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Dear Kate

Response to Exposure Draft APES 230 – Financial Advisory Services

We appreciate the opportunity to respond to the Exposure Draft of Proposed Standard: APES 230 Financial Advisory Services ("APES 230") issued by the Accounting Professional & Ethical Standards Board ("the Board").

While we are supportive of strengthening professional standards in the area of financial advisory services, we are not supportive of the standard as a whole and have a number of general and specific comments in respect of APES 230 which are set out below.

General comments

We are of the opinion that APES 230 should focus on enhancing the quality of advice provided and levels of disclosure required around financial services rather than prescribing the manner in which fees for such services are determined.

We are concerned that insufficient thought has been given to the practical implications of introducing the standard in its current form. We believe that the requirements of APES 230 extend beyond the requirements of current legislation such that members will be placed at a distinct competitive disadvantage to those financial service advisors not subject to the requirements of the standard.

We also note that in recent discussions held between our network and representatives from the Board, there was a clear intention on your behalf to use this standard to both remove perceived conflicts of interest and to ensure protection for consumers. The requirement within both the standard, and soon to be law, for advisers to have a fiduciary duty with respect to their clients removes this conflict as they will be compelled by both the standard and the law to ensure that they are acting in the best interests of the client. With this duty in place, the proposed bans (both retrospective and prospective) on a variety of different payment methods become unnecessary.

Further, as members of the Institute of Chartered Accountants in Australia, we certainly like to consider ourselves as members of this industry who provide high quality advice.

The introduction of this standard as drafted would:

- Place accounting body members at a considerable disadvantage to the rest of the industry;
- Limit the types of clients we can assist (items such as corporate super, mortgage broking and insurance would no longer be practical); and
- Lead to consumers returning to general advisers who are in the main less qualified – resulting in the exact opposite to what you are trying to achieve, which is to protect the end consumer.

After considering several options, we fear the only possible outcome to ensure compliance with APES 230 will be for accounting practices to examine restructuring their businesses to avoid these requirements or, at the extreme, dispose of their financial advisory service lines all together.

Specific comments

1) Legislative alignment

It is our view that it is impulsive to implement APES 230 before the Government releases legislation which will most likely overlap with the issues dealt with in the proposed standard. Furthermore, the proposed commencement date of 1 July 2011 precedes the Future of Financial Advice reforms (2012) and will be all but impossible to achieve given the fundamental changes required to fee structures, business models and service offerings.

2) Jurisdiction

The APES Board has a vision "*to be recognised by our stakeholders for our leading contribution in achieving the highest level of professional and ethical behaviour in the accounting profession*". Financial Planning and Financial Services are a distinctly different industry that, at its very core, provides both services AND products. It is inappropriate to impose the beliefs and practices of a purely service based accounting business onto one that provides service and product hand in hand.

3) Fiduciary duty

Fiduciary obligations that are imposed upon a financial advisor when providing a Financial Advisory Service to a client arise due to:

a) The inequality of the relationship between a financial advisor and client in terms of professional knowledge, skill and experience;

b) The control that a financial advisor has over the professional information and advice provided to a client;

c) The ability and opportunity for a financial advisor to significantly influence a client as a result of the position set out in (a) and (b) above; and

d) The dependence and vulnerability of a client in relation to their financial advisor.

When determining whether fiduciary obligations have been breached, consideration must be given to whether profit and conflict rules have been contravened. Where a fee is calculated as a percentage of a portfolio's sum, based on factors such as:

- complexity;
- degree of difficulty;
- professional knowledge;
- skill and expertise;
- responsibility;
- risk;
- time; and
- resources

but is fully disclosed to and accepted by a client there can be no breach of the profit and conflict rules.

Asset based fees are not inconsistent with a fiduciary duty where a client provides fully informed consent to the amount and method of charging. In fact this method clearly aligns the goals of an investor (to increase the value of their investments) with that of their adviser who will receive a small fraction of that increase.

4) Accountant planners placed at a competitive disadvantage

It is our opinion that by expecting more from your members than the Federal Government expects of non-members, you are placing your members at a commercial disadvantage that is prejudicial to their professional practice and could be anti-competitive and commercially damaging.

5) Imposition of prescribed fee models

In a competitive market customers should be given a choice as to whether a fee for service remuneration model or some other remuneration model is used provided that the remuneration model is consistent with current legislation. The mandatory requirements of APES 230, in relation to a fee for service model, reduce customer choice with no corresponding benefit to customers.

6) "*Fee for Service*" and "*Commission*" require clarification

It is our view that the definition of "Commission" provided in APES 230 is very broad and encompasses almost all payments made to advisors (including payments from financial planning licensees to their planners). In our view, "Commission" should be defined as amounts paid by product providers to planners (or their AFS licensee) out of their own resources (i.e. not out of client funds) for putting clients into (or for keeping them in) their product (i.e. for services provided by the planner to the product provider – not for services provided by the planner to the client).

The definition of "Fee for Service" is also not clear and it is uncertain whether accountant planners can continue to receive commission as the prohibition relates only to "charging" clients in a particular manner (an adviser does not charge "commission" in the true meaning of that term – it is paid by product providers to planners or their AFS licensee).

7) Limited advice issues

It is likely under the current Government reforms and proposals that limited advice services will increase as the Government seeks to allow for the provision of advice for clients who may not be able to afford a full suite of services (or may not require them). Of concern in the proposed standard is paragraph 7.1 which seeks to propose that advisors research alternative strategies and courses of action that can reasonably be expected to meet the client's financial needs. We believe that further clarification of this requirement is needed.

8) Scope of services this applies to

It is unclear how this standard applies to activities such as business broking or other service offerings, for example corporate finance – charging a percentage of funds raised? We would argue that the inability to charge a fee based on percentage of assets would again put members at a commercial disadvantage when compared to other competitors in this space.

9) Clarification as to application to accountants conducting planning activities in a separate business

Clarity is required in regards to which members APES 230 will apply to. For instance, it should be made clear that the standard will not apply to financial advisers who run their financial planning business separately from their accounting business. The APESB should not have jurisdiction to determine the standards that apply to businesses run by members that are not accounting businesses.

10) Retrospective application to trail commission

In our opinion, APES 230 should be applied prospectively rather than retrospectively in that it should not prohibit the receipt of commission for services provided prior to the application of APES 230. At a

minimum, there should be a grandfathering of prior agreements, particularly when a client has been fully informed of the trailing commission to be received by a planner.

It must be noted that amending any retrospective agreements will not change the advice or the process, as the advice has already been given and the agreement and valid contracts have already been entered into. Those agreements and contracts were consistent with the requirements at the time as such should not be required to be amended.

11) Contingency fees

There is no indication of whether this standard will apply to contingency fees for non-financial services and, if not, how this will result in equitable treatment of members.

The Partner Principals responsible for Financial Services at both Moore Stephens Sydney and Melbourne stand ready to assist you in creating a robust standard to ensure practices adhere to strict disclosure and quality of advice processes.

We would be pleased to discuss our comments with members of the Board or its staff. If you wish to do so, please do not hesitate to contact Charlie Viola on 02 8236 7700 or Daniel Minihan on 03 8635 1800.

Yours sincerely,

Stephen Humphrys
Chairman
Moore Stephens Australia

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