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Ms Kate Spargo
Chairperson
Accounting Professional & Ethical Standards Board
Limited
Level 7
600 Bourke Street
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Our ref APES230Submissionto APESB
101020

20 October 2010

Dear Ms Spargo

**Comment on Proposed Standard APES 230 - Financial Advisory Services
(‘Proposed Standard’)**

You have invited comments as to whether the Proposed Standard as a whole would be supported. We are pleased to have the opportunity to comment on the Proposed Standard and welcome the initiative and overall spirit of the Proposed Standard.

We make the following main comments for your consideration.

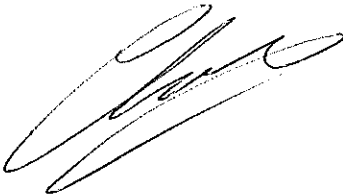
Comment/ Issue	Recommendation
<p><i>Definitions of Client and Financial Advice - Need for clarity</i></p> <p>We understand that the overall objective and intention is that the Proposed Standard is to apply only to members who provide financial planning and such related advice, particularly in relation to retail clients.</p> <p>As currently drafted however, the combined effect of the broad definitions of Financial Advice and Client in the Proposed Standard may unintentionally capture services or advice to clients that would or should be outside the scope of this overall intention, particularly in relation to its applicability to clients and services that would be an “exempt service” under the Corporations Act.</p> <p>For example:</p>	<p><i>Specific statement that Proposed Standard does not apply to certain financial services</i></p> <p>To avoid all doubt and for clarity, the Proposed Standard should specifically state that it does not apply to:</p> <ul style="list-style-type: none"> An “exempt service” (as defined under the Corporations Act) or a service taken not to be a provision of a financial service under the Corporations Act. <p>This is particularly the case in relation to the provision of financial services or advice relating to self managed superannuation funds that are currently exempted through the combined application of regulations 7.1.29(5) and 7.1.29A of the Corporations Act. We understand that the Cooper review on the Superannuation System recommends</p>

<ul style="list-style-type: none"> • advice provided in relation to self managed superannuation funds; • asset allocation advice (which is outside the exemption in Regulation 7.1.33A of the Corporations Act); • advice to superannuation trustees with less than \$10 million in funds under management ; • taxation advice that is exempt under Regulation 7.1.29(4) of the Corporations Act s; and • structuring, establishment, due diligence or valuation advice currently exempted under Regulation 7.1.29(3) (c) of the Corporations Act, <p>would be caught by the Proposed Standard.</p>	<p>removal of these exemptions. However, we submit that it would be better to wait for the outcome and detail of any changes to regulation on this rather than pre-empt possible changes on this issue, not the least so as not to create inconsistencies and unnecessary compliance obligations.</p> <ul style="list-style-type: none"> • Financial services provided to wholesale clients and professional investors (as defined under the Corporations Act). • Financial services provided to retail clients (as defined under the Corporations Act) by virtue or as a result of inclusion in a disclosure or other public document such as an Investigating Expert report or Investigating Accountant report. • Where the financial service does not require the holding of an Australian Financial Services Licence or an Australian Credit Licence. • Where a financial service is provided in relation to and for internal firm purposes such as tax or superannuation advice to employees or partners. <p><i>Adopt or reference definitions of retail and wholesale clients to that in the Corporations Act</i></p> <p>Further, to avoid inconsistencies and implementation difficulties, particularly between the Corporations Act and the Proposed Standard, and to ensure the appropriate scope, the Proposed Standard should adopt or reference definitions of retail and wholesale clients to that in the Corporations Act.</p>
<p><i>Description of Fiduciary responsibilities</i></p> <p>We submit that the inclusion of the term “Fiduciary Relationship” in the definition section and the inclusion of clause 4 on Fiduciary Responsibilities are unnecessary given the body of law that exists in this area as to the meaning and nature of the relationship and established responsibilities.</p>	<p>We recommend removal of this definition and the corresponding clause 4 of the Proposed Standard which adds little to the extensive obligations that already exist at law which may create more confusion and unnecessary additional obligations.</p>

<p><i>Information to be provided to clients</i></p> <p>The information required to be provided to a client under clauses 6 and 7 are generally already required under the Corporations Act. Further, there may be other obligations under the Tax Agents Act or SIS legislation.</p> <p>Also, the need to disclose the nature and effectiveness of safeguards and a statement that the Financial Advisory Service was conducted in accordance with the Proposed Standard exceeds current regulatory requirements, in particular under the Corporations Act.</p>	<p>Clauses 6 and 7 should not add to the extensive obligations that already exist under various regulatory requirements to promote meaningful disclosure. Also to avoid inconsistency and difficulties in implementation, we submit that requirements in relation to disclosure should be referenced to relevant legislation such as the Corporations Act or Tax Agent Act etc.</p>
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We would be pleased to discuss our comments with you. Should you wish to do so, please contact Cheri Ong on (03) 9288 5283 or Sharon Easton on (03) 9838 4992.

Yours sincerely



Cheri Ong
Head of Regulation and Compliance