



Six Month Review of APES 310 *Dealing with Client Monies*

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1 February 2012

1. Executive Summary

1.1. Background

Accounting Professional and Ethical Standards Board (APESB) issued APES 310 *Dealing with Client Monies* (the Standard) in December 2010 with an effective date of 1 July 2011.

1.2. Reason for this report

In accordance with the constitution of APESB, a review needs to be performed six months after a Standard is effective. This report presents a review of the issues reported by stakeholders to the APESB and the proposed recommendations to address stakeholder concerns.

1.3. Issues identified

The concerns identified by stakeholders since the Standard was issued in 2010 are summarised below:

1. When acting as a trustee or power-of-attorney there is no Client relationship in place. However, paragraph 4.10 refers to "Dealing with Client Monies".
2. Paragraph 4.10 requires a Member acting as a trustee or power-of-attorney to apply the requirements of the Standard to the extent practicable, raising the issue of whether an audit is required.
3. As currently drafted, paragraph 8.3 removes the audit requirement from Members in Queensland.
4. Paragraph 7.6(b) refers to paragraph 5.5(b). However, the more appropriate reference should be to paragraph 7.2.
5. References to "account" in paragraph 5.5(b) and 7.2 are potentially confusing.
6. Some Members have not been able to open Trust Accounts in accordance with the requirements of APES 310.
7. Some Members have misinterpreted the requirement to provide an annual statement containing details relating to application of and interest earned on Client Monies.
8. Paragraphs 7.10 and 7.11 address the requirement to have bank accounts reconciled but do not address which party has responsibility for such reconciliations.

1.4. Summary of Recommendations

The following is a summary of the recommendations in respect of the identified issues:

1. Redraft paragraph 4.10 to remove reference to “Client” and provide context that the Standard should be applied to the extent practicable subject to obligations under the trust or power-of-attorney relationship.
2. No amendments are proposed in relation to clarification of whether an audit is required when acting as a trustee or power-of-attorney.
3. Amend paragraph 8.3 to remove the reference to paragraphs 8.1 and 8.2. Thereafter revise paragraph 8.3 in a manner that it provides an exemption for legislative audits that have a similar scope. However, where the legislative audit does not cover the same subject matter then the Member needs to get an audit done of the subject matter not covered by the legislative audit.
4. Redraft paragraph 7.6 to refer to paragraph 7.2 rather than paragraph 5.5(b).
5. Redraft paragraph 7.2 to clarify that interest payable must be applied to the “credit of the Client”.
6. Technical Staff to monitor this issue and if necessary liaise with staff of the ABA and professional accounting bodies.
7. Redraft paragraph 7.8 to clarify the requirements for providing an annual statement containing details relating to application of and interest earned on monies to Clients.
8. Revise paragraph 7.10 and 7.11 to refocus on who has reconciliation responsibility; the Member or the Client. Where the Member has this responsibility, they can be required to reconcile the Bank Account on a timely basis. Where the Client has this responsibility, the Member can be required to make information regularly available to allow a timely reconciliation to occur.

2. Review of Issues

2.1 Dealing with Client Monies as a trustee or power-of-attorney

Issue

A stakeholder noted that paragraph 4.10 refers to the Member's legal and fiduciary duties as trustee or attorney when Dealing with Client Monies. However, when acting as a trustee or attorney, there is no Client relationship in place therefore paragraph 4.10 should not state "when Dealing with Client Monies".

Analysis of issue

As there is no Client relationship in place, trustees or powers-of-attorney are not strictly “Dealing with Client Monies”.

Stakeholders

Members of Professional Accounting Bodies acting as trustees or powers-of-attorney

Recommendation/Status

Paragraph 4.10 to be redrafted to remove reference to “Client” and provide context that the Standard should be applied to the extent practicable subject to obligations under the trust or power-of-attorney relationship.

2.2 Requirement for audit when acting as a trustee or power-of-attorney

Issue

A stakeholder noted that paragraph 4.10 states that a Member acting as a trustee or power-of-attorney shall apply the requirements of the Standard to the extent practicable, raising the issue of whether an audit is required.

Analysis of issue

Paragraph 1.3 of APES 310 states that Members in Public Practice shall follow the mandatory requirements of the standard when they Deal with Client Monies. When acting as a trustee or power-of-attorney Members need to consider whether they are doing so as a Member in Public Practice or in a personal capacity. The standard applies only where the Member is providing services to a Client.

Stakeholders

Members of Professional Accounting Bodies acting as trustees or powers-of-attorney

Recommendation/Status

In circumstances where the Member is acting as a trustee or power-of-attorney, the Member should use professional judgment to determine whether or not an audit is required. The current Standard allows for this to occur and accordingly no amendments are proposed to APES 310.

2.3 Audit of Client Bank Accounts in Queensland

Issue

A stakeholder noted that as currently drafted, paragraph 8.3 removes the audit requirement under APES 310 from Members in Queensland where an audit has been conducted in accordance with the *Trust Accounts Act 1973(Qld)*. The Queensland Act however does not address Client Bank Accounts. Accordingly, some Members have interpreted this to mean that if an audit is performed in respect of the Queensland act then there is an exemption from APES 310 for Trust Accounts as well as Client Bank Accounts.

Analysis of issue

Paragraph 8.3 states as follows:

Paragraphs 8.1 and 8.2 do not apply to a Member in Public Practice in circumstances where a Trust Account is audited in accordance with Trust Accounts Act 1973 (Qld) or similar legislative requirements.

Stakeholders

Members of Professional Accounting Bodies in Queensland.

Recommendation/Status

Propose amending paragraph 8.3 to remove the statement that '8.1 and 8.2 do not apply'. Thereafter revise the paragraph to state that in circumstances where another audit is being performed in accordance with legislative requirements (such as the *Trust Accounts Act 1973 (Qld)*), and covers the same or some of the subject matter of the APES 310 audit then the Member does not need to get a second audit done of the same subject matter. However, if that legislative audit has a different scope and does not cover all of the subject matter of the APES 310 audit then the Member still needs to get an audit done of the subject matter not covered by the legislative audit.

2.4 Cross reference of record keeping in paragraph 7.6(b)

Issue

Paragraph 7.6(b) requires records to be kept in such a manner as to disclose clearly the details and basis of calculation of all interest earned on Client Monies held in a Trust Account and that the interest has been applied by the Member in accordance with paragraph 5.5(b).

A stakeholder has noted that the reference to paragraph 5.5(b) would more appropriately direct the Member to paragraph 7.2.

Analysis of issue

Paragraph 5.5 states as follows:

A Member in Public Practice shall not open a Trust Account with a Financial Institution unless its terms and conditions relating to Trust Accounts require that:

(a) ...

(b) any interest payable in respect of the account balance is credited to that account.

Paragraph 5.5(b) refers to the type of account that is being opened and the conditions of the Financial Institution whereas paragraph 7.2 states as follows:

7.2 A Member in Public Practice shall ensure that all interest earned on Trust Accounts is credited to the relevant Client's account.

Stakeholders

Members of Professional Accounting Bodies

Recommendation/Status

It is recommended that on the next revision of APES 310, paragraph 7.6 be amended to refer to paragraph 7.2 rather than paragraph 5.5(b).

2.5 Clarification of the reference to ‘account’ contained in paragraph 7.2

Issue

A stakeholder has noted that the reference to “account” in paragraphs 5.5(b) and 7.2 is potentially confusing.

Paragraph 5.5(b) requires that the bank account which is used as a Trust Account must have a condition that any interest payable in respect of the account balance is credited to that account. That is, not to a different bank account. Paragraph 7.2 requires that all interest earned on Trust Accounts be credited to the relevant Client's account.

Analysis of issue

The potential confusion arises from the possible interpretation that paragraph 7.2 is referring to the Client's bank account as opposed to the “credit of the Client”. The reference to account in paragraph 7.2 is intended to be to the credit of the Client and not the bank account.

Stakeholders

Members of Professional Accounting Bodies

Recommendation/Status

It is recommended that in next revision of the Standard, paragraph 7.2 be redrafted to clarify that interest payable must be applied to the “credit of the Client”.

2.6 Inability to open Trust Accounts in accordance with the requirements of APES 310

Issue

A stakeholder raised concern that some Members are having trouble complying with APES 310 due to their inability to open Trust Accounts with the major banks.

Analysis of issue

The issue is that a few banks have been reluctant to open Trust Accounts for some Members. During initial drafting of APES 310 the Australian Bankers’ Association (ABA) was consulted and their comments were incorporated in to APES 310. If difficulties with opening Trust Accounts continue then further dialogue on this issue may be necessary with the ABA and the major banks.

Stakeholders

Members of Professional Accounting Bodies

Recommendation/Status

Technical Staff to monitor this issue and if necessary liaise with staff of the ABA and professional accounting bodies.

2.7 Requirement to provide a statement containing details of application of and interest earned on Client Monies

Issue

A stakeholder has raised a concern in respect of paragraph 7.8. This provision requires that the Member provide a statement on application of Client Monies and any interest earned on Client Monies.

Analysis of issue

The stakeholder noted that Members often misinterpret paragraph 7.8 as meaning that an annual statement must be issued to all Clients at the end of the year, regardless of whether any other statement that has been provided to them during the year.

Paragraph 7.8 states:

A Member in Public Practice shall provide a statement containing details of the Member's application of Client Monies and any interest earned on Client Monies, either to the Client or to such other person as directed by the Client:

- (a) in respect of all transactions, at least annually;*
- (b) upon completion of the matter requiring the maintenance of the Trust Account or Client Bank Account;*
- (c) in respect of any transaction, upon written request from the Client; or*
- (d) when a Trust Account or Client Bank Account is closed or if the Member's authority to operate a Client Bank Account is revoked.*

The Member is only required to provide a statement if one of the circumstances described in 7.8(a) – 7.8(d) applies.

Stakeholders

Members of Professional Accounting Bodies

Recommendation/Status

Given the level of misinterpretation by Members it is recommended that paragraph 7.8 be redrafted to clarify that where the Member has already communicated the transactions in writing during the year then there is no necessity to issue an annual statement.

2.8 Responsibility for bank reconciliations

Issue

A stakeholder noted that paragraphs 7.10 and 7.11 address the requirement to have bank accounts reconciled. The stakeholder interprets the provisions as focusing on who has receipt of the bank statements as opposed to who has responsibility for the reconciliation function, particularly where bank statements

are made available electronically, as “receipt” is available to whoever accesses or downloads the electronic records.

Analysis of issue

Paragraph 7.10 requires the Member to provide the Client with details of transactions undertaken by the Member. This responsibility placed on the Member provides the Client with the ability to reconcile all transactions that appear on their bank statement when received directly from a Financial Institution.

Paragraph 7.11 requires a Member who operates a Client Bank Account to reconcile that account at least every 25 business days. This requirement could be an issue where the Client also transacts on the account leading to the potential implication that the transactions in the account will not be reconciled by either the Member or the Client, where the Member operates a Client Bank Account.

Stakeholders

Members of Professional Accounting Bodies

Recommendation/Status

When originally drafted, the intention was to ensure that a Member who is solely operating an account and receiving bank statements, reconciles that account. It is recommended that paragraph 7.11 be revised to focus on circumstances where the Member has reconciliation responsibility. If the member has responsibility to reconcile the accounts, then the standard can require the regular reconciliation of the account; if it is the Client, then the standard can require the Member to regularly make available information that would allow the reconciliation to occur.

Technical staff will examine this issue, review paragraphs 7.10 and 7.11 and revise the wording in a manner that incorporates the original intention of the Board, which is to have a safeguard for Members Dealing with Client Monies through the application of the control of a timely reconciliation of Client Bank Accounts.