Constituents' Submissions – Comments Specifically on Drafting Issues
Exposure Draft 03/12: APES 230 Financial Planning Services

Note: Comments relating to APES 230 Financial Planning Services

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1	1.3	1	Members in Australia shall follow the mandatory requirements of APES 230 when they provide Financial Planning Services **to a Client**.
2	1 & 2	120	**Application and scope of Services:** Section 3 of the Explanatory Memorandum to the ED states the proposed standard "is not intended to capture Taxation Services that are not otherwise connected with Financial Planning Advice, rather only the tax considerations that arise from the provision of Financial Planning Advice." It also states the "Exposure Draft does extend to tax advice related to financial products or dealing in financial products, real estate and non-product advice which is related to financial strategies or structures." Under section 2 of the ED, "Financial Planning Advice" is defined as "advice in respect of a Client's financial affairs specifically related to wealth management, retirement planning, estate planning, risk management and related advice..." and specifically includes certain taxation advice and "advice that does not require an Australian Financial Services Licence, such as real estate and non-product related advice on financial strategies or structures." The scope of the proposed standard extends beyond the provision of financial services to which Chapter 7 of the Act applies. There are exemptions for tax services in Corporations Regulation 7.1.29(4) and s766B(5)(c) of the Act. It is submitted that the scope and application of the proposed standard should be consistent with the scope and application of the requirements of the Act. It should not introduce additional obligations beyond those required in the FoFA Bill. The email from KPMG's Cheri Ong to Ms Sia-Jia Li of the APES Board dated 10 November 2011 provided comments on the drafting of the definition of "Financial Planning Advice". That is, it recommended the following insertions:

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			Financial Planning Advice does not include: • an "exempt service" or "eligible service" as defined under regulation 7.1.29 of the Corporations Regulations); or • Financial Services and other services provided to a person that is not a retail client (as defined under section 761G of the Corporations Act); or • Financial Services provided to a retail client (as defined under the Corporations Act): – by virtue or as a result of the inclusion of the advice in a disclosure or other public document such as an Independent Expert Report or Investigating Accountant Report; or – who is not a natural person where the Financial Service relates to superannuation, life insurance or general insurance products; or • a Financial Service that is not financial product advice (as defined under section 766B of the Corporations Act); or • a Financial Service that does not require the holding of an Australian Financial Services Licence; or • a Financial Service or advice provided in relation to and for internal firm purposes such as tax or superannuation advice to employees or partners of a member. It suggested that the following definition also be inserted: "Financial Service has the meaning in Section 766A of the Corporations Act."
3	1 & 2	163	**Taxation Services** The EM states that it is not the intention of the draft standard to apply to Taxation Services, but only to the tax considerations that arise from the provision of financial planning advice. However, the specific inclusion in the definition of financial planning advice of 'taxation advice which is related to advice provided under (a) or (b)' will we believe capture a

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			broader range of taxation advice than what the EM states is intended. This will potentially require registered tax agents to comply with both the obligations of APES 220 *Taxation Service*s and the APES 230 *Financial Planning Services* when providing this advice. Notably, the requirements of the proposed APES 230 in terms of the basis for providing and documenting the advice appear more onerous and are not consistent with the way in which this type of advice would currently be provided. A transitional framework will also commence in July 2013 which will require financial planners to register with the Tax Practitioners Board in order to continue providing tax advice in the context of financial planning advice. From the end of this transition period only financial planners who have registered with the TPB to provide tax advice in the context of financial planning advice and Registered Tax Agents will be able to provide taxation advice in the context of advising and dealing in financial planning products. Given this and the fact that the intention of the ED is not to capture Taxation Services we recommend (c) is removed from the current definition of Financial Planning Advice. This will provide clarity as to the intended scope of the standard.
4	1 & 2	120	**Application and scope of services – Real Estate:** It is noted that real estate related advice is already regulated with prescriptive requirements under Real Estate legislation in each State and Territory. The requirements set out in the proposed standard represent duplication as far as they relate to real estate related advice. It is submitted that real estate related advice should be excluded from the scope of the proposed standard.
5	1 & 2	163	**Mortgage Broking Services** It is stated in the EM that the provision of Financial Planning Services is considered an integrated discipline comprising advice on all personal wealth management matters. Therefore the ED addresses all financial planning advice provided by a member to clients on wealth management, retirement and estate planning, as well as insurance, risk and mortgage

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			broking services. However, advice on wealth management, retirement planning, insurance and risk products are all regulated by the Corporations Act 2001 which enforces a range of compulsory requirements including licensing under the Australian Financial Services Licensing regime. Mortgage broking, and related consumer credit advice, is regulated under the National Consumer Credit Protection Act 2009 which requires licensing under the Australian Credit Licensing regime. We understand that the APESB has concluded that they consider personal wealth management matters to include consumer credit advice. However, the result of this decision is that the standard will apply to a broad range of services. This in turn imposes a number of additional obligations on members providing mortgage broking services which may add unnecessary complexity. For example, paragraph 3.6 of the proposed standard requires members providing financial planning services to act in the best interests of their client which means the obligations defined in Division 2 of Part 7.7A of the Corporations Act 2001. These obligations will apply to all licensed financial planners providing retail financial services. However, members providing mortgage broking are not subject to these obligations and rather must comply with the general conduct obligations as defined in Division 5 or Part 2.2 of the National Consumer Credit Protection Act 2009. To address this potential confusion and complexity, CPA Australia and the Institute recommend that the APESB remove mortgage broking, including other advice and services related to the procurement of loans and other borrowing arrangements, from the scope of APES 230. This will ensure the requirements and obligations of the standard as currently drafted will appropriately apply to the correct provision of advice and services. It will also avoid confusion and uncertainty about a Members obligations under law and APES 230 with regard to these types of services. Should the APESB determine that consumer credit services should continue to be captured by APES 230, the draft standard should be amended to accurately reflect the applicable obligations and requirements under both the Corporations Act 2001 and the National Consumer Credit Protection Act 2009 for each area of discipline. The title should also then be amended to 'Financial Advisory Services' or 'Financial planning and credit services' in order to also

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			accurately reflect the scope of the proposed standard and reflect industry terminology. Recommendation: 8. Section (d) advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence be removed from the definition of Financial Planning Advice. OR APES 230 be redrafted to accurately reflect the scope of the advice covered by the standard and references applicable requirements under both the Corporations Act 2001 and the National Consumer Credit Protection Act 2009. In this instance, the title of the standard is amended to 'Financial planning and credit services' to also accurately reflect the scope of the standard and reflect industry terminology.
6	1 & 2	120	**Application and scope of services – Self Managed Superannuation Funds:** It is understood that certain draft regulations to the FoFA Bill have yet to be issued and that consideration is being given to a 3 year transitional period for removal of the exemption (Reg 7.1.29A) for accountants. It is submitted that the proposed standard should only apply in the case of a recommendation that a person acquire or dispose of an interest in a Self Managed Superannuation Fund when the exemption for accountants is in fact removed. Furthermore, Regulation 7.1.29(3)(f) sets out a limited exemption for a person who "arranges for another person to engage in dealing in relation to interests in a self managed superannuation fund". It is further submitted that the proposed standard should not apply to circumstances set out in Regulation 7.1.29(3)(f) in relation to self managed superannuation funds. KPMG previously submitted suggestions as to the drafting of the definition of "Financial Planning Advice" which would achieve such an objective. The email from KPMG's Cheri Ong to Ms Sia-Jia Li of the APES Board dated 10 November 2011 provided comments on the drafting of the definition of "Financial

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			Planning Advice"
7	1 & 2	127	**Managing Objectivity and Conflicts of Interest** I am strongly opposed to AFSL holders and ACL holders acting for a client on both the investment and debt side of a transaction – is this not similar a lawyer acting for both parties on a transaction? How can this meet the existing requirements of APS110? Also, how can an ACL holder meet National Consumer Credit Protection Act (NCCP) requirements to ensure there is no disadvantage to clients from potential conflicts when investment performance will be uncertain if both services are provided by the same adviser for the client?
8	1 & 2	127	**Market confusion** The segmentation of the accounting and financial advice market has created significant confusion for the broader public. My observation is that clients are generally confused as to when they need an accountant versus a financial planner versus a credit advisor. This confusion is very evident in the self managed superannuation fund lending area. Each of these roles have spawned diverse industry regulatory and supervisory bodies together with different legislation and licencing requirements. Additionally, the scope of business activities has become more specifically defined in professional indemnity policies. Australian legislators have excluded credit and loan products from the definition of financial products as defined in AFSL. In recent times, legislators have sought to make specific loan products a financial product, but they too have encountered problems with obscuring the definition of financial product due to adverse unintended consequences and complicated implementation issues. By including Mortgage broking in the definition of "Financial Planning Advice", in my opinion, the board will contribute to increased market confusion for: • the broader public given the definition differs to that chosen by legislators, • practitioners who do not provide financial planning services as currently defined who currently pay the PSL and benefit from the professional indemnity cap, • insurers who have differing policies and risk assessments/pricing for the various market segments.
9	2	1	Financial Planning Advice means advice in respect of a Client's financial affairs specifically related to **the Client's** wealth management, retirement planning, estate planning, risk management and related advice, including: ….

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
10	2	141	**Definition of "Financial Planning advice" is both ambiguous and too broad** The definition of "Financial Planning Advice" is ambiguous and could, we believe be interpreted to include other activities that the members and member firms provide such as corporate finance. Indeed the definition includes taxation advice which is specifically excluded from AFSL requirements and other services such as real estate advice and non product related advice on financial strategies. Many of these services are already subject to other regulatory requirements e.g. taxation advice where Tax Agent rules apply. We question the need for them to be covered in a professional standard where there appears to be appropriate regulation in place to cover these services.
11	2	154	**Clause 2 Definitions: Financial Planning Advice** ***Paragraph (c) Taxation advice*** While we welcome the revised definition of financial advice there are a number of aspects of the revised definition that we are still very concerned about. We are principally concerned that Financial Planning Advice is still defined to include: taxation advice which is related to advice provided under (a) or (b). APES 220 deals with members' obligations in the provision of Taxation Services. This includes "any service relating to ascertaining a Client's or Employer's tax liabilities or entitlements, including provision of tax planning and other tax advisory services". APES 220 imposes a number of important professional obligations on Members, which do not need to be replicated by APES 230. For example: • Fundamental responsibilities of Members, including public interest, integrity and professional behaviour, objectives, confidentiality, professional competence and due care; • False or misleading information; • Professional engagement matters; • Client monies; • Professional fees; and • Documentation. We are concerned that APES 230 may create confusion and uncertainty about Members' obligations with respect to taxation services if APES 230 conflicts with or imposes additional obligations on Members' with respect to taxation advice

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			that relates to financial products. Furthermore, we note that advice on the taxation implications of financial products is specifically exempt from the financial services regulatory regime. As noted in the Explanatory Statement to the regulation, taxation activities are considered to be activities that should not be regulated as a financial service under the Act and therefore not subject to the relevant licensing, disclosure and conduct obligations of the FSR regime, which is consistent with the functional regulatory basis that underpins the Corporations Act that focuses on the nature of the activities performed. Accordingly, we believe Members' obligations relating to Financial Planning Services and Taxation Services should be dealt with separately. Any professional and ethical obligations that are considered necessary in their application to Taxation Services should be included in APES 220, rather APES 230. This will avoid duplicating members' obligations and creating any unnecessary uncertainty and confusion. We therefore suggest that reference to "taxation advice which is related to advice provided under (a) or (b) should be deleted. ***A Client's financial affairs*** Financial Planning Advice is currently defined to mean: "advice in respect of a Client's financial affairs …." The term "financial affairs" could be broadly construed and perhaps have unintended consequences. For example accounting advice could fall within the meaning of "financial affairs", which we do not believe should be captured by a professional standard on Financial Planning Services. Accordingly, and for the reasons set out below, we suggest amending the definition of Financial Planning Advice to mean: a) advice relating to financial products as defined in the Corporations Act 2001 b) dealing in financial products as defined in section 766C of the Corporations Act 2001 c) advice and services relating to the procurement of loans and other borrowing arrangements including credit activities provided pursuant to an Australian Credit Licence; and d) non-product advice which relates to financial strategies and structures.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			Paragraphs (a) and (b) Advice and dealing in financial products To help simplify the definition of Financial Planning Advice we have suggested using separate paragraphs to capture advice relating to financial products and dealing in financial products, as well as using existing definitions in the Corporations Act. This approach would also be consistent with the definition of Financial Advice in APS 12. Corporations Act definitions will also help mitigate any confusion and ambiguity surrounding terms such as "risk management and related advice". We note this term may be interpreted as advice relating to how generic classes of financial products such as general or life insurance can mitigate a risk that a person may be subject as conceived by regulation 7.1.29(3)(b); which is different to the concept of "risk management advice" for auditors or accountants. ***Paragraph (e) Non product advice relating to financial strategies or structures*** Financial Planning Advice is currently defined to include: "advice that does not require an Australian Financial Services Licence such as real estate and non-product related advice on financial strategies or structures" (paragraph (e)). *Real Estate* We do not believe Financial Planning Advice should be defined to include real estate. Including real estate in the definition of Financial Planning Advice goes significantly further than APS 12, which does not include real estate in the definition of Financial Advice. Real estate is also not considered a financial product for the purposes of Chapter 7 of the Corporations Act. The regulation of real estate is otherwise being considered as part of the proposed national system for all occupational licensing. Accordingly, it may be premature to seek to regulate advice relating to real estate that is provided by Members. *Non-product advice*

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			We note non-product related advice on financial strategies and structures, which relates to classes of financial products, will require a limited Australian Financial Services Licence, unless an exemption applies. Accordingly paragraph (e), as currently drafted, is not accurate. We have therefore suggested deleting reference to "advice that does not require an Australian Financial Services Licence". We would also suggest defining what is meant by "non-product advice on financial strategies and structures" to provide Members with greater clarity and certainty about what would be caught by this obligation. We appreciate that this term has been used in various consultation papers and discussions relating to the licensing of accountants. However, it is not necessarily a well understood term without being defined in either legislation, regulatory guidance or other professional and ethical standards. *Other advice that does not require an Australian Financial Services Licence <u>such as</u> …* We are also concerned that the definition of Financial Planning Advice as currently drafted using the words "such as", may capture any other advice that does not require an Australian Financial Services Licence. This includes a range of important advice that is specifically exempt from the financial services licensing regime such as advice relating to: • administrative tasks such as the registration of companies, • advice on shelf companies and trusts, • advice in relation to the preparation or auditing of financial reports • business advice, • risk management advice, • certain superannuation advice, and • asset allocation. Subjecting this whole range of advice to APES 230, which Members can otherwise provide without an AFSL, will potentially limit the type of advice Members provide clients, severely undermining access to advice. We also note the potential impact of capturing risk management advice on access to general insurance, which is otherwise exempt from the licensing regime, may be compounded by the blanket ban on commissions by Clause 9: Third Party Payments and Soft Dollar Benefits.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			We strongly suggest amending paragraph (e) to only specifically include the type of advice that is intended to be captured by the definition of Financial Planning Advice, such as non-product advice on financial strategies and structures.
12	2	154	**Clause 2 Definitions: Financial Planning Service** ***Financial Planning Service*** is defined to mean: "a service where a Member provides Financial Planning Advice to a Client in respect of a comprehensive financial plan or limited scope advice". We suggest amending this paragraph to mean: "a service where a member provides **personal** Financial Planning Advice". We believe the terms "comprehensive financial plan" and "limited scope advice" are confusing and may create unintended loopholes. Not all members will necessarily provide a comprehensive financial plan or conversely limited advice when they provide advice or deal in financial products. There is no obligation to provide a comprehensive financial plan or limited advice. Accordingly, those members who structure their services in a way that does not involve the provision of a comprehensive financial plan or limited advice as such, will not have to comply with the various obligations that apply to the provision of a Financial Planning Service as currently drafted (see for example the Fundamental Responsibilities of Members and Best Interests of the Client). We agree it is important to limit the definition of Financial Planning Service to exclude "general advice" as defined in the Corporations Act. It would be incongruous to impose certain obligations on Members such as Bests Interests of the Client or the Basis of preparing and reporting Financial Planning Advice when they provide general advice. This is because by definition a Member will not consider a person's best interests, financial needs, objectives, or priorities; when they provide general advice. If the intention of the definition is to only capture those circumstances when Members provide their clients with a Statement of Advice, because their advice constitutes personal advice, then we suggest amending the definition of Financial Planning Service to only capture personal Financial Planning Advice. This would be consistent with the Explanatory Memorandum which provides that the proposed standard will apply to advice that includes "advice related to personal financial affairs …" Imposing additional obligations on Members when they provide personal advice would be

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			consistent with the obligations in Chapter 7 of the Corporations Act, which vary depending upon whether advice is general advice or personal advice. As an aside, we would also encourage greater consistency with how ASIC has interpreted the concept of limited advice and describing limited advice as "scaled advice". This would also remove ambiguity in the term "limited scope" which has a different meaning in APES 220.
13	2	154	**Clause 2: Definitions: Client** **Client** is currently defined to mean: A natural person (whether the person operates as a sole trader or through a partnership, corporation or trust which the person controls) to whom Financial Planning Services are provided by a Member. Additional protections are ordinarily afforded to clients on the basis that they are retail clients, which will depend upon the financial product involved, their financial resources, level of sophistication or financial literacy and experience; not because they are a natural person. Although the myriad of tests for distinguishing between retail and wholesale clients add a degree of complexity to the conduct and disclosure regime, "these obligations are designed to ensure that retail clients receive professional and reliable advice about financial products". Similarly, we think the professional and ethical obligations in APES 230 should be afforded to retail clients irrespective of whether they are natural persons or not. Members who provide Financial Planning Services will be familiar with the tests for distinguishing between retail and wholesale clients. Accordingly, using the definition of retail client in the Corporations Act and corresponding regulations will not necessarily add any further complexity or uncertainty to APES 230. We also note that the Government is still reviewing the distinction between retail and wholesale clients. It may be premature introducing yet another test for identifying clients which require additional protections to help ensure they receive professional and reliable advice. If, however, the APESB considers the fact that a person is a "natural person" should be the key factor in whether the professional and ethical obligations in APES 230 should apply or not, Members may require further clarity around the circumstances in which a person "controls" a corporation or trust.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
14	2	161	The definition of "client" extends obligations for members not contemplated by the Corporations Law, the potential for conflicts with the law, and will potentially increase costs for some clients for service requirements they arguably neither want nor require.
15	2	161	The definition of "financial planning advice" extends the scope of the proposed standard beyond the provision of financial services to which Chapter 7 of the Corporations Law applies and is potentially ambiguous.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
16	2	120	1 **Definition of Client**: The use of the term "client" as defined in section 2 of the ED does not address the difference between "retail" and "wholesale" clients as does the Act. The requirements under the Act provide a greater level of protection for retail clients than for wholesale clients. The use of the term "client" as defined as part of the definition of the term "Financial Planning Advice" causes the scope of the proposed standard to cover advice and dealing services provided to high net worth individuals and to entities that under the requirements of the Act would be considered wholesale clients not requiring the same level of disclosure as retail clients. Therefore, under the proposed standard, services provided to some clients would give rise to obligations for practitioners, which are not contemplated for that class of client under the Act. This creates a burden for accountants providing financial services to wholesale clients, which is inconsistent with the requirements of the Act. Furthermore, the Future of Financial Advice (FoFA) reforms do not contemplate such obligations for wholesale clients. Setting standards for accountants higher than those required under law for other financial advisers creates a playing field which is not level and does not serve the interest of the public, profession or industry. It is submitted that the scope of the application of the standard should be limited to services provided to retail clients as defined at sections 761G and 761GA of the Act. This is consistent with the approach under the Corporations Amendment (Future of Financial Advice) Bill 2011 (the FoFA Bill). The term "client" and its definition should be modified to the term "retail client" and should adopt and cross refer appropriately to the definition in the Act.
17	2	163	**Strategic and structural advice** The APES 230 ED defines *Client* to mean a natural person, whether the person operates as a sole trader or through a partnership, corporation or trust which the person controls. The definition of *Financial Planning Advice* entails advice in respect of a Client's financial affairs specifically related to wealth management, retirement planning, estate planning, risk management and related advice. While the intention may be to capture advice in respect of a Client's personal affairs, as drafted the standard will in fact capture a much broader range of advice including advice provided to small business entities. Further, the broad definition of *Client* and the inclusion of strategic and structural advice that does not require an Australian Financial Services Licence in the definition of *Financial Planning Advice* has the potential to capture all advice provided by a Member in public practice.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			As advised in our earlier submission, Members in public practice regularly provide advice on business matters including appropriate business structures e.g. establishing, running, winding up companies, trusts, partnerships, buying and selling businesses, legal advice and underwriting in share floats. The inclusion of 'advice that does not require an Australian Financial Services Licence, such as real estate and on-product related advice on financial strategies and structures' has the potential to capture a broad range of traditional accounting advice provided by Members in public practice. This creates we believe unnecessary uncertainty over the intended scope of the standard. For example, Members in public practice regularly provide what they would consider wealth accumulation advice to clients which would include: • appropriate business structures, including establishing a business • advice on running and winding up a company; and • buying and selling businesses. There are also further regulatory reforms such as the future removal of the accountants' licensing exemption under FoFA which are expected to either clarify or define the terms 'class of product' advice and 'non-product' advice. CPA Australia and the Institute therefore recommend that clarity of the scope of the standard is refined to provide further clarity. Recommendation: s9. To provide clarity over the intended scope of the standard, section (e) of Financial Planning Advice is removed until current regulatory reforms are progressed. This decision can then be reviewed post implementation.
18	2	163	9. Definitions Following our recommendations and a review of the current definitions in the ED, we recommend the following amendments. Commission means all monetary amounts received by a Member or Firm from a product provider, licensee or related party, other than the client, which is calculated as a percentage value of product investment, insurance premium payable

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			or credit secured. Financial Planning Advice means: a) advice relating to financial products as defined in section 766B of the Corporations Act 2001 ; and b) advice and dealing in financial products as defined in section 766C of the Corporations Act 2001. Financial Planning Service means a service where a Member provides personal Financial Planning Advice to a Client. Third Party Payments means all amounts received by a Member based on volume, production bonuses or other remuneration benefits based on the sale of in-house products. Third party payments excludes commissions, non-recurring fixed referral fees received by a Member as a result of referring a Client to another service/product provider and are disclosed to the Client by the Member. Wholesale client has the same meaning given by section 761G.
19	2 & 9	122	We note that 'Third Party Payments' are defined under the Standard to include 'all amounts received by a Member from parties other than the Client to whom a Financial Planning Service is provided. Third Party Payments includes Commissions, production bonuses, remuneration based on sales volumes, remuneration benefits received for the sale of in-house financial products or other like payments from financial product providers. Third Party Payments 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 Commission and are disclosed to the Client by the Member'. We also note that the Confidentiality section of the Standard, specifically states that 'For the purposes of paragraph 3.12 [relating to disclosure of information] an Australian Financial Service Licensee or Australian Credit Licensee whom the Member represents is not considered to be a third party' . However, there is not equivalent carve out for Australian Financial Services Licensees (AFSLs) or Australian Credit Licensees (ACLs) in relation to any other sections. We strongly believe that it would be appropriate to apply this carve out more broadly to the other sections of the Standard – in particular section 9 relating to third party payments and soft dollar benefits. The nature and structure of the financial advice industry, is such that advisers are required to operate under an AFSL or ACL (depending on the services provided). As part of their authorisation under the licence, the licensee typically provides numerous services to their authorised

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			representatives (advisers) in order for the adviser to meet their compliance requirements and service their clients in a cost effective, economical and efficient manner. This provision of services means that there are numerous payment flows between the licensees and their advisers, these typically include the payment of a licensee fee from the adviser to the licensee. In return, the licensee usually provides the adviser with software which enables the advice process to be undertaken in an efficient and compliant manner. In addition, a core licensing requirement is that the dealer group ensures that its representatives are adequately trained to provide the advice they are authorised to provide under the licence. As a result, training is often subsidised by the licensee given it is their responsibility to ensure advisers are adequately trained and there are significant consequences if this does not occur. In addition, licensees 'remunerate' advisers based on numerous factors. These factors are now governed by the FoFA legislation which restricts the type of payments that can occur, for example where they are based on volume and likely to influence the advice provided to the client. The definition of commissions is also very broad and includes '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 include trailing commissions and income and amounts received from an Australian Financial Services Licensee, product provider or other party.' Given the points made above, we believe it is critical that the definition of 'Third Party Payment', 'Soft Dollar' and 'Commissions' excludes the AFSL under which the adviser is authorised.
20	3	127	Existing legislative and industry provisions extend well beyond those applying to AFSL holders 1. I feel that the existing legislative provisions of the National Consumer Protection Act (NCCP) and other legislative and industry based requirements (imposed by industry bodies, lenders and aggregators) already provide a framework that is designed to ensure that significant safeguards are in place to ensure the threat to objectivity and self interest threat are reduced to an acceptable level. Additionally, I believe the systems, templates and procedures I have spent 5 years developing for my practice allow me to meet all of the requirements of APS110 and take into account the existing APS12, adapted for the Credit Advice Industry. As a Chartered Accountant, professional ethics is a core component of the way I approach business, and ethical principles infiltrate all aspects of the behaviours, actions and culture of this business. 2. Credit Advice for mortgages cannot be provided without either holding an Australian Credit Licence (ACL) or being

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			an authorised credit representative of an Australian Credit Licence Holder. The legislative regime for ACL is significantly stronger than that applying to AFSL. An AFSL licencee is merely required to manage any conflict of interest whereas the NCCP regime requires ACL holders and their representatives to ensure clients are not disadvantaged. The board should take into account the higher standard of care already required of ACL holders when considering the need for further regulation. 3. Penalties contained in the NCCP Act are significantly higher than those placed on AFSL holders. Civil penalties of $220,000 for individuals or $1,100,000 for companies and multiple trustees and Criminal penalties of up to $11,000 or 2 years imprisonment or both may be applied per breach by ACL Holders and their representatives. 4. Common law imposes a duty of care of finance and mortgage brokers as a relationship of principal and agency arises – the broker has a fiduciary duty of care to the borrower at common law which exceeds the duty of any lender, by virtue of the documentation required under the NCCP and for non-regulated activity for MFAA members (as MFAA members are required to obtain finance broking contracts prior to engaging a client for non-regulated credit advice). Aggregators and Lenders require all accredited brokers to hold membership of an industry professional body (this is not a legislative requirement). 5. The standard for "Eligible Persons" under NCCP and for annual compliance certificate reporting ensures that all ACL holders and credit representatives must: a. be members of either the MFAA or FBAA b. meet minimum professional development activities which exceed those imposed by the ICAA c. provide clear credit reference reports and national police checks annually d. must hold a minimum of $2m professional indemnity insurance (or more if necessary) and 6 months run-off cover e. must have documented compliance plans and internal dispute resolution policies and procedures f. must document each engagement and disclose all remuneration prior to providing a credit service g. must be members of an approved external dispute resolution service h. must not have lost an accreditation from a lender i. must not be a former bankrupt j. must have documented internal policies and procedures for training and compliance (Quality control) k. must ensure objective and impartial audits of client files for NCCP compliance occurs l. lodge annual compliance certificates with ASIC m. Lenders and Aggregators have key requirements in terms of experience, industry body membership, education

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			(minimum Diploma in Financial Services). n. Lenders and Aggregators have systems to monitor quality and to recognise any churning – brokers who have poor quality and engage in churning will lose the support of their aggregator and/or their lender accreditations.
21	3	154	**Clause 3 Fundamental Responsibilities of Members** Under the heading Fundamental responsibilities of members, paragraph 3.1 states that: A member providing a Financial Planning Service shall comply with Section 100 Introduction and Fundamental Principles of the Code and relevant law. As you know, the ethical framework in APES 110 comprises 5 Fundamental Principles. Those principles are: 1. Integrity 2. Objectivity 3. Professional competence and due care 4. Confidentiality and 5. Professional behaviour The purported Fundamental Responsibilities of Members in clause 3 of APES 230 otherwise also include: 1. Public interest 2. Objectivity and conflicts of interest 3. Best interests of the Client 4. Professional appointments (as opposed to professional behaviour) As noted above, we are concerned that slight variations to well established concepts and principles will create confusion and uncertainty. Accordingly, we would suggest: • retaining the 5 Fundamental Principles under the heading Fundamental Principles rather than Fundamental Responsibilities of Members and replicating the fundamental principles in APES 110 being integrity, objectivity, professional competence and due care, confidentiality and professional behaviour; and • inserting a new clause called Additional Responsibilities of Members, to include obligations relating to public interest, conflicts of interest and bests interest of the client.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
22	3.6	19	Para 3.6: the statement: "… that the member shall act in the best interests of the client" the fact that it is the client's interests that should be first and foremost. The way the statement is crafted suggests that the best interests of the client may still be taken into account even if they are subordinated to other interests. I would suggest that the words "first and foremost' be included in this statement.
23	3.6	27	I refer to the exposure draft 03-12 issued in July 2012. There is one major point that stands out and could pose significant problems, it refers to the phrase "the client's best interest". The word "best" takes the role of a superlative and does not give any latitude. Indeed it would be very difficult for an accountant or other party to demonstrate that they have always acted in the client's best interests. What is "best interest" is quite debatable and could be very difficult for an accountant to establish that he or she did act in the best interest of their client. I feel that the phrase "best interest" should be substituted by "reasonable interest" of the client. By using the word "reasonable" I expect it will be construed as acceptable and without the requirement to adhere to perfection.
24	3.6	154	**Paragraph 3.6: Best interests of the Client and the Basis of preparing and reporting Financial Planning Advice** We welcome the amended definition of Best Interests of the Client, particularly as it is now defined by reference to Division 2 of Part 7.7A of the Corporations Act. This will substantially assist Members who also provide personal financial product advice to comply with their best interest duty. It is important to note that a Member will satisfy their duty to act in the Bests of the Client, as defined in Division 2 of Part 7.7A of the Corporations Act, when they comply with the various steps in the safe harbour in subsection 961B(2) of the Corporations Act. As noted above, defining the Bests Interest of the Client in clause 3.6 by reference to the best interests of the Client in the Corporations Act will substantially assist members comply with both their legal and professional and ethical obligations. However, clause 6: The basis of preparing and reporting Financial Planning Advice replicates much of what is contained in the safe harbour, but slightly changes some of the wording, which is otherwise used in s961B(2) of the Corporations Act. This will invariably cause confusion and uncertainty. For example, paragraphs 6.1(b), 6.2(b) and 6.3 use the words the Client's financial needs, objectives, priorities and relevant circumstances. Whereas the safe harbour of s961B(2) refers to "the Client's objectives, financial situation and needs". We also note the Explanatory Memorandum to APES 230, otherwise refers to "the objectives, relevant circumstances and needs of the Client", which is slightly different again to

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			both clause 6 in APES 230 and the safe harbour in the Corporations Act. If Members comply with their obligation to act in the Bests Interest of the Client when providing a Financial Planning Service, they will comply with much of what is contained in clause 6: Basis for the Financial Planning Advice. In relation to those obligations in clause 6 that are not contained in the safe harbour, we would suggest: • making those additional obligations in paragraphs 6.1, 6.2 and 6.3 that are specific to Members and the way they do their work, guidance; and • creating separate mandatory professional and ethical obligations that capture paragraphs 6.4, 6.5, 6.6 and 6.7, which we also think are important. The best interest duty is a relatively complex obligation, which Members who provide personal financial product advice have to deal with. We strongly urge the APESB to mitigate any further confusion and uncertainty and aligning obligations relating to the Best Interest of the Client and the basis of preparing and reporting Financial Planning Advice with the best interest duty in the Corporations Act.
25	3.6	163	**Best Interests of the Client** As drafted, 3.6 requires members to act in the Best Interests of the Client when providing a financial planning service. However, when it comes into effect on 1 July 2013 the best interests obligations will apply to retail clients not wholesale clients. While we believe that members should act in the best interests of all Clients regardless of whether they are retail or wholesale clients, the requirements of s961B(2) potentially imposes a number of obligations on members providing advice to a wholesale client that are not required by law. In acknowledgement of this we recommend the following paragraph is added following the current 3.6: A Member providing a Financial Planning Service to a wholesale client should act in the Best Interests of the Client to the extent practicable. This amendment would confirm the general obligation remains to ensure advice is in the best interests of the client, without unnecessarily imposing new requirements when providing financial planning advice to wholesale clients.
26	3.11	154	**Clause 3.11 Confidentiality** Although we note that there has been no change to this clause as a result of the Exposure Draft, we would like to draw

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			your attention to the fact that this clause is inconsistent with the relevant clause in APES 110. The requirement that a Member shall not use confidential information obtained in the course of a Financial Planning Service "for any purpose other than the proper performance of that service" is stricter than Clause 140.1 (b) of the Code which sets out the obligation of Members not to use such information "to their personal advantage or the advantage of third parties". In addition we note that there is inconsistency with other APES (which in turn appear to be inconsistent with the Code as well). For instance, clause 3.6 of APES 220 Taxation Services and clause 3.10 of APES 225 Valuation Services do not restrict use to only the specific Assignment or Engagement since the restriction is in respect of "the proper performance of professional work for that Client or Employer".
27	3.17	19	Para 3.17: it would be appropriate to include in this section a statement to the effect that the member is required to have the appropriate regulatory sanction to provide a financial planning service; a Professional Practice Certificate issued by their professional member body; and appropriate training and qualifications to accept the request to undertake a financial planning service. There appears to be no clear statement of this requirement in the Code. It is acknowledged that it is commonsense, however it may be an issue in a Court of law if challenged by a member who believes that despite the requirement in the statute there is no clear professional requirement to do so.
28	4	120	**Inconsistency with APES 110** In addition the concept of "professional independence" is introduced in APES 230 which appears to be based on different principles that the tried and tested (internationally and in Australia) concept of independence. We believe that this serves to undermine the principles in APES 110.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
29	4	154	**Consistency with other obligations and professional standards** We are also concerned about the interaction of APES 230 with other professional standards, particularly in relation to independence, audit and assurance concepts. **Clause 4 Professional Independence** Paragraph 4.1 provides that: When engaged to provide a Financial Planning Service, a Member shall comply with Professional Independence as defined in this Standard … We are concerned that slight variations to well-established concepts such as "independence" in APES 110 will create confusion and uncertainty. It also potentially sets a precedent for subsequent professional standards, unduly exacerbating confusion and uncertainty. We suggest simply using the term Independence rather than Professional Independence. In relation to paragraph 4.2(a) and the obligation to disclose the extent of restrictions and any resulting effect on Members' objectivity and Professional Independence, we believe the key challenge when providing limited advice is how to comply with obligations relating to the Best Interests of the Client and not necessarily Independence. We would suggest amending this clause so that members would be required to disclose the resulting effect of any restrictions on the Best Interests of their Client rather than independence. If the obligation is amended to disclose the effect of limited advice on the Best Interests of the Client, Members would also have the benefit of ASIC guidance on the best interest duty and related obligations, which ASIC is currently consulting on.
30	5.2	154	Paragraph 5.2 provides that a Member shall disclose: significant factors that affect or may affect the Member's ability to provide the Financial Planning Service to the Client on an objective and independent basis. We do not believe this obligation is necessary, given objectivity and independence are adequately dealt with in other professional standards. We would therefore suggest deleting this clause

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
31	6.3	154	**Clause 6: The basis of preparing and reporting Financial Planning Advice** Paragraph 6.3 provides that: A Member shall gather sufficient appropriate evidence by such means as … The concept of 'sufficient appropriate evidence" is purely an assurance concept, which should not be applied to all services.
32	6.7	163	**Basis for the Financial Planning Advice** As previously noted, there are a number of obligations that apply to the provision of advice to retail clients that are not required by law when providing advice to wholesale clients. In acknowledgement of this we recommend the following paragraph is added following the current 6.7: A Member who provides Financial Planning Advice to a wholesale client should follow the reporting requirements in paragraphs 6.1 to 6.6 to the extent practicable.
33	6.8	154	**Paragraph 6.8 Reporting the Financial Planning Advice** Paragraph 6.8(g) provides that a Member shall report in a written form to the Client: The specific information on which the Member has relied and the extent to which it has been reviewed by the Member. Members may require further clarity around the extent to which information must be "reviewed" by the member. We also note the concepts and language in paragraph 6.8(h) more closely resemble the old requirement to have a reasonable basis for the advice in s945A of the Corporations Act. We would suggest amending paragraph 6.8(h) and requiring Members to include: The reasons why the Financial Planning Advice is considered to be in the Best Interest of the Client.
	6.8	163	**Reporting the Financial Planning Advice** As previously noted, there are a number of obligations that apply to the provision of advice to retail clients that are not required by law when providing advice to wholesale clients. In acknowledgement of this we recommend the following paragraph is added following the current 6.8: A Member who provides Financial Planning Advice to a wholesale client should follow the reporting requirements in paragraph 6.8 to the extent practicable.
34	6 & 7 & 8	129	One of the major areas of ambiguity with APES 230ED is in relation to the definition and therefore application for "members", "members in business", "members in practice" and "firm". Given the infinite variations in business models

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			that exist to provide a financial planning service, being able to determine to whom and how APES 230 ED applies is extremely complicated and confusing. This will create an environment where the level of uncertainty renders the standard ineffective and unenforceable and places accountant based financial advisers at risk of inadvertent non-compliance. Separately, we seek confirmation that Members in Practice and Members in Business who do not provide financial planning advice and are not in a position to determine or change the policies and procedures of their employer, will be treated similarly. We also seek confirmation that Members in Practice and Members in Business who do provide financial planning advice and are not in a position to determine or change the policies and procedures of their employer, will be treated similarly
35	6 & 7 & 8	141	**Differing obligations on members** The Exposure Draft imposes differing obligations on those members in public practice that are more onerous that members in business that provide exactly the same services. We understand that this approach may have been adopted as a result of feedback in earlier consultations that practically members in business may not be able to comply where their employer is not a member firm. The current approach places members in public practice at a commercial disadvantage as it places restriction on the fee arrangements that a member may have with a client and imposes additional process and thus cost to the members in public practice. This appears to us to be an unjust outcome.
36	8	16	**Comments in respect of professional fees:** 1. The proposed standard is inconsistent with the Code of Ethics for Professional Accountants which requires that the basis for charging professional fees must always demonstrate compliance with the fundamental principles of the Code. It is essential that a Member in Public Practice always acts with integrity, professional due care and competence, and objectivity. All three fundamental principles require equal consideration in all work conducted by the Member in Practice providing financial planning services. It is not appropriate to elevate and require a higher level of consideration of objectivity above the other principles. • A self-interest threat may be a serious concern impacting objectivity when fees are based only on the value of the Client's assets or funds under management. However a serious self-interest threat also exists where a Member in Public Practice lacks integrity. This factor may be more difficult to measure, but is just as important.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			• If a member does not exercise due care and competence there is increased risk that the financial advice provided will be reckless, regardless of the basis for charging fees for that advice. We consider that reckless advice is a far more serious issue that impacts the public interest. • We concur that the basis for charging professional fees on a basis that considers only the percentage of the value of the Client's assets or funds under management has the potential to cause a self-interest threat to objectivity, and particularly where the Member also lacks integrity. However, where a Member lacks integrity we consider that whatever basis is used to charge fees, it is likely to have self-interest bias. 2. Professional fees should be considered in the context of the professional service being provided. This should always include the nature, size and complexity of the Financial Planning Service, the scope and scale of the service provided, the level of experience and expertise of the Member and the Member's staff, the degree of responsibility applicable to the work, inherent risks associated with the service, and the time spent on the Financial Planning Service. 3. As drafted, we consider that the proposed APES 230 Standard diminishes the professionalism of the accounting profession with an implicit presumption that professional members providing financial planning and investment advisory services cannot manage their own conflicts of interest and require 'rule based' constraints. As drafted, we consider that the proposed APES 230 does not emphasise that fees should be proportionate to the value of the professional service provided, but inappropriately focuses on the negative aspect of one fee methodology. 4. In addition the proposed standard does not contemplate giving clients a choice as to their preferred fee model, which is contrary to the public interest. We submit that our own business model and its growth over the last decade is strong evidence that clients favour a simple, unambiguous, predictable, all-inclusive, comparable, aligned asset-based fee tiered for scale and adjusted for complexity and service requirements. We also note that in tendering for larger institutional type work an asset-based fee is typically requested. However, we also recognise that a funds under management fee model will not be successful where the other factors described in point 2 above, are not given equal emphasis and due attention. 5. Fees can be a drain on the performance of a portfolio, particularly during a period of low to negative growth and especially if large regular drawings (such as pension payments) are deducted from the portfolio. During periods of low to negative returns a fixed fee may be beneficial for an advisor as it protects their revenue, but a flexible fee

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			model may operate more effectively for the client in this environment. We consider that a fixed fee model may be designed with a self-interest bias that protects advisors during periods of low to negative market performance. A fee model should therefore retain flexibility if it is to serve the best interests of the client, and the principles of acting with integrity, professional due care and competence, and objectivity are fundamental to the fee model chosen. 6. The proposed standard may at times place Members at a competitive disadvantage when tendering for Financial Planning Services such as asset consulting and investment advisory services. A Member may be competing against domestic and global banks, investment banks, stockbrokers, asset consultants and other advisors. The investment advice industry currently utilises a range of established fee models and often the preferred model is directed by the client during a tender process. When tendering for work in the wholesale client space a Member should retain the flexibility to tender a fee model that gives equal emphasis and due attention to all of the factors described in point 2 above.
37	8	16	We have provided an attachment to this submission which sets out a comparison of the professional fee requirements under the proposed APES 230, the requirements in respect of professional fees under the Code of Ethics for Professional Accountants (APES 110), together with our recommendations for amendments to APES 230 as drafted. We consider that all aspects of ethical behaviour should be addressed without undue prominence to any one factor. This requires only a change of emphasis in the drafting of the requirements. We believe that the ethical standard should promote determination of a fee basis that is **consistent with all ethical principles**, rather than a focus on only one threat to inappropriate fee models being used. We consider that our suggestions as set out in the attachment, provide a holistic approach to clearly link the basis for fee determination to the requirements of the whole standard and in particular public interest, integrity, objectivity and conflicts of interest, best interests of the client, and professional due care and competence. The current exposure draft only addresses objectivity and carries the risk that new fee models will lack integrity, may not be in the public interest, and professional due care and competence may not be factors taken into the determination of appropriate fee levels.
38	8	124	Grant Thornton is firmly of the belief that the level and structure of fees is an issue that should be agreed between clients and their professional advisers, and that percentage-based fees can be a very appropriate form of remuneration where provided with transparency, full disclosure and within fiduciary obligations. Should the ban on asset based professional fees be implemented it would not allow appropriate differentiation between strategic advice and investment management advice. It would also not allow Grant Thornton to efficiently deal with the different types of clients who seek one or both of

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			these advice services. We refer you to the case study provided in Appendix 1, which clearly highlights the significant practical issues as it relates to our business and the detrimental impact it would have on our Model Portfolio investment management service. We therefore encourage the APESB to reconsider its ban on professional fees expressed or collected as a percentage of the value of the client's assets or funds under management as detailed in section 8.2 of ED 03/12.
39	8	120	**Inconsistency with APES 110** APES 230 is inconsistent with APES 110: Code of Ethics for Professional Accountants on the issue of contingency fees. While APES 230 states in paragraph 8.1 that a fee based on the client's assets or funds under management creates a self-interest threat that cannot be reduced to an acceptable level there is no prohibition on contingency fees in APES 110, with contingency fee arrangements based on transaction/asset value being the norm in corporate finance services.
38	8.1	16	**Proposed changes to APES 230:** A Member in Public Practice shall develop a basis for charging professional fees that enables the Member to demonstrate compliance with the following fundamental principles of the Code: • Integrity • Objectivity; and • Professional competence and due care The Member shall demonstrate how the basis adopted mitigates threats to these fundamental principles.
39	8.1	19	Para 8.1: I agree entirely with the philosophy expressed in this paragraph on charging a professional fee based on the value of assets. It needs to be made crystal clear that the objection to asset based fees is that they are generally linked to product (or platform) generated commissions and fees for which the client receives no service or demonstrable value. This is clearly a blight on the financial planning profession evidenced in the enormous amount of take-overs, mergers and consolidations in the financial services space with Count Financial being probably the most notable. FoFA has broken the business model of platform and product kickbacks so I suggest that the legislation may have already addressed this issue.
40	8.1	70	(c) The manner in which remuneration is paid does not automatically result in failure of the self-interest test. Paragraph 8.1 states that no safeguards can reduce a self interest threat to an acceptable level where a professional fee is based upon funds under management. We do not accept this proposition. On its own, if this argument were accepted

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			then we would have to challenge the many other remuneration arrangements that members have in place with their clients. For example, it is accepted by the community that the auditor is directly remunerated by the company he audits. An argument could be put forward that the Auditor's opinion will in some way be influenced by the desire to retain the client - yet there is no suggestion from the public that the auditor's opinion is in any way 'conflicted'. The reason for this is that the auditor has both a legislative as well ethical obligation to assess a range of potential threats to his independence so as to ensure the impartiality of the opinion expressed. We propose that there is no reason why similar 'protections' cannot be put in place so as to ensure Members providing financial planning services continue to provide a high level of professional service, regardless of the means by which they are paid.
41	8.1	163	We propose the following wording for paragraphs 8.1 to 8.2: 8. Professional fees 8.1 A Member in Public Practice shall determine and charge a professional fee for providing a Financial Planning Service to a Client that takes into account a range of factors. This may be expressed or collected as a percentage of the value of the Client's assets or funds under management (or any component of, or changes in such values).
42	8.2	16	Proposed changes to APES 230: The Member shall communicate in writing to the Client the terms of the engagement and, in particular, the basis on which fees are charged and the services covered by the fee, and obtain the Client's agreement to such terms before commencing the engagement.
43	8.2	163	8.2 Factors that a Member in Public Practice shall consider in determining the professional fee for a Financial Planning Service include the nature and complexity of the Financial Planning Service, the scope and scale of the service provided, the level of experience and expertise of the Member and the Member's staff, the degree of responsibility applicable to the work, inherent risks associated with the service, the time spent on the Financial Planning Service and the value of the Client's assets or funds under management.
44	8.3	16	**Proposed changes to APES 230:** Factors that a Member in Public Practice shall consider in determining the professional fee for a Financial Planning Service include the nature, size and complexity of the Financial Planning Service, the scope and scale of the service provided, the level of experience and expertise of the Member and the Member's staff, the degree of responsibility

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			applicable to the work, inherent risks associated with the service, and the time spent on the Financial Planning Service.
45	8.3	163	8.3 If a Member in Public Practice proposes to make a material chance to the basis upon which the Member charges professional fees, the Member shall notify the Client and obtain the Client's written consent to the amended terms in accordance with APES 305 Terms of Engagement. **Implementation of new safeguards – informed consent** CPA Australia and the Institute recommend the Board incorporate a further obligation beyond the mandatory disclosure obligations of paragraph AUST240.7.1 of the Code where a Member in Public Practice receives a commission, requiring the Member to seek the informed consent of the client in order to actually receive the commission, fee or other benefit. This is a higher level of agreement with the client than disclosure only. The requirement to seek "informed consent" from a client is already mandated in some overseas jurisdictions such as in the UK, where the details of informed consent are outlined in the Chartered Accountants Regulatory Board's Investment Business Regulations - Investment Intermediaries Act 1995 GUIDANCE (Updated 1 July 2011). Section 3.22 (1) of this Guide outlines the requirements for informed consent when receiving commissions: 'A firm may keep commission or other benefit received from persons other than the client if this is disclosed and authorised by the client.' Section 3.22 (2) then requires the firm to either: • account to the client for any commission, for example by paying it to the client or by deducting it from the fees chargeable to the client and showing the deduction on the bill; or • get the client's agreement to keep the commission. Further guidance can be provided to demonstrate how the engagement letter could be worded to ensure it contains clear wording in order for the firm to be allowed to keep any commission, fee or benefit. Implementing a requirement for a member to seek informed consent before receiving a commission, fee or other benefit will introduce the necessary flexibility to ensure a client's preference for remunerating the member can also be accommodated where appropriate. For example, one member stated they have implemented a fee for service remuneration model for investment advice but after 12 months their client requested they go back to remunerating the

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			member via asset based fees. Requiring informed consent, combined with the new legislative requirements, provides a flexible professional standards framework that allows the member to consider and where appropriate accommodate such requests while ensuring compliance with the fundamental principles. Importantly, informed consent coupled with the other legislative provisions provide a consistent and robust framework that address or have the potential to address the different conflicts of interest that may arise as a result of adopting different remuneration models be they asset based fees or commissions. CPA Australia and the Institute recommend that the APESB introduce the informed consent obligation when a commission, fee or other benefit may be received by a member. Recommendation: 6. APES 230 introduce the additional obligation to obtain a client's informed consent (which is at a higher level than disclosure), before a commission, fee or other benefit can be received.
46	8.4	16	**Proposed changes to APES 230:** *(Inserted above 8.4):* It is unlikely that the basis for charging fees developed by a Member in Public Practice for providing a Financial Planning Service to a Client can be determined by reference to one factor in isolation. For example, a fee basis that considers only the percentage of the value of the Client's assets or funds under management (or any component of, or changes in such values). Fees charged on this single factor increases a self-interest threat, which is in conflict with the fundamental principles of the Code.
47	8.4	16	**Proposed changes to APES 230:** *(Replaces 8.4):* When developing a fee model a Member in Public Practice considers factors that may create a threat to the fundamental principles of the code such as a self-interest threat. The existence and significance of such threats will depend on factors including: • The nature of the engagement. • The range of possible fee amounts. • The basis for determining the fee. • Whether the outcome or result of the transaction is to be reviewed by an independent third party.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
48	8.4	16	**Proposed changes to APES 230:** *(Inserted after proposed 8.5, becomes 8.6):* The significance of any such threats shall be evaluated and safeguards applied when necessary to eliminate or reduce them to an Acceptable Level. Examples of such safeguards include: • An advance written agreement with the client as to the basis of remuneration. • Disclosure to intended users of the work performed by the Member in Public Practice and the basis of remuneration. • Quality control policies and procedures. • Compliance with AFS Licence conditions, relevant legislations and formal processes for handling complaints from clients.
49	8.4	163	8.4 A Member in Business who undertakes a Financial Planning Service should follow the requirements and guidance of Section 8 of this Standard to the extent practicable.
50	8 & 9	129	**Issues arising from APES 230 provisions and definitions and the Constitutions & By-laws of the APESB and the various JAB entities** There are Corporations Act provisions (especially Sections 232 and 233) which deal with requirements which are oppressive to, unfairly prejudicial to or unfairly discriminatory against a member or members of the organisation. These provisions apply to a "company", which means a company registered under the Corporations Act. As such it includes companies limited by guarantee such as CPA Australia and the Institute of Public Accountants (IPA). There are different considerations for chartered corporations such as the Institute of Chartered Accountants for Australia. We understand that each of the Joint Accounting Board (JAB) entities will need to determine whether to adopt APES 230. We believe and submit that if APES 230 were to be adopted by CPA Australia and the IPA, it will be oppressive, unfairly prejudicial and unfairly discriminatory to members involved in the provision of financial advice. This could lead to a challenge if APES 230 is adopted by CPA Australia or the IPA. The issue of commercial detriment is central to the issue of whether a requirement is oppressive, unfairly prejudicial or unfairly discriminatory against a member or members. The focus in this regard is on the position and interests of the member or members of the organisation and the impact of the requirement in question. We believe that:

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			• member survey data which has been submitted previously by AFAC - refer Member Survey results in the Appendix to the October 2010 submission and the number of signatories obtained in 3 days only to the Petition included with the May 14th AFAC submissions; • survey findings which we believe the Financial Services Council and the SMSF Professionals Association of Australia are including in their submissions; and • submissions previously made on the adverse impact of APES 230; readily demonstrate that significant and widespread commercial detriment to members of the JAB entities who are impacted by APES230 will be able to be established. We believe that if the APESB promulgates APES 230, and especially Clauses 8 and 9, in their current form, the APESB will place CPA Australia and the IPA in particular in an extremely difficult position. They will either need to: • decide to adopt/prescribe – in which case they will be exposing themselves to the very serious potential challenge from their members about conduct which is oppressive, unfairly prejudicial to or unfairly discriminatory against a member or members of the organisation, as well as being exposed to the very real prospect of a significant number of member resignations, OR • not adopt/prescribe - which then has the potential of presaging a highly disruptive phase in the accounting profession. We are not aware of whether these matters have previously been considered by the APESB but consider them highly relevant to any decision in relation to the promulgation of APES 230 in its curent form, particularly with the inclusion of clauses 8 and 9.
51	8 & EM	154	**Clause 8 Professional fees** Paragraph 8.2 in APES 230 provides that: A Member in Public Practice shall not charge a professional fee for providing a Financial Planning Service that is expressed or collected as a percentage of the value of the Client's assets or funds under management (or any component of, or changes in such values).

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			The Corporations Amendment (Further Future of Financial Advice Measures) Act 2012 provides that: The financial services licensee must not charge an asset based fee on geared funds used or to be used to acquire financial products by or on behalf of the client to which the advice relates." (s964F(1)) This obligation "does not apply if it is not reasonably apparent that the funds used or to be used to acquire financial products by or on behalf of the client are geared funds" (s964F(2)). The rationale for banning conflicted forms of remuneration in the financial planning industry, as part of the FoFA reforms is to (among other things) increase trust and confidence in the financial planning industry and make the industry more professional. "To this end, the Act sets up a framework [which includes] a ban on asset based fees on geared amounts". The FoFA reforms represent the Governments response to the PJC Inquiry into Financial Products and Services in Australia, which was established to consider various issues associated with the collapse of Storm Financial, WestPoint and Opes Prime. The PJC's Terms of Reference included the role played by commission arrangements relating to product sales and advice, including the potential for conflicts of interest and remuneration models for financial advisers. The APESB also cites "high profile cases where the investing public was perceptibly harmed" such as Storm, Opes Prime and Westpoint as the genesis for APES 230. From the outset the Government recognised the need to carve out asset based fees on ungeared amounts from any ban on conflicted remuneration. This position was maintained following extensive public and industry consultation. Similarly, the Government recognised the need to exempt general insurance and certain advice relating to basic deposit products from the ban on conflicted forms of remuneration from the FoFA reforms. Without any evidence to the contrary, we do not support imposing more stringent obligations on Members. While we support proscribing remuneration that create threats of self-interest and/ or advocacy and which impact on Members' ability to comply with fundamental principles of the Code, there seems little justification proscribing asset based fees following the introduction of a best interest duty, other FoFA reforms, the removal of the accountants licensing exemption and the introduction of the limited licensing regime. We are particularly concerned about the proposed ban on charging "a professional fee for providing a Financial Planning Services to a Client that is expressed or collected as a percentage of the value of the Client's assets" in paragraph 8.2.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			This could be interpreted as a ban on contingency fees, which are otherwise permitted by APES 110 Code of Ethics for Professional Accountants ("APES 110"). As stated in APES 110, "Contingent Fees are widely used for certain types of non-assurance engagements". Members' charging clients' asset based fees as a contingency fee is a long standing practice, which has not resulted in conflicted advice or clients' suffering financial loss. Contrary to the suggestion that "no safeguards can reduce this threat of self-interest to an Acceptable Level" in paragraph 8.1, APES 110 lists a series of safeguards that can be applied to eliminate or reduce any threats created by contingency fees to an Acceptable Level. According to the Explanatory Memorandum, "a self-interest threat to the fundamental ethical principles arises from conflicted remuneration such as Commissions, percentage based asset fees which are linked to FUM and other incentive based remuneration, which operate in a manner to influence a member's behaviour that is contrary to the Client's best interest". If the problem created by asset based fees is the risk that advisors will not act in the best interests of their client, the appropriate way to address this risk is imposing an obligation to act in the Best Interests of Clients and not an outright ban on asset based fees. We also believe that licensing Members who provide advice on classes of financial products and subjecting those Members to the conduct and disclosure regime, in addition to the various FoFA reforms, will further mitigate any threats to self-interest and conflicts of interest. We note, for example, Members who obtain an Australian Financial Services Licence (AFSL) or a limited AFSL will be required to, among other things, do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly and have in place adequate arrangements for the management of conflicts of interest.
52	9	125	What especially annoys me in both the FOFA and APES 230 outcomes is that a very major conflict of interest has been left untouched – the link between ownership (or some other commercial interest in product margins) and advice. The financial planning industry remains littered with participants where ultimately advisers through various means have a very significant commercial interest to recommend products completely separate from commission and volume related payments. Just take a look, for example, at the recently reported very large sign-on payments made to advisers who were part of the Count dealership.
53	9	129	We request that you consider how best to deal with the following specific scenarios relating to insurance when introducing the Standard and specifically address these matters: i. Legal implications and breaches of the SIS Act with regards to rebating commission to a member who is not the

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			owner of a policy. This situation occurs where the policy is owned under a superannuation umbrella, particularly when most superannuation policies are not owned by the self-managed superannuation fund. ii The implications of rebating brokerage where a loan is taken out by a super fund under a Limited Recourse Borrowing Arrangement and the implications of the SIS Act in term of reimbursement to the superannuation fund.
54	9	163	**Third Party Payments** Consistent with our earlier recommendations and drafting amendments, we recommend section 9 be reworded as follows: 9.1 A Member in Public Practice shall not accept Third Party Payments or Soft Dollar Benefits in relation to a Financial Planning Services provided by the Member, except as provided for in paragraphs 9.2 to 9.4. 9.2 With the Client's knowledge and agreement, a Member in Public Practice may accept a payment of all or part of the professional fee in respect of a Financial Planning Service provided to the Client from a party associated with the Client. Such parties may include family members and associated entities. 9.3 A Member in Public Practice may accept a Soft Dollar Benefit which is trivial and insignificant, provided the Member: • records it in a register within 10 business days of receipt; • maintains the records of the Soft Dollar Benefit for 5 years after receipt; • makes the register available for inspection by the Member's Financial Planning Service clients and the Member's Professional Body within 2 business days or request or as required by regulatory authorities; and • includes a specific reference to the availability of these records in the Member's Financial Services Guide and Statement of Advice.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			9.4 A Soft Dollar Benefit is trivial and insignificant if it is for gifts or other incentives as defined in Division 2 of Part 7.7A of the Corporations Act 2001 to a value of not more than $300. Under FoFA an individual will be able to receive a non-monetary benefits where at least 75 per cent of the time spent on a course must be spent on education or training activities for professional development. The participant or their employer must pay for the costs of travel and accommodation relating to the course and events and functions held in conjunction with the course. CPA Australia and the Institute recommend the APESB consider expanding the soft dollar benefits that can be received to also permit the receipt of PD that meets these requirements. Further, the obligations as drafted in section 9 currently center on the legislative requirements for the provision of licensed financial planning advice under an AFSL. Should the APESB determine that APES 230 should also include advice and services provided under an ACL, this section must be redrafted to provide a more flexible framework applicable to all advice captured by the standard.
55	9 & EM	124	Whilst Grant Thornton concurs with Parliament and ED 03/12 that there should be a general ban on Commissions, we do believe that there are exceptions that do not threaten the APESB's 'incentive based remuneration' - conflicted remuneration (2.2 of the EM), and which have not resulted in reduced returns or losses to clients. If the ban on commissions is considered so significant so that no safeguard can be applied in the Financial Planning Industry, why has the APESB not also banned such commissions for other areas that Members in Practice are involved in being: corporate finance, taxation, business broking and real estate where it is accepted industry practice to remunerate by publicly disclosed Commission based fees (EM 3.1)? ED 03/12 incorrectly attempts to justify its stance on banning of Commissions by arguing it is consistent with the global and Australian equivalent APES 110 'Code of Ethics for Professional Accountants'. However APES 110 does not totally ban Commission based remuneration. Grant Thornton does not support the retrospective nature of ED03/12. Parliament has made it clear that the ban on most Commissions applies to new products as from the application date of 1 July 2013. ED 03/12 bans such Commissions from

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			that date. Grant Thornton believes that such Commission should not be banned as in some instances it may be difficult to track who the former client is. A safeguard would be disclosure to the client if there is an on-going relationship. Grant Thornton notes the arguments for and against banning insurance and risk products in the 5.2 of the EM. In particular it is stated by those opposed to Commissions that non-stepped up Commissions have less churn risk and hence are not unreasonable. Surely this suggests that the safeguards which include disclosure outweigh the risks and hence the fundamental requirements to of both FoFA and ED 03/12 of being in the Best Interests of the Client have been met. Legacy Products are a fact of life for a Financial Planning business and there are instances where the client has not been involved with the Financial Planning business for some time, or indeed is no longer identifiable, and Commission trailing Commissions are still paid. Grant Thornton believes that in those instances, there should be no ban on accepting such Commission on products that are sold to the Client before ED 03/12 was released. 6.3 of the EM could be read to allow receipt of Commission where the Client cannot be traced however Grant Thornton believes that this should apply to all Financial Products issued prior to the release of ED 03/12. The APES 230 proposals to ban all Commissions does seem to be at odds with the business practice of the accounting bodies that promote various commercial products including life insurance, and state that Commissions are paid to the accounting bodies for any member purchases. Is the APESB publicly stating that the accounting bodies are in breach of their own APES 230 ethical principles? How ironic for members of the accounting bodies to be barred from accepting life insurance Commissions when the accounting bodies themselves see no reason to not accept such Commissions.
56	11	120	**Other regulatory announcements will have impact from 1 July 2013** In addition to the already legislated FOFA reforms, there are a number of other announcements that have been made, and details yet to be finalised, which will have an impact on the delivery of financial planning services from 1 July 2013. • The new "limited" AFSL The Government recently provided further clarification on the proposed "limited" AFSL that will be available from 1 July 2013. Whilst principally focussed on the accounting profession as a replacement for the expected removal of the current

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			licensing exemption enjoyed by the accounting profession for the recommendation and established of SMSFs for clients, the exact provisions of this limited license are yet to be released. Accordingly, for many in the accounting profession, a significant question is yet to be answered as to whether they will seek to apply for this new "limited" license, or will cease to provide SMSF recommendations to their clients altogether. Further, uncertainty still remains as to whether the existing AFSL exemption for the establishment of a SMSF will be removed from 1 July 2013 (coinciding with the introduction of the new limited AFSL) or whether it will remain in place until 30 June 2016 (when the streamlined application arrangements for accountants wishing to obtain a limited AFSL will cease). Whilst some accounting bodies have expressed a view that the existing exemption will remain until 30 June 2016, the Government has not made any public comment about the relevant date at this point in time. • The provision of tax agent services in conjunction with financial planning services The scope of the Tax Agent Services Act 2009 has been widely acknowledged as covering many of the issues necessarily included in the provision of quality financial planning advice to clients. The importance of financial planners being able to appropriately address taxation consideration in providing advice to clients has been acknowledged by successive Government ministers in providing a temporary exemption from the requirements of the Tax Agent Services Act. This exemption is currently due to expire on 30 June 2013. From that date, based on earlier Government announcements, it is expected that financial planners (including those who provided financial planning services as part of an accounting practice) will need to be registered with the Tax Practitioners Board, albeit this may be facilitated by ASIC). Whilst some Members may have already met this requirement through previous registration and recognition as a Registered Tax Agent, we understand there are still a number of members who will need to meet this new requirement. The Government has also announced that there may be additional education and competency requirements that will need to be met or demonstrated as part of this registration process. Final details of these requirements have not yet been rleased. Business are constrained by the level of change required

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			Each of the above measures, in isolation, represents a significant impact to the efficient operations of a business, and even more so for a small business. Taken in conjunction, with implementation dates aligning to 1 July 2013, they represent a significant risk to the ongoing revenue of these business in the period through to 1 July 2013 as they seek to adjust systems and processes to have a legally compliant business model from 1 July 2013. To add further change to these business runs the risk that they will not be able to cope and may result in them choosing to cease providing financial planning services to clients. If the supply of persons able to provide financial planning services reduces, this will inevitably lead to an increase in the cost of advice as demands outstrips supply. As an alternative, some Members may choose to relinquish their existing membership of the professional accounting bodies in order to not have to deal with an added layer of reform. **Recommendation:** We recommend that the application of APES 230 be deferred until at least 1 July 2015 to allow the providers of financial planning services sufficient time to adjust to the new regulatory regime introduced as a result of the FOFA measures incorporated into the Corporations Act.
57	11	154	**Clause 11 Transitional provisions** We are very concerned about the retrospective application of clauses 8 and 9 in respect of professional fees, Third Party Payments and Soft Dollar Benefits. Apart from the practical challenges that this may present to Members, there is a presumption against the retrospective application of legislation. Accordingly, we would strongly encourage the APESB to amend clause 11 and ensure any professional and ethical obligations in APES 230 commence on the date of any revised standard.
58	11	163	**Transitional provisions** Should the recommendations in our submission be adopted by the APESB, we recommend the transitional provisions in section 11 are removed from the standard.
59	EM – Appendix A	1	(i) Members in Business *Suggested additional Q&A:* *Question: Does the service of a Member, who provides professional advice (including for example, general taxation or auditing service) to a financial product provider in the production of a product disclosure statement or other such*

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			marketing material, fall within the scope of Financial Planning Advice under this Exposure Draft? *Facts: The Member is engaged by a financial product provider to comment on, for example, taxation or financial data text within a product disclosure statement that has been prepared by a financial product provider, in relation to a financial product publicly offered by that financial product provider. In this instance, the Member's client is the financial product provider and is not a person's whose financial affairs are referred to within the meaning of Financial Planning Advice under this Exposure Draft.* *Answer: As the Member is not providing Financial Planning Services to a Client in respect of the Client's financial affairs, the requirements of the Exposure Draft do not apply to the Member.* The highlighted text is suggested as … although the draft Exposure Draft Standard implies or infers it … clearer text should help address any concern among Members who engage in general professional services to a financial product provider … and which do not involve the provision of any financial advice to a person, as contemplated under the Exposure Draft or under relevant provisions of the *Corporations Act 2001*. Any misunderstanding or misconstruction in this area … may invite undue concerns as to whether the Member should hold an AFS licence … and/or where the Member has adequate professional indemnity cover.
60	EM – 3.3	124	e) Grant Thornton accepts the challenges that some members in Business may have with ethical restrictions and this is mentioned in 3.3 of the EM with the reasoning that "…some Members may not be in a position to determine or change the policies of their employer. On that basis the Member in Business should ensure that their membership of one of the three accounting bodies does not apply in such situations and a statement to that effect on any document that they are associated with."

Staff Instructions

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

RESPONDENTS

1	Tony Jacob, FCA
16	Pitcher Partners
19	Hewison Private Wealth
27	Brookes Deane & Powne
70	Bentleys (WA) Pty Ltd
120	KPMG
122	Count Financial Limited
124	Grant Thornton Australia
125	Geoff Munday, CA
127	CFOutsource Pty Ltd
129	Bongiorno & Partners (Vic) Pty & Lonsdale Financial Group Ltd
141	PwC
154	Deloitte
161	APPC
163	CPA Australia and the Institute of Chartered Accountants Australia

(Chronologically sequential numbering used for submissions received. Only those respondents with comments attributable to the drafting of specific provisions of APES 230 are included in this table.)