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# Accounting Professional & Ethical Standards Board Limited

## Invitation to comment

Consultation Paper:

Review of Miscellaneous Professional Statement APS 12:  
*Statement of Financial Advisory Service Standards*

APESB Accounting  
Professional and  
Ethical Standards Board

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# Invitation to comment

The Accounting Professional and Ethical Standards Board (APESB) is conducting a review of Miscellaneous Professional Statement APS 12: *Statement of Financial Advisory Service Standards* (APS 12). APS 12 was issued in 2005 by the national councils of CPA Australia and the Institute of Chartered Accountants in Australia to mandate best practice for members engaged in financial advisory services. This Consultation Paper is issued for public comment to inform the review of APS 12 in accordance with APESB's mandate to review and relaunch professional and ethical standards for the accounting profession.

The primary objective of the Consultation Paper is to review the practical experience of professional accountants with APS 12 in order to inform the development of a new professional standard that is also harmonious with APES 110: *Code of Ethics for Professional Accountants* (APES 110). The proposed new standard is to be called APES 335 *Financial Advisory Services* (APES 335).

The Consultation Paper will also enable the APESB to obtain the views of stakeholders on certain key issues relating to the professional conduct of members of the professional accounting bodies who provide financial advisory services<sup>1</sup>.

In summary, the Consultation Paper considers:

- The application and scope of the existing APS 12 and the proposed APES 335;
- The overarching principles that apply to the professional conduct of members of the professional accounting bodies when they undertake financial advisory services;
- Whether, and in what circumstances, members providing financial advisory services should be required to uphold the principle of independence, as defined in APES 110;
- Any potential threats to a member's ability to conform with the requirements of APES 110 in the provision of financial and/or investment advisory services and if so, appropriate safeguards to mitigate these threats;
- The requirements members should meet if they hold/receive client monies in the provision of financial advisory services;
- The form of quality review that should be implemented to ensure member compliance with APES 335 and APES 320 *Quality Control for Firms* (APES 320).

All parties who consider that they have an interest in the development of professional and ethical standards for members of the professional accounting bodies in this area, including representative users and user groups, are encouraged to make submissions. These submissions will assist the APESB in identifying the key areas for consideration in the development of APES 335. Respondents may address all or a selection of specific questions posed, or make general submissions on the issues raised in this Consultation Paper.

All submissions and comments will be regarded as being on the public record.  
Submissions and comments should be addressed to the APESB as follows:

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Respondents may forward submissions to us by mail, email or facsimile transmission by close of business on 31 December 2008. Wherever possible, we would appreciate submissions in electronic form.

# Introduction

This Consultation Paper is intended to provide a constructive basis for relevant and effective comment and feedback from the professional accounting bodies, members of the professional accounting bodies and other interested stakeholders on issues surrounding the professional conduct of members of the accounting profession in the provision of financial advisory services. The reference to members within this document refers to members of CPA Australia, the Institute of Chartered Accountants in Australia or the National Institute of Accountants.

One of the primary purposes of the Consultation Paper is to stimulate discussion and debate on the key issues affecting members who provide financial advisory services. The discussion and views expressed herein do not necessarily represent the views of the APESB on any matter.

Section 1 of this Consultation Paper contains background information related to the project. Section 2 outlines the literature and media reviews undertaken so as to inform this document's content. This is followed in Section 3 by a detailed discussion of the key issues for comment and review. Section 4 then summarises the questions that stakeholders are asked to specifically comment on in their submissions. Section 5 contains Appendices containing other relevant material and information.

## 1.1 The APESB and its purpose

The APESB was established as an independent body in February 2006, as an initiative of CPA Australia (CPAA) and the Institute of Chartered Accountants in Australia (ICAA). CPAA, the ICAA and the National Institute of Accountants (NIA) are all members of the APESB.

The primary objective of the APESB is to develop and issue in the public interest appropriate professional and ethical standards, which apply to the membership of the three professional accounting bodies. A secondary objective of the APESB is to provide the opportunity or forum for the discussion and consideration of issues relating to professional standards for accountants.

It is the role of the APESB to identify practices and activities where specific application of the values and principles espoused in APES 110 should be established. These practices and activities are then codified in APESB standards. Where necessary, the APESB will also elaborate on the application of APES 110 or an existing APESB standard by way of guidance notes. A diagram of the structure of the APESB pronouncements is outlined in Appendix 5.1.

The APESB is supported by a small team of technical and administrative staff known as the secretariat. The primary role of the secretariat is to oversee the drafting and development of professional and ethical standards for members of the accounting profession and to provide administrative support to the Board.

A number of standard task forces may be convened by the Board on an ad hoc basis. Each of these task forces is charged with overseeing the development and review of a specific professional standard or guidance note in accordance with their subject area of expertise and the APESB work plan. In this particular instance, a task force has been convened to oversee the review and replacement of APS 12 with the proposed standard APES 335.

The APESB follows a rigorous process for the development of professional and ethical standards. Based extensively on well documented processes adopted by international and national accounting standard setting bodies, the *Due Process and Working Procedures for the Development and Review of APESB Pronouncements* formalises the Board's approach to developing standards. This document will be used as a foundation document in the development of proposed APES 335.

## 1.2 Background to the Consultation Paper

Accountants who are members of CPAA, the ICAA, and the NIA must comply with the professional and ethical standards approved by the APESB. APES 110: *Code of Ethics for Professional Accountants*, other APESB professional standards, and guidance notes<sup>2</sup> are binding on all members of these professional accounting bodies. Broadly, these standards aim to regulate members' professional and ethical conduct when they perform services to clients as well as employers.

As discussed in more detail in Section 3.2 of this Consultation Paper, APES 110 provides a conceptual framework for members to apply overarching and guiding professional and ethical principles. It gives guidance to identify threats to compliance with these principles, to evaluate the significance of those threats and, if such threats are other than clearly insignificant, to apply safeguards to eliminate or reduce them to an acceptable level, such that compliance with fundamental principles is not compromised.

Thus the professional decision making of members should be informed by the values and principles articulated in APES 110. The objective of the proposed APES 335 will be to apply these fundamental values and principles to the provision of financial and/or investment advisory services by members and to further promote competent, professional and ethical practice in financial advisory services. These professional and ethical requirements will supplement those in APES 110.

The proposed APES 335 will acknowledge the legislative framework that applies to the provision of financial product advice and financial services, as prescribed in the *Corporations Act 2001*. It is not intended to replace or be inconsistent with the current legal framework.

APES 335 will recognise the high expectations the public has of professional accountants as trusted business professionals. It will seek to uphold this high level of public confidence by ensuring that the professional and ethical conduct expected of members in the provision of financial advisory services is codified and well understood.

### 1.3 The purpose, aims and objectives of the review

The primary purpose of this review is to replace APS 12 with APES 335 as part of APESB's ongoing review and relaunch of professional and ethical standards.

The broad aims and objectives are to:

- (a) produce a standard that is harmonious with APES 110: *Code of Ethics of Professional Accountants*;
- (b) set a standard for professional best practice for members in the provision of quality and ethical financial advisory services to clients or employers;
- (c) identify implementation issues and any practical difficulties associated with APS 12 over the last 3 years; and
- (d) develop appropriate solutions to issues Identified in (c) and address them in the proposed APES 335.

### 1.4 A summary of the key issues for comment

The key issues that are raised in the Consultation Paper are:

#### (a) The conflicts of interest that are created by the current remuneration models

Remuneration models for members providing financial advisory services in Australia commonly distinguish between:

- *Commission*: The financial adviser receives percentage-based remuneration commissions from third party product providers;
- *Percentage-based fee for service*: The financial adviser receives a percentage-based fee for service from the client in respect of the sale/placement of a product and/or retention of clients' funds;
- *Non-product specific fee for service*: The financial adviser receives a fee for service from the client the calculation of which is unrelated to the sale of a product or to the retention of clients' funds.

Commission-based remuneration models are prevalent in the industry and this creates conflicts of interest for members providing financial advisory services. As described in section 3.3, these conflicts of interest exist at three levels:

- The remuneration of the member is paid by a third party product provider and not the client;
- A product must be sold to receive the remuneration;
- A member may be tempted to recommend a product that pays the highest level of remuneration.

Thus as discussed in detail in section 3.3, whilst some commentators advocate a fee for service model in order to minimise the conflicts of interest others argue that these conflicts can be managed by full disclosure and transparency of the fee arrangements. In section 3.3 stakeholders are invited to comment on whether the concept of independence should be adhered to in the provision of financial advice and their views on the alternative remuneration models.

Comments are also invited on the threats that impact on a member's ability to comply with the fundamental principles of the code and appropriate safeguards that can be adopted.

**(b) Alternative remuneration and 'soft dollar benefits'**

APS 12 states that some alternative remuneration benefits, particularly linked to product or volume sales, are banned, because their receipt places members in direct conflict with the interests of their clients. APS 12 also requires the receipt of other benefits to be registered for public disclosure in an Alternative Remuneration Schedule if they totalled over \$300 in any one year. In section 3.3 stakeholders are invited to comment on the kinds of alternative remuneration that should be prohibited and the extent to which the alternative remuneration schedule in APS 12 has been successful in practice.

**(c) Holding and receiving client monies**

Members providing financial advisory services should carefully assess whether they need to have any involvement with client monies. In section 3.5 comments are invited from stakeholders on when client monies may come into the possession of members, the circumstances in which those monies are held, transferred or otherwise dealt with, and the professional obligations that should apply to such circumstances.

**(d) Quality Review**

Members who hold certificates of public practice and their firms are required by APES 320 to establish and maintain a system of quality control and are subject to the quality reviews of the professional accounting bodies and regulators. In section 3.6 stakeholders are invited to comment on any practical implementation issues associated with the current quality review process for APS 12 and to provide comments on an appropriate quality review process for members in business.

## **1.5 Drafting of proposed standard APES 335**

The proposed standard APES 335 will be drafted in accordance with the APESB *Due Process and Working Procedures Guide for the Development and Review of APESB Pronouncements*, published in November 2007. The proposed APES 335 will be principles based, rather than rules based, in order to encourage and facilitate ethical behaviour and the exercise of professional judgement in the accounting profession.



# 2

## Literature Review

To inform the discussion of the key issues for comment within this Consultation Paper, an extensive literature and media review was conducted.

The literature review examined relevant national and international professional standards and guidance. It also included an examination of relevant ASIC, industry, consumer and government research papers and reports on the financial services industry, since the *Financial Services Reform Act* became operational on 11 March 2003. A review of similar documents related to current accounting issues was also undertaken.

The literature review has assisted in identifying the current and future professional issues that accountants may face in the provision of financial advice to clients, and in identifying the practical implementation issues that may be associated with the proposed APES 335.

A media search of relevant articles from mainstream and industry publications was conducted to identify issues that may impact on financial advisory services provided by accountants in the future.

The review of current media included matters pertaining to accountants and superannuation advice and compliance with the exemption in Regulation 7.1.29A of the *Corporations Act 2001*.

A bibliography of the documents and media references reviewed is outlined in Appendix 5.2.

Relevant content arising from the literature and media reviews is discussed in detail under each of the key discussion areas for comment, within Section 3 of the Consultation Paper.

## Key Discussion Areas

### 3.1 Application and scope of APES 335

This section discusses issues in relation to the scope and application of APES 335. In particular it considers which members should be caught by APES 335, the type of financial advice that should be covered by its scope and the definitions of financial advice and financial advisory services. The APESB professional standards recognise two categories of members as defined below:

**Member in Business** means a member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a member contracted by such entities.

**Member in Public Practice** means a member, irrespective of functional classification (e.g. audit, tax or consulting) in a firm that provides professional services. The term is also used to refer to a firm of members in public practice and means a practice entity as defined by the applicable professional body.

APS 12 applies to members in public practice when they provide financial advice to clients.<sup>3</sup> Members in public practice outside Australia are also expected to follow the provisions of APS 12, to the extent that those provisions are not inconsistent with their local regulations and laws. All other members (including those outside of Australia) are required to follow the provisions of APS 12, to the extent to which they are not prevented from doing so due to the specific requirements of an employer, Australian Financial Services (AFS) licensee, or local laws and/or regulations.

It is proposed that the application of APES 335 will cover all arrangements by which members in public practice in Australia undertake financial advisory engagements in the course of their business/practice. Compliance with the proposed standard will be mandatory for these members.

Members in public practice and practising outside Australia will be expected to follow the provisions to the extent to which they are not prevented from doing so by specific requirements of local laws and/or regulations.

In relation to all other members, i.e. members in business (including those outside of Australia), it is proposed that APES 335 should apply to the extent to which they are not prevented from doing so due to the specific requirements of an employer, AFS licensee, or local regulations and laws, regardless of the form of entity through which the member provides the advice and regardless of the type of advice given.

Given that APES 110<sup>4</sup> and some professional standards cover all members, including members in business, the APESB need to assess the practical application of APES 335 to all members unless there are reasons or implementation issues that would apply uniquely to financial advisory services.

The primary objective of APS 12 has been to cover financial advice provided by a member as an AFS licensee or representative. A secondary objective was to cover financial advice provided by a member which was not subject to licensing requirements.

However, APS 12 does not address the different phases of a typical financial advisory services engagement or types of engagements that occur in practice. For example, financial advisory services engagements may be classified as:

- Comprehensive financial advisory service (i.e. full scope);
- Limited scope financial advisory service (i.e. scope of the advice sought by the client is limited to either a particular area or particular product); and
- Other financial advisory service (i.e. such as dealing or execution only transactions).

As a general rule when comprehensive financial advisory service engagements are undertaken they involve a number of different phases of engagement with clients. These are the preparation of a financial plan, the implementation of the plan, and the monitoring and review of progress in achieving the clients' financial goals outlined therein.

These phases of engagement may be undertaken separately; for example, the client may only require the preparation of a financial plan, but not its implementation or monitoring. Alternatively, the engagement may be undertaken as a process of integrated and comprehensive financial advisory service. This is by far the most common form of engagement for members of the accounting profession who hold an AFS Licence (or are representatives of a licence holder).

Comments are sought from the stakeholders whether the proposed APES 335 should consider the different phases and types of financial advisory services that occur in practice as well as any additional requirements that should be expected of the profession while engaging with members of the public during the delivery of these engagements.

In terms of scope, APS 12 defines 'financial advice' as meaning any financial advisory service carried out by the member, including but not limited to<sup>5</sup>:

- providing advice on financial products such as shares, managed funds, master funds, wrap accounts, and life insurance carried out pursuant to an Australian Financial Services Licence;
- the taxation aspects attaching to such advice;
- dealing in financial products; and
- the provision of financial advice not subject to AFS licensing, such as non product related advice on financial strategies or structures.

'Financial advisory services' is defined as the provision of professional services by a member in the course of assisting clients to manage their financial affairs specifically related to wealth and retirement planning, personal risk management, and allied advice.

It is proposed that APES 335 maintain a similar definition of financial advisory services, whether or not those services are provided as an AFS Licensee or a representative in the provision of financial services under the *Corporations Act 2001*, or in the giving of financial advice which is not subject to licensing requirements. It is intended only to extend the definition to include reference to 'investment advisory services' being the implementation of financial planning advice and strategy and ongoing review process.

It is also proposed that the definition of financial advice be extended to include members providing advice in the areas of mortgage broking, finance broking or procurement of loans on behalf of clients, and margin lending and gearing facilities arranged as a consequence of other financial advisory services, whether or not contained within the definition of financial product or services within the *Corporations Act 2001*.

Recent public debate on the regulation of margin lending,<sup>6</sup> current failures in that area<sup>7</sup>, and the imminent regulation of mortgage broking<sup>8</sup> have led to a leadership position being taken on this point. Fundamental to this position is the overarching purpose of protecting the public interest.

It is proposed that taxation advice given by a member on tax matters which is related to the financial advice provided to the client, continue to be included within the scope of APES 335. Where the member is asked merely to provide tax advice to a client and is not undertaking any other financial advisory services, then that member will not be deemed to be providing advice as a financial advisor.<sup>9</sup> However, a member providing taxation services would need to comply with APES 220 *Taxation Services*.

Regulation 7.1.29A of the *Corporations Act 2001* contains an exemption in respect of recognised accountants who provide recommendations in relation to self-managed superannuation funds. This advice includes advice in relation to the establishment and structure of a self-managed superannuation fund and to ensure the person complies with the *Superannuation Industry (Supervision) Act 1993*. It is envisaged that this type of advice is covered by APES 335.

APES 335 is not intended to detract from any responsibilities which may be imposed by law. Members must be familiar with and comply with any duties, obligations and responsibilities that apply under common law, the *Corporations Act 2001* and any other relevant legislation.

Further, in applying the requirements of APES 335, members should be guided by both the words and the spirit of the standard.

Stakeholders are invited to submit comments on the following questions.

#### Consultation Questions – Application and Scope

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.
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 service engagements?
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?
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 of the relationship between the member and his or her client?
5. Is there an alternative application and scope that you consider is appropriate for financial advisory services? Please provide reasons for your response.

## 3.2 Overarching guiding principles for the provision of financial and investment advice

### (a) The fundamental principles

Recent research indicates that ethical practice is highly valued by Australian Accounting firms to build reputation and brand<sup>10</sup>.

A distinguishing mark of the accountancy profession in the pursuit of these objectives is its acceptance of the responsibility to act in the public interest<sup>11</sup>. A member's responsibility is therefore not exclusively to satisfy the needs of an individual client or employer.

A further fundamental principle is the fiduciary nature of the member-client relationship and the obligation of the member to act in the best interests of his or her client.<sup>12</sup> This obligation lies at the heart of the fiduciary role that members assume when they undertake financial advisory engagements for clients, in their capacity as professional accountants.<sup>13</sup>

Given this fiduciary role, clients are entitled to expect that members will avoid any conflict of interest that poses or may pose a significant threat to the member's professional conduct and performance in providing financial advice, or that may create or creates a negative perception of their ability to provide financial advice on that basis. This obligation is enshrined for members in public practice in Section 220 *Conflict of Interest* and Section 280 *Objectivity – All Services* of APES 110 and applies to all engagements.

Recently ASIC<sup>14</sup> announced that a taskforce will review whether and in what circumstances a fiduciary relationship exists between a financial adviser and a client. There is significant evidence both nationally and internationally that a fiduciary relationship should be recognised as being appropriate for financial service relationships.<sup>15</sup> Accordingly, there is a need for the fiduciary nature of the relationship between a member and a client be recognised in the provision of financial advisory services.

It may be argued that the extent of the fiduciary nature of the role undertaken by the member in financial advisory engagements will depend on the circumstance. For example, it may be appropriate for certain requirements to only be applicable to members who:

- have the legal responsibility for managing investment decisions (trustees and investment committee members);
- are responsible for managing comprehensive and continuous investment decisions (including wealth managers, financial advisors, trust officers, financial consultants, investment consultants);
- have discretion to select specific securities for separate accounts, mutual funds, comingled trusts, and unit trusts.

Comments are sought from stakeholders whether the proposed APES 335 should consider the fiduciary obligations of members when they perform different roles in the investment management process.

APES 110 is structured around a number of fundamental principles that are intended to underpin the professional conduct of members and their performance of professional services. The fundamental principles are:

- (i) integrity;
- (ii) objectivity;
- (iii) professional competence and due care;
- (iv) confidentiality;
- (v) professional behaviour.

Clearly, adherence to these fundamental principles may mean that in some circumstances the members who act as financial advisers are required to meet higher standards than required by laws and/or regulations.

The fundamental principles specified in APES 110 are defined differently from the equivalent principles listed in APS 12. The differences are discussed later in this section. Accordingly, the application of these principles in the current financial advisory services market may require some review.

**(b) In the public interest**

The public interest is defined in APES 110<sup>16</sup> as the collective well-being of the community of people and institutions that the members serve. The accountancy profession's public consists of clients, credit providers, governments, employers, employees, investors, the business and financial community, and others who rely on the objectivity and integrity of members to assist in maintaining the orderly function of commerce.

It is therefore incumbent on members in the provision of financial advice, to at all times safeguard the interest of their client and employers provided they do not conflict with the duties and loyalties owed to the public interest.<sup>17</sup>

In light of this principle, members who provide financial advisory services have a professional obligation to increase community confidence in financial advice and financial markets. Members also play an important role in assisting key stakeholders, who rely on sound financial advice and effective financial management in a variety of business, financial and taxation matters.

The principle also includes an obligation to ensure confident and informed decision making by clients and the provision of expert objective advice and assistance in the accumulation and protection of financial assets, so as to ensure provision for retirement in particular.

The attitude and behaviour of members providing such services has an impact on the economic well being of the community in general. Thus relevant stakeholders should be satisfied those members are upholding the public interest at all times and that members are acting honestly and in good faith.<sup>18</sup>

In the context of financial advice, comments are invited from stakeholders whether the public interest principle has specific connotations for members or raises specific and unique obligations not currently articulated in APES 110. If so, comments are invited on how this should be articulated in APES 335.

**(c) Integrity**

APS 12<sup>19</sup> states that members are expected to be straightforward, honest and sincere in their approach to professional work, which includes a duty to be responsive, accountable and committed to acting responsibly and reliably with respect to all professional relationships.

APES 110 has amended wording for this obligation. The principle of integrity in APES 110 imposes an obligation on all members to be straight forward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.<sup>20</sup>

Comments are invited from stakeholders on whether the integrity principle as outlined in APES 110, is sufficient to ensure that members comply with this principle when providing financial advisory services.

**(d) Objectivity**

The principle of objectivity outlined in section 120 of APES 110 imposes an obligation on all members not to compromise their professional or business judgment because of bias, conflict of interest, or the undue influence of others. Relationships that bias or unduly influence the professional judgment of the member are to be avoided.

Members in public practice are also bound by section 280 *Objectivity – All services*, which imposes an obligation to maintain objectivity across all services, in particular as it relates to interests in, or relationships with, a clients or directors, officers or employees.

This differs slightly from the wording used in clause 8 of APS 12 where the focus included the maintaining of an impartial attitude and the upholding of the principles of professional independence.<sup>21</sup> APS 12 emphasises the professional aspect of independence as distinct from any requirements imposed by the law.

Independence is defined in APES 110<sup>22</sup> as:

- (a) independence of mind: the state of mind that permits the provision of an opinion without being significantly affected by influences that compromise professional judgment, allowing an individual to act with integrity and exercise objectivity and professional scepticism.
- (b) independence in appearance: the avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a member's integrity, objectivity or professional scepticism had been compromised.

In particular, APS 12 focussed on member's providing financial advisory services recognising the potential threats created by personal and business relationships and the acceptance of commission or other benefits and financial incentives by reason of their nature or degree which might threaten their objectivity. It imposed a positive obligation on the member not to be adversely influenced by third party remuneration in the provision of advice to their client.

Comments and views are sought from stakeholders on whether and in what circumstances members providing financial advisory services should be required to uphold the principle of independence, as defined in APES 110. The issues relevant to this discussion will be articulated in more detail in Section 3.3.

**(e) Professional Competence and Care**

The obligation of professional competence and due care in Section 130 of APES 110 requires members to maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service and to act diligently in accordance with applicable technical and professional standards when providing their services.

Professional services in this context means services requiring accountancy or related skills performed by a professional accountant and includes financial management services.<sup>23</sup>



Professional competence and due care has numerous elements:

- attainment of professional competence;
- maintenance of professional competence, incorporating an understanding of continuing professional developments;
- diligence<sup>24</sup> being the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis; and
- where appropriate, making clients, employers or other users of these services aware of the limitations inherent in the services so as to avoid a misinterpretation of an expression of opinion as an assertion of fact.<sup>25</sup>

These elements are similar to the obligations found in APS 12<sup>26</sup>. APS 12 also contains a specific obligation in this context to communicate with the client in a way that builds a candid and trusting relationship, that assists the client to identify and understand his or her needs and objectives and that ensures clear, concise and effective explanations of the reasoning which leads the advice and the appropriate recommendations to their client.

These obligations have resonance in the context of the current public debate on the provision of superannuation advice to members of the public and advice on self managed superannuation funds to trustees in general.<sup>27</sup>

Comments are not sought for the purposes of this paper on the policy debate surrounding the exemption in Regulation 7.1.29A of the Corporations Act 2001.<sup>28</sup> However, the public debate on superannuation advice, the recent marketing of sophisticated financial products to self managed super fund trustees, and the upcoming review of the self managed super fund sector by the Federal Government<sup>29</sup> accords a timely opportunity to seek comment from stakeholders about the professional obligations of members in the provision of this type of advice.

In addition, recent evidence suggests that professional advice on the establishment of self managed super funds, trustee obligations, and the fees and costs associated with such funds is inadequate to assist clients to make informed decisions on whether or not to establish such a fund.<sup>30</sup> The professional accounting bodies<sup>31</sup> are of the view that there is no evidence that members are acting contrary to ethical standards and professionalism in assisting their clients to establish a self managed super fund. However, comments are invited from members and stakeholders on whether, in relation to the principle of professional competence and due care in particular, there are specific professional obligations that should be considered for adoption in APES 335 for members who specialise in superannuation advice.

#### **(f) Confidentiality**

The principle of confidentiality outlined in Section 140 of APES 110<sup>32</sup> imposes obligations on members to:

- refrain from disclosing outside the firm confidential information acquired as a result of professional and business relationships without the proper or specific authority of the client or employer or unless there is a legal duty to disclose;

- using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties; and
- members are also expected to maintain confidentiality in a social environment.

When providing financial advisory services, the Australian Financial Services Licensee whom the member represents was not deemed to be a third party in APS 12<sup>33</sup>.

Comments are invited from stakeholders on whether the confidentiality obligation needs to include additional obligations specifically in the financial services context<sup>34</sup> and if so, what those obligations should be.

### (g) Professional Behaviour

The principle of professional behaviour in Section 150 of APES 110 imposes an obligation on members to comply with relevant laws and regulations and avoid any action or omission that may bring discredit to the profession.

Further, in marketing and promoting of themselves in their work, members are not entitled to bring the profession into disrepute. Members are expected to be honest and truthful and should not make exaggerated claims about the services they are able to offer, the qualification they possess or experience they have gained, or make disparaging references or unsubstantiated comparisons to the work of others.

Stakeholders are invited to submit comments on the following questions.

#### Consultation Questions – Application of APES 110 Principles

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 behaviour) outlined in APES 110? Please provide reasons for your response.
7. Are there any other specific principles that are important to be identified in APES 335 in a financial advisory services context and why?
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.
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?
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?

### 3.3 Independence and the impact of current remuneration models

Independence is an outcome of applying fundamental principles, rather than a fundamental principle in itself.<sup>35</sup> It can be argued that in the context of financial advisory services, independence is therefore linked as an outcome to the fundamental principles of objectivity, integrity and professional behaviour in particular and the overarching principle of acting in the public interest. There is quite clearly a link to the fiduciary relationship between a professional accountant and their client and the obligation to place a client's interests before those of the adviser<sup>36</sup>.

There has been much debate and discussion about how independence relates to the role of auditors and in particular the dual activity of assurance and non-assurance services. The issue is whether there are other types of professional work that accounting firms can do that are compatible with their role as an auditor.<sup>37</sup>

Comments are invited from stakeholders on (a) the application of the concept of independence, as defined in APES 110, to financial advisory services and (b) the actual and perceived threats to such independence that are created by the current remuneration structures found in the financial services industry.

#### (a) A summary of current remuneration models

Remuneration models for members providing financial advisory services in Australia commonly distinguish between:

- *Commission*: The financial adviser receives percentage-based remuneration commissions from third party product providers (that is, a commission) in respect of the sale/placement of a product, and/or retention of clients' funds (referred to as a trailing commission);
- *Percentage-based fee for service*: The financial adviser receives a percentage-based fee for service from the client in respect of the sale/placement of a product and/or retention of clients' funds (referred to as a trailing fee);
- *Non-product specific fee for service*: The financial adviser receives a fee for service from the client the calculation of which is unrelated to the sale of a product or to the retention of clients' funds.

Therefore, at one end of the spectrum advisers may be remunerated solely by commissions paid by product providers following a purchase of a product recommended by the adviser.<sup>38</sup> A commission is paid upfront and is usually followed by a trailing commission which is paid for as long as the client holds the investment. The commission model is usually associated with the cost of the financial advice being bundled up with other costs to form a single percentage cost for the client.

At the other end of the spectrum there is a non-product specific fee for service, where clients pay for a service that is calculated on the basis of an hourly rate, a task based scale of fees, an annual retainer, a negotiated fee, or a combination thereof. This form of fee is unrelated to the sale of a product or the accumulation/retention of clients' funds. Clients receive a full rebate (refund) of any commissions flowing from product manufacturers.

In between these there are complex combinations of commission rebates, percentage 'fees', trailing commissions, incentives, hourly rates, and retainers.

The predominant remuneration models in the industry are based on commissions. However, there is evidence of a trend towards a fee for service model (usually percentage based) and away from commission based models.<sup>39</sup> This trend has coincided with statements by some professional associations to indicate a preference for fee for service models<sup>40</sup>, to ensure that fees for advice are separately identified from other fees<sup>41</sup>, to ban access to certain alternative remuneration payments and benefits, and to insist on the adviser and client negotiating fees for service and the mechanism for the collection of payment, prior to any service being provided.<sup>42</sup>

Internationally, remuneration practices and associated regulations for financial advisers vary<sup>43</sup>. There appears to be no preference for fee for service models except in Japan and at the higher service end in the USA<sup>44</sup>. For example, in the USA brokers registered under the Securities Exchange Act may offer financial advice and charge commissions. Financial planners registered under the Investment Advisers Act mostly avoid (90%) the use of commissions.<sup>45</sup>

Only India appears to have banned the receipt of certain commissions such as commissions associated with mutual funds and insurance sales<sup>46</sup>. The focus internationally remains on disclosing the compensation arrangements offered and in allowing clients to be given the option to choose to receive fee for service only.<sup>47</sup>

#### **(b) Independence and remuneration practices**

As mentioned earlier, independence includes the provision of an opinion which is not affected by influences that compromise professional judgment, allowing an individual to act with integrity and exercise objectivity and professional scepticism, and the avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of relevant information, including safeguards applied, would reasonably conclude that a member's integrity, objectivity or professional scepticism has not been compromised.

APS 12 states that independence is aligned with how fees for a service were determined, not how the fees were received. However, it did cite a preference for a fee for service approach as being more consistent with professional independence.<sup>48</sup> It also focussed on members recognising the potential threats created by personal and business relationships, the acceptance of commission or other benefits, and financial involvements which, by reason of their nature or degree, might threaten the member's objectivity. It imposed a positive obligation on the member not to be adversely influenced by third party remuneration in the provision of advice to a client.

There appears to be international recognition that some remuneration practices do lead to unresolved conflict of interest and inappropriate or unethical advice.<sup>49</sup>

ASIC defines a conflict of interest as a circumstance in which some or all of the interests of clients to whom an AFS Licensee, or its representative, provides financial services are inconsistent with, or diverge from some or all of the interests of the Licensee or its representatives. This includes actual, apparent, and potential conflicts of interest.<sup>50</sup>

Conflicts of interest and how they are managed are a reputational issue for the accounting profession. Whilst there are numerous real and potential conflicts of interest that may be encountered in the provision of financial advisory services, the primary focus currently is on conflicts associated with remuneration practices.

The receipt of commission, for example, will put a financial adviser in a position of conflict or give an appearance of conflict. That conflict exists at several levels. The first level is that a third party is paying the remuneration, not the client. The second level is that a product must be sold to receive remuneration in the first instance. The third level of conflict is that advisers may be tempted to recommend the product that pays the highest level of remuneration.<sup>51</sup>

As an alternative to commission, some financial planners rebate commissions to their clients, and charge an annual amount pursuant to a 'fee for service' scale that is based on a percentage of clients' funds. Arguably, this is preferable to a commission, although it still requires that a product be sold (or that a client has assets on which to apply the scale).

A number of participants in a recent professional survey held strong views about financial planners' remuneration.<sup>52</sup> The view that remuneration of financial planners should be based on a fee for service was expressed on a number of occasions. Other participants had no issue with commission based remuneration provided that full disclosure was made to clients.

These views appear to be consistent with the breadth of views identified in the literature and media searches. There are two countervailing views. One view is that the debate on remuneration should focus on providing consumers with the opportunity to choose the method of remuneration by which their advisers should be paid. This view argues that conflict of interests can be properly resolved by disclosure and transparency and that the method of remuneration is not relevant.

The other view is that there is a fundamental structural conflict of interest problem within current remuneration models, being their reliance upon the sale of financial products (or the existence of assets on which to charge a fee)<sup>53</sup> in order to generate remuneration. This view maintains that the current models must be replaced with a fee for service model (where fees are calculated by reference to time, and/or by reference to a published scale of fees that is not based on a percentage or on existence of assets) so as to avoid the conflicts that are inherent in the current system.<sup>54</sup> This view suggests that the solution lies in solving both real and perceived structural conflicts in the industry and that mere disclosure and transparency does not address this.<sup>55</sup>

The Joint Committee which undertook the recent Federal Parliament Enquiry into superannuation suggested that consumers should be able to choose how they remunerate their adviser, including commissions, if they are well disclosed and managed.<sup>56</sup>

The ASIC Retail Investor Taskforce has an objective to consider industry remuneration arrangements and conflicts of interest. For now, the ASIC Chairman has stated that ASIC will allow the market to “vote with its feet” on the remuneration models and that different remuneration arrangements are acceptable.<sup>57</sup>

However, in July 2008 the federal government indicated that it will be targeting conflicts of interest and commission-based selling as part of its review of the compulsory superannuation system. The proposed federal government review represents a significant challenge for the financial planning industry as it may lead to future reform.

The proposed APES 335 needs to establish professional obligations that will enable members and firms to provide financial advice to clients so that:

- A member’s objectivity will not be impaired, either in fact or appearance in the provision of financial advice; and
- Threats to a member’s objectivity arising from remuneration structures are avoided, or reduced to an acceptable level, through the application of effective safeguards.

Some of the existing and potential safeguards that can be considered are:

- 1) proper disclosure practices in the form of strict disclosure requirements informing clients of the existence of any commission-based remuneration arrangements, including the identification of the ultimate recipient(s) and the exact quantum of any potential commission components, that will/ may arise from provision of advice relating to particular types of financial product;
- 2) rebating commissions received as a result of financial advice/ recommendations provided to the client as an off-set against fees charged to clients, or payment of commissions received to the client;
- 3) providing clients with the option, wherever possible, for remuneration to be paid either through commission arrangements with financial product provider(s) or through fees charged to the client without payment of commissions to the member/firm; or
- 4) mandating the adoption of fee for service arrangements that are unrelated to the sale of products or the retention of a client’s funds.

Stakeholders are invited to submit comments on the following questions.

### Consultation Questions – Independence and Remuneration

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.
12. Is independence in the provision of financial advice, a necessary part of achieving the overall objectives of the public interest and acting in the client's best interests?
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 the interests of members with the interest of their clients? Please provide reasons for your response.
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.
15. Are there any particular threats for members in a multi disciplinary practice?
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.
17. Should APES 335 contain specific disclosure requirements informing clients of the various components of the remuneration arrangements 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.
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?

### (c) Alternative Remuneration or 'Soft Dollar' benefits

APS 12 defines alternative remuneration benefits as all monetary and non monetary benefits, except direct client advice fees and monetary commissions that financial advisers and their licensees may receive for the recommendation of certain financial products.<sup>58</sup>

In applying the test outlined in ASIC Regulatory Guide 181<sup>59</sup>, some professional associations have recognised that mere disclosure of the conflicts of interest arising from alternative remuneration benefits are not sufficient to uphold the public interest principle.

To satisfy professional and legal obligations, a number of Codes of Practice including APS 12<sup>60</sup>, state that some alternative remuneration benefits, particularly linked to product or volume sales, are banned, because their receipt places advisers in direct conflict with the interests of their clients. Further, these Codes prohibit the acceptance of free travel and accommodation to conferences based on the volume of sales of a manufacturer's product, computer hardware or office accommodation, cash, or gifts over the value of \$300. These Codes are seen by Government and regulators as going some way to manage conflicts of interest within the industry.<sup>61</sup>

In addition to banning the receipt of certain benefits, APS 12 also:

- Includes a positive obligation to avoid alternative remuneration benefits received from third parties that place the interests of the member in significant conflict with those of the client;
- Requires the receipt of other benefits to be registered for public disclosure in an Alternative Remuneration Schedule if they totalled over \$300 in any one year;
- Allows for receipt of certain benefits under \$300 with disclosure;
- Allows for certain benefits and subsidisation related to training and continuing professional development; and
- Bans buyer of last resort contracts where volume bias towards a financial product was included.

Stakeholders are invited to submit comments on the following questions.

#### Consultation Questions – Alternative Remuneration

19. What are the alternative remuneration benefits that should be prohibited from receipt by members? Please provide reasons for your response.
20. To what extent has the Alternative Remuneration Schedule In APS 12 been successful in practice in reducing conflicts of interest? Please provide reasons for your response.
21. Should the Alternative Remuneration Schedule in APS 12 be replaced with alternative professional obligations? Please provide reasons for your response.

### 3.4 Potential threats to compliance with APES 110 and APS 12

APES 110 recognises that it is impossible to define every situation that creates a threat to compliance with fundamental principles and the appropriate corresponding action/s. Members have an obligation to identify, evaluate and address threats to compliance rather than merely comply with a specific set of rules.

Many threats to compliance fall into the following categories<sup>62</sup>:

*Self-interest threats* – which may occur as a result of the financial or other interests of the individual or their family.

*Self-review threats* – which may occur when a previous judgement needs to be re-evaluated by the member responsible for that judgement.

*Advocacy threats* – which may occur when a member promotes a position or opinion to the point that subsequent objectivity may be compromised.

*Familiarity threats* – which may occur when, because of a close relationship, a member becomes too sympathetic to the interests of others.

*Intimidation threats* – which may occur when a member may be deterred from acting objectively by threats, actual or perceived.



Where threats are significant, a member should apply safeguards to eliminate or reduce the threat to an acceptable level. The objective is to ensure that compliance with the fundamental principles is not compromised.

Safeguards that may eliminate or reduce such threats to an acceptable level fall into two broad categories: safeguards created by the profession, legislation and regulation and safeguards in the work environment.

The Code also allows for a degree of judgment to be incorporated when determining whether or not safeguards are required and what safeguards will be deemed appropriate in the circumstances. Where administrative burdens of the suggested safeguards are considered to be costly or inappropriate for small entities, alternatives may be adopted.

Stakeholders are invited to submit comments on the following questions.

#### Consultation Questions – Threats to Compliance

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?
23. If threats exist, what safeguards do you suggest firms and members adopt within their workplaces to mitigate those threats?
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?

### 3.5 Holding and receiving client monies

In the course of providing financial advice to clients, a client may request the member/firm to hold, receive or otherwise deal with monies that are the property of the client.

Section 270 of APES 110 currently binds members in public practice who may not assume custody of client monies or other assets unless permitted to do so by law and if so, in compliance with any additional legal duties imposed on the member holding such assets.

Section 270.2 contains requirements and guidance to ensure members/firms adhere to high standards of professional conduct and performance in the course of holding, receiving or otherwise dealing with client monies and safeguards against threats to objectivity arising from holding client assets.

The *Corporations Act 2001* contains provisions with respect to money handling and trust accounting provisions to address situations where a financial adviser receives money or property on behalf of a client. Anti money laundering legislation now covers this area and those obligations are reiterated in section 270.3 of APES 110.

Members who hold funds in trust must keep appropriate records necessary to show that the funds are being correctly administered. Members are referred to Professional Statement APS 10 *Trust Accounts* and Guidance Note GN 3 *Operation of Trust Accounts* which deals with trust accounts, for the approved principles relating to the custody and maintenance of client monies. The APESB is working on a replacement standard for these existing professional pronouncements, which is likely to be APES 310 *Client Monies*.

Members/firms should carefully assess whether they need to have any involvement with client monies when providing financial advisory services. Comments are invited from stakeholders on when client monies may come into the possession of members, the circumstances in which those monies are held, transferred or otherwise dealt with, and the professional obligations that should apply to such circumstances.

In particular whether there should be specific obligations in the proposed APES 335 for members in public practice to:

- report on all monies held in trust for financial advisory services and be audited in relation to same;
- ensure prompt transmission of monies received on behalf of a client, say from fund managers and other third parties, to the client;
- not appropriate investment funds to settle the fees of the member or for any other use in lieu of their transfer directly to the client, unless agreed to by the client in writing;
- where funds are to be banked by member in public practice on behalf of a client, use a separate bank account as the trust account, to be maintained in accordance with the requirements of the applicable professional body.

Stakeholders are invited to submit comments on the following questions.

#### **Consultation Questions – Holding/Receiving Client Monies**

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.
26. Should the existing accounting professional standards in relation to Client Monies (APS 10 and GN 3) apply to these situations?
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?

### 3.6 Quality Review

The quality review functions of each of the accounting professional bodies are a key feature of a co-regulatory framework and are essential to promote and ensure member compliance with APES 110 and other professional standards, such as APS 12. These programs also ensure that members provide high quality services to their clients.<sup>63</sup>

The quality review programs are linked to APES 320: *Quality Control for Firms*<sup>64</sup>, which covers all the work done by a member in public practice, regardless of the specialisation, such as audit, tax, or financial advisory services.

Members who hold certificates of public practice and their firms are required by APES 320 to establish and maintain a system of quality control designed to provide reasonable assurance that a practice and its staff comply with professional standards and regulatory and legal requirements. A quality control system consists of policies designed to achieve this objective and the procedures necessary to implement and monitor compliance with those policies.

Currently APS 12<sup>65</sup> states that a member's compliance with APS 12 may be assessed as part of the quality review program conducted by the respective professional accounting body of which they are a member. However, currently, to be eligible to undergo audit under these programs the member must be in public practice. It is expected that APES 335 will include similar statements to those made in APS 12. Another issue to consider is what form of quality review can be adopted if APES 335 applies to members in business as well.

External compliance reviews of members in public practice are performed by the accounting professional bodies and regulators and there is some recognition of reciprocal reviews to avoid duplication of costs and to minimise disruption to practices<sup>66</sup>. This is subject to the external reviewer's work being sufficient to rely on. The aim of these external review programs is to identify risk exposures, with a view to implementing a targeted risk management strategy. The end result should be a lowering of professional negligence claims and a potential reduction in professional indemnity insurance premiums.

For example, the ICAA and CPA Australia, have a reciprocal arrangement regarding quality reviews. While the review programs are operated separately by the individual bodies, a review done by one body is fully recognised by the other body.

There are some practical problems that may arise in monitoring compliance with APES 335, including whether or not reviewers will be able to access:

- the manuals, working papers and other documents of an Australian Financial Services Licensee for whom a member may work or be authorised to represent, and which is not itself a member of the professional accounting bodies;
- a cross-section of recently completed engagement files, in circumstances where the member is an authorised representative of an Australian Financial Services Licensee and there may be confidentiality concerns. In this regard however, the standard engagement letter currently in use seeks the client's consent to such a review and assuring the client that the review taking place is in no way a review of the affairs of the particular client or a reflection on the standards of the practice being reviewed. This may assist to alleviate some of this concern.

Stakeholders are invited to submit comments on the following questions.

**Consultation Questions – Quality Review**

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?
29. Are there additional implications if APES 335 is extended to apply to members in business? Please provide details to support your response.
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?

## Conclusion

### 4.1 A summary of the questions for comment as outlined in the Consultation paper

The APESB seeks comments and feedback on the following specific questions:

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.
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 service engagements?
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?
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 of the relationship between the member and his or her client?
5. Is there an alternative application and scope that you consider is appropriate for financial advisory services? Please provide reasons for your response.
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 behaviour) outlined in APES 110? Please provide reasons for your response.
7. Are there any other specific principles that that are important to be identified in APES 335 in a financial advisory services context and why?
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.
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?

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?
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.
12. Is independence in the provision of financial advice, a necessary part of achieving the overall objectives of the public interest and acting in the client's best interests?
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 the interests of members with the interest of their clients? Please provide reasons for your response.
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.
15. Are there any particular threats for members in a multi disciplinary practice?
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.
17. Should APES 335 contain specific disclosure requirements informing clients of the various components of the remuneration arrangements 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.
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?
19. What are the alternative remuneration benefits that should be prohibited from receipt by members? Please provide reasons for your response
20. To what extent has the Alternative Remuneration Schedule In APS 12 been successful in practice in reducing conflicts of interest? Please provide reasons for your response
21. Should the Alternative Remuneration Schedule in APS 12 be replaced with alternative professional obligations? Please provide reasons for your response.
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?
23. If threats exist, what safeguards do you suggest firms and members adopt within their workplaces to mitigate those threats?
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?

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.
26. Should the existing accounting professional standards in relation to Client Monies (APS 10 and GN 3) apply to these situations?
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?
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?
29. Are there additional implications if APES 335 is extended to apply to members in business? Please provide details to support your response
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?

## 4.2 Call for submissions and timeframes

All parties who consider that they have an interest in the development of ethical and professional standards for accounting body members in the area of financial advisory services, including representative users and user groups, are encouraged to make submissions to inform this review. These submissions will assist the APESB in identifying the key areas for consideration in the development of APES 335.

All submissions and comments will be regarded as being on the public record.

## 4.3 Mechanism for feedback

Respondents may forward submissions to us by mail, email or facsimile transmission by close of business on 31 December 2008. Wherever possible, we would appreciate submissions in electronic form.

Submissions and comments should be addressed to the APESB as follows:

The Chairperson

Accounting Professional & Ethical Standards Board Limited

Level 7, 600 Bourke Street

MELBOURNE VIC 3000

Email: [sub@apesb.org.au](mailto:sub@apesb.org.au)

Tel No: (03) 9670 8911

Fax No: (03) 9670 5611

## PLEASE COMPLETE THE FOLLOWING QUESTIONS:

Respondent: \_\_\_\_\_

Please indicate whether you are responding on behalf of:

Self       Organisation/Firm

Name of Organisation/Firm: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

## Questions for Accounting Body Members submitting responses:

(Please tick the appropriate box)

1. Do you regularly provide financial advisory services to clients, either yourself or through your firm?

Yes       No

2. If yes, please indicate the proportional significance of those financial advisory services to other professional services you/your firm provides.

High       Medium       Low

3. Do you hold a Certificate of Public Practice?

Yes       No

4. Are you a member of another professional body or membership association for financial advisers? If yes, please state the name of the professional body or association.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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## 4.4 References

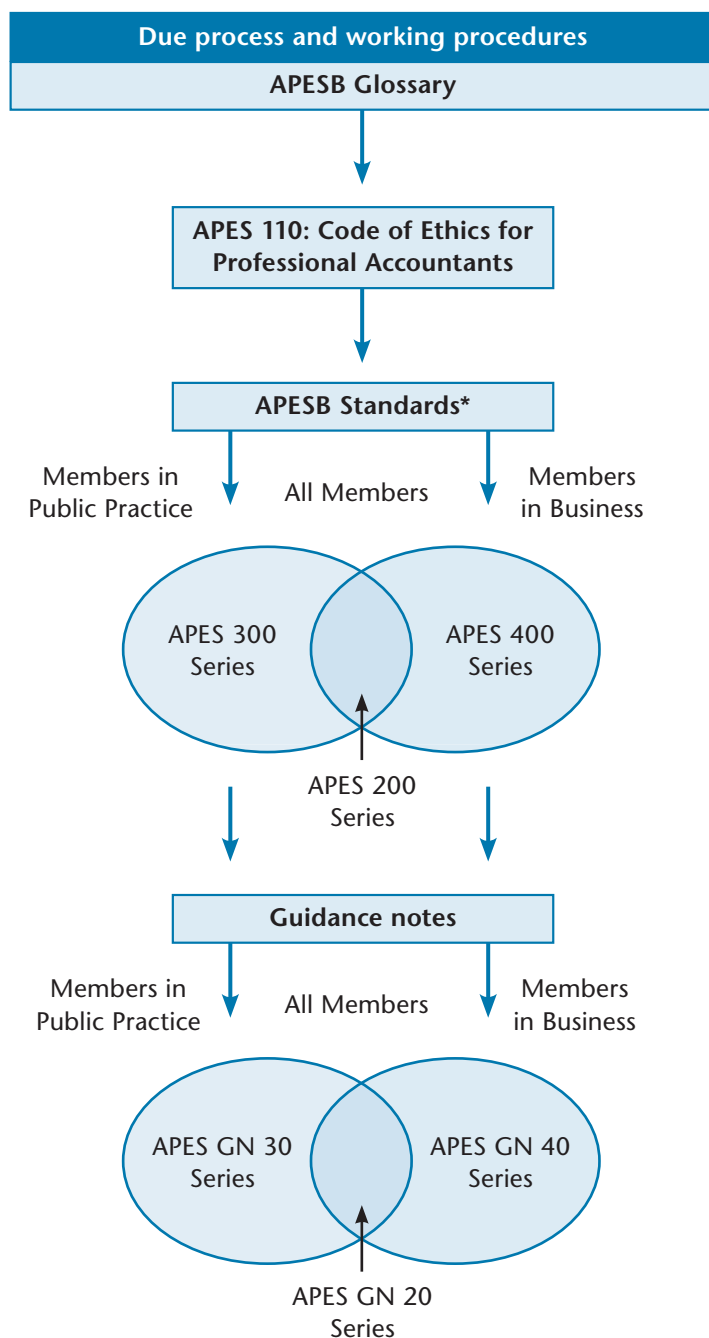
- 1 Please note that for the purposes of this paper, a reference to financial advisory services includes reference to investment advisory services.
- 2 APES 110 *Code of Ethics for Professional Accountants*, professional and other guidance standards applicable to members are obtainable through professional bodies in hard copy or electronic forms.
- 3 CPA Australia and the Institute of Chartered Accountants in Australia, 2005, *APST2 Statement of Financial Advisory Service Standards: Miscellaneous Professional Statements*, October, CPA Australia, Melbourne, at clause 1.2.
- 4 See page 4 of APES 110.
- 5 See clause 3 of APS 12.
- 6 Cooper, J. 2008, "Clients finish last for too many planners", the Australian Financial Review, 14 May, p69
- 7 D'Aloisio, T., 2008, "Securities markets, participants and ASIC", a speech given by the ASIC chairman to the SDIA conference, 22 May.
- 8 Australian Government, Treasury, 2008, *Green Paper: Financial Services and Credit Reform: Improving, Simplifying and Standardising Financial Services & Credit Regulation*, Australian Government, Canberra, pp. 1–48, downloaded at [www.treasury.gov.au/greenpaperonfinancialservicesandcreditreform\(consultations\)](http://www.treasury.gov.au/greenpaperonfinancialservicesandcreditreform(consultations)), Sherry, Nick, the Hon Senator, 2008, "The Government's priorities in superannuation and financial services", a speech to the Institute of Actuaries' Financial Services Forum, 19 May, Melbourne, pp. 1–7.
- 9 Accounting Professional and Ethical Standards Board Limited, 2007, APES 220 Taxation Services, October, Accounting Professional and Ethical Standards Board Limited, Melbourne, pp. 1–7.
- 10 Banarra Trust, 2007, *Evaluation of How Professional and Business Ethics are applied in practice by accounting firms: A Report to the Financial Reporting Council*, September, Banarra, pp. 1–50.
- 11 See paragraph 100.1 of APES 110.
- 12 See The Institute of Chartered Accountants in Australia, 2006, *Accountants and Ethics: 1st Edition*, September, the Institute of Chartered Accountants in Australia, Sydney.
- 13 The Institute of Chartered Accountants in Australia, 2006, "Values, codes of ethics and the law," *A Discussion Paper Prepared by Professor Jack Flanagan of the University of Notre Dame*, Australia, Sydney, June, The Institute of Chartered Accountants in Australia, Sydney, pp. 1–33. The Institute of Chartered Accountants in Australia, 2007, *Reinventing Financial Planning*, a paper authored by Robert M. Brown, March, the Institute of Chartered Accountants in Australia, Sydney, pp. 1–17.
- 14 D'Aloisio, T., 2007, "Regulating financial advice – current opportunities and challenges", a speech given by the ASIC Chairman to the FPA National Conference, 28 November, Sydney at pp. 16–17.
- 15 See Financial Planning Standards Board, 2007, *Code of Ethics for CFP(tm) Certification*, downloaded at [www.fpsb.org/CMS/index.php?option=com\\_content&task=view&id=54&item](http://www.fpsb.org/CMS/index.php?option=com_content&task=view&id=54&item), Financial Planning Standards Board, 2006, *Regulatory Environment Comparison Table*, May, Financial Planning Standards Board, Denver, U.S.A., pp. 1–6, and Certified Financial Planner(tm) Board of Standards, 2007, *Standards of Professional Conduct*, Rev. 10/07, Certified Financial Planner™ Board of Standards Inc, Washington, pp. 1–2.
- 16 See paragraph 100.1 of APES 110.
- 17 See paragraph 100.1 of APES 110, clause 6.2 of APS 12 and The Institute of Chartered Accountants in Australia, 2007, *Financial Planning Forum*, November, The Institute of Chartered Accountants in Australia, Sydney.
- 18 See clause 6 of APS 12.
- 19 See clause 7.1 of APS 12.
- 20 See section 110 and 110.2 of APES 110.
- 21 See clauses 8.1 to 8.4 of APS 12.
- 22 See the definition of independence on page 93 of APES 110.
- 23 See the definition of professional services on page 95 of APES 110.
- 24 See section 130.4 of APES 110.
- 25 See section 130.6 of APES 110.
- 26 See clause 11 – technical and professional standards of APS 12.
- 27 See Appendix 5.2 for numerous media and literature references to the current public debate on the provision of self managed superannuation advice and superannuation advice in general, the exemption in Regulation 7.1.29A and current government reviews of superannuation advice. In particular see Australian Government, 2008, "Simple advice on choices within an existing superannuation account", *Financial Services Working Group Consultation Paper*, May, Canberra., Sherry, Nick, the Hon Senator, 2008, "Key note address to SPAA Conference," a Speech Given to the SPAA Conference, 12 March, Brisbane, pp. 1–7. Financial Planning Association of Australia Limited, 2008, "FPA calls for end to SMSF exemptions for accountants," Media Release, 5 May, Financial Planning Association of Australia Limited, Sydney. Hoyle, S., 2008, "One law to rule them all," *Professional Planner – General News: Media Monitors*, 13 June, page 28, reference no 00037536002., the ATO's reviews of self managed superannuation trusts and trustee obligations and ASIC's work in the area including it's shadow shopping reports.
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## Appendices

### 5.1 Diagram of the Current APESB Standard Setting Model



## NOTES

### **Conceptual Framework for APESB standards**

- Principles based
- Mandatory for Professional Accountants

### **APESB Standards\***

- Introduce Principles
- Mandatory Requirements in black letter
- Guidance and/or explanation in grey letter

### **APESB Guidance Notes**

- Do not introduce new Principles
- Guidance on a specific matter on which the Principles are already stated in a Standard
- Guidance is only in grey letter

See: APESB: Due Process & Working Procedures for the development and review of APESB Pronouncements at page 17.

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