

May 2012



## **Draft Explanatory Memorandum: APES 230 Financial Planning Services**

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## Glossary

[Except where directly referenced, the following definitions are derived from ED 02/12 APES 230 *Financial Planning Services*]

**Acceptable Level** means a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the Member at that time, that compliance with the fundamental principles is not compromised.

**Australian Credit Licence** means a licence that authorises the licensee to engage in particular credit activities as defined in the *National Consumer Credit Protection Act 2009*.

**Australian Financial Services Licence** means a licence to provide financial services under Chapter 7 of the *Corporations Act 2001*.

**Best Interests of the Client** means the obligations defined in Division 2 of Part 7.7A of the *Corporations Act 2001*.

**Client** for the purposes of this Standard means a natural person (whether the person operates as a sole trader, partnership, corporation or trust) to whom or to which Financial Planning Services are provided by a Member.

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

**Commissions** means all monetary amounts received by a Member or Firm other than from a Client in respect of the placement or retention of the Client's funds or purchases or sales of financial or risk products. Commissions includes trailing commissions and income, and amounts received from an Australian Financial Services Licensee, product provider, or other party.

**[ED 01/10 APES 230 June 2010] Fee for Service** means fees determined by taking into consideration factors such as the complexity of the Financial Advisory Service, the required skills and knowledge, the level of training and experience of the Member and the Member's staff, the degree of responsibility applicable to the work such as risk and the time spent on the Financial Advisory Service.

Fee for Service does not include Commissions, percentage based asset fees, production bonuses, or other forms of fees or remuneration that are calculated by reference to product sales or the accumulation of funds under management, whether paid by the Client or a third party such as a product manufacturer.

**[APS 12 October 2005] Fee for Service** means a charge to clients based on the criteria as specified in Professional Statement F6 – Professional Fees, that being all of the following:

- the skill and knowledge required for the type of work;
- the level of training and experience of the person necessarily engaged in the work;
- the degree of responsibility applicable to the work, such as risk; and
- the time of all persons engaged in the work.

**[APS 12 October 2005] Financial Advice** means any financial advisory service carried out by the member. These services include, but are not limited to:

- (a) Providing advice on financial products such as shares, managed funds, master funds, wrap accounts and life insurance carried out pursuant to an AFS License;
- (b) The taxation aspects attaching to such advice;
- (c) Dealing in financial products as defined in section 766C of the *Corporations Act (2001)*; and
- (d) The provision of financial advice not subject to AFS licensing, such as non product related advice on financial strategies or structures.

**Financial Planning Advice** means advice in respect of a Client's personal financial affairs specifically related to wealth management, retirement planning, estate planning, risk management and related advice, including:

- (a) advice on financial products such as shares, managed funds, superannuation, master funds, wrap accounts, margin lending facilities and life insurance carried out pursuant to an Australian Financial Services Licence;
- (b) advice and dealing in financial products as defined in section 766C of the *Corporations Act 2001*;
- (c) Taxation advice which is related to advice provided under (a) or (b);
- (d) advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and
- (e) advice that does not require an Australian Financial Services Licence, such as real estate and non-product related advice on financial strategies or structures.

**[APS 12 October 2005] Financial Advisory Service** means 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 includes the provision of financial services as defined in Section 766 of the *Corporations Act (2001)*, and other *financial advisory services* for which a license may not be required (see *Financial Advice*).

**Financial Planning Service** means a service where a Member provides Financial Planning Advice to a Client.

**Financial Services Guide** means a financial services guide as defined in the *Corporations Act 2001*.

**Financial Services and Credit Guide** means a financial services guide combined with a credit guide in a single document as defined in the *Corporations Act 2001*.

**Firm** means:

- (a) A sole practitioner, partnership, corporation or other entity of professional accountants;
- (b) An entity that controls such parties through ownership, management or other means;
- (c) An entity controlled by such parties through ownership, management or other means; or
- (d) An Auditor-General's office or department.

**Member** means a Member of a Professional Body that has adopted this Standard as applicable to their membership, as defined by that Professional Body.

**Member in 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.

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

**Professional Independence** means:

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

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

**Soft Dollar Benefits** means all monetary and non-monetary benefits other than commissions received by a Member from parties other than the Client in connection with a Financial Planning Service. Soft Dollar Benefits includes:

- Remuneration based on sales volumes, unless they are rebated in full to the Client;
- Remuneration benefits received for the sale of in-house financial products;
- Free or subsidised services or equipment such as office, computer hardware or commercially available computer software; or
- Free or subsidised attendance (including travel and accommodation), at or sponsorship of, conferences or functions of one or more days duration, conducted by a third party, where the principal eligibility is based on or related to business volumes written or held.

Soft Dollar Benefits excludes non-recurring fixed referral fees received by a Member as a result of referring a Client to another service/product provider provided that they are not Commissions and are disclosed to the Client by the Member.

**[ED 01/10 APES 230 June 2010] Soft Dollar Benefits** means all monetary and non-monetary benefits received by a Member from parties other than the Client in connection with a Financial Advisory Service which may influence or have the perception of influencing the provision of Financial Advice by the Member. They do not include:

- (a) fees derived directly from the Client in respect of the Financial Advisory Service; and
- (a) non-recurring fixed referral fees received by a Member as a result of referring a Client to other service/product providers provided that they are not Commissions and are disclosed to the Client by the Member.

**Statement of Advice** means statement of advice as defined in the *Corporations Act 2001*.

# 1. **Background to the development of proposed APES 230 *Financial Planning Services***

## 1.1 **Introduction**

This explanatory memorandum provides the background, development process and the rationale for APESB's key decisions in respect of the proposed APES 230 *Financial Planning Services*. It has been prepared by Technical Staff of Accounting Professional & Ethical Standards Board Limited ("APESB"). It has been reviewed and approved by the Board of Directors of APESB and is provided for the benefit of stakeholders.

The explanatory memorandum **does not** form part of APES 230 and is not a substitute for reading the proposed Standard.

## 1.2 **Proposed APES 230 Standard**

APESB issues ED 02/12 Proposed Standard APES 230 *Financial Planning Services* for public comment. This Exposure Draft has been prepared following consideration of matters raised by respondents and key stakeholders to ED 02/10 Proposed Standard APES 230 *Financial Advisory Services (Now renamed Financial Planning Services)* initially issued by APESB in June 2010.

APESB received 67 submissions from Members, Member bodies, accounting Firms, financial institutions, consumer groups and the regulator. The respondents' comments and the matters raised by key stakeholders during APESB's public consultation process have been considered by the Board in this revised ED. This Explanatory Memorandum will assist stakeholders understand the rationale behind significant changes made to the initial exposure draft and the basis for the Board's key decisions in the revised ED.

## 1.3 **Existing Standard APS 12 *Statement of Financial Advisory Services***

This proposed APES 230 Standard has its origins in APS 12 *Statement of Financial Advisory Service Standards*(APS 12) jointly issued by the National Councils of CPA Australia and the Institute of Chartered Accountants of Australia in October 2005. APS 12 has requirements and guidance for Members of the accounting profession who provide Financial Advice [as defined in APS 12] on how to identify and safeguard against threats to the fundamental principles of the Joint Code of Conduct (the predecessor Code to the current APES 110 *Code of Ethics for Professional Accountants* (the Code)). This includes professional obligations on how to recognise and manage threats created due to the remuneration structure of the financial planning industry. For example, the threats created to the fundamental ethical principles of objectivity, integrity and professional competence and due care resulting from fees based on percentage of assets or Commissions.

APS 12 requires Members to accept remuneration only if it "fairly reflects the value of the work performed" and then provides guidance that the Member should adopt a *Fee for Service* approach as defined in APS 12<sup>1</sup>, as this is considered to be more consistent with the principles of Professional Independence. It also requires the Member to disclose, at a minimum, details of all Commissions or other incentives and ongoing remuneration arrangements. Paragraph 18.4 of APS 12 states that a mere standardised percentage basis applied to all funds under management or advice is not a *Fee for Service* [as defined in APS 12].

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<sup>1</sup> Refer to the Glossary and Appendix B for relevant excerpts of APS 12

The existing APS 12 goes on to prohibit Members in Public Practice from accepting Non-cash and Alternative Remuneration<sup>1</sup> that places the interests of the Member in significant conflict with those of the Client as it has the potential to undermine the independence and professionalism of Financial Advice [as defined in APS 12].

Accordingly, APS 12 provided as guidance in 2005 the remuneration principles that was subsequently proposed as a mandatory requirement in APES 230 ED issued in June 2010.

## 1.4 Recent developments in the Financial Services Industry

Since APS 12 was issued in 2005, the financial services industry in Australia and globally has experienced a number of negative events, which has resulted in significant investment losses and thus affected public opinion of the industry and increased regulatory interest in the industry's affairs. Some recent high profile cases where the investing public was perceptibly harmed include Storm Financial, Opes Prime and Westpoint. As a direct result of the fallout from these events in the financial services industry, the Australian government in February 2009 initiated the *Parliamentary Joint Committee (PJC) on Corporations and Financial Services* inquiry into financial products and services in Australia to investigate the issues associated with financial product and services provider collapses that occurred in 2007-08.

APESB made a submission to this PJC inquiry and also appeared before the PJC. The central proposition in the APESB's submission to the PJC inquiry was that:

*financial advisers need to transition away from 'product based' remuneration models (commissions, asset-based percentage fees when it is used as the main or only basis of setting the fee and production bonuses attached to particular products) and adopt a 'Fee for Service' model which minimises conflicts of interest. APESB believes that it is important to have proper disclosure processes to identify conflicts of interests and transparency of fees and expenses. Fees and expenses must be unbundled so that consumers can clearly evaluate the reasonableness of fee components and the total fee. APESB also recommended to the PJC that 'other benefits' or 'soft dollar' benefits which are related to product sales be banned. Where financial advisers are effectively employees of the product provider their remuneration should not be unduly determined by sales based bonuses as this creates a conflict of interest in circumstances where they are held out to customers as independent "financial advisers".*

The PJC inquiry issued its report in November 2009 which is the basis for the government's *Future of Financial Advice (FoFA)* reforms. This reform package is aimed at improving the provision of financial advice with the objectives of improving the quality of advice, strengthening investor protection, enhancing trust and confidence in the financial planning industry and ultimately encouraging more people to seek financial advice. The key matters identified by the PJC Inquiry include:

- Reduction or elimination of existing conflicts of interest in the provision of financial advice, in particular restrictions on conflicted bases of remuneration (e.g. Commissions or percentage based fees);
- Requirements for those providing financial advice to act in the best interests of clients;
- Requirements for those providing financial advice to agree fees with clients on an ongoing basis by requiring clients to continue to "opt in" for continued advisory services. However, there was a late change to allow an exception for a professional body that has an ASIC approved code; and
- Removes "accountant's licensing exemption" for providing advice on the establishment of a self managed superannuation fund (retirement fund).

## 1.5 APESB's development process and stakeholder consultation in respect of the proposed APES 230

The APESB project to develop a pronouncement to replace the current APS 12 *Statement of Financial Advisory Service Standards* commenced in August 2007. Since commencement nearly five years ago, the project has undergone three key consultation processes:

- (i). Issue of Consultation Paper on Review of APS 12 *Statement of Financial Advisory Service Standards* in October 2008;
- (ii). Issue of Exposure Draft on APES 230 *Financial Advisory Services* in June 2010; and
- (iii). Public Consultation with key stakeholders at the May 2011 (Melbourne) and August 2011 (Sydney) Board Meetings.

### **(i) Consultation Paper – Review of APS 12 – Oct 2008**

The first consultation process took place in October 2008 with the public release of APESB's Consultation Paper *Review of Miscellaneous Professional Statement APS 12: Statement of Financial Advisory Service Standards*. The Consultation Paper sought stakeholder views on the scope of the proposed replacement pronouncement, its application towards the fundamental ethical principles of the Code, and the appropriateness of remuneration methods in light of their impact on the application of the Code. Stakeholders were encouraged to identify potential threats to compliance with the Code in providing Financial Advisory Services (as defined in APS 12) to Clients and what suggested safeguards Firms and Members could apply to reduce these threats to an Acceptable Level.

During 2009, APESB considered the submissions received from Professional Bodies, Firms and Members in response to the Consultation Paper in the development of the APES 230 ED 02/10.

In March 2010, the APES Board approved the *Proposed Principles to be addressed in the proposed APES 230*. The *Proposed Principles* document excluded from the definition of Fee for Service the use of Commissions, asset based percentage fees, production bonuses, or other forms of remuneration that are calculated by reference to product sales or the accumulation of funds under management.

Subsequently on 26<sup>th</sup> April 2010 the Federal Government released an information pack on *The Future of Financial Advice (FoFA)* which was the Government's response to the findings of the PJC inquiry. FoFA introduced three key areas for reform which included a prospective ban on conflicted remuneration structures, including commissions and any form of volume based payment and a ban on percentage-based fees on geared products or investment amounts.

APESB's ED 02/10 expanded on the definition of Fee for Service from APS 12. The ED 02/10 definition of Fee for Service, consistent with the Board submission to the PJC inquiry, excludes the use of Commissions, percentage based asset fees, production bonuses, or other forms of fees or remuneration that are calculated by reference to product sales or the accumulation of funds under management, whether paid by the Client or a third party such as a product manufacturer.

**(ii) APES 230 ED Financial Advisory Services – June 2010**

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

APESB received 67 submissions from Members, Member bodies, accounting Firms, financial institutions, consumer groups and the regulator. Key issues that were identified during this exposure process were:

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

The Board considered the issues raised at length during the January and March 2011 Board meetings. At the March 2011 meeting the Board determined to invite key stakeholders/ respondents to present on significant issues to the Board. Key stakeholders were selected based on organisation type and size, as well as the breadth and analysis of key issues in their respective submissions and the adequacy of coverage of the different issues identified.

**(iii) Public Consultation with key stakeholders at the May and August 2011 Board Meetings**

The following key stakeholders presented and discussed their issues and key concerns with the Board:

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

In addition, Technical Staff held discussions on common issues raised by the major accounting Firms:

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

Following these in-depth public consultations with key stakeholders, the Board reviewed ED 02/10 Proposed Standard APES 230 and made amendments where the Board considered necessary. The following chapters provide a summary of the key matters considered by the APESB when redrafting the revised Exposure Draft for public comment.

APESB has also been monitoring the ongoing developments in respect of the government's *FoFA* reforms, in order to give these legislative reforms due consideration in the development of the proposed APES 230 *Financial Planning Services*.

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## 2. The Accounting Profession and the Code of Ethics

### 2.1 APESB and Professionalism

APESB has existed in its present form as an independent standard setting body for the three major professional accounting bodies in Australia (CPA Australia, the Institute of Chartered Accountants in Australia, and the Institute of Public Accountants) for over six years.

Professionalism cannot easily be defined. A rather limited definition appears in the Oxford dictionary as “a person competent or skilled in a particular activity” and in the Collins dictionary as “a person who engages in an activity with great competence”.

However, a profession’s obligation to serve the public is the most critical factor that sociologists use to distinguish professions from other occupations. Due to this predominant self-imposed obligation to serve the public interest the relevant profession (such as the medical, legal or accountancy profession) is accorded a high occupational status in society. Research has indicated that there are five distinct characteristics that set professions apart from other occupational groups:

- a systematic body of theory;
- professional authority;
- sanction of the community;
- regulatory code of ethics; and
- a professional culture.

The common theme embedded in these characteristics is the profession’s overriding obligation to perform services in the public interest and not to serve its own interests.

### 2.2 The Code of Ethics

For professional accountants in Australia, the fundamental ethical principles that must be adhered to are enunciated in the Code. The Code requires Members to comply with the fundamental ethical principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour and to take reasonable steps to identify circumstances that could pose a conflict of interest with these principles. As conflicts arise, a Member must apply appropriate safeguards to eliminate or reduce to an Acceptable Level any threats to the fundamental ethical principles. For example, a potential conflict arises when the Member or the Member’s immediate or close family members have financial interests that could be directly affected by decisions made by the Member. This presents a threat to objectivity, integrity and professional competence and due care since the Member has a self interest in the decision and this will affect their professional judgment.

An example of a self interest threat is conflicted remuneration such as Commissions or other incentive based remuneration, which may be designed in a manner to influence behaviour that may be contrary to the Client’s best interests. Members who are active in the financial planning industry (hereafter referred to as Members<sup>2</sup>) were presented this guidance through APS 12 in 2005 that remuneration for Financial Advice must fairly reflect the value of the work performed<sup>3</sup>.

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<sup>2</sup> Note that draft FoFA legislation refers to “financial adviser”

<sup>3</sup> Refer to Appendix B paragraphs 17.1 and 17.2 of APS 12

A common basis for remuneration in the financial planning industry, *percentage of assets under management*, may be designed to motivate actions that do not necessarily create wealth for the client, but rather have the aim of increasing the total amount of funds invested with the financial planner. These remuneration methods may be designed in a manner to influence the financial planner/advice behaviour to increase funds under management (FUM), without due consideration of the Client's objectives, needs or risk appetite, resulting in a conflict of interest and threats to the fundamental ethical principles of objectivity, integrity and professional competence and due care.

An important thing to note is that during APESB's public consultation process with key stakeholders no effective safeguard against these threats to the fundamental ethical principles of the Code have been identified. The only way to effectively avoid compromising these fundamental ethical principles of the Code is not to adopt these conflicted remuneration models.

One recent Australian example which clearly demonstrates negative outcomes to the general public from such conflicted remunerations models is the case of Westpoint. Financial planners were remunerated 10% of the value of their Clients' funds invested in Westpoint, which turned out to be a sub optimal scheme and a low quality investment. Westpoint investors have instigated one of the largest class action lawsuits against their financial planners.

Another way to look at remuneration models is to examine financial advisers' experiences from the recent Global Financial Crisis (GFC). The GFC increased market volatility and resulted in Clients requiring more advice on their financial planning matters, yet at the same time, market values were at a low point. As in most cases fees are linked to the total value of FUM, in rising markets more fees are earned whilst fees will decline in falling markets. Interestingly when the markets are falling the financial planner is probably doing more work on behalf of the Client but receiving less fees. Storm Financial presents a recent example of the failure of this business model to protect the Client's best interests. Storm incentivised financial planners through remuneration based on percentage of FUM. These financial planners provided Clients with the Financial Advice to borrow funds against their equity/assets and invest in the stock market. This strategy assumed increasing market values and a highly liquid lending market; both assumptions were proven wrong during the GFC and left many investors with debt that they could not repay. Better outcomes for Clients are possible through remuneration methods which use value as a basis and are linked to outcomes which reflect the Client's financial goals and objectives.

The proposed APES 230 prohibits fees based on a percentage of assets or FUM (or changes in such values) as creating self-interest and advocacy threats to the fundamental ethical principles of integrity, objectivity and professional competence and due care of the Code for which there are no safeguards which can eliminate or reduce the threats to an Acceptable Level.

## 2.3 ASIC approved Codes

A significant element of the *FoFA* reforms is the “opt-in” provision whereby a retail client must receive a fee disclosure statement from the financial planner when initially engaged and the retail client must opt in to renew the engagement every 2 years or the arrangement terminates within 30 days of the renewal period regardless of whether the retail client provides notice of termination. This provision of *FoFA* was initially designed as a safeguard to ensure that the retail client remains aware of all fees being charged and does not by default continue to pay for services that are not provided on an ongoing basis.

A late change to the proposed *FoFA* legislation announced by the government in March 2012 provides that financial planners will be exempt from the “opt in” requirements if ASIC approves the applicable code of ethics of the professional body of which the financial planner is an active member. The likely rationale for the exemption is that any code of a professional body would have requirements that minimise conflicts of interests in relation to remuneration thus obviating the need for the “opt in” clause. As recently stated by ASIC Commissioner Peter Kell:

*As for ‘obviating the need’ for opt-in, there is obviously still work to be undertaken around this issue. However, I’m sure it will not come as a surprise to hear that at this early stage our view is that obviating the need for opt-in via subscribing to a code does not mean that financial advisers will suddenly have no responsibilities and obligations in this area.*

*We expect that codes will contain provisions that require members to have active obligations towards their clients that will achieve the same outcome as the opt-in requirement intends to achieve.*

The commissioner has also noted that ASIC expects a code to satisfy the following criteria:

- the rules contained in the code must be binding upon (and enforceable against) code subscribers through contractual arrangements;
- the code must be developed and reviewed in a transparent manner which involves consulting with relevant stakeholders including consumer representatives; and
- the code must have effective administration and compliance mechanisms.

The proposed APES 230 addresses the requirement to communicate Client arrangements through section 5 *Terms of the Financial Planning Service* which requires Members to document and communicate the terms of engagement to provide the Financial Planning Service in accordance with APES 305 *Terms of Engagement* (APES 305). APES 305 provides more specific detail, including the requirements that Members agree fee and billing arrangements and obtain a response from the Client confirming their understanding of the Terms of Engagement. APES 305 also requires a Member to refer to applicable provisions of the law in the Engagement Document.

Further the proposed APES 230 has higher remuneration principles than *FoFA* which will minimise conflicts of interests. A preliminary analysis of the APES 230 development process against ASIC’s RG 183 *Approval of financial services sector codes of conduct* is provided in Appendix D.

### **3. The scope of APES 230 *Financial Planning Services***

The proposed APES 230 standard is focused on Members of the accounting bodies providing personal Financial Planning Advice to Clients. This includes advice related to personal financial affairs covering insurance and mortgage broking.

It does not cover professional services generally provided by corporate finance or financial advisory service lines of Firms, such as Independent Expert's Reports, Due Diligence Services or Valuation Services. It is also not intended to capture Taxation Services that are not otherwise connected with Financial Planning Advice. However, Members should note that there are other APESB Standards that address these services. Some of the more significant scoping issues considered by the APESB in the proposed APES 230 are discussed below.

#### **3.1 Change of title of the proposed standard**

APESB determined to amend the title of the proposed APES 230 from "Financial Advisory Services" to "Financial Planning Services". APESB believes that this change provides greater clarity over the scope of the proposed standard and the type of services the proposed Standard primarily seeks to address. It also reduces the potential to inadvertently capturing other professional services provided by accounting Firms that are not related to Financial Planning Services.

Financial Planning Advice is intended to encompass advice provided to the individual as part of the management of an individual's personal wealth management matters. Accordingly the definition of "Financial Planning Advice" includes reference to personal wealth management and estate planning and by definition excludes the provision of advice that is not related to a Client's personal financial affairs.

#### **3.2 Coverage of Insurance, Risk and Mortgage Products**

Some of the respondents to APES 230 ED were of the view that some of the services provided by Members such as insurance and mortgage broking should be excluded from the scope of the proposed standard due to the fact that existing industry remuneration practices are based on Commissions paid by the product manufacturers or product providers.

The provision of Financial Planning Services is considered an integrated discipline comprising advice on all personal wealth management matters. The proposed Standard addresses all professional services provided by a Member to Clients which include Financial Planning Advice on wealth management, retirement and estate planning, as well as insurance, risk and mortgage broking services.

When reviewing the scope of the standard, APESB were of the view that Financial Planning Services should be treated as an integrated professional advice discipline. All sub-disciplines of Financial Planning Services should comply with the same fundamental ethical standards in APES 230, which is based on the fundamental ethical principles in the Code. Accordingly, APESB determined that insurance, risk and mortgage broking services provided by Members must remain within the scope of the Standard.

### **3.3 Reference to Members in Business**

A number of respondents expressed concern over the application of the proposed Standard to Members in Business due to the fact that such Members may not be in a position to determine or change the policies and procedures of their employer. To address this issue APESB has amended the proposed APES 230 and introduced appropriate flexibility for Members in Business to apply the proposed APES 230.

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## 4. Best Interests of the Client

### 4.1 Fiduciary responsibilities versus Best Interests of the Client

APES 230 ED 02/10 originally referred to Fiduciary Responsibilities that the Member was required to comply with when providing Financial Planning Services. However, the Australian government's *FoFA* reforms referred to Best Interests of the Client and some respondents were concerned that there would be confusion between the proposed statutory Best Interests of the Client and the professional obligations imposed by the Fiduciary Responsibilities specified in APES 230 ED.

The nature of the relationship between a Client and a Member providing Financial Planning Services results in a significant gap in the knowledge of the Member in relation to the Client's specific personal details and long term financial plans and vulnerability of the Client to actions taken by the Member which impact their wealth and financial security. This situation places obligations on the Member to assume a level of responsibility to act appropriately when providing Financial Planning Services.

APESB considered the issue raised by respondents and determined that Best Interests of the Client, which is aligned with the *FoFA* reforms, should replace the Fiduciary Responsibilities in the proposed APES 230 ED. Accordingly the provisions dealing with Fiduciary Responsibilities are now removed and, consistent with the government's *Further FoFA Measures Division 2 Best interests obligations*<sup>4,5</sup>, reference to Best Interests of the Client is now included in the proposed APES 230.

Best Interests Obligation is guided by the principle that the objectives, financial situation and needs of the Client are paramount when a Member provides Financial Planning Advice. In order to best achieve this outcome and improve the overall quality of Financial Planning Advice for Clients, all conflicts of interest must be removed. The best method to do this is to remove all sources of conflicted remuneration and any other incentives that give rise to an actual or perceived conflict of interest between the Member and the Client. Clients are seeking a trusted adviser relationship.

Why should a Client pay for something the Member wants the Client to have instead of what the Client truly needs based on their financial objectives? The Client should derive value for the fees they pay their financial adviser. The Fee for Service model forms a basis for a trusted relationship, which allows for clear expectations between the Member and the Client and minimises actual and potential conflicts of interest which arise due to remuneration methods.

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<sup>4</sup> Refer to proposed subsection 961 of the proposed *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012* on page 6

<sup>5</sup> Refer to Chapter 1 of the *Replacement Explanatory Memorandum – Further FoFA Bill 2012* on page 5

## 5. Remuneration Methods

### 5.1 Financial Planning Advice

The most common forms of remuneration methods adopted by financial planning practices in respect of Financial Planning Advice are:

- (a) Commissions which are paid by product manufacturers;
- (b) Percentage based asset fees which are linked to Funds Under Management (FUM);
- (c) Fee for Service (Flat or fixed fees based on professional services provided to Clients which are unrelated to sale of products or FUM); and
- (d) Hybrid Fee for Service (combination of flat/fixed fee up-front for the financial plan and an ongoing percentage based fee on the portfolio managed. In some cases the initial fee may be rebated if the prospect proceeds and an on-going percentage based fee is charged).

As discussed throughout this document, the fundamental ethical principles of the Code that are threatened by the traditional remuneration methods of Commissions and percentage based asset fees are:

- Integrity;
- Objectivity; and
- Professional competence and due care.

There are a number of reasons why these fundamental ethical principles of the Code are threatened by the traditional remuneration methods. For example, Commissions are not transparent payments and not paid for by the Client. Accordingly the Member's decision making is potentially affected by another party external to the Client-adviser relationship. The receipt of Commissions paid by a financial services company for selling a product creates a conflict of interest, since the efforts spent or the quality of the advice to the Client does not affect the remuneration received by the Member.

With asset based fees, remuneration is also based on quantity of product sold or Funds Under Management (FUM). This results in an actual or perceived conflict since it is in the Member's best financial interest to sell more product to the Client or to increase FUM, when the best option for the Client may be another alternative, such as to use surplus funds to repay existing debt. These volume or quantity based sales incentives may not take into account the Client's financial objectives or risk appetite when purchasing financial products. The Member may be influenced instead to put the Client on a sales or product platform so that FUM is increased and provides the maximum percentage remuneration for the Member.

The existing APS 12<sup>6</sup> contains Section 17 *Remuneration* which requires Members to ensure that the total amount paid by the Client by whatever means fairly reflects the value of the work performed. It goes on to suggest that a Fee for Service approach is considered to be more consistent with the principles of Professional Independence. Section 18 *Determining Fees* provides guidance which excludes percentage of FUM or funds under advice from being a valid Fee for Service remuneration arrangement.

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<sup>6</sup> Refer to the Glossary and Appendix B for relevant excerpts of APS 12

The proposed APES 230 ED 02/10<sup>7</sup> went a step further than the guidance in APS 12 and in Section 9 *Fee for Service* proposed a mandatory requirement for a Member providing a Financial Advisory Service (now Financial Planning Service) to only charge a Client on a Fee for Service<sup>8</sup> basis. Section 10 *Soft Dollar Benefits* of the proposed APES 230 ED 02/10 also proposed restrictions on a Member from accepting other forms of conflicted remuneration, unless they are trivial or insignificant.

The proposed revised APES 230 has been significantly redrafted so that Section 8 *Professional Fees* now specifies the requirements for Members charging professional fees for Financial Planning Services. The revised wording in paragraph 8.3 states that a Member shall not charge a professional fee for service that is expressed or collected as a percentage of the value of the Client's assets or FUM (or any component of, or changes in such values). The proposed standard does not prohibit using the value of the Client's assets as one of the factors for determining the fee. However, it cannot be the only or dominant determinant.

**(a) Commissions**

With the *FoFA* reforms, it is unlikely that Commissions as a form of remuneration will be retained in respect of financial advice post 1 July 2013 (or a later date), except on individual life insurance policies which are outside of a superannuation fund. Most types of Commissions will be captured and restricted under *Further FoFA Measures* Division 4 *Conflicted Remuneration* and Division 5 *Other Banned Remuneration*. The draft *FoFA* legislation is currently being reviewed by parliament. It should be noted that the government reforms will be implemented on a prospective basis which means that existing Commissions-based arrangements will be allowed to continue in perpetuity, even where it is possible to arrange for the Commissions to be provided as a rebate to the Client.

**Proposed APES 230 requirements:** In Paragraph 9 of APES 230 Members are prohibited from receiving third party payments and/or other benefits including Soft Dollar Benefits in relation to a Financial Planning Service from parties other than the Client to whom the service is provided, as such receipts create threats of self-interest and/or advocacy to the fundamental ethical principles for which no safeguards exist which can reduce the threats to an Acceptable Level.

**(b) Percentage based asset fees which are linked to FUM**

The *Corporations Amendment (Further Future of Financial Advice Measures) Draft Bill 2012 – Regulation Impact Statement* (paragraphs 3.40 through 3.45) discusses *Storm* and asset based fees and how *Storm*'s use of asset based fees (as well as Commissions) in charging Clients fees and how this led to an inevitable conflict of interest between the financial planner/AFSL licensee's interests in increasing revenue and the interests of the Client in receiving appropriate advice.

Respondents to the APES 230 ED 02/10 who are supportive of percentage based asset fees which are linked to FUM argue that:

- A percentage of FUM is easily understood by the Client;
- Allows Clients to access Financial Planning Advice;
- This method is widely used and consumers are familiar with it;
- Platform fees are asset based and therefore efficiency and consistency will be achieved if the adviser also gets remunerated on an asset based structure; and

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<sup>7</sup> Refer to the Glossary and Appendix C for relevant excerpts of APES 230 ED 02/10

<sup>8</sup> Refer to the Glossary and Appendix C for definition of Fee for Service

- Provides an incentive for a Member to grow FUM as then they will also get a higher remuneration and thus are rewarded if the invested funds perform well.

Respondents to the APES 230 ED 02/10 who do not favour percentage based asset fees argue that

- Whilst there is an upside opportunity there is also a downside risk in having the Members remuneration linked to the performance of the market. The wealth management industry was one of the industries that suffered the most during the Global Financial Crisis (GFC) and identified poor behaviour of financial advisers;
- This approach has the potential to skew the behaviour of a Member to recommend investment strategies that accumulate FUM to the detriment of considering other financial strategies on which a percentage cannot be earned (eg. Investment properties, lowering debt of a Client, salary sacrificing into a company/industry superannuation fund, investments in cash in falling markets);
- Accordingly, there will be a lack of objectivity and potential conflicts of interests in making recommendations to invest in FUM or to be invested in FUM as otherwise Members may not be able to earn remuneration (i.e. obtain a percentage of FUM); and
- Another issue is transparency. "1% of FUM" may be transparent in a conceptual sense, but it may not be clear in an absolute dollar sense. To accurately predict the final fee of the proposed "1% of FUM" at the start of the year may not be possible.

**Proposed APES 230 requirements:** In Paragraph 8 of APES 230 Members are prohibited from charging a professional fee for a Financial Planning Service that is expressed or collected as a percentage of the value of the Client's assets or FUM, as such fees create threats of self-interest to the fundamental ethical principles of the Code for which no safeguards exist which can reduce the threats to an Acceptable Level.

The implication of paragraphs 8 and 9 of the proposed APES 230 is that Members must adopt a Fee for Service remuneration model in respect of Financial Planning Services.

**(c) *Fee for Service (Flat or fixed fees based on services provided to Clients which are unrelated to sale of products or FUM)***

APES 230 ED 02/10 proposed that a Member providing a Financial Advisory Service (now Financial Planning Service) must only charge on a Fee for Service basis.

Respondents to the APES 230 ED 02/10 who favour Fee for Service argue that:

- When a Fee for Service remuneration approach is adopted the Member's commercial interest are not linked with the sale of products or accumulation of FUM;
- This remuneration method complies with the fundamental ethical principles of the Code and removes conflicts of interest (which are present in the Commissions and percentage based asset fee remuneration methods);
- Allows the Member to provide objective unbiased and strategic Financial Planning Advice which is in the best interests of the Client without the imperative to sell products or accumulate FUM;
- Creates a relationship of trust between Members/Clients;

- Allows Members to charge Fee for Service to Clients of all sizes, large and small, thus widening the availability of Financial Planning Services; and
- It is more transparent to Clients and provides them with an actual dollar amount upon which they can evaluate whether the benefits of the intended purchase outweighs the cost.

Respondents to the APES 230 ED 02/10 who are against Fee for Service argue that:

- It is difficult to implement;
- It is difficult to price fees as more complex advice may have higher variability in outcomes; and
- Adoption of Fee for Service will mean higher fees which may make it difficult for ordinary Australians to access Financial Planning Advice.

**Proposed APES 230 requirements:** In Paragraph 8 of APES 230 Members are prohibited from charging a professional fee for a Financial Planning Service that is expressed or collected as a percentage of the value of the Client's assets or FUM, as such fees create threats of self-interest to the fundamental ethical principles of the Code for which no safeguards exist which can reduce the threats to an Acceptable Level.

The implications of paragraphs 8 and 9 of the proposed APES 230 is that Members must adopt a Fee for Service remuneration model in respect of Financial Planning Services.

**(d) *Hybrid Fee for Service structure***

Some respondents advocated the use of a Hybrid Fee for Service whereby a Fee for Service as defined in APES 230 ED is charged on the initial strategy advice and thereafter an asset based fee/Commissions is charged on the portfolio that will be managed by the Member on an ongoing basis. Some of the Members who adopt this approach also use a sliding scale or percentage whereby as the amount of FUM increases the percentage of fees charged decreases.

The issue with this approach is that it still does not adequately address the perceived conflict of interest and whether the Member considers other investment options (reducing debt, investment property, cash investments, etc.) that are in the best interests of the Client and appropriate to the financial objectives of the Client as it does not result in increasing FUM.

With the use of percentage based asset fees in essence the value of the Financial Planning Advice is linked to the relevant products or FUM. A similar example in the accounting profession is if auditors started charging a Fee for Service based on a percentage of the value of a company's assets. Then it would be in the auditor's interest to allow the company to overstate its asset base as then the audit fee would be higher. However, APES 110 prohibits the use of contingent fees or similar fee arrangements in respect of assurance engagements. APESB has also prohibited the use of contingent fees in respect of professional services that are delivered on an independent basis in five other APES standards<sup>9</sup>.

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<sup>9</sup> APESB has prohibited the use of Contingent Fees in certain circumstances. These circumstances are described in the following APESB Standards:

APES 215 *Forensic Accounting Services*;  
APES 225 *Valuation Services*;  
APES 330 *Insolvency Services*;  
APES 345 *Reporting on Prospective Financial Information Prepared in Connection with a Disclosure Document*; and  
APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document*.

Another example raised by a respondent is if medical practitioners started charging fees based on a percentage of the value of the drugs prescribed by them. If this practice was adopted then patients and the general public would not trust the advice received from Doctors. *Doctors and other true professions are remunerated on a professional basis based on the value of the service provided rather than the products that are given as part of that service.*

**Proposed APES 230 requirements:** In Paragraph 8 of APES 230 Members are prohibited from charging a professional fee for a Financial Planning Service that is expressed or collected as a percentage of the value of the Client's assets or FUM, as such fees create threats of self-interest to the fundamental ethical principles for which no safeguards exist which can reduce the threats to an Acceptable Level.

As demonstrated through the March 2012 published report on the results of ASIC's *Shadow shopping study of retirement advice*<sup>10</sup> research, the quality of financial advice sampled in the study was rated as "adequate" to "poor" in quality. The research also found that *"where fees were contingent on a product recommendation, there were numerous examples where the advice appeared to be structured towards recommending or selling financial products. In some cases, this was at the expense of optimal strategic advice..."*

A recent research study performed on the market for financial advice in the USA in late 2008<sup>11</sup> revealed similar tendencies for financial advisers in their market, including the propensity for financial advisers to act against their own biases that help them further their own interests, e.g. maximize fees. Some financial advisers were found to have no problem discouraging their Clients from following their current investment strategy when it was not in the interest of the financial adviser.

Discouraging Members from entering into conflicted remuneration engagements by prohibiting charging professional fees based on the value of the Client's assets or FUM will send a clear signal to the public that Members of the accounting profession are seeking to improve the quality of Financial Planning Advice delivered and to develop a trusted adviser relationship with their Clients. Clients are more likely to receive objective professional advice and not a product sale which is disguised as a professional service.

## 5.2 Insurance and risk products

The most common remuneration method in respect of insurance and risk products is Commissions. These are generally paid by the insurance company to the Member selling the insurance product and are most often calculated as a percentage of the cost of the insurance policy premiums. However, Members who have adopted a Fee for Service approach are charging their Clients on a Fee for Service basis and rebating the Commissions they receive from the insurance companies.

### *Arguments for Commissions based remuneration*

Respondents who want to maintain a Commissions based remuneration structure for insurance and risk products argue that:

- The insurance company sets the Commissions based remuneration structure and therefore Members have no say in the remuneration methods;
- A similar set of Commissions rates are applied to all financial planners;

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<sup>10</sup> Report 279: *Shadow shopping study of retirement advice, March 2012, Australian Securities & Investments Commission, retrieved 29<sup>th</sup> March 2012*

<sup>11</sup> Mullainathan, S.; Noeth, M.; and Schoar, A. 2012, *The Market for Financial Advice: An Audit Study, National Bureau of Economic Research, retrieved 2<sup>nd</sup> April 2012*

- In Australia there is an under insurance problem and by charging Clients an upfront Fee for Service it will only exacerbate the underinsurance problem as Clients will not pay a fee for initial advice, implementation and annual review of their insurance needs;
- Insurance is a product that needs to be sold and therefore, the sale of this product grants Commissions payments from the manufacturer to the adviser that sold the product;
- Clients should be offered a choice to pay the financial planner either via Commissions or Fee for Service; and
- Clients undergo a traumatic and stressful time when claiming life insurance. Fee for Service remuneration structure will require a payment from the Client for the service done by the financial planner to claim their insurance. Whereas, a Commissions based payment will cater for such a situation and not cause any more distress to Clients during a delicate and challenging time.

### *Arguments for Fee for Service based remuneration*

Stakeholders who argue for a Fee for Service approach for insurance and risk products argue that:

- the current embedded Commissions based remuneration actually contributes to the ongoing problem of underinsurance in Australia by adding to the cost of insurance and removing trust in advice offered (by embedding conflicts of interest);
- Commissions on these products are very similar to percentage based asset fees/trailing Commissions in investments with ongoing trails received over the years the policy is held;
- A stakeholder points out that one of the major factors in determining how insurance premiums are priced is the embedded, up-front financial adviser Commissions where the Commissions payment is factored into the cost of the premium charged to consumers. A Survey of initial Commissions reveals that they can be in the range of 100-130% for the first year and around 11% on an ongoing basis. These Commissions are paid by the insurer to financial advisers which are then factored into the amount of premium charged to the consumer. When an insurance company pays a financial adviser these Commissions, it will mean that the Client will have to stay with the insurance company for at least five to six years to make it sustainable for the insurance company. However, if there is a high churn rate then this will lead to the insurance companies pushing the cost of premiums higher. This in turn contributes to higher insurance premiums and potentially contributing to the under insurance problem in Australia;
- In response to the above argument, another stakeholder argues that there are four different types of Commissions. The most dangerous is the Upfront (noted above) and Stepped Commissions method as both results in a high upfront Commissions payment and minimal ongoing Commissions payments. These two methods of Commissions have the potential to encourage churning to obtain the high initial payment. However, the Hybrid and Level Commissions methods have stable Commissions payments and the churning rate is significantly lower than the Upfront and Stepped Commissions;
- As price is a determinant factor for consumers when choosing an insurance policy, if the cost of premiums is lower, then it may lead to more consumers being attracted to insurance. Fee for Service financial planners state that they can save Clients up to 30% of annual insurance premium costs;
- Every person will have a different insurance need. For instance, as an individual moves through life and their debts are repaid their financial planner should consider reducing their insurance cover, but often this creates a conflict of interest for the advisor as it reduces the Commissions on the insured amount; and

- The underinsurance problem has existed in Australia for several decades and the existing Commissions-based remuneration practices have not solved it.

**Proposed APES 230 requirements:** In Paragraph 9 of APES 230 Members are prohibited from receiving third party payments and/or other benefits including Soft Dollar Benefits in relation to a Financial Planning Service from parties other than the Client to whom the service is provided, as such receipts create threats of self-interest and/or advocacy to the fundamental ethical principles for which no safeguards exist which can reduce the threats to an Acceptable Level.

### 5.3 Mortgage products

Some respondents have argued to exclude mortgage broking from the scope of APES 230 ED as the government's new credit regime will provide protection for consumers. Respondents argue that all brokers receive the same Commissions rate from the banks and the brokers therefore are not incentivised to put Clients in to more risky products due to Commissions differences which applied previously. Furthermore, respondents argue that the Commissions percentage relating to a mortgage is very minor at only 0.24-0.4% per annum.

APESB Technical Staff has performed a calculation exercise on an average loan of \$500,000 with a Commissions rate of 0.34% p.a., at 7.81% standard variable rate over 30 years of the loan. The result is that a financial planner will receive over \$25,000 in trailing Commissions payments over the life of the loan.

However, a typical Fee for Service financial planner will charge approximately \$1,600 for the initial loan evaluation and will rebate the full upfront Commissions of approximately \$1,800 to the Client. Thus at the initial point itself the Client is better off by \$ 200 and thereafter over the life of the loan a Fee for Service financial planner will rebate to the Client the Commissions payments which are estimated at over \$ 25,000 in the example noted above. However, if the Client requires any further advice during the life of the Loan then a Fee for Service would be applicable.

It should be noted that there is a lack of transparency in disclosing the small percentage which is applied to the outstanding capital balance and it is difficult for a consumer to estimate the monetary value of the trailing Commissions without doing a detailed calculation.

**Proposed APES 230 requirements:** In Paragraph 9 of APES 230 Members are prohibited from receiving third party payments and/or other benefits including Soft Dollar Benefits in relation to a Financial Planning Service from parties other than the Client to whom the service is provided, as such receipts create threats of self-interest and/or advocacy to the fundamental ethical principles for which no safeguards exist which can reduce the threats to an Acceptable Level.

### 5.4 Client's Choice

A number of respondents argued that Members should not be restricted by the remuneration method and that they should offer this choice to Clients to allow the Clients to make a private decision on how they want to remunerate the Member. They further state that conflicts do not exist if a Client has made a decision based on full disclosure of information and provided their consent to use either a percentage based asset fee, Commissions or Fee for Service to remunerate a Member.

Respondents argue that some Clients would prefer to tie the fees charged by the financial planner to the market rather than to have to pay a flat/fixed/hourly rate as this will enable Members to make better decisions when evaluating financial strategies and financial products.

Furthermore, respondents argue that many Clients in need of Financial Planning Advice may not be able to afford the upfront payment to the Member and therefore Commissions should exist in respect of Insurance and Mortgage broking, and that the proposed Standard is likely to make Financial Planning Services not affordable to Australians who need it most.

Respondents opposed to the above views maintain that remuneration models fundamentally influence the behaviour of Members, and that allowing percentage of assets based fees or Commissions in any area of financial planning practice leads to conflicted advice, a lack of trust and poor advice which is not in the Clients' interests (case in point being Storm Financial).

Furthermore, they argue that a Fee for Service will encourage Members to advise ordinary Australians and will encourage such people to approach Members for advice in the confidence that they can be trusted to act without conflicts and without the imperative to sell a product or to accumulate FUM.

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## **6. Legacy Products**

### **6.1 Detrimental impact on the Client**

An issue identified with legacy products is that in certain circumstances the Commissions payments cannot be turned off and renegotiation of the contract may have a detrimental impact to the Client. Further the new product may not be the most suitable to meet the Client's financial objectives. Some respondents have suggested that in some cases changing from legacy products which pay Commissions can negatively impact on the Client by triggering capital gains tax, transaction costs or redemption penalties or, in the case of insurance policies, leave the Client without adequate insurance coverage.

Generally the two types of legacy products are those where the Commissions can be rebated (refunded) by the product provider to the Client within the product and those that either pay the Member the Commissions or the product provider will retain the Commissions. To switch off the Commissions the Member would need to remove themselves as the servicing financial planner and normally the Client would not receive the rebated Commissions. This is not ideal for any party except the product provider.

### **6.2 Legacy Products**

Section 9 *Third party payments and Soft Dollar Benefits* of the proposed APES 230 requires a Member in Public Practice who receives Commissions, production bonuses or other payments from third parties such as product providers for which there is no reasonable way of having such payments made directly to the Client by the third party, to fully rebate any such payments to the Client as soon as practicable. Where a payment by the third party is not related specifically to an individual Client, the Member is required to apportion the amount amongst all relevant Clients in a fair and reasonable manner.

## 7. Operative Date and Transitional Provisions

FoFA has proposed the following operative dates in the draft bills. The transitional provisions contained in APES 230 have been aligned with current drafts of the FoFA bills as a minimum, or provides additional time:

Issue	FoFA	Proposed APES 230
Application	New Clients <i>*Implementation commences 1/7/2013</i>	General provisions <i>*Implementation commences 1 July 2013</i> New Clients <i>*implementation commences 1 July 2013 (fees)</i> Existing Clients <i>*implementation commences 1 July 2015 (fees)</i>
Remuneration: Advice	Financial Services Licensee not to charge asset-based fees on borrowed amounts <i>(Further FoFA Measures Subdivision B Asset-based fees on borrowed amounts)</i> <i>*Implementation commences 1/7/2013</i>	Asset based fees are not allowed as per Section 8 <i>Professional fees</i>
Remuneration: Advice	Asset based fees are allowable if not on borrowed funds <i>(Further FoFA Measures Subdivision B Asset-based fees on borrowed amounts)</i> <i>*Implementation commences 1/7/2013</i>	Asset based fees are not allowed as per Section 8 <i>Professional fees</i>
Remuneration: Advice	Commissions allowed in certain circumstances: - General Insurance; - Life Insurance; - Individual life policies not connected with a default super fund; and - Execution only (non-advice) services. <i>(Further FoFA Measures Division 4— Conflicted remuneration)</i> <i>*Implementation commences 1/7/2013</i>	Commissions are not allowed as per Section 9 <i>Third party payments and Soft Dollar Benefits</i>
Remuneration: Product	Initial/upfront Commissions – not permitted Trail Commissions – not permitted Volume based – not permitted Shelf space fee that are not based on volume (e.g. product access payment)– permitted <i>(Further FoFA Measures Division 4— Conflicted remuneration)</i> <i>*Implementation commences 1/7/2013</i> However, for existing Clients these remuneration methods will be allowed.	Commissions not allowed as per Section 9 <i>Third party payments and Soft Dollar Benefits</i> Volume based fees are not allowed as per Section 8 <i>Professional fees</i>

<p>Soft Dollar Benefits</p>	<p>Banned for anything over the prescribed amount (proposed to be \$300, subject to regulations). Exceptions included:</p> <ul style="list-style-type: none"> <li>- Benefits in relation to a general insurance or execution-only products;</li> <li>- Benefits under a prescribed amount so long as those benefits are not identical or similar and provided on a frequent or regular basis;</li> <li>- Benefits must have a genuine education or training purpose relevant to providing financial advice to retail Clients; and</li> <li>- Benefit is the provision of IT software or support, related to the provision of financial product advice.</li> </ul> <p>(Further FoFA Measures Section 963C ) *Implementation commences 1/7/2013</p>	<p>Banned for anything over \$300. Must keep a register of Soft Dollar Benefits as per Section 9 <i>Third party payments and Soft Dollar Benefits</i></p>
<p>Distinction between retail and wholesale Clients</p>	<p>Yes (Further FoFA Measures Section 961 <i>Application of this Division</i>)</p>	<p>APES 230 defines <i>Financial Planning Advice</i> as “advice in respect of a Client’s personal financial affairs”. Accordingly there is no distinction between a retail and a wholesale client as long as the financial advice is in respect of a Client’s personal wealth management matters.</p>
<p>Best Interests of the Client</p>	<p>Best Interests of the Client will be introduced. FoFA also includes a ‘reasonable steps’ qualification and ‘best interest’ formulation. (Further FoFA Measures Division 2 <i>Best interests obligations</i>) *Implementation commences 1/7/2013</p>	<p>Best Interests of the Client (aligned with FoFA) included in Section 3 <i>Fundamental responsibilities of Members</i> of the proposed APES 230.</p>
<p>Opt In</p>	<p>FoFA includes a requirement for retail Clients to agree to the fees and to renew (by opting in) every two years for an adviser's continued services. This is provisionally subject to the financial planning adviser being a member of a professional body for which ASIC has approved the code of ethics and professional conduct. If the code is approved by ASIC, this requirement is not applicable. (FoFA 962K <i>Fee recipient must give renewal notice</i>; and 962CA <i>Exemption from application of opt-in requirement</i>) Implementation commences 1/7/2013</p>	<p>Although regulation may exempt this requirement, as per paragraph 5.1 and 8.6 of the proposed APES 230 and the extant Standard APES 305, there is a continued need to document and communicate with the Client the Terms of Engagement and whenever there is a change to the Terms of Engagement.</p>

*\*Implementation date subject to change. There may be a delay in the government’s proposed reforms, although the government maintains that the current timetable will be adopted.*

## **8. Transition to a Professional Fee basis in accordance with APES 230**

### **8.1 Barriers to Transition**

As with any significant changes to existing business practices, transitioning to the requirements of the proposed standard will require some time and efforts and there may be some resistance to change. Some of the more common arguments which exist as barriers to transition include:

- Legacy products which do not allow changes without negatively impacting the Client (as described above);
- The belief that Members will be put at a competitive disadvantage by the proposed changes and that their business will be negatively impacted; and
- Requirement to develop a value proposition to explain Fee for Service to Clients, as opposed to asset based or Commissions based remuneration.

### **8.2 Key to Successful Transition**

There are a number of factors to enable a successful transition to a professional fee basis. Many accountancy practices have already employed successful strategies that incorporate one or more of these factors:

- Get the value proposition right – Members should define the service they are offering to Clients and the type of Client they are servicing. This involves meeting with Clients and having discussions to understand their specific needs. Determining the complexity of the Client's needs and then working together to develop outcome based Financial Planning Advice.
- Segment the Clients based on the Member's understanding of the Client's expectations of service or the complexity of their needs. Not all Clients require or demand the same level of service;
- Selecting the appropriate pricing methodologies. The complexity and quality of advice can be used as a basis for pricing services. This requires the Member to be in a trusted adviser relationship with their Client and allows the Member to justify to the Client their fees;
- Using outside advice and support where necessary to prepare for the transition. This can include education and training in delivering the value proposition or in having the difficult conversation with existing Clients on the benefits of transitioning; and
- Partner with other practitioners to bring together expertise and deliver holistic Financial Planning Advice to the Clients.

### **8.3 Transitional provisions and operative date**

The introduction of the proposed standard is likely to impact some businesses significantly in terms of systems and current business models. It was therefore considered essential that transitional provisions take into account the time required to implement such changes for both new and existing Clients. Accordingly, the proposed APES 230 will commence on 1 July 2013 for new Clients (in line with the commencement date for FoFA reforms) and 1 July 2015 for existing Clients (i.e. an additional two years).

## APPENDIX A

### Assessment of FoFA legislation

The Australian government has released the *Future of Financial Advice* Draft Bills on the 29 August 2011 and 24 November 2011. Thereafter a few matters were referred to the PJC and the bills were presented again in March 2012. Please refer below to a summary of the proposed FoFA reforms:

<b>New law</b>	<b>Current law</b>
<b>Conflicted remuneration and other banned remuneration</b>	
Licensees must not accept remuneration which could reasonably be expected to influence the financial product advice or recommendations provided to retail Clients (with the exception of certain insurance or execution-only services).	There is no existing statutory prohibition on advisers from receiving conflicted remuneration. Relevant information about advisers' remuneration (including Commissions) is required to be disclosed, including in the initial Statement of Advice provided to the retail Client.
Licensees must not accept soft-dollar benefits over the prescribed amount that could reasonably be expected to influence the financial product advice or recommendations provided to retail Clients (with the exception of certain insurance or execution-only services, and excepting certain benefits for education or training purposes, and certain information technology benefits).	There is no existing statutory prohibition on advisers from receiving soft-dollar benefits. There are disclosure obligations. Various industry codes also self-regulate in this area to some extent.
Employers of financial services licensees (or their representatives) must not pay the licensee or its representatives conflicted remuneration.	There is no existing statutory prohibition on employers paying conflicted remuneration to licensees or their representatives. Employers can currently pay incentives to advisers to sell a certain type or a certain volume of products.
Product issuers or sellers must not provide conflicted remuneration to licensees or their representatives.	There is no existing statutory prohibition on product issuers from paying conflicted remuneration to licensees or their representatives. Various industry codes purport to self-regulate in this area to some extent.
Volume rebates paid by platform operators to licensees will be banned.	There is no existing statutory prohibition on platform-licensee rebates.
Licensees and platform operators must not accept volume-based fees the purpose of securing 'shelf-space' on an adviser's or platform's product list.	There is no existing statutory prohibition on the receipt of volume-based shelf-space fees.
Advisers must not charge asset-based fees (fees dependent upon the amount of funds held or invested) to a retail Client to the extent that the amount is borrowed.	There is no existing statutory prohibition on the charging of percentage-based fees to retail Clients.

<b>Charging ongoing fees to Clients</b>	
In order to charge an ongoing advice fee to a retail Client for a period of longer than 12 months, the fee recipient will be required to provide a fee disclosure statement to the Client detailing advice fee and service information for the previous 12 months.	There is no requirement under the current law for advisers/fee recipients to provide ongoing disclosure of advice fees to retail Clients.
In order to charge an ongoing advice fee to a retail Client for a period of longer than 24 months, the fee recipient will be required to provide a renewal notice and a fee disclosure statement to the Client, which will detail advice fee and service information for the previous 12 months. If the Client opts not to renew the arrangement with the fee recipient, or does not respond to the renewal notice, the arrangement ceases and an ongoing advice fee can no longer be charged to the retail Client.	There is no requirement under the current law for advisers/fee recipients to obtain the agreement of retail Clients to continue charging ongoing advice fees.
For ongoing fee arrangements, the Client can 'opt-out' or terminate the arrangement at any time.	There is no implied term under the current law that retail Clients have the right to opt-out of ongoing financial advice arrangements at any time (however, it is a common practice in the industry to allow Clients to opt-out at any time).
<b>Best Interests of the Client</b>	
Statutory obligation for individuals who provide personal advice to act in the best interests of Client.	There is no existing statutory obligation for individuals who provide personal advice to act in the best interests of Clients.
Statutory obligation for individuals who provide personal advice to give priority to the interests of the Client in the event of a conflict of interest.	There is no existing statutory obligation for individuals who provide personal advice to give priority to the interests of the Clients.
Statutory obligation for individuals who provide personal advice to ensure that the advice is appropriate.	Statutory obligation on the licensee or authorised representative to ensure who advice is appropriate.
Statutory obligation for individuals who provide personal advice to warn Clients if the advice is based on incomplete or inaccurate information.	Statutory obligation on the licensee or authorised representative to warn Clients if the advice is based on incomplete or inaccurate information.
Penalties for breaching obligations to give appropriate advice and warn the Client are civil penalty provisions.	Penalties for breaching obligations to give appropriate advice and warn Client rest with the licensee or the authorised representative and are criminal in nature.
Statutory obligation on licensees to take reasonable steps to ensure their representatives comply with the obligation to provide appropriate advice only.	Statutory obligation on the licensee to take reasonable steps to ensure compliance with the obligation to provide appropriate advice only.

## **APPENDIX B: Relevant excerpts from APS 12 Statement of Financial Advisory Service Standards**

Extracts that follow are preceded by the relevant section headings. Not all details of each section are included. Black letter paragraphs are retained in the existing format.

### **3. Definitions**

**Fee for Service** means a charge to Clients based on the criteria as specified in Professional Statement F6 – Professional Fees, that being all of the following:

- the skill and knowledge required for the type of work;
- the level of training and experience of the person necessarily engaged in the work;
- the degree of responsibility applicable to the work, such as risk; and
- the time of all persons engaged in the work.

**Financial Advice** means any financial advisory service carried out by the *member*. These services include, but are not limited to:

- 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 financial advice not subject to AFS licensing, such as non product related advice on financial strategies or structures.

### **17 Remuneration**

**17.1 Members providing financial advice must ensure that the Client is clearly advised of the total cost of advice and that the total amount paid by the Client by whatever means, fairly reflects the value of the work performed.**

17.2 Members should adopt a fee for service approach as this is considered to be more consistent with the principles of professional independence. This applies to both initial and ongoing remuneration. Where the member accepts Commissions or other incentives, the member is to adhere to Clauses 20 and 21 of this Statement. At a minimum, these benefits are to be fully and clearly disclosed to the Client and the Client is to receive appropriate advice for the total remuneration received. The member is referred to F6 (Professional Fees) of the Code for further information.

### **18 Determining Fees (Applicable to Members in Public Practice only)**

18.4 A mere standardised percentage basis applied to all funds under management or advice is not a fee for service.

18.5 In addition to the criteria specified in Professional Statement F6 of the Code - Professional Fees in setting or charging fees for service, members should consider:

- i) Client requirements;
- ii) Statutory duties;
- iii) Levels of expertise and responsibility required and the degree of complexity entailed;

- iv) Amount of time taken and effectively applied by the member and staff;
- v) The professional and financial risk associated with providing the advice; and
- vi) Any agreed fee basis.

## 19 Receipt of Fees (Applicable to Members in Public Practice only)

19.1 Members should not be restricted in how fees for service are received as Professional Independence comes from how fees for service are determined not how the fee is received. This means that fees for service can be collected via direct billing of the Client or via the product or platform the Client invests in.

19.2 Methods of receipt can include:

- Direct billing of Client;
- Automatic debit from financial product, platform or administration service;
- Commissions payments where they are offset against fees for service payable by the Client;
- Converting an agreed fee for service into a percentage amount for the purpose of debiting against a financial product, platform or administration service.

## 20 Disclosure and Reporting Fees (Applicable to Members in Public Practice only)

20.1 **A member must fully and accurately disclose in writing all interests, financial and non-financial, received or receivable by themselves, their AFS Licensee or a third party relating to the provision of advice given by the member. It includes payments and benefits to or from related parties that influence or might reasonably be capable of influencing advice and referral payments. Disclosure must be at a level of detail that a Client would reasonably require for the purposes of deciding whether to act on the advice and must be clear, concise and transparent.**

20.3 Members should report at least annually to all Clients, all fees, Commissions and other remuneration received on behalf of each Client to demonstrate how *fees for service* are received and applied.

20.7 **All fees must be disclosed whether they are directly or indirectly paid by the Client. Where a percentage calculation of a portfolio value is used for fee payment, an estimate should be used based on the annual opening balance of the *Client's* account.**

## 21. Non cash and Alternative Remuneration (Applicable to Members in Public Practice only)

21.1 **Alternative remuneration benefits, including soft dollar benefits received from third parties that place the interests of the *member* in significant conflict with those of the *client* must be avoided due to their potential to undermine the independence and professionalism of the advice.**

21.2 ASIC<sup>12</sup> defines soft dollar benefits as all monetary and non-monetary benefits except direct client advice fees and basic monetary commissions that financial advisers and their licensees may receive if they recommend certain products. ASIC has identified certain types of soft dollar benefits that are often related to the sale of financial product to *clients* and are usually paid by third parties such as Fund Managers and Platform Providers as follows:

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<sup>12</sup> Australian Securities and Investment Commission report on Soft Dollar Benefits – July 2004.

- i) Additional commission or benefits based on sales volumes;
- ii) Free or subsidised benefits such as:
  - Rent for office or equipment,
  - Computer hardware which would otherwise be purchased;
  - Computer software which would otherwise be purchased;
  - Meals or entertainment;
  - Attendance at Adviser Conferences;
  - Travel and accommodation to conferences or for personal use;
  - Subscriptions to magazines, journals etc; and
  - Other gifts or payments which may influence, or have the perception of influencing advice.
- iii) Sponsorship by a third party of an AFS Licensee or *representatives* function, seminar, conference or meeting;
- iv) 'Buyer of Last Resort' agreements;
- v) Cash payments and/or goods not directly attributable to a direct *client* transaction;
- vi) Marketing Support payments;
- vii) Shares or options in the product provider;
- viii) Fee rebates or profit sharing arrangements;
- ix) Differential Splits.

**21.3 The receipt of the following benefits, gifts or other incentives by a *member* from a third party related either directly or indirectly to the sale of product are banned:**

- Additional commission or benefits based on sales volumes unless they are rebated in full to the client;
- Preferential commission or benefits received for the sale of in house financial products;
- Free or subsidised office rental or equipment;
- Free or subsidised computer hardware;
- Free or subsidised computer software which is commercially available;
- Free or subsidised attendance (including travel and accommodation), or sponsorship of, conferences or functions of one or more days duration, conducted by a third party, where the principal eligibility is based on or related to business volumes written or held;
- Cash payments not directly attributable to a direct *client* action or sales volumes;
- Gifts over \$300 in retail value.

**21.4 Alternative remuneration benefits received by a *member* from a third party relating to entertainment, conference attendance or sponsorship which are not volume based, that exceed \$300 on the actual cash value or best estimated retail value, must be recorded by the *member* within 14 days of receipt, in an Alternative Remuneration Schedule, kept by them. Members must keep a record for five years after the receipt of a recordable benefit, or for five years after the last date of receiving a continuous or recurrent benefit.**

**21.5 The Alternative Remuneration Schedule must be made available for immediate inspection by *clients* or upon the request of CPA Australia or the Institute with 2 business days notice. Specific reference to the availability of the Alternative Remuneration Schedule is to be included in the *member's* Financial Services Guide and *Statement of Advice*, if a relevant recommendation is made.**

**21.6 Appendix 3 contains a sample Alternative Remuneration Schedule for use as a guide. The Schedule should be varied according to individual requirements and circumstances, but should record any alternative remuneration benefits that have been received by the *member*. The**

Schedule should detail the company or provider of the benefit, the type of benefit, its estimated retail value and the date the benefit was received.

- 21.7 *Members* will be deemed to have satisfied the requirements of Clause 21.4 if they use or rely on an equivalent document provided by the AFS Licensee they represent.
- 21.8. Benefits, gifts or other incentives which are not banned under clause 21.3 and which are received by a *member* from one third party source but do not exceed \$300 in total over any rolling 12 month period, will be deemed to be incidental and will not be subject to mandatory disclosure in the Alternative Remuneration Schedule. However, all benefits that influence or are capable of influencing advice, regardless of size, should be disclosed in the Financial Services Guide and *Statement of Advice* if a relevant recommendation is made. For example, a Buyer of Last Resort agreement with a bias for certain brands must be disclosed in both the Financial Services guide and in the *Statement of Advice* if a relevant recommendation is made, whether or not the agreement is offered by a Product Provider of an AFS Licensee.
- 21.9 Where a *member* attends an educational event which is not subsidised and the event has a genuine educational or training purpose, disclosure is not required. Where the *member* attends an educational event in the capacity of a professional presenter, disclosure is not required.
- 21.10 *Members* should only use the term “Rebate” to describe an amount credited to the account of their *client*. Use of the term Rebate may otherwise be misleading and deceptive. An amount or payment retained by a product provider or an AFS Licensee should be more appropriately named a “Commission Payment.”
- 21.11 For the purposes of Clause 21 the standard revenue splits applied by AFS Licensees to their representative will not be banned unless there is a product bias within the Licensees remuneration schedule, wherein the sale of certain products qualify for a higher split or additional benefits in comparison to other products.

## APPENDIX C: Relevant excerpts from APES 230 *Financial Advisory Services ED 02/10*

Extracts that follow are preceded by the relevant section headings. Not all details of each section are included. Black letter paragraphs are retained in the existing format.

### 2. Definitions

**Fee for Service** means fees determined by taking into consideration factors such as the complexity of the Financial Advisory Service, the required skills and knowledge, the level of training and experience of the Member and the Member's staff, the degree of responsibility applicable to the work such as risk and the time spent on the Financial Advisory Service.

Fee for Service does not include Commissions, percentage based asset fees, production bonuses, or other forms of fees or remuneration that are calculated by reference to product sales or the accumulation of funds under management, whether paid by the Client or a third party such as a product manufacturer.

**Financial Advice** means advice in respect of a Client's financial affairs specifically related to wealth management, retirement planning, succession planning, estate planning, personal risk management and related advice. It includes:

- (a) advice, including related taxation advice, on financial products such as shares, managed funds, superannuation, master funds, wrap accounts, margin lending facilities and life insurance carried out pursuant to an Australian Financial Services Licence;
- (b) advice and dealing in financial products as defined in section 766C of the *Corporations Act 2001*;
- (c) advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and
- (d) advice that does not require an Australian Financial Services Licence, such as real estate and non-product related advice on financial strategies or structures.

### 4. Fiduciary responsibilities of Members

4.1 Where a Member provides a Financial Advisory Service, a Fiduciary Relationship will exist between the Member and the Client. The relationship between the Member and the Client arises from the agreement reached between the two parties concerning the nature and scope of the Financial Advisory Service. This relationship is characterised by the trust created by the Member's duty to act in the Client's best interests. The respective positions of strength and vulnerability within this relationship place fiduciary responsibilities upon the Member.

4.2 **A Member providing a Financial Advisory Service shall comply with the Member's fiduciary responsibilities to the Client. The Member shall:**

- (a) put the Client's best interests ahead of the Member's interests and the interests of any third party; and
- (b) disclose to the Client matters relevant to the Fiduciary Relationship, including disclosure of any actual, potential or perceived conflict of interests.

## **9. Fee for Service**

- 9.1 A Member who provides a Financial Advisory Service has fiduciary responsibilities and shall only charge Clients on a Fee for Service basis as defined in this Standard.**
- 9.2 A Member who provides a Financial Advisory Service shall comply with the requirements of paragraph 9.1 in respect of new and existing Clients, including those from whom trailing income is being received, from the date of commencement of this Standard.**

## **10. Soft Dollar Benefits**

- 10.1 Unless they are trivial or insignificant, a Member shall not accept any Soft Dollar Benefits, gifts or other incentives from a third party related either directly or indirectly to the provision of Financial Advice, which include but not limited to:**
- Additional remuneration based on sales volumes, unless they are rebated in full to the Client;**
  - Preferential remuneration benefits received for the sale of in house financial products;**
  - Free or subsidised office rental or equipment;**
  - Free or subsidised computer hardware;**
  - Free or subsidised computer software which is commercially available;**
  - Free or subsidised attendance (including travel and accommodation), at or sponsorship of, conferences or functions of one or more days duration, conducted by a third party, where the principal eligibility is based on or related to business volumes written or held.**
- 10.2 Where a Member receives a Soft Dollar Benefit which is trivial or insignificant from a third party related either directly or indirectly to the provision of Financial Advice, the Member shall record in a register the benefit within 10 business days of receipt. The Member shall maintain the records for five years after the receipt of the Soft Dollar Benefit.**
- 10.3 A Member shall make the register referred to in paragraph 10.2 available for inspection by the Client or Professional Body within 2 business days of request or as required by regulatory authorities. A Member shall include a specific reference to the availability of these records in the Member's Financial Services Guide and Statement of Advice.**

## APPENDIX D: Preliminary analysis of the APES 230 development process assessed against ASIC's RG 183

### Purpose

To perform a preliminary assessment of APES 230 development process against the requirements of ASIC's Regulatory Guide 183 *Approval of financial services sector codes of conduct* (RG 183). ASIC Commissioner Peter Kell flagged this guidance as being the basis for the code approval process that will be undertaken by ASIC once the *FoFA* legislation is finalised and receives royal assent. ASIC stated that it will incorporate any additional FoFA requirements into its code approval process in due course.

### APES 230 against ASIC's RG 183 checklist

RG 183 reference	Description of requirement	APES 230	APESB Reference	Comments
RG 183.99 & RG 183.56	Freestanding and written in plain language	<input checked="" type="checkbox"/>	APESB <i>Drafting Conventions</i>	APESB Due process and working procedures
RG 183.13 & RG 183.23	Comprehensive body of rules (not single issue)	<input checked="" type="checkbox"/>	APES Series	Fourteen published Standards and Guidance Notes and two more proposed.
RG 183.13–RG 183.15	Enforceable against subscribers	<input checked="" type="checkbox"/>	Enforcement is the responsibility of the Joint Accounting Bodies (i.e. CPA Australia, Institute of Chartered Accountants in Australia and the Institute of Public Accountants).	Abiding by the Code of Ethics and applicable professional and ethical standards is a condition of membership
RG 183.26–RG 183.35	Meets the statutory criteria	<input checked="" type="checkbox"/>	Paragraph 1.6 states that the Standard is not intended to detract from any responsibilities which may be imposed by law or regulation and where applicable references to the legislation are provided.	APES 230 <i>Scope and application</i> and where applicable references to the legislation are provided.
RG 183.50–RG 183.55	Consultative process for code development	<input checked="" type="checkbox"/>	APESB <i>Due process and working procedures</i>	If the Board issues the revised APES 230 ED, then the proposed Standard would have gone through three public consultations (including the Consultation Paper) over a four year period.

RG 183.73– RG 183.75	Effective and independent code administration	<input checked="" type="checkbox"/>	APESB is an independent body that develops and issues professional and ethical standards for the three major accounting bodies in Australia.	Refer to the APESB Constitution and APESB Due process and working procedures
RG 183.76– RG 183.78	Compliance is monitored and enforced	<input checked="" type="checkbox"/>	Refer to the applicable quality control program of the relevant accounting body.	Members in public practice of the Joint Accounting Bodies are subject to periodic quality review processes of their practices.
RG 183.67– RG 183.72	Appropriate remedies and sanctions	<input checked="" type="checkbox"/>	Refer to the professional conduct processes of the applicable accounting body.	The Joint Accounting Bodies have disciplinary tribunals in place and members are held to account for breaches of standards
RG 183.56– RG 183.61	Code content addresses stakeholder issues	<input checked="" type="checkbox"/>	3.6 <i>Best interests of the client</i> ; 5. <i>Terms of Engagement</i> ; 8. <i>Professional fees</i> ; and 9. <i>Third party payments and Soft Dollar Benefits</i>	Refer to ED 02/12 APES 230 <i>Financial Planning Services</i> .
RG 183.75– RG 183.77	Code is adequately promoted	<input checked="" type="checkbox"/>	APESB Website and Media Releases; Regular contributions to professional bodies periodical journals; and Ethical standards part of member qualification process.	
RG 183.79– RG 183.81	Mandatory 3 year review of code	<input checked="" type="checkbox"/>	In accordance with APESB's constitution a six monthly review will be performed six months after a standard becomes effective. Thereafter an annual review is performed.	APESB's Constitution; and APESB Due process and working procedures.

<b>ASIC expect an effective code to do at least one of the following:</b>		
(a) Address specific industry issues and consumer problems not covered by legislation;	<input checked="" type="checkbox"/>	APES 230 proposes additional professional requirements in respect of conflicted remuneration practices.
(b) Elaborate upon legislation to deliver additional benefits to consumers; and/or	<input checked="" type="checkbox"/>	Refers to the legislation where appropriate and the proposed higher requirements is expected to deliver benefits to consumers by minimising conflicts of interest in respect of remuneration.
(c) Clarify what needs to be done from the perspective of a particular industry or practice or product to comply with legislation.	<input checked="" type="checkbox"/>	8 <i>Professional Fees</i> ; and 9 <i>Third party payments and Soft Dollar Benefits</i> Also: Reference to disclosure requirements for Anti-Money Laundering and Whistleblowing.

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<b>ASIC also expect a code to satisfy the following criteria:</b>		
The rules contained in the code must be binding upon (and enforceable against) code subscribers through contractual arrangements;	☑	Members in Public Practice who provide Financial Planning Services will need to abide by the proposed APES 230 <i>Financial Planning Services</i> once it is issued. The Joint Accounting Bodies are responsible for enforcement. Abiding by the Code of Ethics and applicable professional and ethical standards is a condition of membership.
The code must be developed and reviewed in a transparent manner which involves consulting with relevant stakeholders including consumer representatives; and	☑	APESB Due process and working procedures. Also refer to Explanatory Memorandum on APES 230 <i>Financial Planning Services</i> which details the extensive public consultation process followed by APESB in the development of APES 230.
The code must have effective administration and compliance mechanisms.	☑	APESB Constitution, Board Charter; and APESB Due process and working procedures. The Joint Accounting Bodies have established quality control and professional conduct mechanisms to investigate complaints against members.

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