use of the words independent, impartial or unbiased under section 923A of the Corporations Act. A <i>member</i> must not claim to be independent, impartial or unbiased or use the term/s independent, impartial or unbiased in their business or in any promotional literature unless their business operations strictly meet the provisions of section 923A Corporations Act (2001).</p> <p>9.3 the Code applies to <i>financial advisory services</i> in the same manner as it applies to other forms of professional practice. Accordingly, APS 12 reiterates the professional aspects of independence as distinct from any requirements imposed by law</p> <p>In addition to the professional requirements in relation to independence, members must be reminded of their statutory obligations as set out in section 923A of the Corporations Act and this needs to be reinforced in APES 335.</p>	
12	Is independence in the provision of financial advice, a necessary part of achieving the	Deloitte	No, independence as defined in APES 110 should not be confused with objectivity and the other fundamental principles. Independence is not a necessary part of	<p><u>Summary of respondents comments</u></p> <p>All respondents agree other than Deloitte. Deloitte's</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
	overall objectives of the public interest and acting in the client's best interests?		achieving the overall objectives of the public interest and acting in the client's best interests unless the member is providing assurance services.	view is that independence is only applicable for assurance engagements. The following observations were also made:
		GLW Analysis Services P/L	Yes: see Q11.	MS → The Member should act in the best interest of the client and should not place the members /employees interest before the client.
		Grant Thornton	Yes	Professional Bodies → Under S923A it is difficult for a financial planner to be independent. However Independence is important and therefore need to qualify the term 'Independent'.
		Mark Shum	Having discussed the issues regarding public Interest and client's best interests, it is suggested that the Member should act in the client's interest and not place the Member's (or the employer's interest) before the client. Independence in the provision of financial advice is important in ensuring Members act in the clients' interests.	<u>APESB Technical staff comments</u>
		Professional Bodies	Independence and the provision of financial advice are important to the overall objectives and principle of public interest and acting in the client's best interest. However, under the current regulatory environment, and associated definition under section 923A, it is near impossible for a financial planner or practice to legally use the term 'independent financial advice'. There are currently very few practices, firms or financial planners who are able to truly call themselves providers of independent financial advice. It is therefore important to qualify how the term independence is used in financial advice and manage client expectations of independence.	Members should endeavour to avoid situations that could cause or be perceived to cause a loss of independence or objectivity in providing financial advice. APESB to consider whether guidance should be provided to members of circumstances where their independence is likely to be compromised. NZICA ED state: <i>In order to avoid breaching their fiduciary duties members and firms must, as far as is reasonably practicable, avoid situations where advice provided to a client, and any recommendations provided as part of the advice, is in any way constrained or likely to be biased in favour of use of, or recommendations about use of particular financial products or product providers by their clients.</i> <i>Regardless of whether or not the member or firm holds itself out as providing financial advice and related services on an independent basis, the member or firm</i>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
				<p><i>must consider, for each financial advisory engagement the member or firm is requested to undertake or considers undertaking, whether or not the member or firm is able to undertake the engagement on an independent basis.</i></p> <p><i>If the member or firm concludes, with reference to all the information available, that the member or firm will not be, or is unlikely to be independent for purposes of providing the advice and/or services for the client, either in fact or in appearance, in accordance with paragraphs 30(c) and 47 the member or firm must disclose the relevant circumstances to the client prior to, and at the time of providing the advice, and also obtain the client's informed consent to be able to provide advice.</i></p> <p>APESB should consider whether similar provisions to NZICA be developed from an Australian context.</p> <p><u>Proposed recommendation</u></p> <p>The standard should emphasise the importance of the following principles in the provision of financial advice.</p> <ul style="list-style-type: none"> • objectivity principle (Section 280 of the Code), • the principles of public interest • acting in the Client's best interest and not to place the Member's /employer's interest before the Client
13	Does a fee for service model that is unrelated to the sale of products or the accumulation of funds under management result in the substantial alignment of	Deloitte	A fee for service model as outlined in APS 12 (17.2) is likely to better align client's interests with those of members by helping to reduce actual or perceived conflicts of interest which can potentially be associated with remuneration models based on sales of products.	<p><u>Summary of respondents comments</u></p> <ul style="list-style-type: none"> • Deloitte and the Professional Bodies agree on a fee for service model while the others do not. • GLW and MS provide arguments for why it may be

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
	the interests of members with the interest of their clients? Please provide reasons for your response		Additionally, members are more likely to be viewed as impartial and not unduly influenced. However we agree that consumers should be able to choose how they remunerate their adviser if such models are well disclosed and managed.	<p>difficult to have a fee for service model.</p> <ul style="list-style-type: none"> GT support the currently allowable remuneration models;
		GLW Analysis Services P/L	<p>Yes, probably. There may be a problem in that the fee that can be charged to clients may not cover the costs of the member in practice in set up and research.</p> <p>I would expect that a member in practice, deriving income as a professional financial advisor, has a continuity of business that enables set up and research costs to be spread over a number of clients with similar objectives. Alternatives for consideration in APES 335 would be:</p> <p>(a) Introduction (for no fee or commission) to another practitioner with the required continuity in the financial products sought by the client, and/or</p> <p>(b) The first member in practice limiting his or her expertise displayed in signage and stationery; eg “independent financial advice on Australian banking products”.</p>	<p><u>APESB Technical staff comments</u></p> <p>The NZICA ED state:</p> <p><i>A member or firm must not hold the member or firm out as providing financial advice and/or related services on an independent basis if the member or firm receives, or agrees to receive, directly or indirectly, in connection with the financial advisory engagement:</i></p> <p><i>(a) any payments or commissions from third parties, other than those disclosed to affected client(s) and rebated to their accounts in full when received by the member or firm in accordance with paragraph 53; and</i></p> <p><i>(b) any ‘other benefits’ from third parties.</i></p> <p><i>In accordance with the Code of Ethics, a member or firm must ensure the total amount of fees paid by their client, by whatever means, for undertaking a financial advisory engagement fairly reflects the value of the services provided to the client.</i></p>
		Grant Thornton	<p>We support the currently allowable remuneration models provided that there is clear disclosure to the client of the type and quantum of remuneration being charged.</p> <p>Commissions as a means of remuneration are more attractive to some clients and in some circumstances rather than requiring the client to pay a full service fee or an invoice.</p>	<p><i>Members and firms must not advertise provision of financial advice and related services on the basis of providing ‘free financial advice’ or similar, where the intention is to derive fees from provision of advice and/or services only by way of product placement fees or commissions paid by third parties.</i></p> <p><i>Members and firms must not undertake financial</i></p>
		Mark Shum	Not necessarily. I propose the following issues for your	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>consideration:</p> <ul style="list-style-type: none"> • Can a client afford the advice if a Member adopts a fee-for-service model and charges an hourly fee upfront? • How does a Member calculate the hourly fee charged to the client? Is it relative to the funds subject to the advice or a discounted present value of commissions that a Member may receive from providing that advice? • In a fee-for-service model, is there an incentive for a Member to enhance a client's portfolio performance? Given that the Member will arguably be remunerated the same rate whether the portfolio has a 1% or 10% growth. This may lead to suboptimal results as Members may recommend a more conservative investment strategy (noting that it may not be adverse to the client's interests, having considered the present economic environment) in lieu of a possibly more financially rewarding strategy for the client, subject to the risk tolerance and financial situation of the client. • Is there evidence to suggest that clients of Members subject of a fee-for-service model perform better than clients of Members of other remuneration models (e.g. asset-based fee, commissions)? <p>In essence, I do not agree that all fee for service models that is unrelated to the sale of products result in substantial alignment of the interests of Members with the interest of their clients.</p>	<p><i>advisory engagements on a free or heavily discounted basis, where the intention is to recoup fees representing the value of the advice and/or services provided through higher charges, or provision of other professional services such as accounting or taxation services, to a client in the future.</i></p> <p>The proposed approach for members are:</p> <ul style="list-style-type: none"> • Member must ensure that financial advice that they provide recommending financial products or services is not constrained in any way, including by any relationships, financial interests, agreements or associations that the member or firm has with any third party or third parties, including product providers; and • The standard should prohibit Members from accepting commissions (or % fees of funds under management) when they are required to be acting in an independent basis. Any commissions received from third parties that are not avoidable must be: <ul style="list-style-type: none"> (i) disclosed to the Client in full and (ii) rebated to clients by the Member or Firm in full when received. <p>This approach is consistent with the fundamental principles in APES 110 Code of Ethics as well as recent professional standards issued by APESB such as Valuation Services (APES 225) and Forensic Accounting Services (APES 215). This is based on the fact that essentially commissions are in effect contingent fees and the professional standards issued by APESB to date has taken the position that where independence is required a Member is prohibited from being</p>
		Professional Bodies	It is generally agreed within the professional accounting bodies that a fee for service remuneration model which is not aligned to the sale of a product, payment by third	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			parties or the accumulation of funds under management best addresses the interests of members and most importantly their clients. We believe such a model is the best mechanism to align the interests of members with those of their clients and to overcome the perception of bias or the potential for bias that exists under the current percentage based remuneration models.	remunerated on a contingent fee basis. APESB Technical staff agrees with the positions proposed in the NZICA ED as it is consistent with the Code and other professional standards issued by the APESB. <u>Proposed recommendation</u> A fee for service remuneration model must be adopted for independent financial advisory services and to be encouraged in all other cases to reduce conflicts of interest. We will need to define what we mean by fee for service.
14	Should there be an expressed prohibition on certain types of remuneration, such as trailing commissions in the performance of certain types of financial advisory service engagements? Please provide reasons for your response.	Deloitte	We believe that proposed APES 335 should provide guidance rather than prohibitions (except for those exceptions already outlined in APS 12) which would be in line with a principles based standard.	<u>Summary of respondents comments</u> Most of the respondents are of the view that there should not be any prohibitions on certain types of remuneration. GLW – Advocate an express prohibition.
		GLW Analysis Services P/L	Yes, I would advocate an express prohibition for members in public practice earning any remuneration from vendors of financial products, services or credit commitments.	The Professional Bodies recommend that Members are encouraged to adopt a fee for service model. However commissions to be fully and clearly disclosed if used.
		Grant Thornton	We support the currently allowable remuneration models provided that there is clear disclosure to the client of the type and quantum of remuneration being charged. Commissions as a means of remuneration are more attractive to some clients and in some circumstances	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			rather than requiring the client to pay a full service fee or an invoice.	<u>APESB Technical staff comments</u>
		Mark Shum	No. Although I note that there is recent media coverage regarding the possibility of banning trailing commissions for superannuation funds.	As noted above there must be a prohibition on commissions for independent financial advice or when objectivity is required, and in circumstances when a member is acting as a fiduciary.
		Professional Bodies	<p>This issue was discussed at length in the development of APS 12 and it was agreed that while the prohibition of certain remuneration models may well have aligned better with a professional approach to the provision of financial advice, in the current environment this was not a practical solution.</p> <p>A compromise was agreed upon whereby members were encouraged to adopt a fee for service model. However commissions could be used as part of the collection mechanism for the payment of these fees but are required to be fully and clearly disclosed to the client.</p> <p>We believe this compromise is still appropriate. However, the emphasis must continue to be that the preferred remuneration model is a fee for service model that is not aligned to the sale of product, payment by third parties or the accumulation of funds under management.</p>	<p><u>Proposed recommendation</u></p> <p>Members must adopt a fee for services remuneration model for independent financial advisory services.</p> <p>In all other circumstances the recommended remuneration model should be changed to a fee for service model as it minimises the conflicts of interest.</p> <p>The fee does not need to be time based and value added fees can be used by the member. The key issue is that the fee is determined by taking into account the complexity, time and expertise of the member and is totally unrelated to the sale of products or funds under management.</p>
15	Are there any particular threats for members in a multi disciplinary practice?	Deloitte	None that we are aware of.	<u>Summary of respondents comments</u>
		GLW Analysis Services P/L	No comment.	The consensus view appear to be that there are no particular threats that members of multi disciplinary practices would be unable to address via the current professional standards.
		Grant Thornton	No, other than market risks.	Self-interest and familiarity threat raised by MS to be considered when drafting the standard.
		Mark Shum	Yes. Self-interest and familiarity threat may arise if the	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			client engages the Member to provide different types of professional services. For example, if the client retains the Member's services to provide personal financial planning advice and undertake an assurance engagement of the client's company, the services may have a material effect on the Member's independence and objectivity of the advice provided	<p><u>Proposed recommendation</u></p> <p>No particular threats have been identified in a multidisciplinary practice.</p>
		Professional Bodies	There are no particular threats that members of multi disciplinary practices would be unable to address via the current standards, guides and the review of APS12.	
16	Can appropriate safeguards be applied so that a broad remuneration structure can co-exist with the members professional obligations to uphold the fundamental principles? Please provide reasons for your response.	Deloitte	Yes, appropriate safeguards should be sufficient to allow broad remuneration structures to co-exist with professional obligations, as long as consumers have choices.	<p><u>Summary of respondents comments</u></p> <p>All respondents agree that a broad remuneration structure can co-exist with the members professional obligations to uphold the fundamental principles.</p> <p><u>Key points</u></p> <ul style="list-style-type: none"> • Proper disclosure • MS →Consider providing examples of different remuneration models <p><u>APESB Technical Staff comments</u></p> <p>The NZICA have mandated the following disclosure in respect of remuneration which may act as a safeguard:</p> <p><i>If the financial advice given to a client by a member or firm includes recommendations or advice to purchase an identified security or other type of financial product, or an identified class or set of securities or other type of financial product, the member or firm must fully and accurately disclose the details of remuneration or other benefits that the member or firm will receive if the client</i></p>
		GLW Analysis Services P/L	Yes, see Q13.	
		Grant Thornton	Yes, we see this as no different to other non-attest services, as it all comes down to disclosure	
		Mark Shum	Yes. The Member should ensure clear, concise and frank disclosures of remuneration structures are made to the client. The APESB should consider publishing examples of different remuneration models (including brief description of advantages and disadvantages) by way of easy-to-read brochures for clients. Members should not be obliged to adopt every remuneration model but should advise the client which model it adopts prior to providing any financial planning services. This can be outlined in the client engagement	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			document.	<p><i>elects to act on the member or firm's advice or recommendations. The member or firm's disclosure must be made to the client in writing at the time the advice is given or the recommendation is made to the client.</i></p> <p><i>In addition to the disclosures required in paragraph 30, a member or firm must fully and accurately disclose in writing to the client at the time the advice is given or the recommendation is made, all interests, financial and non-financial, received or receivable by themselves or any related parties relating to the provision of advice by the member or firm. This includes payments and benefits to or from related parties that influence or may reasonably be capable of influencing advice, and any referral payments.</i></p> <p><i>The disclosure must be clear, concise and transparent, and be at a level of detail that the client would need in order to decide whether to act on the member or firm's advice and/or recommendations.</i></p> <p><u>Proposed recommendation</u></p> <p>Need to consider mandatory disclosure requirements for Members to disclose remuneration arrangements.</p>
		Professional Bodies	Refer to questions 17 and 18	
17	Should APES 335 contain specific disclosure requirements informing clients of the various components of the remuneration arrangements	Deloitte	Yes. We believe Appendix 1 of APS 12 sufficiently sets out an example of a “ <i>best practice sample fee disclosure</i> ” which in our view helps reduce threats to a member’s objectivity through transparency of fees.	<p><u>Summary of respondents comments</u></p> <p>Key observations on ‘disclosure’</p> <ul style="list-style-type: none"> • Type and quantum of remuneration • Simple and easy to understand

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
	that will/may arise from provision of advice relating to particular types of financial products as is required in APS 12? Please provide reasons for your response.			MS → The Member should explain the fees to the client rather than referring the client to the Statement of Advice
		GLW Analysis Services P/L	Yes: disclosure of the method of calculation of remuneration, and reconciliation with estimates provided in the terms of engagement originally quoted, is good professional practice.	Professional Bodies → the standard should recommend Members who have their own AFSL to incorporate APES 335 to their compliance manual.
		Grant Thornton	We support the currently allowable remuneration models provided that there is clear disclosure to the client of the type and quantum of remuneration being charged.	<u>Proposed recommendation</u>
		Mark Shum	The major issue in respect of the implementation of the suggested safeguards is over-disclosure. The disclosure should be simple and easy to understand. APESB may wish to revise its present template in Appendix One of APS 12 and publish updated disclosure templates for the membership. It should also consider whether to place a positive obligation on the Member to actively explain the schedule of fees to the client rather than simply referring the client to the Statement of Advice.	Create obligations on the Members to inform Clients of the various components of the remuneration arrangements that will/may arise from provision of advice relating to the particular types of financial products. Appendix 1 of APS 12 needs to be carried forward to the new standard.
		Professional Bodies	Yes – disclosure requirements should be incorporated into APES335. Where members who have their own Australian Financial Services License, APES335 can be incorporated into their overall compliance manual and requirements. As such APES335 as a standard has a critical function to provide assistance and guidance to members, which includes the area of disclosure. This guidance must be of a practical nature. This is important and is a valuable guide, as disclosure and transparency are particularly high profile concerns within the financial planning industry.	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			It should be noted that currently there is not a significant number of members who hold their own AFSL. However the professional accounting bodies have a responsibility to provide guidance and assistance irrespective of the number of licensees.	
18	What are the issues, if any, that may arise in respect of the implementation of appropriate safeguards to reduce identified threats from remuneration arrangements?	Deloitte	There is a danger of overcomplicating disclosure requirements.	<p><u>Summary of respondents comments</u></p> <p>The Professional Bodies have identified the following issues:</p> <ul style="list-style-type: none"> • Safeguards can lead to additional cost. [In question. 13, GLW has mentioned that the fee that can be charged may not cover the costs of the Members in public practice] • May impact the continuing membership of the Professional Body. <p><u>Proposed recommendation</u></p> <p>When developing the proposed standard need to consider the costs vs benefits of implementing appropriate safeguards such as disclosure requirements and documentation.</p>
		GLW Analysis Services P/L	See Q13 above.	
		Grant Thornton	We are not aware of any.	
		Mark Shum	Members may have to revise their current processes to implement appropriate safeguards to reduce identified threats from remuneration arrangements which assist Members in complying with the legal requirements.	
		Professional Bodies	There are a range of issues in relation to the implementation of appropriate safeguards and remuneration models. For example – safeguards would usually incorporate further disclosure and transparency requirements that would result in both additional financial cost and administrative burden for the practice. In addition, where safeguards include the prohibition or banning of specific forms of remuneration this may impact on members continuing membership with the professional bodies.	
19	What are the alternative remuneration benefits that should be prohibited from receipt by members? Please	Deloitte	We support maintaining the position on alternative remuneration based benefits outlined in APS 12 (s21.3).	<p><u>Summary of respondents comments</u></p> <ul style="list-style-type: none"> • The respondents have not agreed on the alternative remuneration benefits that should be prohibited.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
	provide reasons for your response,			<ul style="list-style-type: none"> Definition of remuneration
		GLW Analysis Services P/L	Ban any remuneration benefits other than a standard time based fee to clients, for members in public practice, in order to safeguard the Fundamental Principles: see Q11 above.	GLW → Prohibit any remuneration other than the standard time based remuneration.
		Grant Thornton	We support the currently allowed remuneration models as they currently work appropriately.	MS → Prohibit remuneration based on the monetary value of the products
		Mark Shum	Any alternative remuneration based on the monetary value of products sold should be prohibited as this arrangement creates substantial conflict of interests that no safeguards could be introduced to mitigate the conflict. The APESB should carefully consider the effects of volume-based remuneration models offered by platform providers on Members. There have been suggestions that a platform is merely an administration facility rather than a product and therefore the volume-based prohibition does not apply.	<p>Deloitte, GT and the Professional Bodies support the current APS remuneration framework.</p> <p>MS and the Professional Bodies want the standard to further define and clarify volume based remuneration.</p> <p><u>Proposed recommendation</u></p> <p>Define and clarify volume based remuneration models and carry forward the existing alternative remuneration benefits outlined in APS 12.</p>
		Professional Bodies	<p>The “alternative remuneration benefits” outlined in APS 12 paragraph 21.2 and 21.3 should continue to be the framework which outlines the benefits or incentives that should be prohibited.</p> <p>There are also a number of issues that require further discussion to ensure members understand these paragraphs. For example: Are platforms products or simply administration platforms?, and further define and clarify “benefits based on sales volumes”</p> <p>Any prohibitions should be on the basis of a broad definition of the type of remuneration to be banned rather a tight definition that could easily be outmaneuvered by changes in the structuring of the remuneration to get around such bans.</p>	
20	To what extent has the	Deloitte	We consider that the disclosure of alternative	<u>Summary of respondents comments</u>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
	Alternative Remuneration Schedule in APS 12 been successful in practice in reducing conflicts of interest? Please provide reasons for your response		remunerations in a register encourages transparency and helps prevent conflicts of interest however we do not have examples to provide to show they have been successful in practice,	<p>Respondents agree that the current APS 12 Alternative Remuneration Schedule has been successful in practice.</p> <p><u>Proposed recommendation</u></p> <p>As noted in question 19, the existing Alternative Remuneration Schedule in APS 12 needs to be carried forward.</p>
		GLW Analysis Services P/L	No comment.	
		Grant Thornton	We support the currently allowed remuneration models as they currently work appropriately.	
		Mark Shum	<p>There are two major benefits of the Alternative Remuneration Schedule:</p> <ul style="list-style-type: none"> • When the Member makes an entry to the register, the action engages the Member to consider whether such remuneration would materially affect the objectivity of advice provided or to be provided, or compliance with the fundamental principles. • Proper disclosure of alternative remuneration provides clients with the opportunity to consider the benefits received by the Member from third parties. 	
		Professional Bodies	We are unable to answer this question definitively.	
21	Should the Alternative Remuneration Schedule in APS 12 be replaced with alternative professional obligations? Please provide reasons for your response.	Deloitte	The requirements in APS 12 in our view are appropriate.	<p><u>Summary of respondents comments</u></p> <p>All the respondents agree that the Alternative Remuneration Schedule in APS 12 should not be replaced.</p> <p>MS → If a Member has to explain the content of the schedule to the client, the Member should not charge the client for this service.</p>
		GLW Analysis	No comment.	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
		Services P/L		
		Grant Thornton	We support the currently allowed remuneration models as they currently work appropriately.	<p><u>Proposed recommendation</u></p> <p>Alternative Remuneration Schedule in APS 12 should not be removed and must be included in the proposed standard.</p>
		Mark Shum	The Alternative Remuneration Schedule should not be replaced. However, if a client requests the Member to explain the content in the Schedule, the Member should not be able to charge for the service.	
		Professional Bodies	The professional accounting bodies would support the continuation of the Alternative Remuneration Schedule as it would be in line with the industry terminology. This schedule is important as a practical guide and support for members, especially for those who hold their own AFSL.	
22	What are the potential threats to members' ability to conform with the requirements of APES 110 and APS 12 generally, in the provision of financial advisory services to clients?	Deloitte	<p>The potential threats outlined in APS 12 (s9.5) are:</p> <ul style="list-style-type: none"> • The acceptance of commission or other benefits • Financial involvements which by reason of their nature or degree might threaten a members objectivity; and • A member may be adversely influenced by third party remuneration. <p>In addition other potential threats may include:</p> <ul style="list-style-type: none"> • Members in business may not fully understand their obligations; and • Volatile market conditions leading some members to cut back compliance resources, be driven by commissions, or take short cuts that undermine compliance with standards and the law. 	<p><u>Summary of respondents comments</u></p> <p>The following potential threats have been identified:</p> <p>MS → Self-Interest, Self-Review, Advocacy, Familiarity and Intimidation.</p> <p>Professional Bodies → Members ability to meet the requirements of the standard under the parameters of their Australian Financial Services License.</p> <p><u>Proposed recommendation</u></p> <p>The proposed standard needs to consider the obligations of the Australian Financial Services License. The other threats noted by respondents will be dealt with under the fundamental obligations of Member's section of the proposed Standard.</p>
		GLW Analysis Services P/L	I see no threats, if the guidelines proposed in Q2 answer above are implemented in APES 335.	
		Grant Thornton	None we are aware of.	
		Mark Shum	An outline of each threats to Members' ability to	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>conform with the requirements of APES 110 and APS 12 generally in the provision of financial planning services is as follows:</p> <ul style="list-style-type: none"> • Self-Interest – A financial benefit would arise if a product is recommended as part of the advice. This may affect the objectivity of the advice provided. • Self-Review – the Member may have ongoing arrangements with the client to review the Member's original strategy and/or recommendations. This may affect the objectivity of the advice provided. • Advocacy – the Member, due to his/her arrangement with a product provider, promotes a particular product or classes of product to the clients. This may affect the objectivity and independence requirements in APES 110. • Familiarity – the Member may have a long association (whether personally or professionally) with a client. This may affect the objectivity of the advice provided. <p>Intimidation – the Member may be forced by his/her employer to meet specific product sales targets and failure to meet targets may lead to internal disciplinary actions. This may affect the objectivity of the advice provided.</p>	
		Professional Bodies	<p>The professional accounting bodies are of the view that in general terms and in terms of fundamental principles there should not be threats to members' ability to conform with the requirements of APES110 and APS 12.</p>	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			However, there remains a threat to the practical application of some of the requirements of APS 12. In particular, are members able to meet the requirements of APS12 under the parameters of their Australian Financial Services Licensee? For example, can they comply with the requirement to annually report to clients all fees and remuneration applicable to them – the issue may not be one of principle but the practical application of running reports and software limitations	
23	If threats exist, what safeguards do you suggest firms and members adopt within their workplaces to mitigate those threats?	Deloitte	The safeguards outlined in APS 12 are: <ul style="list-style-type: none"> • The member should ensure that threats to independence are disclosed to clients • The member must fully disclose all interests - both financial and non financial earned from the sale of any financial product • In recommending one product in preference to another the member must make a recommendation which is appropriate to achieve the clients needs and objectives • The member must only recommend one product be replaced by another where it is appropriate to achieve the clients needs and objectives; and • A member has a continuing duty to maintain professional knowledge and skill at a level to ensure a client or employer receives the advantage of competent professional services In addition other potential safeguards may include: <ul style="list-style-type: none"> • Testing the effectiveness of professional training; and • Ensuring resources are adequate for monitoring compliance 	<p><u>Summary of respondents comments</u></p> <p>The following safeguards are mentioned:</p> <p>Deloitte – Has discussed safeguards already outlined in APS 12.</p> <p>MS → Possible safeguards for the identified threats; Self-Interest, Self-Review, Advocacy, Familiarity and Intimidation.</p> <p>Professional Bodies → The standard should provide examples on how to deal with threats and what type of safeguards could be applied to counter those threats.</p> <p><u>Proposed recommendation</u></p> <p>The standard should provide guidance on how to deal with threats and the type of safeguards that could be applied to counter those threats.</p>
		GLW Analysis Services P/L	No comment, other than reference to Q2 answer above.	
		Grant	None we are aware of.	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
		Thornton Mark Shum	Some proposed safeguards are as follows: <ul style="list-style-type: none"> • Self-Interest – clear and concise disclosure of all conflicts of interest – in the advice provided to the client, Financial Services Guide (which may be done by incorporation by reference) and the Alternative Remuneration Schedule. • Self-Review – whilst possible, it is unlikely and impractical for a Member in the financial planning environment to refer the client to another Member to review the existing strategy. • Advocacy – the Member, together with the AFS licensee (if applicable), develop proper conflicts of interest policies to ensure material conflicts are avoided and that the client is aware of any conflicts arising from a particular engagement. • Familiarity – the Member may have to refer the client to another Member for advice. Intimidation – encourage the Member Firm or the Member’s employer to not solely measure performance against sales targets or achievement of a funds under management target.	
		Professional Bodies	In developing APS 12 the professional accounting bodies were mindful that the standard should provide for examples of how to deal with threats and what sort of safeguards could be applied to counter those threats. The key is to identify and document any issues and ensure appropriate mechanisms are in place to mitigate those risks. In particular the following was included to address possible conflicts between the workplace and APS12.	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			<p>“..... <i>members</i> (including those outside of Australia) must follow the provisions of APS12 to the extent to which they are not prevented from so doing due to the specific requirements of an employer, AFS Licensee or local regulations and laws.</p> <p>Where a <i>member</i> does not comply with a provision of APS 12, the <i>member</i> must document the departure from the Standard and note the reason/s for the non-compliance. In the case of a <i>member</i> not in public practice, the <i>member</i> should also bring the departure to the attention of their Employer or Licensee with a view to encouraging the Employer or Licensee to comply with the provisions of the Standard.”</p> <p>Members can also refer to APES 110 for further information and guidance on how to mitigate potential threats.</p>	
24	Are there any cost or other burdens that may be associated with the implementation of certain safeguards, that may have an adverse impact on sole practitioners in particular?	Deloitte	The costs of implementing additional safeguards may have a proportionately larger impact on a sole practitioner because of the availability of resources to a small business.	<u>Summary of respondents comments</u> The consensus view is that sole practitioners should be able to implement additional safeguards, but we must be mindful of the already existing regulations.
		GLW Analysis Services P/L	No if Q2 answer is adopted.	<u>Proposed recommendation</u> Respondents do not believe there are significant costs or other burdens that may be associated with the implementation of appropriate principles based safeguards.
		Grant Thornton	None we are aware of.	
		Mark Shum	There are no significant costs on sole practitioners to implement the above safeguards.	
		Professional Bodies	The majority of potential obligations, costs and burdens occur where the sole practitioner is the AFS licence holder, as they usually have less administrative and	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			financial resources at their disposal. This issue is magnified where the standard is prescriptive rather than principles based. We must be mindful that the financial advisory services industry is highly regulated and members already face a wide range of obligations from government, regulators and other associations.	
25	Is there ordinarily any need for a member/firm to hold or receive client monies in the course of provision of financial advisory services? if yes, please provide details of these circumstances	Deloitte	Not in our experience given the type of financial advisory services we may provide.	<p><u>Summary of respondents comments</u></p> <p>A member/firm may hold client monies due to:</p> <ul style="list-style-type: none"> • A Managed Discretionary Account • Fee for service • Commission
		GLW Analysis Services P/L	No comment.	<p><u>Proposed recommendation</u></p>
		Grant Thornton	Yes there may be a need depending on the type of service provided such as a Managed Discretionary Account.	The proposed standard should refer to APS 10 and GN 3 (or proposed new APES 310) with regard to client monies.
		Mark Shum	<p>Members/Firms are generally not required to hold or receive client monies in the course of providing financial planning services. The following provides some scenarios whereby Firms may hold client monies:</p> <ul style="list-style-type: none"> • Fee-for-service – if the Member charges an hourly rate for financial planning services, a sum of money may be requested upfront and held in trust until the work has been completed. • Commissions – when there is an arrangement between the Member or the Member Firm with the client whereby a sum of commissions may be rebated and that the product provider (or fund manager) could not retain the commission in the client account held by the provider, the money may 	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			be deposited into an account controlled by the Member.	
		Professional Bodies	There is not ordinarily a need for members to hold or receive client monies in the course of the provision of financial advisory services. The services provided by members may include the processing of clients' monies – investable funds and insurance premiums, however these are not held by the member. It should also be noted that members who provide licensed financial advisory services are required to meet the obligations and compliance requirements of their Australian Financial Services License holder.	
26	Should the existing accounting professional standards in relation to Client Monies (APS 10 and GN 3) apply to these situations?	Deloitte	Yes	<u>Summary of respondents comments</u> All respondents agree that APS 10 and GN 3 should apply.
		GLW Analysis Services P/L	Yes.	MS → Do we need a standard on client property?
		Grant Thornton	Yes.	<u>Proposed recommendation</u>
		Mark Shum	The existing accounting professional standards in relation to Client Monies should apply to money received in the course of providing financial planning services. APESB should also consider introducing standards for the dealing of client property	APES 335 should refer to APS 10 and GN 3 with regard to client monies [refer question 25]
		Professional Bodies	The professional standards relating to client Monies (APS10 and GN3) should apply.	A section on Client property to be included within the proposed standard and should address the following: <ul style="list-style-type: none"> • The Member or Firm must take prudent steps to protect client property that is within the control of the Member or Firm's • The Member or Firm must return a Client's property to the Client upon request and as soon as reasonably practicable, or in accordance with the agreed terms of the engagement. •

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
27	Are there additional professional obligations that members should meet if they hold/receive client monies in respect of clients for whom they provide financial advice?	Deloitte	We agree with the 4 points outlined in the discussion paper. In addition we suggest: <ul style="list-style-type: none"> Ensuring that those involved in transferring client money are subject to probity checks as an anti-fraud measure Ensuring that proper authorisations are in place for transferring client money as anti-fraud safeguard 	<p><u>Summary of respondents comments</u></p> <p>Deloitte:</p> <ul style="list-style-type: none"> Probity checks on those involved in transferring client money Proper authorisations are in place <p><u>Proposed recommendation</u></p> <p>The proposed standard should refer to APS 10 and GN 3 with regard to client monies [refer question 25]. Two additional professional obligations noted by Deloitte to be considered when drafting the proposed standard.</p>
		GLW Analysis Services P/L	No comment.	
		Grant Thornton	No, they are already prescribed by ASIC.	
		Mark Shum	Members should be made aware of the requirements by the Corporations Act, in particular, Division 2 of Part 7.8, and Section E of ASIC's Regulatory Guide 166 relating to additional financial requirements for Licensees holding client money or property.	
		Professional Bodies	We do not believe there is a need for additional obligations to be imposed on members who hold or receive client monies for whom they provide financial advice.	
28	Is the current form of quality review conducted for APS 12 in respect of members in public practice who provide financial advisory services effective in terms of ensuring member compliance with APS 12?	Deloitte	In our experience the Institute's Quality Review Program should be effective in achieving its objectives however we have not been subject to this review process in respect of Financial Advisory Service engagements.	<p><u>Summary of respondents comments</u></p> <p>Professional Bodies → The quality program is under review.</p> <p>MS → Provide a quality review program template and guidance as part of the standard.</p> <p><u>Proposed recommendation</u></p> <p>Respondents appear to be satisfied with the current quality review program. APESB to include professional obligations relating to quality control in the proposed standard.</p>
		GLW Analysis Services P/L	Yes	
		Grant Thornton	Yes.	
		Mark Shum	No comment. However, I encourage the APESB to publish a detailed quality review program template and	

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
			guidance for Members offering financial planning services.	
		Professional Bodies	The Quality Review program for financial advisory services incorporating APS 12 requirements is currently under review. An external consultant will be reviewing the process and assisting in the reviews of practices which provide financial planning services.	
29	Are there additional implications if APES 335 is extended to apply to members in business? Please provide details to support your response	Deloitte	Yes, there are potentially practical difficulties in terms of the identification of members in business providing financial services of this nature and the access and monitoring of their activities. In addition, a member in business may not be able to comply with requirements, such as in areas of disclosure and remuneration models, if their employer's practice and policies do not comply with APES 335.	<p><u>Summary of respondents comments</u></p> <p>Deloitte & MS → Member in Business will not be able to comply with quality review requirements.</p> <p>MS and Professional Bodies → Members may not be able to comply due to their employer or license requirements.</p> <p><u>Proposed recommendation</u></p> <p>Consider providing guidance to Members in Business in respect of quality review requirements when developing the proposed standard.</p>
		GLW Analysis Services P/L	No comment.	
		Grant Thornton	No.	
		Mark Shum	<p>Most Licensees have their own compliance review programs to determine compliance with the law. It is noted that Members that are also members of the Financial Planning Association have to ensure its systems and processes comply with the Association's professional standards.</p> <p>Another concern is that quality reviewers may not be able to access Members' documents if a particular Member is subject to restrictions by a non-member Licensee.</p> <p>Accordingly, the quality review provisions should not apply to Members in business.</p>	
		Professional	As identified previously, members may not be able to	

Constituents' Submissions
 Consultation Paper : APS 12

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
		Bodies	<p>comply with the requirements of APS 335 due to requirements of their employer, AFS licensee, local regulations or the law.</p> <p>Furthermore, it may be challenging to obtain definitive details of members who would be required to meet the obligations of APES 335.</p>	
30	Please provide details of any practical difficulties that quality reviewers or members encountered when quality reviews were performed to check member's compliance with APS 12?	Deloitte	We have not been subject to such a quality review therefore we have no comment.	<p><u>Summary of respondents comments</u></p> <p>Professional Bodies → the new quality review framework will be implemented in June 2009. Also many of the reviewers do not have extensive experience in the financial services/ financial planning industry. Gaining access to member files, which are deemed to be owned by the dealer group, may also prove to be a challenge.</p>
		GLW Analysis Services P/L	A quality reviewer encountered a member in practice (not an Institute member) undertaking financial planning services as authorised representative of an AFS Licensee. One client file selected in the quality review showed the client was classified as "Cautious Prudent" and, following the standard investment plan provided by the AFS Licensee, about 5% of funds were invested in equities classified as growth stocks in South East Asia. Subsequently this 5% was written off with a decline in market values (well before the current downturn). The reviewer suggested that the loss be explained to the client and the client file should record the explanation. The practice stated no explanation was necessary and the reviewer was not qualified in financial planning and did not understand financial planning procedures.	<p><u>Proposed recommendation</u></p> <p>APESB to monitor the development and implementation of the new quality review program of the professional bodies.</p>
		Grant Thornton	We have not encountered any practical difficulties	
		Mark Shum	No comment	

Constituents' Submissions
 Consultation Paper : APS 12

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments	APESB Staff Comments
		Professional Bodies	<p>As stated in Q28 the Quality Review program is currently under review. The engagement of an external consultant is a result of the challenges the Quality Review teams have had in monitoring financial planning services and these services against the requirements of APS 12. A general comment can be made that many of the reviewers do not have extensive experience in the financial services/ financial planning industry. Further, gaining access to member files, which are deemed to be owned by the dealer group, may also prove to be a challenge.</p> <p>The initial plan is for a Quality Review framework to be implemented by June 2009</p>	

Staff Instructions:

- Comments of a “general” nature should be dealt with first, followed by paragraph specific comments.
- Respondents’ comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order.
- Use acronyms only for respondents. Update the attached table with details of additional respondents.

RESPONDENTS

Professional bodies	CPA Australia, ICAA, NIA
GT	Grant Thornton
MS	Mark Shum
GLW	GLW Analysis Services Pty Ltd
DTT	Deloitte Touche Tohmatsu