



31 August 2021

Chief Executive Officer  
Accounting Professional & Ethical Standards Board Limited  
Level 11  
99 William Street  
MELBOURNE VIC 3000

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

Dear Sir/Madam,

**SMSF ASSOCIATION SUBMISSION – APESB EXPOSURE DRAFT 03/21 PROPOSED AMENDMENTS TO FEE-RELATED PROVISIONS OF APES 110 CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS (INCLUDING INDEPENDENCE STANDARDS)**

The SMSF Association welcomes the opportunity to provide this submission in response to the Accounting Professional and Ethical Standards Board Limited (APESB) exposure draft 03/21 for the proposed amendments to the fee related provisions of APES 110.

Our submission is focused on the proposed paragraph AUST R410.14.1, which discusses auditor independence and the impact of referral fees, including the introduction of a 20% threshold. These measures will directly impact not only self managed superannuation fund (“SMSF”) auditors but also trustees and referral firms. We have therefore sought to widely consult with our members on the proposed changes.

As part of our consultation process, we undertook several member engagement activities, including a series of member round tables, discussions with our Specialist SMSF Auditor Discussion Group and direct member consultation and feedback.

Feedback from members on what would be considered an appropriate threshold has been varied. SMSF audits are conducted by ASIC registered SMSF auditors in a variety of firm types, structures, and sizes. Therefore, the impacts of a particular threshold will be varied.

We do have concerns that the introduction of a threshold will become a dominant focus, may cause unintended consequences, will negatively impact start-up businesses and risks becoming a barrier to entry.

The current framework requires auditors to appropriately address the referral fee income, consider the actual or perceived risks, and to apply safeguards in the context of the environment of their firm, fees and sources of fees to eliminate the threat, or reduce it to an acceptable level.

Further, the Australian Taxation Office’s current view is that 20% threshold for referral fees is a “*useful guide*”. Utilising the current principals-based approach overlaid with industry specific regulator guidance is appropriate and practical. It eliminates the distortions and unintended consequences that emerge where standards become prescriptive.



#### **Current Standard – Paragraph AUST R410.3.1:**

When the total fees in respect of multiple Audit Clients referred from one source represent a large proportion of the **total fees of the Firm** expressing the audit opinions, the Firm shall evaluate the significance of the threat and apply safeguards when necessary to eliminate the threat or reduce it to an Acceptable Level. [Emphasis added]

#### **Proposed Standard – Paragraph AUST R410.14.1:**

When the total fees in respect of multiple Audit Clients referred from one source represent more than **20% of the total fees of the Engagement Partner, an Office of the Firm or the Firm** expressing the audit opinions, the Firm shall evaluate the significance of the threat and apply safeguards when necessary to eliminate the threat or reduce it to an Acceptable Level. [Emphasis added]

#### **Codifying a Threshold - Consistency**

We note an inconsistency in how threshold percentages are positioned, and to be applied across different provisions within the exposure draft.

When we look to the fee dependence threshold at paragraph R410.15 (ED 03/21), regarding audit clients that are not Public Interest Entities, a threshold of 30% is proposed for a single audit client. Further, these are proposed to be applied and tested after five years.

Paragraph AUST R410.14.1 does not equally provide for a similar period over which auditors must consider audit fees from a single referral source. The period over which the standard is to be applied is not stated or defined.

When considering fee dependency and the associated risks, it is difficult to see the difference between a parcel of fees from one referral source to a single audit client. It could be argued that the referral of a parcel of fees poses a lower risk to a single audit client.

#### **RECOMMENATIONS:**

The current framework and standard are to be retained and is to be supplemented by Regulator guidance to address industry specific issues and concerns.

If a threshold test is to apply, a threshold of 30% should apply in respect of total fees from multiple audit clients referred from one source. This ensures a consistent approach.

A period of two (2) years to be introduced over which auditors must consider audit fees from a single referral source.

#### **No Test Time Defined**

The exposure draft does not address at what point in time the threshold test must be considered or applied. This can result in a vastly different outcome when applied at different points across a financial year.



Concerns are held that an auditor may take genuine steps to comply with the standards, yet still fall foul of these provisions if a regulator or a court, were to apply the threshold at a different point in time.

An auditor may in good faith, at the start of a new financial year, undertake an assessment of their likely fee income and sources for the year. Whilst fees, including referral fees, for the previous year may assist in a budgeting or planning process, there are no guarantees that the same level of work will be received the following year.

There are a variety of external factors that will impact the referral of audits that may not be known by the auditor. An unexpected increase or decrease in referrals may occur during the year. Indeed, fluctuations are not uncommon. It is the extent or degree that often can not be determined.

Member's also raised concerns about how they are to assess a proposed new referral of audit fees. In practice, these are not guaranteed to come to fruition. A new referral partner may indicate at the start of the relationship to submit, for example, 100 SMSFs for audit. However, only a small fraction of these (e.g. 20 or 40 audits) may be received.

The number of audits to be received by an auditor are contingent only until the audit is physically received.

The auditor cannot control this environment and often won't know until the end of the financial year what their actual audit program for the year looked like, or what the value and percentage of fees from various sources were.

We understand that the threats and risks need to be appropriately considered and addressed at various points during the financial year. Whether this is at the start of a financial year when planning for the year ahead, or when the auditor is approached by a potential new referral source, or on review at the end of the financial year.

To codify a specific percentage puts the auditor in an impossible position. At what point in time does the auditor need to comply with the threshold? Or should the auditor simply assume that the threshold will not be met and apply safeguards. This would likely involve at least annual independent audit reviews, which are costly, time consuming and increase the cost of business.

Auditors should be able to address these issues as part of their ASQC 1 *Quality Control for Firms that Perform Audits and Review of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements* issued by the Auditing and Assurance Standards Board.

#### RECOMMENATIONS:

Auditors need to reasonably consider, and appropriately apply the standards at all times.

Auditors need to ensure that their ASQC quality control processes and procedures adequately address auditor independence and the impact of referral fees.

Audit procedures and work papers should appropriately address auditor independence and the impact of referral fees for all audit engagements.



#### Codifying a Threshold with Appropriate Safeguards

Regardless of the final threshold that is to apply, it is essential that practical and appropriate safeguards are preserved, and that auditors are able to apply those safeguards reasonably and practically.

Any guidance through the updated *Independence Guide* that follows any future update to APES 110, needs to be reflective of industry best practice, but also be practical, easily implemented and cost effective.

Our members are concerned that the introduction of a codified threshold will become a hard test that will require them to decline some, if not all of the audits referred to them from a particular referral source.

The concern is that the Regulator's intent for these proposed changes, and industry's interpretation of them, may differ to any further interpretive guidance contained in a future version of the *Independence Guide*. Future guidance may result in any thresholds that are codified, evolving into a hard threshold test.

Concerns were raised around the potential increase to compliance costs and the costs to SMSF trustees.

In the current SMSF audit environment, auditors have been subject to ever increasing compliance obligations. This is largely due to the ever-evolving legislative environment and continued engagement by the Australian Taxation Office as regulator.

Concerns were also raised on what additional compliance burdens will be placed on auditors and the resulting cost to business. Many SMSF auditors operate within small businesses. They uniformly agree on the need for clear and consistent standards. However, compliance with the standards should not be onerous, either administratively, or financially.

In an environment that has seen continued increases to compliance obligations placed on SMSF auditors, real concerns are held as to the additional cost to business, in an environment where margins are already under pressure.

This is also of particular concern to small firms and start-ups, as there are no considerations included in the exposure draft as to how the proposed changes would apply to new firms as distinct from established firms.

It was noted that the impact of these changes disproportionately impacts smaller firms as opposed to larger firms or those operating within large corporate businesses structures.

#### Threshold Test Met but Small Audit Books

Strong concerns were raised by our members around auditors who may meet a codified fee threshold, due to the presence of other non-audit fee income or sources. Particularly where the auditor undertakes only a small number of audits each year. The auditor takes on these engagements each year for the sole purpose of maintaining their SMSF auditor registration with ASIC.



Presently there are no prescribed minimum audit numbers that need to be conducted. However, ASIC has the power to cancel an auditor's registration where no audits have been completed over a period of time.

Although the auditor complies with the codified threshold, they nonetheless encounter the same independence threats, as practitioners who undertake a greater number of audits from various sources. The risk to independence arises as the auditor would not want to lose their audit engagements in order to preserve their ASIC auditor registration.

We are not advocating for the codification of a minimum number of audits into APES 110. This determination should be left to the regulators and where appropriate, legislative change. However, the example highlights how the introduction of a threshold does not eliminate auditor independence risks in this circumstance.

#### Loss of a Referral Source

A firm may have multiple referral sources, none exceeding the prescribed threshold. However, similar threats can emerge to those addressed in the exposure draft where:

- There is a risk that the firm will lose one its referral sources
- The loss of those audits will cause one or more remaining referral sources to exceed the threshold.
- As a result, the firm is required to undertake further work due to the additional procedures required which is a time cost to business.
- Additional costs will be incurred as the scope and size of any annual reviews will be expanded.

Consideration on the impacts of actual or perceived independence threats should not only be applied on the acquisition of new audit clients, but also on the possible loss clients. Including where the parcel of fees itself sits below any prescribed threshold.

#### Test Application to be Expanded

The current framework requires auditors to consider referral fees in the context of the firm's total fees. The exposure draft is more detailed and prescriptive and is to apply to the "*total fees of the Engagement Partner, an Office of the Firm or the Firm expressing the audit opinions*" (AUST R410.14.1).

For some firms, due to their size and structure, the test will need to be applied at multiple levels. If the test is applied at the firm level, accounting for firm wide income, could result in audit fees from one referral source falling well below a prescribed threshold. However, when we distil that down further to the engagement partner, the outcomes can be very different.

This becomes further complicated when we consider the definition of an Engagement Partner:

*The partner **or other person** on the Firm who is **responsible for the engagement** and its performance, and for the report that is issued on behalf of the Firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body*  
[Emphasis added]



This definition has wider application to those who are business owners or equity holders in a firm. An example from one of our members involves:

- The Firm has three (3) equity partners
- None of the partners are ASIC Registered SMSF auditors
- One (1) senior staff member in the firm is the sole ASIC Registered SMSF auditor

Clarity is needed on how the definition is intended to be applied in this type of scenario and other practice structures and arrangements.

This scenario also highlights how the application of this exposure draft will be vastly different, depending upon the size and structure of the firm, how it operates and who undertakes audits within the firm.

#### [Referral Source - Definitions](#)

The concept of a referral source or a referrer needs to be clearly and specifically defined.

At first instance, a referring firm such as an accountancy practice or administrator are obvious examples. However, in practice we see a range of different relationships and business activities around SMSF audits.

These could include panel or pooling arrangements. Is the panel or the audit pool considered to be the referral source? Or are the firms contributing audit engagement to the panel or the pool the referral relationship?

The panel or audit pool are merely the mechanism by which the referral partner seeks to engage with an independent, registered auditor. Often there is no commercial arrangement between the administrator or the audit panel or pool and the SMSF auditor. The operator merely acts as a facilitator. It then falls upon the respective parties to negotiate any commercial arrangements, fees etc.

We would suggest that in circumstances as set out above, the referral partner should be the firm contributing the audit engagement, and not the mechanism that connects the auditor and accountant/administrator.

#### [Relevant Factors to be Considered](#)

The current version of APES 110 paragraph 410.3 A2 notes that *“factors that are relevant in evaluating the level of such threats include:*

- *The operating structure of the Firm.*
- *Whether the Firm is well established or new.*
- *The significance of the client qualitatively and/or quantitatively to the Firm.*

However, when we look to the exposure draft, the reference to new or established firms are omitted. Exposure draft paragraph 410.14 A3:

- *The operating structure of the Firm.*
- *Whether the Firm is expected to diversify such that any dependence on the Audit Client is reduced.*



The application of the proposed standard will have different impacts and considerations where the firm is a new firm as opposed to an established firm. Regardless of the age of the firm, independence must still be appropriately considered and managed. However, consideration must be given to new firms.

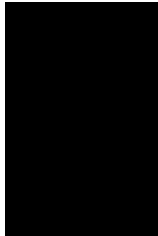
The introduction of prescriptive standards should not create a barrier to entry for new entrants to the sector.

The Australian Office is of the view that a new firm, is a firm operating for less than two (2) years. We believe that this is a reasonable assertion.

Specific transitional measures need to be considered for new firms, to allow them to enter the market but at the same time, ensure that they are ultimately meeting their professional and ethical obligations, in a reasonable and practical manner. Similarly, appropriate, and practical guidance will be needed to assist these firms in meeting their obligations.

Should you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,



Peter Burgess  
Deputy CEO/Director of Policy and Education  
SMSF Association

#### **ABOUT THE SMSF ASSOCIATION**

The SMSF Association is the peak body representing SMSF sector which is comprised of over 1.1 million SMSF members who have more than \$700 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.