WORKING DRAFT
Constituents' Submissions – Residual Issues Table
Exposure Draft 02/10: APES 230 Financial Advisory Services

Note: Specific comments relating to APES 230 Financial Advisory Services are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Reference to Table	Respondent	Respondents' Comments
1	From GC Item 4	SD	I read the exposure draft with interest as and commend the exposure draft for the following reasons: 1. Clearing explaining the future for Chartered Accountants in Financial Services and creating a very strong point of difference in the market place to Commission/ Asset Based fee Financial Advisers 2. Clearing explaining the requirements of a Chartered Accountant to operate in business with the associated links to the Industries standard for Marketing Professional Services, Terms of Engagement and Dealing with Client Monies. I make this point as I asked these questions many years ago and the Institute was not able to help, this now makes it very clear. 3. Clearing explaining the what is required for Professional Independence, Terms of Advice, Reporting the Financial Advice, document quality etc. I find all this information a breath of fresh air from the Institute. Thank you. Now may I request the following in the next steps 1. Impact on these terms on Chartered Accountants as Members in Business as employed financial planners or members of a dealer group. Specifically, what is the policy of the ICAA where these members in business work for or in a dealer group who charge commissions / Assets based fees. (Personal Note: With all the changes in the industry I sold my practice and moved to Orange NSW, and took a role with Westpac Financial Planning. They currently have commissions/ asset based fees and see no change in the immediate future. What does this means for me over the long term) 2. Is the ICAA able to provide information on the fee for service modules to explain a. The cost of Financial Services to the client and how advice fees is only part of the total cost. Case study to include i. What the costs of Financial Services? ii. What each party involved in Financial Services does for the fee? iii. How the client benefits from the services of each party? b. Difference between Fee for Service and Commission/ Asset based fees in a manner the client can understand and explaining the fiduciary duty to clients c. Different type of Fee for Services models i. Hourly rate ii. Retainer model iii. Hybrid iv. Others to be advised d. Case studies on models and how the fee are collected from the client and the annual payment statement. 3. Is the ICAA aware of the Dealer Groups who have accepted this Fee for Service model and support the changes and / or does this change mean ICAA members in will need to take out their own licence?

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			a. Can ICAA gather information and provide consulting advice such as a survey of dealer groups with information on those that do accept the Fee for service model? b. Can ICAA provide case studies on what is required to obtain and operate under your own licence? Including i. Licensing requirements (does this vary where non commissions or advice fees charged) ii. Compliance requirements iii. Support service requirements and list of providers 1. Research for Investments 2. Insurance (non commission) 3. Compliance providers 4. Professional indemnity cover 5. Planning software providers 6. Etc 4. Where a Chartered Accountant provide Financial Advice that includes tax advice, will they be required to obtain a Tax Agent certificate. If so what is involved and how can the ICAA assist? 5. Where a Chartered Accountant provides Financial Advice that includes Lending or Debt, they will not be able to accept a commission. Is the ICAA aware of groups regulated under the Australian Credit Licence who provide lending on this bases. a. Can ICAA gather information and provide consulting advice such as a survey of Australian Credit Licencee's with information on those that do accept the Fee for service model? b. Can ICAA provide case studies case studies on what is required to obtain and operate under your own licence? Including i. Licensing requirements (does this vary where non commissions or advice fees charged) ii. Compliance requirements iii. Support service requirements and list of providers 1. Research for lending 2. Compliance providers 3. Professional indemnity cover 4. Planning software providers 5. etc 6. Where a Chartered Accountant meets all of these requirements, will the ICAA provide the ICAA in Financial Services with marketing and promotional material a. Explaining the Fiduciary Duty to the client b. Explaining the point of difference c. Explaining the fee for service modules This is all my feedback. Trust it is useful.

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2	From GC Item 11	DMR	Set out below are our comments in respect of this Exposure Draft. Paragraph references used are as per the Exposure Draft. **Background** We hold an Australian Financial Services Licence. The Licence provides: 1. This licence authorises the licensee to carry on a financial services business to: (a) provide general financial product advice for the following classes of financial products: (i) securities; to retail and wholesale clients. As you can see from the above, we holds an **Australian Financial Services Licence**, which authorizes us to provide **Financial Advice** on financial products such as shares. The terms shown in bold are defined in the Exposure Draft. Our assignments under the licence are limited to the preparation of independent expert's reports and also potentially to option valuations. In all of these assignments we are retained by a company pursuant to an engagement letter, however the reports are made available to all of the company's shareholders.
3	From GC Item 16	JR	Thank you for inviting comment on the proposed Standard APES 230. Johnston Rorke and our financial services subsidiary, JR Wealth Management, wish to make a submission to the board for your consideration. **Johnston Rorke** Johnston Rorke is an accounting and advisory firm providing a full range of services to private and family controlled group and businesses, professional services firms and the individuals within those organisations. Since forming in Brisbane in 1974, Johnston Rorke has grown to become a leader in our market. We have 14 partners and more than 120 staff. The firm consists of Business Advisory Services, JR Pharmacy, JR Superannuation, Taxation, Audit and Corporate Services. We also have specialist IT services – JR Bizlink and JR Spacelink, which provide accounting and management reporting to pharmacy clients. **JR Wealth Management** JR Wealth Management is a new initiative of Johnston Rorke, having received our own Australian Financial Services Licence on 31 August 2010. The partners of Johnston Rorke have recognised the need to provide an independent service to clients of the firm that provides investment advice in the best interest of our clients. To maintain this independence, we have taken the additional time and expense to hold our own AFSL. We also saw the need to have complete transparency with our clients, and will not receive any trail commissions or rebates of fees from any product providers or third parties. However, our business model is to charge clients who are part of our core Portfolio Management Service and asset-based fee.
4	From GC	GGBW	The purpose of this document is to respond to the Exposure Draft of Proposed Standard APES 230 Financial Advisory Services ("APES 230")

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	Item 20		issued by the Accounting Professional & Ethical Standards Board ("APESB"). Our business, GGBwealthcare Pty Ltd, operates as a Sydney based multi-family office serving the needs of a limited number of ultra high net worth families who are domiciled across Australia and elsewhere in the world. We have our own AFSL (number 340355), which allows us to advise and deal on a wide range of issues with our clients. Importantly, all our clients qualify as wholesale/sophisticated investors and, in terms of our client engagement documentation, we require client authorisation before we execute any instruction or implement any advice. As you would expect, independence, objectivity, integrity and respect for privacy and confidentiality are paramount for the success of our business. Accordingly, we accept no rebates, retrocessions, commissions or any other incentives from any financial institution with which we place funds and, more importantly in our view, our advice is entirely unfettered as we are not owned by a financial institution and therefore do not act as a 'Trojan Horse' distribution channel for any manufacturer's financial product. Accordingly, irrespective of the fact that the bulk of our revenue is determined by reference to the quantum of funds under our influence (a percentage based asset fee arrangement), we believe that our business is absolutely designed to avoid conflict of interest. We are a small business employing highly qualified people - 60% of our staff complement is made up of Chartered Accountants – and we consider our culture to be deeply aligned with rendering the highest levels of client service and constantly sensitised to the 'fiduciary duty' we have towards our clients. **General comments** Accordingly, whilst we are encouraging of strengthening professional standards in the area of financial advisory services and are, on balance, broadly supportive of the proposed standard's sentiment, we are concerned that insufficient thought has been given to the practical implications and ramifications of certain aspects of the new standard, most notably that of banning percentage based fee arrangements. We are of the opinion that APES 230 should focus on enhancing the quality of advice provided and the nature of disclosure required for those Chartered Accountants operating within the financial advisory services industry.
5	From GC Item 22	SCT	Having met with Robert MC Brown last week herewith my late but token submission to your draft APES 230 submission. My consultancy business has been working with financial planners since inception in 1993. Our objective is to build the most valuable advisory firms in the world. I have included my personal biography. I submit to you a book I wrote last year 'What Price Advice' which is based upon the practice and initiatives I have observed throughout great financial planning businesses throughout Australia, USA and UK. The Australian advice financial profession is at a fork in the road. The destination is providing significantly better financial outcomes for all Australians and the two paths before us lead to this destination. The first path advocated by Chris Bowen's future of advice is long, winding and slow, say ten years. The second path with your excellent submission support is steeper, more challenging, and quicker, say three years. Australians want better financial outcomes in their lives much more than they want financial products or financial effort. However the challenges for the facing the product based financial planning industry are similar to those facing the hourly rate based compliance driven accounting industry. Both have their baggage, and a necessity to change to avoid oblivion. I, and my clients, support the public interest being the primary driver of all financial professionals, the insistence of removal of conflicts of

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			interest for all financial professional and the move to relate pricing in dollars not percentages or hourly rates. I hope my book, and any support that I can provide may support your submission and I congratulate the AESPB on its leadership.
6	From GC Item 27	DFP	As a CPA Australia member practicing as a financial planner I recognise the importance of professional standards to ensure members provide quality and ethical advice to clients. I support and currently apply the fundamental principles outlined in the APES 230 ED when providing advice to my clients and view these principles as essential in the provision of professional financial advisory services. As an Authorised Representative I provide holistic financial planning advice, including advice on insurance, and do so on a fee for service basis consistent with APES 230 ED. I take a range of factors into account, as detailed in APES 230 ED, when determining my fee and therefore, do not charge percentage based asset fees.
7	From GC Item 29	FPAA	**Confidential Submission**
8	From GC Item 32	KCA	**Firm Background** Our firm, Kothes Chartered Accountants, is a 7 Partner Chartered Accounting firm operating on the Far South Coast and Monaro region of NSW. Our main offices are in Bega, Merimbula, Eden and Bombala. We also attend our offices in Bermagui, Cooma and Jindabyne on a weekly basis all year. We have approximately 55 staff and have been operating for 64 years. I have been the only authorised representative since 2001 after we decided to go "in-house" with our financial planning due to numerous failed attempts with external referral relationships. I am currently licensed with Bridges Financial Services. I am responsible for our firms 350 self managed super funds and our financial planning division. We currently have approximately $25 million in funds under management and I spent approximately 50% of my time in financial planning. I am a member of the Institute of Chartered Accountants and I have and use the "Financial Planning Specialist" designation. **Opinion on Proposed Standard** My overall opinion of the proposed standard is fully supportive. My main reason for support is the elimination of any conflict of interest. I have operated for the past 9 years charging clients an advisor service fee (ASF) using asset based percentages. I acknowledge that my first most thought has been the amount of funds the clients have available to invest and what our fee will be based on the ASF %. The greater the funds to invest the harder I worked to engage as a client. This should not be how a professional should operate. Accountants are already familiar to completing time sheets and billing clients on an hourly rate. There is no reason why we as an Accounting profession cannot eliminate % based ASF's and move to hourly rates or fixed dollar fees, neither of which are based on the amount of funds under advice. For the past 12 months I have charged all new clients a fixed dollar fee rather than % based. This has totally changed the way I look at clients and recommend investments for their consideration.

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			I do acknowledge we are currently receiving a % ASF each quarter for clients who require little servicing. Conservative clients in term deposits or uninterested clients that don't want to regularly get together should not have to pay a % of their assets each year for advisors to do very little. I must attend bi-annual professional development days with my dealer group, Bridges Financial Services. Regular discussions with other advisors (not Accountants) and with management tells me they are happy to keep things the same. They do not want to change. It's all about how to convert more clients onto their platforms, a win for the group and a win for the advisor, the outcome to the client is secondary. Along with my fellow Partners in Tax and Audit our firm considers ourselves as "professionals" and are proud members of the Institute of Chartered Accountants. In my opinion the only way Accountants providing Financial Advisory Services can call themselves professionals is to totally move from asset based fees. We are comfortable with the proposed start date 1 July 2011. Professionals make the hard decisions in business. I believe if we lead the way as a group and adopt this proposed standard Accountants will become the premier financial advising group in the industry. I hope my comments are helpful in the Board's review of the proposed standard.
9	From GC Item 46	ISN	ISN strongly supports the direction of regulatory change proposed in Exposure Draft APES 230 *Financial Advisory Services.* In particular, we support the imposition of a fiduciary relationship on accountants who provide financial advisory services to clients and the requirement to remove conflicts of interest especially those created by certain types of fees and remuneration. By way of context, the Federal Government is currently undertaking a comprehensive reform process to address the serious structural conflicts of interest within the financial planning and wealth management industry (called the Future of Financial Advice or "FoFA" reforms). This includes the imposition of a requirement in the Corporations Act to act in a client's best interests when providing personal financial advice. The reforms being undertaken by the Federal Government follow the recommendations made by the Parliamentary Joint Committee on Corporations and Financial Services which examined a number of high profile collapses of financial advice businesses including Storm, Opes Prime and Westpoint. It should be noted that there were accountants providing financial advisory services involved in some of these collapses. The draft Standard appropriately goes beyond what is intended in the proposed reforms of the Corporations Act and will ensure that all accountants providing financial advisory services are providing high quality, unbiased, strategic advice. The imposition of a fiduciary standard and comprehensive regulation of remuneration which is consistent with the fiduciary standard will ensure that the process of providing financial advice by accountants is entirely disaggregated from the sale and distribution of financial product or accumulation of funds under management. If the Standard were to be implemented, the accounting profession would certainly be subject to higher professional and ethical standards than those required by the Corporations Act (even after the proposed reforms are implemented) and by the professional standards imposed by the Financial Planning Association or the Association of Financial Advisers. Not withstanding some commonality between measures in the FoFA package and APES 230, the accounting profession will be unparalleled in setting rigorous ethical and professional standards to ensure that their clients can trust them to deliver independent, high quality advice services. Apart from lending our support in general terms to the proposed Standard, ISN would like to make submissions in relation a number of

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<tr><th>Item No.</th><th>Reference to Table</th><th>Respondent</th><th>Respondents' Comments</th></tr>
<tr><td></td><td></td><td></td><td>detailed aspects of your Exposure Draft Standard.
Conclusion
In order to maintain very high professional and ethical standards, it is critical that any accountant who is providing financial advisory services be subject to a fiduciary duty and an obligation to avoid receipt of any payment which introduces bias and creates tension between the client's interests and the accountant's personal stake in the advice. The final version of the Standard should go beyond what is proposed for the legal regulatory framework and ensure that accountants are subject to more rigorous standards, to ensure that all financial advisory services delivered by accountants are in the client's best interests.
ISN strongly supports the proposed requirements of the Exposure Draft of APES 230 and would urge the APESB to issue a Standard which sets rigorous and effective regulations for accountants providing financial advice.</td></tr>
<tr><td>10</td><td>From GC Item 47</td><td>APPC</td><td>The Australian Public Policy Committee appreciates the opportunity to comment on Exposure Draft 02/10 Proposed Standard: APES 230 Financial Advisory Services (the ED).
The APPC includes BDO, CPA Australia, Deloitte, Ernst & Young, Grant Thornton, KPMG, PKF, PricewaterhouseCoopers, The Institute of Chartered Accountants in Australia and the National Institute of Accountants.
The APPC's objectives are to promote public policy outcomes in respect of audit, accounting and related services in Australia that:
1. Enhance the reputation of the accounting profession by setting and adhering to high standards of ethical and professional conduct.
2. Preserve the viability of a high quality, independent, external financial audit profession through an ongoing focus on audit quality and fair and equitable apportionment of the financial risks associated with the audit function.
3. Add value to the accounting profession's clients and stakeholders.
Background to the ED
We note that the ED was initiated in response to a project proposal submitted by the professional bodies to develop APES 335 to replace existing standard APS12. Accordingly the standard was originally intended to apply to members in public practice only.
As part of the process of developing the ED, the Accounting Professional and Ethical Standards Boards (the APESB) released a consultation paper Review of Miscellaneous Professional Statement APS 12: Statement of Financial Advisory Service Standards in October 2008. Subsequent to that paper the APES 335 Financial Advisory Services Task Force was renamed the APES 230 Financial Advisory Services Task Force reflecting a revised intention that the standard apply to all members, not only those in public practice.
In addition to the change in intended application, since the commencement of the APES 335/230 project there have been significant external developments impacting the financial advisory services landscape. These include the inquiry undertaken by the parliamentary Joint Committee on Corporations and Financial Services and its November 2009 report on Financial Products and Services in Australia and the response by the Federal Government to that report in April 2010 when it announced its intention to enact a package of reforms known as The Future of Financial Advice (FoFA). The FoFA package overlaps and interacts with the policy issues addressed in the ED.
Given the nature of concerns that have been expressed in relation to the ED we recommend that the APESB undertake further consultation with stakeholders after this round of submissions to determine the appropriate form and content of a standard to replace APS 12. Such further consultation should revisit the definition of "Financial Advice" and consider the ED's interaction with the proposed FoFA legislation, including in relation to discrepancies between their respective positions on permissible remuneration practices (for example, the ED</td></tr>
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			proposes a ban on trailing commissions from its operative date with retrospective effect, whereas FoFA proposes a ban to apply only to new clients from its date of commencement). Ideally this will allow the accounting profession to reach a confirmed and agreed position on appropriate remuneration practices (i.e. those that do not give rise to conflict of interest situations) that will enable the APESB and the accountancy profession to take a leading role in the debate on professional standards that are to apply under FoFA. We would welcome contributing to such further discussions with the APESB.
11	From GC Item 51	PB	CPA Australia, the Institute of Chartered Accountants, and the National Institute of Accountants (the Joint Accounting Bodies) have considered the Exposure Draft and our comments follow. The Joint Accounting Bodies represent over 180,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally. We welcome the opportunity to comment on the Accounting Professional & Ethical Standards Board (APESB) Proposed Standard APES 230 Financial Advisory Services. The Joint Accounting Bodies believe that any professional standard for members providing financial advice must meet the principal objective of assisting the availability of quality, affordable and understandable financial planning advice throughout Australia, including all regional areas. We also believe that generally while it is the client who should be empowered to make an informed choice about the terms on which they choose to receive financial advice there is a need to ensure there is both an obligation and guidance to protect clients from inappropriate remuneration structures. **The proposed standard and the Future of Financial Advice (FoFA) initiative** Before any standard for members is finalised, consideration should be given to potential changes to the current regulatory landscape such as the proposed Future of Financial Advice (FoFA) reforms. The FoFA reforms announced by the Government earlier this year will potentially implement the most significant and extensive changes to the financial planning industry since the introduction of Financial Services Reform in 2001. While these reforms will be aimed at improving both the trust and confidence of the consumer in the financial planning industry and strengthening consumer protection, they will require financial planners to undertake considerable changes to their practices and systems. As part of the FoFA consultation process, Treasury has established a peak consultation group to review the reforms including professional standards for the industry, conduct and competency standards. The Joint Accounting Bodies have two representatives on this peak consultation group to represent the accounting profession. Given the significance of these reforms, we believe it is imperative that the APESB is also actively engaged in the FoFA consultations to ensure that it can both contribute to the process and be fully familiar with all outcomes. The Joint Accounting Bodies call on the APESB to defer issuing a standard to replace APS12 for financial advisory services that regulates members who provide licensed financial planning advice until the outcomes of the FoFA reforms are known. There are many benefits for deferring the issue of the standard including: • Primarily, avoiding any unintended consequences of implementing a standard which may conflict with potential Government regulation. • Avoiding duplication between APESB issued standards and government regulation;

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			• Enabling consistency across the financial services industry. • Ensuring equity across all financial planners so that Members of the Joint Accounting Bodies are not unfairly placed at a competitive disadvantage to others in the market. • The opportunity to facilitate a more efficient transition of members' business systems and practices into a new environment. In the interim, APS 12 Statement of Financial Advisory Service Standards would continue to apply to Members. Once the outcomes of the FoFA reforms are known, we believe that the exposure draft of the proposed standard APES 230 should be redrafted and reissued for further comment. We have attached in the Appendices both a summary of our recommendations (Appendix 1) and detailed comments outlining our concerns with the current exposure draft (Appendix 2). However we reiterate our principal recommendation which is to defer finalisation of the APES 230 until the outcomes of the FoFA reforms are known.
12	From GC Item 52	ASIC	**Confidential Submission**
13	From SC1 Item 8	KEN	***Proposed Operative Date***: Currently, it is proposed that the Standard will apply from 1 July, 2011, for both new and existing clients. We have no problem with its application to new clients from that date, but ask you to consider a further 12 months before the Standard applies to existing clients. For firms such as ours, with a large number of clients obtained over a long period of operation, it will be a major administrative task to implement a new fee process. Naturally, fees charged to clients should always be agreed firstly between the member and the client, and then most clients prefer to authorize this to be paid from their investments. Whilst some funds and platform providers allow adviser fees to be paid as a flat dollar amount, others do not yet have this facility available. In addition, some older style products originally used many years ago may not have the facility to rebate to the client any ongoing commission given up by a planner. If the client is then billed by the adviser for work done, with no reduction because no commission has been received, the client is significantly worse off. If the implementation of this standard was delayed for a further 12 months, it would give members sufficient time to lobby product providers for the changes necessary to provide flexibility in remuneration payments. Naturally, members could separately invoice clients for services provided, but especially in relation to superannuation investments, clients may be cashflow poor, and the fees for advice need to paid out of the relevant investments under review. If the Board continues with the approach of insisting on fee for service to apply to personal risk management and related advice, we request that the implementation of this be delayed for at least a further 12 months to 1 July 2012, to allow appropriate systems to be implemented by both members and product providers. An undesirable situation will arise if only some product providers move to paying flat dollar fees, and, where clients are unable to pay for risk advice separately, the number of products that we can consider appropriate for these clients, reduces.
14	From SC1 Item 13	FPAA	**Confidential Submission**
15	From SC1 Item 17	SPAA	Proposed operative date and transitional arrangements 18. The Government's prospective ban on conflicted remuneration structures, advisor charging regime and statutory fiduciary duty (the

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			three key components of the Government's Future of Financial Advice reforms) will apply to new clients from 1 July 2012. However, the proposed operative date for APES 230, for both new and existing clients, is 1 July 2011. 19. SPAA considers that an operative date of 1 July 2011 is likely to cause confusion and Members will have insufficient time to make the system and other changes necessary to conform to the new standards. There are also likely to be product arrangements in place that cannot be unwound without considerable cost and tax implications for Clients. Similarly, there is likely to be issues around legacy products which pay commissions which will need to be considered. 20. Furthermore, the requirement for Members to adopt APES 230 for new and existing Clients from 1 July 2011 will place many Members at a significant commercial disadvantage when compared to those not aligned with a professional accounting body. The prohibition on commission payments will have an impact on revenue streams and may create an un-level playing field for Members in public practice versus those who will only be required to comply with the Government's Future of Financial Advice reforms for new clients from a later date. 21. Given that the detail of the Government's Future of Financial Advice reforms are subject to further industry consultation, and no doubt further change, SPAA considers it appropriate for APES 230 to be introduced only after all of the details of the Government's Future of Financial Advice reforms have been finalised. The Government's consultation process is likely to identify other issues and considerations which should be properly considered prior to the release of the Exposure Draft. 22. However, SPAA does agree that APES 230 (and the Future of Financial Advice reforms when finalised for non-members) should apply to existing Clients but only after an appropriate transitional period. It is difficult to foresee how a regime which provides for different standards to be applied to different Clients could be sustainable or even desirable over the longer term. This transitional period should be sufficient to enable Members to make the necessary changes to their existing charging practices and systems, and should enable Clients to be transitioned to the new fee charging regime in an efficient and orderly manner. Recommendation No.7 – The operative date for APES 230 should be deferred until after the Government's Future of Financial Advice reforms have been finalised. Recommendation No.8 – APES 230 should only apply to existing Clients after an appropriate transitional period.
16	From SC1 Item 18	MSC	**Confidential Submission**
17	From SC 1 Item 24	ISN	**Operative Date** Given that there is some overlap between the matters proposed to be regulated by the Exposure Draft Standard and the FoFA reforms, it is probably a logical step to align the operative date of both. The new Standard would therefore not be operative until 1 July 2012. The latter operative date could also be justified given the operational, technological and risk management/compliance changes which would need to occur to meet the new requirements of this Standard.
18	From SC 1 Item 27	PB	**Comments on proposed standard** Notwithstanding our comments above, we also make the following observations in respect of the current exposure draft:

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			• The effective commencement date of 1 July 2011 is unrealistic. The earliest effective date should align with the Government's FoFA reforms with an appropriate transition period and/ or extension where the requirements of the proposed standard are at a higher level. **Summary** **Principal Recommendations** • **Defer finalisation of APES 230 until the outcomes of the FoFA reforms are known.** • **The APESB should become actively engaged and involved in the FoFA reforms consultation process.** • **The proposed standard should be redrafted and reissued as an exposure draft for comment once the outcomes of the FoFA reforms are known. This will ensure consistency, avoid duplication and inequity, facilitate the transition of business systems and avoid any unintended consequences.** **Other Comments** While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted. • Reforms which align with the proposed Government FoFA reforms should be identified and these reforms should have an implementation date no earlier than the date of these legislated reforms. All other reforms should have an operative of at least 12 months after this date. **Detailed Analysis** While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when the ED is redrafted. **Proposed operative date – 1 July 2011** The effective commencement date and the lack of appropriate transitional provisions in APES 230 is a significant concern to the Joint Accounting Bodies. We believe that it poses a risk to the credibility of both the APESB and the accounting profession. Member feedback confirms that the majority of those affected will be unable to comply with the proposed standard in its current form within the short timeframe proposed. Further if they attempt to, it will impose an unreasonable burden of cost and time. The APES 230 Exposure Draft requires Members to make fundamental changes to their business structures, review their current

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			remuneration models and then consider how the firm will charge as a result of the proposed reforms to remuneration being proposed in APES 230. For many public practitioners this may also include evaluating where future cash flows will come from given the proposed banning of receipt of all commission, which rightly or wrongly, may potentially threaten the profitability and possibly the viability of a Members' practice. The limited timeframe will not allow members to make the appropriate decisions for their businesses. Such revaluations may also affect covenants in place with lending institutions, impact the members' costs of servicing their obligations and access to ongoing finance in a tight credit market. Of further importance is that Members are being compelled to make these significant changes not only in an extremely short timeframe but also following the Global Financial Crisis and its associated impact. The 1 July 2011 operative date also fails to recognise that there will be existing Client arrangements in place, which cannot be amended during this timeframe or possibly at all in the case of Clients who have funds invested in legacy products. Member feedback indicates a concern that the APESB is being unnecessarily hasty in pushing the new standard before the proposed Government reforms. Members are also concerned that it appears that the APESB have not taken into account the implications raised above when setting the proposed operative date for the standard. These same concerns were raised by the Joint Accounting Body representatives at the Taskforce during the drafting of the proposed standard. It should also be noted that the review of APS 12 commenced in October 2008 and it has taken nearly 20 months of reviewing this standard before the release of the Exposure Draft of APES 230. This in itself is evidence of the extensive complexities that are embedded in this industry. We strongly believe that the proposed start date of 1 July 2011 is both unrealistic and unachievable. It provides insufficient time for Members to make the necessary changes to their practices, market their new value proposition to their Clients and then transition to a Fee for Service remuneration model. Further time is required to allow Members to appropriately make this transition.
			Recommendation: • **Reforms which align with the proposed Government FoFA reforms should be identified and these reforms should have an implementation date no earlier than the date of these legislated reforms. All other reforms should have an operative of at least 12 months after this date.**
19	From SC 1	KCA	We are comfortable with the proposed start date 1 July 2011.

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	Item 28		Professionals make the hard decisions in business. I believe if we lead the way as a group and adopt this proposed standard Accountants will become the premier financial advising group in the industry.
20	From SC 3 Item 4	MSC	**Confidential Submission**
21	From SC 3 Item 6	ISN	**Breadth of Standard** The Standard proposes a broad scope of application that goes beyond the reforms proposed in the FoFA package, including application to general advice services (not just personal financial product advice) and all product types including risk products. Obviously the focus of the legal regulatory framework revolves around the regulation of financial product advice, which is consistent with the approach of other OECD jurisdictions. The FoFA reforms propose an approach which will further increase the legal minimum obligations for providers of personal financial product advice. However, in order to create minimum standards appropriate for a profession, the draft standard appropriately proposes a broader application, including setting higher professional standards for advice on all product types as well as on general financial advisory services. The breadth of approach proposed in this Standard is commendable and reflects the more evolved nature of the accounting profession when compared with the financial planning industry and the independence of the APESB.
22	From SC 3 Item 7	PB	**Comments on proposed standard** Notwithstanding our comments above, we also make the following observations in respect of the current exposure draft: • The scope of the proposed standard needs to be refined because the inclusion of non-licensed strategic and structural advice has the potential to make the scope of the standard so broad that it will affect the way in which traditional public accounting services are provided. • The standard should be applicable to Members in public practice only, as employee members are not typically involved in the strategic and operational decision making of the business and therefore they are not in a position to influence the necessary changes to remuneration structures. **Summary** **Other Comments** While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted. • The scope of the proposed standard should be refined because including non-licensed strategic and structural advice has the potential to make the scope of the standard so broad that it will affect the way in which traditional public accounting services are provided. The scope's current definition may well also impact on the services provided by members and firms at a wholesale and

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			corporate level. *[Technical Staff Note - The following dot point is repeated in Specific Comments – Table 4]* • The scale of legacy products in the market combined with their complexities require appropriate provisions be included in APES 230, including a suitable definition, which should be based on the Government's description and be as follows: ***Legacy Product*** means a financial product that is closed to new Clients but remains in force due to existing client participation in the product. • The standard be amended to be part of the APES 300 series that is applicable only to Members in public practice as employee members are not typically involved in the strategic and operational decision making of the business and therefore they are not in a position to influence the necessary changes to remuneration structures. **Detailed Analysis** **Scope of the proposed standard** The inclusion of strategic and structural advice that does not require a licence in the definition of ***Financial Advice*** has the potential to capture all advice provided by Members in public practice. For example, Members in public practice regularly give advice on business matters including tax advice (as registered tax agents), appropriate business structures e.g. establishing, running, winding up companies, trusts, partnerships, buying and selling businesses, legal advice and underwriting share floats. In addition, feedback from a wide range of members in practice and business indicates that there is a clarity issue in terms of the application of the proposed standard. An unintended consequence of this lack of clarity is its application to wholesale and corporate services and advice provided by members and their firms.
			Recommendation: • **The scope of the proposed standard should be refined as including non-licensed strategic and structural advice has the potential to make the scope of the standard so broad that it will affect the way in which traditional public accounting services are provided.**
			Application of the proposed standard

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			The Joint Accounting Bodies are concerned at the inclusion of Members in business in the scope and application of proposed standard APES 230. Employee Members are not typically involved in the strategic and operational decision making of the business and therefore they are not in a position to influence the necessary changes to remuneration structures. These are the responsibility of senior management and the owners of the business. The inclusion of such Members in the final standard has the potential to force these Members to choose between their employment and maintaining their membership with their Professional Association. Further, the Joint Accounting Bodies have no means to monitor or take practical action in relation to entities that are not Members. It would be a breach of the principles of natural justice to take professional action against a Member in relation to an issue they have no control over. Implementing a compulsory standard for Members that cannot be adequately monitored or enforced puts at risk both the credibility and effectiveness of the proposed standard. Therefore to ensure the integrity of APES 230, the standard should be amended to be applicable to Members in public practice. Further analysis is required to address the application of the proposed standard to the variety of entities and structures that members operate and the application to non-members within these entities. While the intent and principles are supported, there needs to be a detailed analysis of the practical application and monitoring of these different structures For example clear guidance must be issued to advise Members who will be required to adhere to the standard once issued where the Member does not provide Financial Advice but they do have an equity interest in a practice. This issue here is to identify at what stage would the proposed standard apply based on the equity holding of the entity.
			Recommendation: • **The standard be amended to be part of the APES 300 series that is applicable only to Members in public practice as employee members are not typically involved in the strategic and operational decision making of the business and therefore they are not in a position to influence the necessary changes to remuneration structures.** • **Further analysis as to the application of the proposed standard to clarify its practical application to the various entity structures under which members operate.**
			Legacy Products It is common in the managed investment industry for products to be closed to new investors due to changes in commercial practices. Legislative, regulatory and tax developments also result in financial products becoming outdated. These products are then known as 'legacy products'. The Financial Services Council (FSC) has estimated that the total amount of funds under management in legacy products may amount to

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			$221 billion or approximately 25% of all funds under management. The Government is working to establish a product rationalisation framework. This is because Clients invested in legacy products cannot simply be moved into a new product due to the structural, legal and institutional environment in which these products exist, coupled with the need to balance the interests and rights of the beneficiaries. For instance, in the case of life insurance each policy constitutes a separate contract between the consumer and the product provider. Given the scale of these products and the complexities involved, appropriate recognition and provisions should be included in the final APES 230 standard. The Joint Accounting Bodies recommends that a legacy product should be defined in the standard and provisions inserted to ensure a Member will not unintentionally breach the new standard where their Client is invested in a legacy product that pays a commission. The onus will be on the Member to demonstrate that where they are receiving a commission from a Legacy Product, that they have recorded both the details of the Client and the product in a separate register. This register must then be made available for review upon request of the Members' respective Joint Accounting Body.
			Recommendations: • **The scale of legacy products in the market combined with their complexities require appropriate provisions be included in APES 230, including a suitable definition, which should be based on the Government's description and be as follows:** ***Legacy Product*** **means a financial product that is closed to new Clients but remains in force due to existing client participation in the product.**
			Consistency in APESB issued guidance The Joint Accounting Bodies are concerned that the principles and guidance being proposed in the APES 230 ED may not be consistent with other guidance that has been issued by the APESB. The APESB has proposed the banning of commissions in the APES 230 ED on the basis that they cause a conflict of interest. We note that the APES 110 Code of Ethics for Professional Accountants ED has been amended to remove the specific reference allowing a Member who is a financial adviser from receiving a commission. We raise the issue that other Members in Public Practice who do not provide ***Financial Advice*** and therefore will not be subject to the proposed requirements of APES 230 will still be allowed to receive a commission from the sale of goods or services to Clients. The proposed blanket ban of commissions in APES 230 would infer the APESB believe Members who are Financial Advisers are unable to use their own professional judgment to ensure their objectivity and professional competence and due care is not compromised. The Joint Accounting Bodies suggest that this apparent inconsistency be addressed to ensure that all guidance issued by the APESB is fair

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			and equitable for all Members. **Recommendation:** • **All guidance issued by the APESB for Members in Public Practice should be consistent across all APESB provisions and equitable between all Member groups, as currently there appears to be inconsistencies between the APES 110 Exposure Draft and the APES 230 Exposure Draft in respect of commissions.**
23	From SC 4 Item 4	AFAC	**3. DETAILED COMMENTS** **3.6. Clarification of definitions** The definition of "**Commission**" is so broad that it captures almost all payments to financial advisers (including payments from financial services licensees to their financial advisers). We note also that a payment from a client to a financial adviser appears to be included in the definition of a commission. In our view, "Commission" should be defined as amounts paid by product providers to financial advisers (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 financial adviser to the client). There should also be consistency with the legislation on the definition of commission and what is prohibited e.g. if platform payments are not prohibited on the basis that they recognise the work undertaken by financial advisers and do not cause a conflict (and may just lead to other adverse change such as financial advisers becoming product providers), they should also not be prohibited by APES 230 as it will place accountant financial advisers at a competitive disadvantage with no real benefit to clients. APES 230 also appears to be aimed at prohibiting the receipt of insurance commission – this will have the effect of increasing the cost of insurance advice and so will likely lead to a reduction in the amount of insurance recommended to and taken out by clients. If commission is not prohibited by law on insurance products and if all insurance products on the Approved Product List pay commission at the same rate, APES 230 will only disadvantage clients and accountant financial advisers. This will only serve to exacerbate the widespread under-insurance problem.
24	From SC 4 Item 6	PB	**Summary** **Other Comments** While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted. • The definition of ***Commission*** be amended to remove reference to 'risk products'. **Detailed Analysis** **Commissions**

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			The definition of ***Commissions*** in the APES 230 ED prohibits a Member from receiving a monetary amount from a Client. This may be an oversight and should be amended as follows to ensure that a Member can receive payment from their Client for advice or services provided: ***Commissions*** means all monetary amounts received by a Member from an Australian Financial Services Licensee, Client, or other party, in respect of placement or retention of the Client's funds, or purchases or sales of financial or risk products, and includes trailing commissions and income. **Recommendation**: • **The word 'Client' be removed from the definition of 'Commissions' to avoid any confusion that a Member can receive payment from their Client for advice or services provided.**
25	From SC 4 Item 7	FPAA	**Confidential Submission**
26	From SC 4 Item 8	CONFP	Definitions: **Fee for Service** – the second paragraph of this definition seems to leave it open for fees to be collected by reference to a percentage provided that they are not calculated by reference to 'product sales' or to 'the accumulation of FUM'.
27	From SC 4 Item 9	HPW	*[Technical Staff Note - Definition for Fee for service is repeated in Specific Comments – Table 8]* 2. Definitions: **Fee for Service**: The claim that fee for service does not include "percentage based asset fees" is too narrow in its view and should be qualified. I agree that asset based fees such as trail commissions are inappropriate, are not tied to the delivery of service and are little more than loyalty fees paid by the product manufacturers. However, I would submit that true full service and pro-active management of a client's affairs requires the continuing attention of an adviser to the following: # Portfolio re-balancing # Strategic planning – such as withdrawal and re-contribution, contribution splitting, pension administration, cash flow management, taxation issues, legislative change, personal circumstance changes. # Corporate actions, investment management, restructuring, risk management # Maintaining records and reporting # Personal communication, care and attention Bearing in mind the above, asset based remuneration therefore is entirely appropriate given that it is easily understood by the client and transparent, i.e., the client can quite easily calculate the veracity of the fee. Whilst the alternative is a fixed fee, I would argue that such an alternative is not entirely fair nor reasonable as over the past three years we have seen portfolio values that have fallen and in some cases considerably. It would be distasteful in such cases if fees remained static. There are also circumstances where capital withdrawals occur and/or additional deposits are made and where such events occur fees should be adjusted accordingly. I would also argue that scale is an important factor, that is, the relative cost should be scaled according to the size of a portfolio on the basis that automated systems make it more cost efficient to manage a larger portfolio. Therefore, whilst the dollar cost may be greater the relative percentage cost to capital may be significantly lower. To try to base all this on

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			an hourly rate is totally impractical and I would suggest to the point of being administratively impossible.
28	From SC 4 Item 10	DFP	*[Technical Staff Note – these paragraphs are repeated in Specific Comment – Table 8]* While I support all the principles of 'Fee for Service' in APES 230 ED, I believe the definition itself requires further clarification, particularly with regard to percentage based asset fees. There appear to be two separate issues APES 230 ED is trying to address in its definition of **'Fee for Service'**. These are: 1. Conflicts of interest - there must not be any perceived or actual conflicts of interest (ie: commissions, production bonuses, remuneration related to product sales); and 2. The fee should be set in a professional manner (ie: taking into account factors such as the complexity of advice, the required skills, the level of training and experience required and degree of responsibility applicable). As APES 230 ED is currently worded, it suggests that percentage based asset fees are a form or commission and/or give rise to conflicts of interest. Given these fees are paid by the client, not the product provider, I do not believe this is the case. However, percentage based asset fees do not, in my opinion address the second issue of a fee that is set in a professional manner. I believe this standard would benefit from further clarity on this issue and in particular, the reasons for banning percentage based asset fees.
29	From SC 4 Item 11	AFAC	**3. DETAILED COMMENTS** **3.6. Clarification of definitions** The definition of Fee for Service is also not clear. It is also not clear whether accountant financial advisers can continue to receive retrospective commission as the prohibition is only on "charging" clients a particular way (the adviser does not charge "commission" in the true meaning of that term – it is paid by product providers to financial advisers or their AFS licensee). **The Government has not proclaimed any changes to the receipt of commissions for life insurance products due to the enormous implications this has for the insurance industry and the community at large. Such as a proposal needs careful consideration and research, to ensure that Australia's current underinsurance problem is not exacerbated.** **We acknowledge and agree on changes to the financial advice industry regarding the receipt of commissions. We propose that any fee arrangement suitable for the client's circumstances be discussed and agreed with the client prior to the implementation of any advice, and disclosed to the client in writing.**
30	From SC 4 Item 14	FPAA	**Confidential Submission**
31	From SC 4 Item 21	PB	**Summary** **Other Comments** While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted. • The definition of ***Soft Dollar Benefits*** be reviewed to ensure that it does not have unintended consequences, such as preventing a third party from paying for advice where the Client is a Not-for-Profit company. **Detailed Analysis**

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			Soft Dollar Benefits Member feedback has suggested that the definition of ***Soft Dollar Benefits*** may potentially capture circumstances where a third party may pay for the advice of a Client where the client is for example a Not-for-Profit company. Whilst it may not be the intention of the proposed standard to capture these situations, we believe that it warrants further consideration to avoid any unintended consequences. **Recommendation:** • **The definition of *Soft Dollar Benefits* be reviewed to ensure that it does not have unintended consequences, such as preventing a third party from paying for advice where the Client is a Not-for-Profit company.**
32	From SC 4 Item 22	DMR	The Exposure Draft includes the following definition of **client**: **Client** for the purposes of this Standard means an individual, firm, entity or organization to whom or to which Financial Advisory Services are provided by a Member. Whilst we consider our client to be the company that has retained us, it has retained us to provide advice not to it but to its shareholders. As the advice that we provide is for the benefit of the shareholders, we believe that the above definition can read that our client is the shareholder to whom the advice is provided and the company is merely acting a an agent for its shareholders.
33	From SC 4 Item 23	Deloitte	We are concerned the current definitions of "Client" and "Financial Advice" are too broad and will result in both general advice to retail clients and advice to wholesale clients being caught by the ED which we do not think is the intention. **<u>Client</u>** We understand it is the intention of the ED to provide extra protection to retail clients who receive personal financial advice from financial advisors in the area of financial planning and wealth management. Currently the ED makes no distinction between retail or wholesale clients - we believe this is a relevant distinction as the obligations placed on financial advisors in relation to retail clients should be greater. We note that the Government is continuing to consult on the appropriateness of the current classification of retail and wholesale clients in relation to the FoFA, and believe consideration needs to be given to a similar distinction for the purposes of this ED. We believe the definition of Client for the purposes of the ED should only extend to retail clients, as defined under the Act, rather than all clients of a Member.
34	From SC 4 Item 25	KPMG	Definition of **Client** and **Financial advice** – *[Technical Staff Note –* *[Technical Staff note - Definition is repeated in both Client & Financial Advice Section of this table]* Need for clarity We understand that the overall objective and intention is that the Proposed Standard is to apply only to members who provide financial planning and such related advice, particularly in relation to retail clients. As currently drafted however, the combined effect of the broad definitions of Financial Advice and client in the proposed Standard may

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			unintentionally capture services or advice to clients that would or should be outside the scope of this overall intention, particularly in relation to is applicability to clients and services that would be an "exempt service" under the Corporations Act. For example: • advice provided in relation to self managed superannuation funds; • asset allocation advice (which is outside the exemption in Regulation 7.1.33A of the Corporations Act); • advice to superannuation trustees with less than $10 million in funds under management; • taxation advice that is exempt under Regulation 7.1.29(4) of the Corporations Act s; and • structuring, establishment, due diligence or valuation advice currently exempted under Regulation 7.1.29(3) (c) of the Corporations Act, would be caught by the Proposed Standard. **Recommendation** Specific statement that Proposed Standard does not apply to certain financial services To avoid all doubt and for clarity, the proposed Statement should specifically state that it does not apply to: • An "exempt service" (as defined under the Corporations Act) or a service taken no to be a provision of a financial service under the Corporations Act. This is particularly the case in relation to the provision of financial services or advice relating to self managed superannuation funds that are currently exempt through the combined application of regulations 7.1.29(5) and 7.1.29A of the Corporations Act. We understand that the Cooper review on the Superannuation System recommends removal of these exemptions. However, we submit that it would be better to wait for the outcome and detail of any changes to regulation on this rather than pre-empt possible changes on this issue, not the least so as not to create inconsistencies and unnecessary compliance obligations. • Financial services provided to wholesale clients and professional investors (as defined under the Corporations Act). • Financial services provided to retail clients (as defined under the Corporations Act) by virtue or as a result of inclusion in a disclosure or other public document such as an Investigating Expert report or Investigating Expert report or Investigating Accountant report. • Where the financial service does not require the holding of an Australian financial Services Licence or an Australian Credit Licence. • Where a financial service is provided in relation to and for internal firm purposes such as tax or superannuation advice to employees or partners. Adopt or reference definitions of retail and wholesale clients to that in the corporations Act Further, to avoid inconsistencies and implementation difficulties, particularly between the corporations Act and the proposed Standard, and to ensure the appropriate scope, the proposed Standard should adopt or reference definitions of retail and wholesale clients to that in the corporations Act.
35	From SC 4	PWC	For completeness, in section 4 below we note a number of matters that arise from the ED where we do not perceived a significant direct impact on this firm, but recognize a potential impact on the wider accounting profession.

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	Item 28		**1. Definition of "Financial Advice" in the ED** 1.1 Our first concern is with the service range covered by the ED. We note that in announcing the proposed new standard, you referred to the standard as applying to financial planners. However, our reading of the ED is that it has application to a much wider range of practitioners than accountants acting as financial planners. In our view, the present definition of "financial advice" is far too wide. It has the effect of applying to many situations where ordinary tax and accounting advice might be required by a taxpayer client, but where it could not be said that the accountant is providing "financial planning" services. For example, the proposed statement appears to an accountant advising on matters as diverse as: • The accounting and taxation issues inherent in structuring of a complex group of family-controlled companies, where the founder is considering retirement and passing control of the group to the next family generation • The application of the dividend franking system to receipt of dividend income from shares that a client has already purchased • The applicable tax depreciation rate to a residential property, for a client proposing to acquire such a property as an investment, and • The value of the shares of a family company sought by a controlling shareholder who is considering his estate planning options. 1.2 Many more examples could be provided to demonstrate how ordinary professional accounting activities are drawn into the ambit of a proposed standard intended to apply to financial planners. In each of the above mentioned examples, the accountant would not normally be acting as financial planner. We are not aware of any professional or ethical reason to impose further regulation on such activities. Importantly, for the reasons noted below, it could be said that the advisor relationship ordinarily constituted a "fiduciary relationship" as anticipated in the ED. 1.3 We note our concerns with the definition do not arise from a preference to receive fees other than on a fee for service basis. The real issue is that the ordinary interaction with our clients, which is already governed by a range of other professional pronouncements, may be dramatically affected. For example, the requirements of paragraph 7.8 in the ED would mean that a simple telephone enquiry about a depreciation rate on an investment property would necessitate a detailed written report in the prescribed form. In our view, the definition of "Financial Advice" within the ED should be amended to make it clear that tax and accounting services, where the accountant is not otherwise providing financial planning services, are expressly excluded. We appreciate that this may be easier in concept than it is to draft. Perhaps the APESB may consider. • Limiting the definition to services for which an Australia Financial Services Licence is required. We appreciate that this has the effect of narrowing the application of the standard, but it is still likely to continue to address the majority of APESB's fundamental reasons for developing the standard. • Providing specific exclusions. For example, exclude "services where both an Australia Financial Services Licence is not necessary and the principal requirement is the application of tax or accounting expertise." • In addition to the above suggestions, limiting the definition to retail clients thus excluding wholesale clients.
36	From SC 4 Item 29	APPC	**Comments on the ED** The APPC commends the APESB for being proactive in undertaking work on a replacement for APES12 and for its contribution to the public policy debate on appropriate professional and ethical standards with respect to financial advisory services.

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			We are however aware of a number of concerns within the accounting profession and the broader financial advisory services industry with regard to some elements of the ED. These include (but are not limited to): 1. <u>Definition of "Financial Advice" and "Client"</u> We believe the current definitions of "Client" and "Financial Advice" are too broad and will result in both general advice to retail clients and advice to wholesale clients being caught by the standard (with the consequential affect of fiduciary obligations being imposed on members acting as a 'financial adviser' in situations where a fiduciary relationship may not ordinarily exist – see further comments under 2. below). The definition of "**Financial Advice**" in the ED is broader than both the current definition of Financial Advice under APS 12 and the definition of Financial Product Advice contained in the Corporations Act and will result in a wider range fo financial advice being caught than we believe is intended. Examples include: • Advice in relation to self-managed superannuation funds which are currently regarded as an "exempt service" and exempted as financial advice where provided by an accountant in certain circumstances pursuant to Regulation 7.1.29(5) and 7.1.29A of the Corporations Act; • Asset allocation advice (which is outside the exemption in Regulation 7.1.33A of the Corporations Act); • Advice to superannuation trustees with less than $10 million in funds under management; • Taxation advice that is exempt under Regulation 7.1.29(4) of the Corporations Act; • Structuring, establishment, due diligence or valuation advice currently exempted under Regulation 7.1.29(3)(c) of the Corporations Act. The broad definition of **Financial Advice** in the ED also raises the potential for conflict and inconsistency between obligations under APES 230 and other requirements. For example, APES 230 creates new and/or more onerous reporting obligations for tax and valuation services than exist under the specific APES standards covering these services (APES 220 and APES 225 respectively). We believe that the definition of "**Financial Advice**" in the ED should be revisited to clarify that is does not apply to tax and accounting services where the member is not otherwise providing financial planning services, including servicers/advice that are subject to the requirements for the Tax Agents Services 2009.
37	From SC 4 Item 30	EY	The purpose of this letter is to endorse the APPC submission and to emphasise an issue that is of particular concern to Ernst & Young, namely that tax advice provided by Registered Tax Agents, that is now subject to regulation under the Tax Agents Services Act (TASA) 2009, should not fall within the scope of APES 230. **Taxation advice provided by Registered Tax Agents** The proposed definition of **Financial Advice** in the ED covers advice in respect of a client's financial affairs specifically related to wealth management, retirement planning, succession planning, estate planning, personal risk management and related advice. It includes: • advice, **including related taxation advice** [emphasis added], on financial products such as shares, managed funds, superannuation, master funds, wrap accounts, margin lending facilities and life insurance carried out pursuant to an Australian Financial Services Licence;

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			• advice and dealing in financial products as defined in section 766C of the Corporations Act 2001; • advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and • advice that does not require an Australian Financial Services Licence, such as real estate and non-product related advice on financial strategies or structure. This definition of Financial Advice therefore includes tax advice provided to a client by a Registered Tax Agent, even where the tax agent is only providing tax advice and not also the underlying wealth management advice in relation to the client's financial affairs. We note that the tax advice will be subject to both the requirements of the ED and TASA. In our view this potential double-regulation seems to be in conflict with the government's approach under the TASA, where financial planner were specifically excluded from the operations of the TASA so that there was not dual regulation of financial planners. However, this ED appears to impose a regulatory regime on financial planners which seem to also apply to tax agents and thus imposes a dual regulation on tax agents that in some situations may be inconsistent and/or conflicting. To avoid such double regulation the former Assistant Treasurer Senator Sherry accounted that the TASA oversight for financial planners would be deferred pending consideration of the regulatory regime for financial planners. **Our submission** For the similar reason of avoiding double-regulation, we submit that the definition of "Financial Advice" in the ED should be revisited to clarify that it does not apply to tax and accounting services where the member is not otherwise providing financial planning services, and specifically where the services or advice are subject to the requirements of the TASA. We would be please to further discuss those issues with the APESB.
38	From SC 4 Item 31	PB	**Summary** **Other Comments** While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted. *[Technical Staff Note - The following dot point is repeated in Specific Comments – Table 3]* • The scale of legacy products in the market combined with their complexities require appropriate provisions be included in APES 230, including a suitable definition, which should be based on the Government's description and be as follows: **Legacy Product** means a financial product that is closed to new Clients but remains in force due to existing client participation in the product. **Detailed Analysis**

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			Legacy Products The definition of a legacy product should be based on the Government's description of these types of products1 and be as follows: **Legacy Product** means a financial product that is closed to new Clients but remains in force due to existing client participation in the product. **Recommendations**: ***[Technical Staff Note - this recommendation is repeated in Specific Comments – Table 3]*** • **The scale of legacy products in the market combined with their complexities require appropriate provisions be included in APES 230, including a suitable definition, which should be based on the Government's description and be as follows:** **Legacy Product means a financial product that is closed to new Clients but remains in force due to existing client participation in the product.**
39	From SC 5 Item 1	CFP	I believe that if the education bar/entry level for Financial Planning qualifications were raised to be granted Authorised Rep status, and we had a professional body (ie FPA) with teeth that all Authorised Representatives had to belong to (with professional standards that all followed), we might not be having this debate about ongoing fees. Further details: Education Standards: We're competing in an industry where the majority of planners are NOT members of a professional body. I'd say about a half of all Authorised Representatives are members of the FPA, and the FPA has conflict of interest in representing both Dealers who sell product, and Planners who don't sell in-house product. Financial Planning requires at least a general knowledge of Tax Law, Superannuation Law, Corporations Law, Family Law, Economics, Centrelink, Human Psychology, conflict resolution, communication and writing skills, and for many, business administration. We are the GPs equivalent in the Finance Industry, and entry level qualifications and experience should reflect the high standard required to offer advice in this broad and complex space. Some goals: 1. By say 2014 all new entrants who want to become professional financial planners to have as a minimum a tertiary qualification in financial planning. At the moment, anyone can get RG 146 accreditation (within a few weeks) become an Authorised Rep and call themselves a Financial Planner. We have a client who was a tradesman who, with less than a year of part time study, holds out the same shingle as me (it took me 9 years of Uni, CA Program and CFP studies to obtain my qualifications and experience)! I think we need different designations eg if you aren't currently a CFP, or by 2014 have not completed the tertiary pathways prescribed by the FPA plus one year's supervised work, you should NOT be able to call yourself a Financial Planner. The designation could be "Paraplanner" or "Product Adviser". I realize this will could put a squeeze on finding new employees, but as Principals, we can choose to employ people (as I have) without Tertiary qualifications who can still do lots of the Planning work, and either NOT sign off as Authorised Rep, or make it clear that they are NOT as qualified or experienced in their sign off by having a different designation. 2. By 2012, develop with the education sector a commonly recognised curriculum for financial planning based on the Financial Planning Standards Board curriculum topics.

1 *Product Rationalisation Issues Paper*, The Treasury 2007 p. 11

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			3. Dealers and Planners to work with ASIC, the government and the profession to develop an objective assessment mechanism that instills confidence in financial planner entry competence. 4. By 2012, all education programs should provide a clear entry pathway to professional designation. 5. Membership of a professional body (the FPA will have to do for the moment) is a compulsory component of the issue of a Authorised Rep licence, just like you have to be a member of the Institute of CAs to both become and stay a CA, or like a doctor both qualifies through and stays a member of, say, the College of Surgeons. 6. All Continuing Professional Development (CPD) should include mandatory training in ethics. Australian Financial Services Licensees to dedicate resources and attention to the supervision of CPD to ensure it focuses on professional alignment, rather than simply compliance with RG 146. Regular Dealer Audits or Peer Audits should oversee this. I have always felt that the solution is to license individuals with the appropriate qualifications and membership of a Professional body with practice guidelines, ongoing education requirements and disciplinary measures, rather than through Dealer groups. A doctor is not licensed by a Hospital or Pharmaceutical company. An architect is not licensed by Boral. A CA Financial Planning specialist should be ideally qualified in this regard. Once qualified, a CA can practice on their own and source technical advice, software choices etc at their discretion. The client pays the CA, and the CA attends to the overheads. In Financial Planning, the compliance costs of being a small licensee under the current regime is onerous and ever increasing - I estimate the cost to our practice at over $50k pa to keep on top of both compliance and research matters, and of more concern is trying to find and keep suitably qualified and experienced staff in this Compliance area. For this reason, I've chosen to be an AR of Count and take advantage of economies of scale, but I would rather that I was licensed and choose to pay Count for services rendered, rather than them having control of the revenue source. I felt very vulnerable when Count as a Dealer chose to relinquish it's FPA membership for a time, and that meant I would lose my FPA CFP designation - a ridiculous state of affairs. I earned my qualification, not Count! In summary, here are some solutions to this whole debate: • Push for a minimum entry level of university qualification and "internship" to be licensed as an Authorised Representative ie make CFP the minimum entry level NOW. Being able to call yourself a planner after 3 months training with no prior industry experience is an insult to qualified and experience Financial Planners, and more importantly is dangerous for uninformed clients. Have a different designation for those "planners" who don't meet the education or experience standard. • Mandate membership of a Professional body for all qualified planners – like the Institute of Chartered Accountants. This body can work with Practitioners to develop standards of Advice and guidelines for methods of remuneration.
40	From SC 5 Item 4	HPW	3.9: the word "should" would be better as "must". The consideration of guidance issued by professional bodies and the appropriate regulatory bodies is not voluntary. It is an obligation. Para 3.3: the first sentence of this paragraph should be changed to state that the permission "must" be in writing, not "preferable". The second sentence is fine the way it is and should be retained. Changing the first sentence to a "must" gives a clear message that formal permission is the only option, however the second sentence recognises that on some occasions, verbal permission is received and in those cases the permission must be backed up by a file note, instead of relying on a recollection.
41	From SC 5	MSC	**Confidential Submission**

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42	From SC 6 Item 1	CONFP	As written, I believe that the provision is too open to subjective determination and could be proven against a member who in fact has taken measures 'in good faith' to attain the 'best outcome' for a client: a preferred wording would include the following:- "(a) exercise the utmost good faith to put the client's best interests ahead of all other considerations and interest in the relationship; and" I believe the provision would be enhanced by adding words so that it would then read:- "Where a Member exercising professional judgement identifies an actual, potential, or perceived threat to the member's fiduciary responsibility to the Client, the member shall ....(continuing as currently drafted)." Note also the recommendation for further words to be added to the definition of 'Acceptable Level' above.
43	From SC 6 Item 2	JR	**Fiduciary duty** - we fully support the move to an explicit fiduciary duty being imposed upon the providers of financial advice towards their clients. As accountants providing financial advice, this has always been our primary duty. However, we do not consider that an asset-based fee is inconsistent with fulfilling a fiduciary duty. On the contrary, an inherent risk in a time-based fee model is that a client may prevent their best interests being the dominant driver of advice by seeking to cut costs and not receive important advice. As discussed above, we believe that an incentive exists within time-based fees for member firms to generate advice that is not in the best interest of the client in an effort to increase fees, hence contravening the premise of acting within a fiduciary duty.
44	From SC 6 Item 5	Deloitte	**1. Fiduciary Relationship** Where a Member provides financial advice to a Client, the ED asserts that there is a fiduciary relationship between the Member and their Client. Based on the ED, this relationship will apply to all advice (both general and personal) provided by the Member. In contrast the FoFA, which also has the concept of a fiduciary relationship between Financial Advisors and their clients, limits the relationship to circumstances where Financial Advisors provide "*personal advice*" to "*retail clients*". In our opinion it is not appropriate to impose a fiduciary duty under which a Member would be required to consider the Client's best interests when providing "*general*" advice. General advice by definition cannot be specific to a Client's particular circumstances. For example where general financial product advice is provided for the benefit of a large group of users (such as potential investors in the case of a

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			prospectus), it is impracticable and not appropriate for financial advisors to be held to have a fiduciary relationship with such users. Furthermore, we are concerned that the ED proposes that the fiduciary duty would extend to advice given to "*wholesale clients*". Wholesale clients by their nature are sophisticated and therefore, do not need to be afforded the same level of protection as "*retail clients*". We do not believe that it is the role of a professional standard to impose or seek to define fiduciary responsibilities. This is a matter for the courts to determine. We note to date that the courts have generally emphasised the need to examine the specific nature of the relationship in order to determine whether that relationship is one where a fiduciary duty would exist. However, as there is currently no statutory fiduciary obligation imposed on financial advisors generally under the Corporations Act 2001 ("the Act"), the courts have avoided finding the existence of a fiduciary duty in circumstances where the parties have agreed otherwise. In *Pilmer v The Duke Group (in liq) & ors* (2001)2, the High Court held that the accountant/client relationship does not, of itself, impose fiduciaries duties upon the accountants. Whether an accountant or financial advisor is subject to a higher duty (fiduciary duty) to their client will depend on the circumstances of the relationship, the terms of the retainer and the position of the client. In *ASIC v Citigroup* (2007)3, the court held that, even though the nature of the relationship would have strongly pointed towards the existence of a fiduciary relationship, the letter of engagement expressly disclaimed a fiduciary relationship. As such, there was no fiduciary relationship. We also note that the Government has indicated its intention to impose a statutory duty on financial advisors as part of the FoFA reforms. In defining the precise nature of such a statutory fiduciary duty, the Government has indicated it will consult with stakeholders both on the "best interests" of clients and on the "reasonable steps" that an advisor must take to discharge their fiduciary duty. We consider that the ED should not seek to broaden any fiduciary duty of financial advisors beyond that which applies under current law ahead of the Government's proposed reforms in this area. Accordingly we recommend paragraphs 4.1 and 4.2 should be deleted and appropriate amendments made to other sections (including paragraph 9.1) of the ED. In addition, we do not support the introduction of a "fiduciary duty" as currently proposed and believe any such duty should be consistent with that proposed under the FoFA.
45	From SC 6 Item 6	AFAC	**INTRODUCTION & EXECUTIVE SUMMARY** However, AFAC has some fundamental concerns with Exposure Draft APES 230, including the following: APES 230 introduces fiduciary duty obligations in a manner which pre-empts the very important fiduciary duty obligations being proposed by Government, and which are still being fully defined. Financial advisers already have fiduciary duty obligations to clients, and the Government has proposed that these responsibilities be codified in the Corporations Act, with a shift from a negative fiduciary duty obligation test to a positive obligation. There are important definitional issues to finalise. We submit that APES 230 inappropriately pre-empts this process, and may result in a fiduciary duty obligation different to that defined in the Corporations Act. This is also likely to result in unnecessary confusion which can be easily avoided. **2.2. Objective of Exposure Draft APES 230**

[2] 180 ALR 249 (HCA)
[3] ASIC v Citigroup Global Markets Australia Pty Ltd (No 4)[2007]FCA 963

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			[Technical Staff Note - the following dot point is repeated in Specific Comments – Table 7] The broad intent and objective of APES 230 – i.e. quality, objective and professional financial advice – is to be applauded. Unfortunately, the objective of quality, objective and professional financial advice is poorly translated into the drafting of APES 230, including the following: Inclusion of components in this standard which do not properly reside within APES 230 (e.g. fiduciary obligations, professional independence) – these principles or standards are either covered elsewhere in the accounting professional standards (e.g. in APS 12) or are currently subject to Government determination (e.g. the precise positive fiduciary duty obligation to be incorporated into the Corporations Act) **2.7. Emerging Legal Position** **Financial Advisers Under a Fiduciary Duty** In most situations financial advisers, whether accountant based financial advisers or general financial advisers, will owe a fiduciary duty to act in the best interests of their client for the "purposes of and within the scope of the retainer." The duty to act in the best interest in this sense does not create a positive duty to act in the client's best interest but rather requires that the adviser must not obtain an unauthorised profit from the client and not be in a position of conflict. This is known as the profit rule and the conflict rule. The characteristics which give rise to fiduciary obligations owed by accountant based financial advisers to clients include the inequality of the relationship between the financial adviser and the client in terms of expertise and specialised knowledge the financial adviser has over the client; the control over the information to the client; the ability to significantly influence the client's decisions and the dependence of vulnerability of the client in reliance of the financial adviser. Where a fiduciary duty exists this requires the financial adviser to take care not to breach the profit rule or the conflict rule and where there is a breach the financial adviser must then account for any profits or compensate for any losses arising from the breach. **3. DETAILED COMMENTS** **3.1. Fiduciary Duty** From a legal perspective most retail client situations will give rise to a fiduciary duty between the financial adviser and the client. AFAC also agrees that financial advisers are under a fiduciary obligation when dealing with their clients and understands the government proposes to formally introduce this obligation as part of its Future of Financial Advice (FOFA) reforms. The following characteristics highlight the fiduciary nature of the relationship and thus the fiduciary obligations that are imposed upon an accountant when providing a Financial Advisory Service to a client. 1. The inequality of the relationship in terms of professional knowledge, skill and experience. 2. The control of the professional information and advice provided to the client. 3. The ability and opportunity to significantly influence the client as a result of the position set out in (1) and (2) above. The dependence and vulnerability of the client in reliance upon the accountant/financial advisor. Given all that is set out above, the law requires that the financial adviser must act in the best interests of their client for the purposes of the relationship. Best interests in this sense does not create any positive obligating to act in the client's best interest but requires that the

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			accountant must not obtain any unauthorised benefit from, and not be in a position of conflict as a result of the professional relationship with the client. This is known as the profit rule and the conflict rule and is central to the fiduciary obligation owed to the client and enforceable in a Court of Equity. *[Technical Staff Note – the following 10 paragraphs are repeated in Specific Comment Table 8]* **3.2. Fiduciary Duty** Central to the proposed standard is the clear statement that the accountant who provides a Financial Advisory Service to his/her client is under a fiduciary duty to the client and is subject to the profit and conflict rules. Reflecting on recent proposed reforms within the Financial Services Industry arising from the Ripoll Report (Ripoll) with regard to forms of remuneration to financial planners, APESB has sought to address this area for accountants by proposing the following:- **'Fee for service means fees determined by taking into consideration factors such as the complexity of the Financial Advisory Service, the required skills and knowledge, the level of training and experience of the Member and the Member's staff, the degree of responsibility applicable to the work such as risk and the time spent on the Financial Advisory Service.** **Fee for service does not include Commissions, percentage based asset fees, production bonuses or other forms of fees or remuneration that are calculated by reference to product sales or the accumulation of funds under management, (emphasis added) whether paid by the Client or a third party such as a product manufacturer.'** It is clear that fees calculated as against that underlined in the 2nd paragraph above are disallowed by APESB on the basis that such remuneration is inconsistent with the fiduciary obligations and duties imposed upon an accountant in the relationship with the client by APESB. The inference being that in such circumstances there is a clear breach of the profit and conflict rules in that the remuneration received and calculated by reference to either product sales or asset based percentages may not have had any bearing on the actual professional work carried out, and that the payment of remuneration where there is not a direct link, or proportionality to the professional work carried out, puts the accountant into a conflict position with regard to the bests interests of the client. **Fiduciary Duties and Remuneration Models** However, from a fiduciary duty perspective there is nothing to prohibit percentage based asset fees or commissions from being paid to financial advisers unless there is a breach of the profit rule or conflict rule. Further, there will normally be no breach of either the profit rule or the conflict rule provided that adequate disclosure of fees and commissions have been provided to the client. The key principle in the fiduciary remuneration question is whether the profit and conflict rules have been breached. In short, whether the fiduciary has been improperly remunerated (usually being overpaid compared to the actual degree of work carried out) and that the fiduciary's obligations to put the clients' interests before his/her own has been conflicted in that the fiduciary has profited at the expense of the client. Where a fee characterised as a percentage of a portfolio's sum, such as a percentage based asset fee, but nevertheless arrived at by reference to factors such as complexity, degree of difficulty, professional knowledge, skill and expertise, responsibility, risk, time and resources, is fully disclosed to the client, as well as accepted by the client there **can be no breach of the profit and conflict rules**. Also, in such circumstances should the client authorise a third party to make the disclosed and agreed to payment to the fiduciary, there can be no breach of the fiduciary obligation and duty to the client in this regard.

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			Where fees are calculated by reference to accumulation of funds under management, and such fees are acknowledged and assented to by the client, there would be no conflict, but a clear alignment of both the professional and the clients' interests in that the adviser and the client are both focused on the portfolio performance remaining positive for the client. Asset based fees are neutral to the duties owed under a fiduciary duty and do not in and of themselves create a conflict. **4. MEMBER VIEWS – Synopsis of Survey Results** ***[Technical Staff Note - Please see survey detailed results in Appendix]*** The full survey results are covered in AFAC's full submission to the APESB. These comprise of 272 responses from accountant financial planners across the AFAC dealer groups. Some interesting highlights are: Polarised results on whether APES 230 goes beyond what is required under fiduciary duty (roughly equal agreement and disagreement)
46	From SC 6 Item 10	PWC	2. Fiduciary Relationship 2.1 The ED asserts that: "where a member provides a Financial Advisory Service, a Fiduciary Relationship will exist between the member and the Client[1]." 2.2 This is the first APESB pronouncement to refer to accountants being in a fiduciary relationship in any context, and we are not aware of any predecessor pronouncement that asserts the existence of such a relationship. We understand tha the suggestion is based on Government statements concerning proposed legislative reform of the financial planning industry but the Government itself has acknowledged that more work needs to be done in order to fully articulate the scope and content of the duty. As such, it very much remains work-in-progress. 2.3 It is most unusual for legislation to impose or create a fiduciary duty and relationship (that in inherently common law) between parties. Whether this is appropriate at all will be the subject of detailed submissions to the Federal Government and, we expect, considerable debate in relation to the proposed legislation. 2.4 We are of the strong view that for the standard to assert a fiduciary relationship ahead of the legislation invokes uncertainty as to whether the huge body of law relating to fiduciaries applies to accountants (for example, the so-called "no profit rule" where a fiduciary may not profit from its fiduciary position without the beneficiary's consent). It also muddies the waters as to how remedies for breaches of duty would apply (for example, account of profits, compensatory damages etc). This is against the backdrop of courts being reluctant to impose fiduciary duties on accountants at all unless the context specifically dictates otherwise[2]. If however, the duty is ultimately codified within legislation, we would expect it to provide an opportunity to limit the scope of the fiduciary relationship and clarify the consequences of a breach. 2.5 We note also that members may need to examine their insurance arrangements to determine whether they hold cover (or sufficient cover, as the case may be) for a breach of a fiduciary relationship, given the focus to date has been on professional negligence. The proposed fiduciary duty is significant for accountants and their insurers because: • The amounts awarded for breach of fiduciary obligations may be greater given fiduciary obligations "are more onerous (and the legal consequences more drastic) than those arising from common law duties of care or from contractual relationships"[3].

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			• The limitation period is longer • It is possible that notions of contributory negligence do not apply[4]. 2.6 We strongly believe it is not appropriate for such complex relationships to be sought to be imposed or created at the standard level. The potential for unintended consequences of introducing this concept into a standard is too high, and there appears little need to refer to it in order to achieve the objectives of the standard.
47	From SC 6 Item 11	WHK	Set out below are the key aspects that WHK wishes to comment with respect to APES 230. WHK is a member of Accountant Financial Adviser Coalition (**AFAC**) an has also been working with the Mid-Tier Accounting companies on APES230. **1. Fiduciary Duty** We agree that financial advisers are under a fiduciary obligation when dealing with their clients. However, we are concerned about the approach taken in APES 230 in seeking to address this issue through, inter alia, the approach to defining "Fee for Service". Our concerns include the exclusion of percentage based asset fees and remuneration based on the accumulation of funds under management and alignment to the FOFA reforms. A key principle in considering fiduciary duty and remuneration is whether the profit and conflict rules have been breached. Where a fee characterized as a percentage of a portfolio's sum, but nevertheless arrived at by reference to such factors as complexity, degree of difficulty, professional knowledge, risk, time and resources, is fully disclosed to the clients, as well as accepted by the client we would contend there is no breach of the profit and conflict rules. Furthermore, asset based fees (when agreed by the client) create a clear alignment in that both the adviser and the client are focused on the client's portfolio performance being positive. Additionally, we believe that attempting to define a fiduciary duty ahead of proposed FOFA reforms is premature, and may result in a number of unintended consequences. **Recommendation: We recommend that APES 230 should not seek to define a financial adviser's fiduciary duty ahead of the FOFA reforms. We believe it would be better to understand the Government's changes and to seek consistency between the Government changes and what is proposed under APES 230.**
48	From SC 6 Item 13	ISN	**Fiduciary Responsibilities of Members** ISN is supportive of the imposition of a fiduciary standard on accountants providing financial advisory services to clients. In particular, ISN believes that it is desirable to be clear that this requires accountants to put the client's interests first and to disclose any actual, potential or perceived conflict of interest, and to avoid or minimise to an acceptable level any actual or potential threat to the accountant's objectivity or professional independence caused by personal or business relationships. ISN is particularly supportive of combining the imposition of a fiduciary standard with regulation of remuneration related conflicts. Unlike a fiduciary duty under general law where remuneration related conflicts can be overcome by gaining the informed consent of the client, in the area of financial advice, it is broadly accepted that clients are generally not capable of providing "informed consent". The finding of the PJC summarises this view concisely: There are also limits as to the usefulness of disclosure, however clear and concise, in an environment where clients have already committed

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			in their mind to their trusted adviser's chosen strategy.1 In the relationship between accountant and client, which is typified by a significant knowledge asymmetry and generally an ongoing and trusting relationship, disclosure of remuneration related conflicts are an insufficient measure to ensure that advice is unbiased. In the face of the current industry practices, it is critical that the APESB's standards specifically require that remuneration related conflicts be avoided altogether.
49	From SC 6 Item 16	PPA	Fiduciary duty - we fully support the move to an explicit fiduciary duty being imposed upon the providers of financial advice towards their clients. As accountants providing financial advice, this has always been our primary duty. However, we do not consider that an asset-based fee is inconsistent with fulfilling a fiduciary duty. On the contrary, an inherent risk in a time-based fee model is that a client may prevent their best interests being the dominant driver of advice by seeking to cut costs and not receive important advice.
50	From SC 6 Item 17	PB	**Fiduciary responsibilities of Members** A fiduciary relationship gives rise to a higher standard of care and duty than one based in statute or contract. The Joint Accounting Bodies support the concept that Members providing financial advice have a fiduciary responsibility to their Clients. However we are concerned this inclusion may have unintended consequences. There is evidence that the duties of a financial planner already include certain fiduciary obligations, evidenced by both case law and the fact the Financial Ombudsman Service (FOS) often refers 'to the investor relationship as in financial planning as fiduciary' in their determinations. The elements of a fiduciary relationship however are not currently articulated in legislation, but rather are embedded in common law. APES 230 ED does not provide sufficient discussion or detail on the actual expectations of this requirement. For example, what constitutes the 'Client's best interests' is ambiguous and open to interpretation. Further, whilst paragraph 4.5 demonstrates that the level of action required by the Member to discharge their fiduciary duty varies depending on the circumstances, it fails to provide any guidance on what this may entail. This is of concern given that FOS and the courts may look to this standard for guidance and make their own interpretation as to what this may mean. The Joint Accounting Bodies raise the issue as to whether it is appropriate to directly link fiduciary responsibilities to a specific remuneration model. For example, it is possible that in certain circumstances fee for service remuneration may not be in the client's best interests. The Government's Future of Financial Advice reforms also include a proposal to introduce a statutory fiduciary duty on all Australian Financial Services Licensees and their authorised representatives to act in the best interests of their Clients. The Government has advised that this will include a 'reasonable steps' qualification that must be undertaken to discharge this duty. While what will constitute 'best interests' and 'reasonable steps' is still to be developed in consultation with industry, we understand that it will be detailed and provide licensed financial planners with a clear message of what will be expected. It is also possible that the Australian Securities and Investments Commission (ASIC) will provide further guidance to demonstrate what will be expected from both licensees and their representatives. Even without this detail, the Government has advised it will not expect a financial adviser to make an assessment of every product available in the market in order to act in the 'Client's best interests'.

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			There is also a risk that the fiduciary duty being proposed for Members in APES 230 may conflict with what will become their statutory fiduciary duty once it is defined and implemented by Government. Taking into consideration these concerns the Joint Accounting Bodies recommend that the definition of **Fiduciary Relationship** and any other references be removed from the standard in order to avoid any unintended consequences. **Recommendation**: • **The definition of Fiduciary Relationship and any other references be removed from the standard to avoid unintended consequences of introducing a fiduciary duty that is not clearly defined and may possibly conflict with Member's statutory fiduciary duty once implemented.**
51	From SC 7 Item 2	HPW	Para 5.3: it is strongly suggested that the words in the fourth line "and the resulting ……… professional independence" be deleted without replacement. It is sufficient to state the restriction and thus give the client the responsibility to interpret the restriction to their own affairs. To expect a member to comment on an effect on their own objectivity and independence as a result of a restricted service is bizarre.
52	From SC 7 Item 4	SPAA	Professional Independence 11. The Exposure Draft requires Members to comply with the independence requirements contained in laws or regulations, such as the Corporations Act 2001. For consistency purposes, SPAA considers that the Professional Independence standard referred to in the Exposure Draft should specifically state that third party payments of embedded product fees (such as up-front commissions, trail commissions and volume based fees) paid to Members for the provision of a financial advice are prohibited. Recommendation No.3 – The Professional Independence standard should make specific reference to the prohibition of third party payments of embedded product fees to Members.
53	From SC 7 Item 6	SPAA	Terms of the Financial Advisory Service 12. The requirement for the Client to expressly agree to the services and fees being charged by Members is not entirely clear in the Exposure Draft. SPAA recommends that the Exposure Draft should make it clear that a Member's charging model must be expressly agreed to by the Client prior to the service being provided. This agreement should establish a clear and written understanding with the Client regarding the terms and conditions under which the fees will be calculated and paid to the Member. This agreement should also require written consent from the Client for the Member to calculate and receive the fees as disclosed in the agreement. 13. The Exposure Draft should also require Members to disclose how their fees will be collected. SPAA would expect that any collection method would be permissible provided all of the standards are complied with. Typically, collection measures would include one or a combination of the following: · Direct debit from one or more of the Client's financial products · Direct debit from the Client's nominated bank account

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			· Invoicing and the receipt of fees via client cheque or EFT. Recommendation No.4 – The Exposure Draft should make specific reference to the need for the Client to expressly agree to the fees being charged by Members prior to any fees being charged. Recommendation No.5 – The Exposure Draft should require Members to disclose how their fees will be collected.
54	From SC 7 Item 8	HPW	Para 6.2, (c), (e) and (g); sub paras (e) and (g) are well covered by (c). Are (e) and (g) necessary or perhaps (c) should be expanded instead? Pare 6.3: this provision should be altered to instead only provide for a renewed disclosure where there is a change in the details of and/or the methodology used for determining the fee for service. As it is, this requirement creates work that adds no real value to the client.
55	From SC 7 Item 9	MSC	**Confidential Submission**
56	From SC 7 Item 10	ISN	**Terms of the Financial Advisory Service** The proposed requirements of paragraph 6 [now paragraph 5] set higher and more effective obligations on accountants then current or proposed legal requirements, in terms of providing a "terms of engagement" letter to clients on an annual basis. While the FoFA package includes a proposal to require financial advisers to gain annual client renewal of fee arrangements, paragraph 6.2 would put in place more effective and detailed disclosure of the specific engagement with the client. Unfortunately there remains a high level of client disengagement and inertia in relation to their financial affairs. Regular renewal of the terms of engagement with a client should over time lead to clients exercising greater control and interest in their relationship with their accountant adviser.
57	From SC 7 Item 12	ISN	**The Basis of Preparing and Reporting Financial Advice** ISN is supportive of the proposed requirements set out in paragraph 7 [now paragraph 6]. We believe that there are some particular aspects of the proposed obligations which are important in terms of ensuring a high minimum standard of advice. Currently, too much financial advice is provided where the possible strategies and product range available to the adviser are limited by the commercial arrangements put in place by the dealer group or licensee. ISN commends paragraph 7.1(b) in requiring accountants to reveal their evaluation of alternative strategies which could reasonably be expected to meet the client's financial needs. This should give rise to better competitive analysis of the strategies and products which will service the client's financial interests.
58	From SC 7 Item 13	CONFP	Heading: include the word 'quality' before the words 'Financial Advice'. This will give fruition to the desire expressed in provision 1.2 for 'the provision of quality and ethical' services. Consider adding the words 'and/ or verified by the Client where otherwise sourced' after the words 'provided by'; as this covers for members sourcing information from related records or advisers and allows for the reconciliation of what might otherwise appear conflicting statements 'of facts'. (your numbering optional): add a provision, not in block type, along the following lines:- "where a client seeking advice where scope has been limited, the Member will be seen to have complied with this provision if they record

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			that options were precluded by the client (where raised by the Member or not)." (your numbering optional): add a provision, not in block type, along the following lines:- "Where a Member discloses the matters in 7.4 and 7.5 [Now paragraph 6.4 and 6.5] in the text of a valid Statement of Advice, they will be seen to have complied with these provisions." Paragraph 6.8 (i) - I don't understand the need for this provision, particularly in a situation where not all advisers in an office will necessarily be members of an ascribing professional body. The requirement would add an administrative burden to the compliance regime in such an office. What does the requirement do for the protection of the Client?
59	From SC 7 Item 14	DMR	Paragraph (b) requires that in providing financial advice we are required to "take into consideration the Client's financial needs, objectives and priorities". An independent expert in preparing his advice cannot take into account the financial needs, objectives and priorities of individual shareholders, the reason is obvious as one letter of advice is prepared for the benefit of many shareholders. For the reason outlined above, an independent expert cannot comply with this paragraph. As above. We believe that APES 230 should not apply to assignments such as independent expert's reports as these are adequately cover by existing standards. If you agree with this view the Exposure Draft should be amended to exclude this type of financial advice. Alternately, the Exposure Draft should be amended so that paragraphs 7.2(b), 7.4 and 7.8(h) do not apply to assignments where general advice is provided to a group of "clients" rather than to individual clients.
60	From SC 7 Item 15	MFS	Paragraph 7.8 should include a similar deeming provision to paragraphs 6.4 and 10.4, where a compliant Statement of Advice is provided by an AFS Licensee.
61	From SC 7 Item 16	MS	1) 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.
62	From SC 7 Item 17	AFAC	**3. DETAILED COMMENTS** **3.3. Limited advice** It is likely under the current Government reforms and proposals that the provision of limited advice will increase as the Government seeks to allow for the provision of advice for clients who may not be able to afford a holistic service. Of concern in the proposed standard is paragraph 7.1 which seeks to propose the research of alternative strategies and courses of action that can reasonably be expected to meet the client's financial needs. This will certainly be required for some advice work, but not all.

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			We would recommend that clarification be provided so that scoped or limited advice is allowed for without the requirements that may exist for comprehensive or holistic advice. We recommend clarity be provided within APES 230 to cater for limited advice
63	From SC 7 Item 18	MSC	**Confidential Submission**
64	From SC 7 Item 19	PWC	Paragraph 7.1 of the ED appears to impose a requirement for work to be done that may be in excess of what a client requests. We again assume it is not the APESB's intention to impose on clients the requirement to pay for advice the client does not want, and may not need
65	From SC 8 Item 1	CFP	There are 2 essential matters here: 1. Hourly based fees or even fixed fees don't automatically guarantee better or worse service than asset based fees – the adviser, and their support team (including their Licensee) determine this. 2. I believe that if the education bar/entry level for Financial Planning qualifications were raised to be granted Authorised Rep status, and we had a professional body (ie FPA) with teeth that all Authorised Representatives had to belong to (with professional standards that all followed), we might not be having this debate about ongoing fees. Further details: 1. Hourly/ Fixed fee or asset based fee: We have a professional and hybrid fee-for-service based business that includes: * Approximately 20 "Services" with a fixed fee - for example calculating the benefits of a Transition to Retirement strategy. * 4 levels of Review Service, comprising both a fixed annual fee and an asset based fees: - The fixed fee represents the value in our strategy advice and time to prepare the Statement of Advice (or Record of Advice). In many cases, the value of the advice is significantly more than the agreed fee eg extra retirement savings may be $100,000 through using salary sacrifice, assistance to set and keep to a budget, and paying off credit debt first. Perhaps VALUE given rather than time/hourly fee is a better method of charging??!! - The asset based fee represents the time invested by us in looking after the investment throughout the year. The asset based fee % reduces as the value of the portfolio rises (a bit like reverse marginal tax rates) reflecting some economies of scale. I believe this gives us a real commitment to the client to grow the funds under our management. My clients have actually REQUESTED this: we have "skin in the game", where if asset values increase we benefit, but no one seems to remember that when asset values fall we also share the pain. As a CA practitioner and CFP spending 100% of my time in Financial Planning Advice area, I don't entirely agree with the Institute's submission that there should be no link between the sale of a product and our remuneration. I would estimate that two thirds of our client base could not have afforded their initial advice and ongoing annual review were it not for the ability to have this advice paid for from the investment. This is particularly the case for advice on existing super funds, and/or their consolidation where non-super cash is limited. We have always provided full disclosure as to both the initial cost of our advice, and ongoing costs (which are re-disclosed annually). We give clients the choice to pay the upfront cost from an account separate to the investment or super, and in almost 18 years of practice, less than a handful of clients have selected this option, preferring instead to have the cost deducted from their

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			investment. Low value investors (say less than $20k) MUST have an ongoing fee because they simply can't afford to pay a high upfront fee for advice. Eg 25 year old with $5,000 to invest won't pay 2/3 of their savings to us as an advice fee, yet on an hourly time basis, we spend between 2 – 4 days in interviews, collecting information, preparing strategy and Advice documents, and ensuring the money is invested correctly (rollovers are particularly time-consuming). If the ability to deduct advice costs from the product is removed, you will also remove the ability to access advice for the majority of Australians who need it most. Being paid by the hour (where there is less reward for being efficient) from a client's bank account no more guarantees good advice than being paid for from a product, as long as the client agrees to the fee. Whilst on this matter, almost all large Dealer Groups take their remuneration directly from products, before passing on the balance to the Authorised Rep (or in the case of Banks and Insurance companies, build their profit into the MER of the product that they own in-house or as shareholders of Financial Institutions). This makes an unlevel playing field for Planners like me who do not simply receive a salary from a Licensed Dealer who is selling products. It is impractical and inequitable to ask Planners to source their revenue exclusively outside the investment product, when the very organizations ASIC gives the Licences to source their revenue FROM the investment product. If Planners have to use Fee for Service, then Licensed Dealers should have to do the same. A middle ground is to ensure that when the advice is given, the ongoing advice fee (currently bundled in the MER of many funds), is agreed to between client and adviser, noted separately both in the Statement of Advice and the application form, and the client signs off on both. We already have this arrangement with one of the platforms we use, and have done so for the last ten years. The fee has two components - one for strategy advice, and one for investment selection and management. Industry super funds like NGS and State Super offer in-house financial planning for no or very low cost with "restricted" advice options. As a generalization, Industry funds make it difficult for us to get information on behalf of clients, particularly unit prices, client units held, and asset allocation on a daily basis. Public offer fund managers do provide this information, and also contribute significantly to assisting us with their Technical teams, providing experienced and qualified speakers at Professional Development Days etc. They, unlike the Industry funds, are helping their investors by supporting Financial Planners to receive good ongoing support for their technical, business administration and development and client communication training. This support has a cost, and Industry funds are simply providing less Service/advice/support for a lower cost. I think the FPA, ICA and other professional bodies that represent Financial Planners have done little to counter the Industry Super fund advertisements that imply commissions to Financial Advisers are a waste of money. I'm sure you are aware of many studies that show the value of Advice in reaching client goals can far exceed the commission cost. The real question is for individual investors to ensure that they feel they are getting value for any commissions they pay. In addition, a product cannot be judged superior simply because it's fees are lower - that's like saying you have a better accountant because you paid less tax - it may simply be because you earned less income in the first place! In summary, here are some solutions to this whole debate: • Retain flexibility in the method of charging at Practitioner level - Hourly based fees or even fixed fees don't automatically guarantee better or worse service and quality advice than ongoing commission – the adviser, and their support team (including their Licensee) determine this. • If the ability to deduct advice costs from the product is removed, you will also remove the ability to access advice for the majority of Australians who need it most. Being paid by the hour (where there is less reward for being efficient) from a client's bank account no more guarantees good advice than being paid for from a product, as long as the client agrees to the fee. A middle ground is to ensure that when the advice is given, the ongoing advice fee is agreed to between client and adviser, noted separately both in the Statement of Advice and the

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			application form, and the client signs off on both. • In addition to the above, to make good advice more affordable, ASIC needs to relax the Statement of Advice requirements for lower $ investments (say $20,000 in super or non-super), and Replacement product disclosure requirements so that the length and therefore COST of the Advice document can be reduced. • To meet the need for the majority of Australians who need our expertise, but can't afford it, perhaps Centrelink or Family Assistance office or Medicare could issue a voucher to the value of say $1,000 which can be used to pay the cost of qualified Financial Planners. This short term cost to Government will be recouped many times over when we can help people to become financially independent, reducing the need for Centrelink payments, marriage break-ups over money disputes, and lower health care costs as we know financial stress is a major contributor to poor health, lack of productivity etc. • Push for a level playing field with sharebrokers – in particular ongoing written trade advice (or lack thereof) is totally different to Advice requirements in relation to advice for changes to investments in managed funds, particularly Replacement Product disclosure if platforms are changed. • Push for a level playing field with Real Estate Agents – this asset class usually requires a far greater investment of cash (or risk in borrowings) than many of our clients make in super, shares or managed funds. Property is purchased by the majority of Australians yet education standards for accreditation as an agent are low, and no written advice is required in relation to the "appropriateness" of the purchase of this investment, either on it's own merit, or in relation to other asset classes. I look forward to your comments.

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66	From SC 8 Item 5	FFA	Whilst I understand what the accounting bodies are trying to achieve, ie the full implementation of fee for service, and in fact my larger clients are predominantly on annually negotiated fees which are not linked to a percentage of FUM, I believe there should be a minimum level of assets under management, eg $500,000, before the removal of percentage based fees for the following reasons: 1. My feelings are that advisers invariably take on small clients who they envisage will become larger clients over time at reduced fees initially knowing these clients will become more viable down the track and as part of the initial servicing may agree to provide a lower level of service initially, consequently, having to engage in the extra work required to document and renegotiate fees annually puts more pressure on being able to service smaller clients cost effectively especially in light of the fact fees are required to be disclosed to clients prior to them signing up and they have the ability to discuss fees if they become dissatisfied with the level of service provided at any stage. The percentage based fee works well in these circumstances as the advisers fees grow with the clients wealth. Having said that, I do also believe that there comes a point when the amount of work required to service clients does not necessarily increase with their wealth. The level of risk the adviser is exposed to may, however, increase as the funds under advice increases. 2. Another issue with the removal of percentage based fees and negotiating them annually with clients is that smaller investors generally expect their advisers fees to fall if the value of their investments fall. Whilst I acknowledge that most advisers do not have control over the economics surrounding clients investments the smaller clients, I believe, are less likely to be prepared to have a fee that has no downside risk even if there is no upside risk to them either, in the short term. As discussed above, at the end of the day percentage based asset fees are just one of the methods for calculating advice fees charged to clients at the disposal of advisers as opposed to being linked to the provision of a particular product. As with all fees, irrespective of how they are calculated, clients either agree to pay them or they don't depending on whether or not they perceive they are getting value for money. In relation to renegotiating fees annually irrespective of whether or not there is a formal procedure in place clients have the ability to terminate an advisers services at any time if they so wish irrespective of whether or not their fees are specifically negotiated annually. With regard commission income, whilst a very small portion of my income, I perceive a couple of problems in relation to arrangements which are currently in place: 1. My understanding with risk products which are already in place and the client has previously opted for a commission based fee not all providers allow for the already existing commission to be dialled down to zero, for example Asteron, and those that do, require the policy to be cancelled and reissued, for example Aviva. Consequently, to then comply with the proposed standard would either require the adviser to rebate the commission to clients which may involve monthly transactions where clients pay the premiums monthly or for the policy to be cancelled and reissued. The end outcome is to place additional administrative tasks on the advisers which ever option they take. Where advisers have existing clients or take on clients who already have risk products in place with commissions attached they will automatically inherit the additional administrative burden the cost of which will either need to be unfairly absorbed by the adviser or passed on to the client. In addition, my understanding is that not all financial advisory bodies are supporting the removal of commissions in relation to risk products. 2. Another minor source of commission income is trail commission paid by cash management trusts which is generally paid monthly,

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			consequently, to rebate it to clients involves a number of, generally, insignificant monthly transactions. It is possible to turn off this type of trail commission, however, it is not then paid to the client it generally remains as extra profit for the product provider. The amounts would generally not be considered significant enough to place a bias on recommending one CMT over another. To avoid the product providers benefitting from the proposed standard maybe a solution is to allow for such commissions to be donated to charity by the advisers or failing that pressure needs to be brought to bear on the product providers to remove the commissions and reduce their fees accordingly. In summary, the professional accounting bodies need to ensure they are not placing constraints on their members which advisers operating under other bodies don't have to comply with. Maybe there needs to be a level of materiality brought into play where small amounts do not need to be rebated and grandfathering provisions allowed for in relation to existing risk products to ensure the advisers do not have to deal with the additional administration. It is also necessary to ensure the members of the professional accounting bodies are not expected to operate under standards which their professional bodies aren't required to operate under. For example the Institute of Chartered Accountants advises members that they receive revenue through the member benefits program so as to maintain the quality and diversity of it's services. I trust the above comments are useful to the review process in relation to the proposed standard and I would be pleased to discuss my comments further if necessary.
67	From SC 8 Item 6	ORT	**Confidential Submission**

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68	From SC 8 Item 7	CRA	**Confidential Submission**
69	From SC 8 Item 10	FFP	I cannot in any way, however, agree with two aspects of the proposed Fee for Service remuneration model. These are the banning of percentage based asset management fees and commission paid on risk products such as life insurance. **Percentage Based Asset Management Fees** Assuming that the fee is clearly disclosed and understood by the client, this fee structure works well to align the objectives of client and adviser. When the client's investments improve in value through sound advice, the adviser's remuneration improves. The proposed standard reiterates the existing fiduciary relationship between adviser and client, so the adviser will naturally put the client's interest ahead of his or her own financial outcomes. The imposition of such a measure on Accountants would create a significantly uneven playing field in the Financial Planning industry. You would be aware that the vast majority of financial planning advice in Australia is not provided by Accountants. The majority of existing financial planners are not Accountants so automatically there would be a market imbalance if the proposed APES 230 was adopted. Furthermore, many of the non-Accountants are aligned with financial product providers such as banks and insurance companies. In these situations there is often significant product bias which can lead to less than adequate advice being provided. The proposed standard will have no impact on the behaviour of the non-Accountants. In fact, should APES 230 be adopted, it is inevitable that non-Accountants will secure greater market share as it would be harder for Accountants to commercially compete. This is obviously not a good outcome for consumers. **Banning of Commissions** My issues here are; a) Many existing investment products have no scope to rebate commissions back to clients and manually rebating hundreds of small value commissions back to clients would be unworkable. b) As reflected in the recent Ripoll Review, the Federal Government has recognised that commission based remuneration works best for personal risk product sales such as life insurance and income protection. This is because; i. Clients are reluctant to pay for risk insurance advice on a fee for service basis. ii. Australia is already badly under insured in the personal risk area and any system that promotes risk advice should be encouraged and; iii. Writing personal risk business is an involved and time consuming business which is routinely unsuccessful in generating revenue due to client underwriting problems, etc. Remunerating advisers on a success basis by commissions works best. Creating disincentives for Accountants in the financial planning industry will result in an overall decline in the quality of financial advice in Australia. It is illogical why Accountants will be required to adhere to practices others in the financial planning industry will not be required to follow. The Accounting Professional & Ethical Standards Board (APESB) should be encouraging Accountants to be financial planners rather than creating these uncompetitive hurdles. I do not understand why the APESB is contemplating these measures when the Ripoll Review was

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			recently released by the Federal Government, a review that was conducted after significant industry consultation. Whilst no doubt drafted with the best intentions, the exposure draft inadequately considers the adverse commercial ramifications for Accountants in the financial planning industry and Australian consumers in general. It may inadvertently require Accountants to question the value of their membership of their professional Accounting associations. In conclusion, I believe that the exposure draft should be amended to remove the ban on percentage based asset management fees and commissions relating to personal risk products.
70	From SC 8 Item 12	FMFS	As a member of the **IFAAA** (Independent Financial Advisers Association of Australia), an organisation that upholds an even higher standard of independence, we naturally and wholeheartedly endorse the decision by the Accounting Professional and Ethical Standards Board [REF: standard APES 230 Financial Advisory Services] to remove remuneration models that include commission and or asset based fees for member accountants that provide Financial Planning services to their clients. We see this as the first step towards providing clients with non-biased and conflict fee advice
71	From SC 8 Item 13	RIA - MR	I was recently sent a copy of a media release your office issued on 30 June 2010 regarding asset based fees and am writing to you to congratulate you for your courage, integrity and leadership. I have been providing advice for 14 years, but it's only since I started operating as an independent financial adviser 4 years ago that I actually started to feel pride in what I was doing. The first ten years of my career was spent in various financial planning offices in Canberra, Sydney and Melbourne whose advice was tainted with many conflicts of interest. Commissions on managed funds, kick-backs from property developers, commissions on insurance products and asset based fees offered a limited range of options for advisers and their clients. The introduction of proposed standard APES 230 Financial Advisory Services is to be highly commended. It will remove a conflict of interest that will ensure that client interests are being put first. Authorised Representatives, whether they classify themselves as financial advisers, financial planners, accountants or trusted advisers must operate under a genuine fee-for-service model. All conflicts of interest that link fee to product must be removed. I personally don't see how advice can be given any other way. Congratulations again. I sincerely hope that other associations follow your lead soon.
72	From SC 8 Item 16	IFAAA	The fact is that impartial advice doesn't exist where remuneration has an incentive structure. Arguments to the contrary are motivated by commercial reasons which ought not to be placed ahead of the interests of the public. The IFAA insists on a Gold Standard of independence in its members: 1. No ownership links with any product manufacturers. 2. No commissions (these are the province of a salesperson, not an adviser). 3. No asset-based fees (these are simply commissions by another name). Any opposition to this standard will be short-lived, I promise you. The inescapable fact is that independence in your adviser is not a matter of personal discretion; either conflicts exist or they don't and it is clear that conflicts distort the quality of advice. I applaud you.

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73	From SC 8 Item 17	NEX	We are writing to express our disappointment with both the substance of the abovementioned policy as well as the lack of member consultation in coming to this conclusion. While improving professionalism across the financial planning industry is a goal all advisers should aspire to, we absolutely reject the assumption that providing asset management fee financial planning services is at odds with this conclusion. We have considered our position within Nexia Court Financial Solutions carefully in coming to this conclusion, spurred on by the following implications: 1. A loss of revenue from existing clients, particularly for those clients who have stated a preference to initiate services with our firm on a commissions and asset management basis, and signed service agreements on this basis 2. Currently, asset management fees provide an element of 'mutual objectives' with the client as fees rise and fall with the value of the portfolio itself (with non advice assets removed from the calculation). In my view, this is an important foundation for ensuring the fiduciary relationship is maintained and conflicts of interest minimised. 3. The proposed change will put our firm at a disadvantage to other non accounting financial planning firms who will have the benefit of providing services under an asset management fee basis on an ongoing basis. In our view, the clear objective that the industry should be targeting is clear, client driven advice (rather than commercially driven product advice). How a firm chooses to remunerate itself (as a client driven fee) should be of lesser concern than making substantive efforts towards addressing the nature of the advice that is given to clients across the financial planning industry. We would be more supportive of efforts to achieve such an outcome in order to differentiate accounting based financial planning firms from the rest of the industry. **Conclusion** Unfortunately, the Accounting Professional & Ethical Standards Board (APESB), through APES230, creates an unnecessarily difficult commercial impediment for all accounting based financial planners. The impact of the Ripoll recommendations to be implemented across the board from 2012 are very substantive and importantly, will ensure a level playing field for all firms from a remuneration perspective. We believe these recommendations should be mirrored for APES230 for all accounting based financial planning firms. Therefore, we believe that the exposure draft should be amended to remove the ban on percentage based asset management fees and commissions relating to personal risk products.
74	From SC 8 Item 18	CONFP	I make the following key points to support my making this stand before moving to a more detailed commentary on specific provisions of the proposed standard:- 1. our firm provides services to corporate superannuation plan sponsors and members under circumstances whereby ongoing services contracted with the employer are provided to the employee members – and whereby the members superannuation accounts are charged a fee for that service based on a percentage of the ever-changing account balance. There is obviously a cross-subsidising of the cost of these services in any one of more financial years, but to structure the fees under current industry circumstances so as to comply with the proposed standard will not be possible within the currently proposed timeframe.

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			2. personal risk insurance services are vital to the economic well-being of the Australian economy and the level of under-insurance in this country is well documented. Out experience is that the time and cost factors in writing business in the competing scenarios of: a) low-level cover; and b) clients with suspect health history, mean that the determination of an appropriate fee for initial advice is almost, if not impossible to determine at a time to comply with the provisions of the proposed standard particularly as the industry is not going to be ready with a solution by the July 2011 proposed implementation date.
75	From SC 8 Item 20	HPW	*[Technical Staff Note - HPW submission on "Fee for Service" is repeated in Specific Comment – Table 4]* Definitions: Fee for Service: The claim that fee for service does not include "percentage based asset fees" is too narrow in its view and should be qualified. I agree that asset based fees such as trail commissions are inappropriate, are not tied to the delivery of service and are little more than loyalty fees paid by the product manufacturers. However, I would submit that true full service and pro-active management of a client's affairs requires the continuing attention of an adviser to the following: # Portfolio re-balancing # Strategic planning – such as withdrawal and re-contribution, contribution splitting, pension administration, cash flow management, taxation issues, legislative change, personal circumstance changes. # Corporate actions, investment management, restructuring, risk management # Maintaining records and reporting # Personal communication, care and attention Bearing in mind the above, asset based remuneration therefore is entirely appropriate given that it is easily understood by the client and transparent, i.e., the client can quite easily calculate the veracity of the fee. Whilst the alternative is a fixed fee, I would argue that such an alternative is not entirely fair nor reasonable as over the past three years we have seen portfolio values that have fallen and in some cases considerably. It would be distasteful in such cases if fees remained static. There are also circumstances where capital withdrawals occur and/or additional deposits are made and where such events occur fees should be adjusted accordingly. I would also argue that scale is an important factor, that is, the relative cost should be scaled according to the size of a portfolio on the basis that automated systems make it more cost efficient to manage a larger portfolio. Therefore, whilst the dollar cost may be greater the relative percentage cost to capital may be significantly lower. To try to base all this on an hourly rate is totally impractical and I would suggest to the point of being administratively impossible.
76	From SC 8 Item 22	PMHFP	I have read through the exposure draft and on the whole I think it is consistent with and in some cases improves on professional standards for CPA's who operate as financial planners. I am, however, very concerned at two aspects of the 'fee for service' concept included within Clause 9 of the exposure draft and will address each in turn. **Proposed ban on asset based commission for pre-existing clients.** The difficulty I have with this proposal is that it is retrospective. 1. Where members have bought or otherwise spent money to develop their businesses in accordance with existing professional standards – this proposal will substantially erode the value of those businesses. I cannot find any provisions in the proposed

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			standards which will serve to offset this. CPA Australia has always argued strongly against retrospective changes which impact on taxpayers and members and in my view this proposal is wholly inconsistent with our professional association's established policy. 2. In many cases our clients have not been willing or cannot afford to pay substantial amounts up-front for us to prepare and fully implement a Statement of Advice. So, by charging a lower fee up front, we have sought to recover our costs over the longer term on the basis of a commission based trailer and a long term client relationship. If Proposed Standard – APES 230 is implemented we will be unable to recover these costs via the trailers and will be forced to write off substantial amount of WIP already incurred (work which complies with the existing standards). 3. In some cases our clients have modest investment funds and could not or would not be prepared to pay one-off fees for advice but are prepared to pay us an ongoing asset based trailer as a retainer so that they can call upon us should the need arise. Converting these clients from an asset based trailer to direct invoicing will prove very time consuming, costly and undoubtedly meet significant confusion and resistance. Many of these clients have small amounts of superannuation which they are converting to pensions. Over the following years their small trailers enable us to assist them complete their Centrelink pension forms, a process they find confusing and stressful, as well as amend their pension options as their circumstances change. These people, in receipt of small pensions, are not able to afford a fee for service arrangement but need help. While we are in receipt of small trailers we are able to provide this service to retirees. 4. Where remuneration is asset based I believe there is less incentive for churning or over-servicing. Under a wholly fee for service arrangement some clients are unlikely to be able to detect or willing to take action such as moving to another professional. Proposal to ban fees based on assets. I have a number of reasons for objecting to this measure in the Proposed Standard. 1. My concern here is that the practice of charging fees based on the level of assets being managed will remain an industry standard no matter what stand CPA Australia's take on the issue. The level of investments is generally commensurate with the level of work required to be undertaken by the adviser, their risk and their responsibility and hence in my view this is not an unreasonable approach. In any case it is my view that fees charged under the standard are likely to significantly correlate with asset based fees anyway. Requiring an different standard for CPA's compared to other Financial Advisers puts us at a disadvantage, reduces our flexibility and reduces our ability to compete in the market. 2. By charging on a time/cost basis we will be forced to fully charge our clients up front. Many people are not willing to pay high upfront costs for advice and often these are the people who have limited understanding of financial issues and in fact benefit the most from this advice. Banning the collection of fees based on assets will wipe out trailers which clients are happy for us to receive and enable us to recover our costs over time. It will also force larger upfront payments. This will in my view mean we will be uncompetitive with the rest of the industry which faces no restriction and will impact on our clients as we will not be able to take a long term view for collecting fees. People will not want to pay up front fees and will either seek advice elsewhere or fail to get the advice they need. I do consider, however, that there is merit to prohibiting up front commissions based on the amount of the investment in certain situations. There is no doubt in my view that there could very well be or perceived to be a biased towards investments offering higher commissions. I know of two CPA firms which heavily promote agri-sector investments which have failed spectacularly. I have not and will never

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			recommend tax effective agri sector investments for this very reason. 3. I would like to raise a third issue concerning fee payments. Most clients find it convenient to have payments to advisers come directly from their investment or superannuation fund. I do not think it is clear whether this would be possible under the Proposed Standard. Charges based on a time/cost basis for services provided would, in my view, most likely make it impractical to have such fees withdrawn form a client's investment. Requiring the client to make separate payment from other sources would in some cases cause cash flow problems and would certainly be less efficient and more costly for clients. There is also the additional concern of whether or not such amounts would be tax deductible, particularly if they relate to superannuation investments, then there is the inevitable conflict wherein advisers would, in some cases, structure or describe such feed falsely in order to ensure tax deductibility. In my view none of this is efficient or desirable. It has always been my view that accountants are well placed to provide financial advice together with tax advice to provide the best overall financial outcomes for clients. I feel that as CPA's we should be encouraged to provide these services to clients. I fear, however, that these new obligations will effectively render is impossible for us to continue to do so. In my view the proposals are akin to perhaps a hypothetical standard which insists that members not act as auditors where we provide other services to clients (perhaps a meritorious professional approach to eliminate potential or perceived conflicts of interest), but if we took this approach on our own without widespread industry support it would put our members at significant competitive disadvantage, By way of another example, there is currently also a push towards prohibiting auditors to audit SMSF's where the same firm has done the accounting work. Again I think we would all agree this is not without merit. However if CPA Australia moves to impose this on members where is doesn't apply to other accountants we will not be operating on a level playing field. In summary I consider that the two elements of the proposal: a) Create retrospectively which damages the value of our existing business; b) Requires higher standard of CPA embers that the standard of the industry as a whole. This will render us uncompetitive with our peers. c) Reduces the flexibility we can offer clients in the collection of fees. Many who cannot afford up-front fees or fail to see the benefit of this approach will fail to get advice they really need and suffer as a consequence. *[Technical Staff Note - the following paragraph is repeated in General Comments]* The proposals contained in the exposure draft will do serious damage to our business, due to their retrospectivity and directly as a consequence of adopting a policy position which is inconsistent with the rest of the industry and the government's state policy position. I ask you review these proposals so neither CPA's or their clients are disadvantaged by the Proposed Standard.
77	From SC 8 Item 23	CFS	At the outset I would like to commend the Board for its efforts in support of increasing professional standards in the industry. I have long supported increasing professional standards for financial advisers and accountants alike. Under my stewardship CFS has been a strong supporter of the product and advice remuneration reforms contained in the FSC Member Superannuation Charter and the Financial Planning Association's Remuneration Principles. And whilst I am comfortable with most of the principles within APES 230, there is one important assumption upon which the proposed Standard is based which I do not support. This relates to the definition of 'Fee for Service' for the provision of Financial Advisory Services. The application of this definition will hinder the future delivery of affordable and accessible financial advice by Members to their clients. Below I have outlined reasons for my concern in relation to the proposed definition. The proposed standard and the definition of Fee for Service

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			Proposed Standard APES 230 requires that Member of a professional body which adopts the Standard comply with the Standard when providing a 'Financial Advisory Service'. The Standard required that a member who provides a Financial Advisory Service only charges clients on a 'Fee for Service' basis. 'Fee for Service' is not defined by law. In the broader financial advice industry it is broadly understood to refer to an arrangement where the adviser and client explicitly agree to the fee charged. A fee for service arrangement can take a number of different forms. In fact the form of the payment of the payment mechanism is almost irrelevant. It is the explicit agreement to the service delivered, and fee charged for that service, which is crucial in establishing a fee for service arrangement. Often the fee can be explicitly deducted from a client's investment, facilitated by the product provider. However, the Proposed Standard defines Fee for Service arrangements much more narrowly than this: Fee for Service does not include Commissions, **percentage based asset fees**, production bonuses, or other forms of fees or remuneration that are calculated by reference to product sales or the accumulation of funds under management, whether paid by the Client or a third party such as a product manufacturer." The Board's state reason for drafting the Fee for Service definition narrowly is to minimise conflicts of interest. This implies that percentage-based asset fees cause conflicts of interest and are therefore an inappropriate method of remuneration for Members. In the comments below I outline why I do not agree with this proposition as well as the reasons why I believe percentage based asset fees are an important part of financial advice remuneration in a fee for service environment. **Forms of financial advice remuneration** Financial advice provides considerable benefits to clients and had an important part to play in addressing issues such as retirement adequacy and generation change. Accountants are trusted advisers and are a crucial source of such advice. The issue of remuneration is important because initial financial advice is expensive. Research conducted by Dealer group Advisers indicated that the average full financial plan cost $3,570 to create, present and implement. This is far beyond what the vast majority of consumers are willing to pay. Consequently, it is very difficult for an adviser to recoup the necessary return from upfront advice on an hourly set fee basis. The Treasury demonstrated the extent of the problem in their submission to the Parliamentary Joint Committee on Corporations and Financial Services (PJC) as follows: "The requirement for a fee only structure could contract the advice market and this contraction may fall largely on less affluent clients who are unable to pay upfront fees." As guiding principles, I believe it is important that remuneration is transparent, understandable, agreed by the client and controlled by the client. There are at least three methods of remuneration that meet these guiding principles; hourly rate, set or flat fees and percentage-based asset fees. All three forms of remuneration have advantages and disadvantages. Hourly rates have been criticised because "clients feel they have no control, that there is no correlation between cost and quality". Furthermore, a recent AFR article regarding hourly rates and law firms outlined four problems with this method of billing: "First, it measures efforts, not outputs and results. Second, it "misaligns interest" and encourages law firms to unnecessarily prolong tasks. Third, it requires the constant addition of new lawyers to increase profitability, instead of focusing on efficiency gains. Fourth, it burns

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			people out and destroys innovation." Clearly, the statement applies equally to professions other than law. **The need for percentage based fees for advice** In April this year, Minster Bowen released the Future of financial Advice report. The suggested reforms are guided by overriding principles that financial advice must be in the client's best interests and that financial advice should not be put out of reach of those who would benefit from it. The listed benefits of the reforms include "Adviser charging will be clear, product neutral (and) directly related to the services provided". Following considerable investigation from the PJC the report recommends that percentage based fees be permitted on ungeared products and investment amounts. There are several reasons that some clients and Members prefer a remuneration method based on percentage-based asset fees. Firstly, such fees align the member's remuneration with the client's interests; the adviser's fees increase or decrease with the client's balance. Second, it should be recognised that accounting work and financial planning work are different and involve different types of risk. Financial planning involves both advice and the management of investment transactions, carrying substantial operational risk. In this environment it is reasonable to charge fee based on the proportionate increase in risk. Given the proposed regulatory changes it is likely we will see and increasing trend towards transaction-based or limited scope advice. It will continue to be important for members to have the flexibility to charge for their services in a manner which recognises the risk associated with the transaction, the benefits of financial planning are rarely immediate. Most are realised over a long period of time and require constant monitoring. Percentage-based asset fees reflect the ongoing nature of an advice relationship, especially under the fee for service model ('Adviser charging') described in the Future of Financial advice report. Finally, percentage-based asset fees reflect the fact that there is more work for the member for clients with higher balances. Higher net worth will generally have a more complicated financial situation, requiring more detailed analysis, implementation and review. **The implication of introducing the Proposed standards in its current form** <u>The adoption of this recommendation would bring enormous disruption to thousands of Members</u>. Firms will be forces to implement new systems and procedures and the costs of compliance will be pushed to clients, who already struggle to meet the cost of initial advice. Clients, therefore, will be forced away from a source of trusted advice. All forms of remuneration risk being abused. In my view, however, the benefits of percentage-based asset fees far outweigh the risks. Banning this form of remuneration may reduce perceptions of conflict of interest to the member. The cost, however, is that access to advice is materially reduced for a large number of Australian consumers and a large number of the institute's Members would have an immediate and negative impact on the own businesses. **Recommendation** The best outcome is to afford members and clients the flexibility to negotiate the fee structure that most suits the advice, the circumstances of the client and the nature of the ongoing relationship. In many cases, that fee structure will be percentage based asset fees. To the extent that the Proposed Standard defines Fee for Service arrangements, this definition should not include percentage based asset fees.
78	From SC 8 Item 24	MFS	*[Technical Staff Note - The following 2 paragraphs are repeated in General Comments]* We agree with the fundamental principles in the proposed APES 230 ED that Members who provide Financial Advisory Services act in a

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			Fiduciary Relationship (putting their Clients' best interests ahead of their own interests) and that in so doing they must remove conflicts of interest. However, we consider that the proposed standard goes a step too far in the prescription of the basis of remuneration and, if implemented, may even serve to frustrate some of the objectives of the standard. Our principal concern with the proposed standard relates to the overarching requirement for financial advisory services to be provided solely on a fee for service basis (as defined). **1. Personal Risk (Life) Insurance** The requirement for pure fee for service has no regard for how the provision of personal risk (life) insurance services operates in practice. In fact, it is our view that a fee for service basis for such services is totally unworkable without significant detriment to Members and Clients alike, which would only serve to exacerbate Australia's massive underinsurance problem. We offer the following comments in support of this position. 1.1. The stance adopted in the proposed standard is inconsistent with the position taken by other professional bodies and the Government. The Financial Planning Association, for example, has excluded risk products from its Financial Planner Remuneration Policy until further consideration is given to such products. The Federal Government, under its Future of Financial Advice reforms, has also deferred dealing with commissions from risk products, noting that: "Insurance has different features from investment products, including the fact that there are no investment funds which might be used to pay for advice. Therefore, concerns about affordability and the potential for under-insurance need to be explored in this context." (The Future of Financial Advice Information Pack, p4) 1.2. The whole essence of life insurance is to pool risk. In a similar vein, the current commission-based fee model provides the opportunity to pool revenues, which allows us to provide services such as claims administration and underwriting fairly and efficiently. There is nothing to suggest that a fee for service model in this area would improve the delivery of such services to our clients. 1.3. Not every life insurer provides policies on a no-commission basis, meaning that we may fail in our obligations to act in the clients' best interests. Alternatively, if the responsibility to rebate any commission received were to fall on us, we would need to employ additional human resources and incur significant IT costs to attend to that process manually. 1.4. For those policies that are available on a no-commission basis, the reduction in premium is not commensurate with the amount of commission waived/rebated. In fact, we understand that the average premium reduction is only 15%-20%, which is significantly lower than the cost of providing the services. This is clearly not in the best interests of our clients. 1.5. The proposed standard puts Members at a competitive disadvantage with other advisers who can continue to offer personal risk insurance services under a commission-based model. 1.6. To propose that the new standard apply to existing and new clients ignores the magnitude of any transition process and how commercially unrealistic and impractical such a guillotine approach would be. In fact, the consequences of the proposed standard on our personal risk insurance business are so dire we consider that we would be left with no choice but to surrender our memberships of the professional accounting bodies or divest ourselves of that part of our business altogether.

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			For the reasons set out above, we submit that risk products should be expressly excluded from the proposed standard until there is greater certainty about the treatment of such products under the Future of Financial Advice reforms and/or how the life insurers propose to modify the premium structures in their policies in the future. **2. Asset-based fees** We disagree that an asset-based fee structure (to be distinguished from commissions) presents a conflict of interest situation in relation to the provision of investment services. 2.1. On the contrary and by way of an example, we currently outsource our clients' portfolio administration to a third party provider, who charges us on a wholesale basis using a tiered, asset-based fee scale. We pass on those fees directly to our clients, adding a margin to cover our role in the provision of the services. Under this model, fees are capped so that portfolios whose values exceed a prescribed threshold are charged a maximum amount. This represents a clear benefit for clients from such a fee structure. 2.2. It is important to understand and appreciate that an asset-based fee is a fee for service arrangement (and not a commission). In exchange for the fee charged to the client, the following services are typically provided: • Regular portfolio reviews and meetings (monthly, quarterly or bi-annually depending on the client's requirements and portfolio size); • Regular economic and investment market updates via email newsletter; • Invitations to seminar presentations (typically quarterly); • Monthly or quarterly portfolio reporting; • Portfolio administration services; and • Access to advisers via telephone or face to face meetings outside regular review meetings as required by the client. 2.3. Note also that most, if not all, platform administration service arrangements are charged on an asset fee basis, typically on a sliding scale. 2.4. Delivery of the above services involves significant hours of document preparation, administration, meetings, other client liaison, product research, compliance, etc. A significant proportion of this time cannot be directly attributed to clients and the asset-based fee scale is a fair, efficient and transparent method of allocating those costs. 2.5. If asset-based fees are fully disclosed in a manner clients are able to understand (which is required by law), which includes a dollar based estimate, clients are able to make a sound value judgement and there is no mischief. **Clearly the focus should be on the quality and value of advice rather than cost or the method of charging. Clients are the best source of referrals for advisers. Therefore it is in an adviser's best interests to give high quality, ongoing, value-for-money service to their clients in order to retain business and generate new work.**
79	From SC 8 Item 25	JR	We would be pleased if you would consider the following responses to the proposed ban from 1 July 2011 of percentage-based asset fees for members providing financial advisory services. 1. **Fee for service** – we agree that numerous providers of financial advice as well as many commentators incorrectly consider asset-

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			based fees as fee for service. They are not. Fee for service refers to time based or job based remuneration models. The crucial difference providers of financial providers should be informing their clients about is whether they are "fee only", "commission only" or a "mixture of fees and commissions". We reject commissions as a conflicted source of remuneration for the provision of financial advice. We fully support the provision of genuinely independent financial advice on a fee only basis. Although there are circumstances where a fee for service is appropriate in the provision of specific solutions for clients, we believe that a time cost fee for service has the potential to provide inefficient advice and encourage inefficiency. We do not believe a time cost fee for service is appropriate for the ongoing monitoring and management of client portfolios. In fact, when employing such a fee model for the ongoing monitoring of portfolios, it has the potential to create conflicts of interest. Stockbrokers charging clients brokerage based on the amount of turnover, or number of trades, have the incentive to increase the frequency of trading to generate higher brokerage. Similarly, members charging clients time cost fees may be incentivised to generate advice to improve their fees, rather than acting in the best interest of the client. The incentive that exists within asset based fees is to provide advice to improve the value of the client's investments. We note that the proposed Future of Financial Advice reforms propose that no asset-based fee should be charged on additional geared funds, which we agree with. 2. **Competitive disadvantage** - we do not understand why the Board wishes to impose a more onerous standard on accountants providing financial advice than others within the financial planning industry. Such a standard would place accountants at a permanent competitive disadvantage. We note that there is no evidence that accountants providing financial advice have been the cause of the numerous problems within the financial planning industry that have come to light over recent years. There have also now been numerous reviews of the industry and none have made the recommendation to abolish asset-based fees. Further, we note that the effective date of the proposed standards is 1 July 2011, 12 months before the proposed implementation of the numerous Future of Financial Advice reforms that will be mandated for all Financial Advisory Services providers. 3. **Fiduciary duty** - we fully support the move to an explicit fiduciary duty being imposed upon the providers of financial advice towards their clients. As accountants providing financial advice, this has always been our primary duty. However, we do not consider that an asset-based fee is inconsistent with fulfilling a fiduciary duty. On the contrary, an inherent risk in a time-based fee model is that a client may prevent their best interests being the dominant driver of advice by seeking to cut costs and not receive important advice. As discussed above, we believe that an incentive exists within time-based fees for member firms to generate advice that is not in the best interest of the client in an effort to increase fees, hence contravening the premise of acting within a fiduciary duty. 4. **Conflicted remuneration models** – we completely reject conflicted remuneration models in which the providers of financial advice are paid by product providers, administration providers or any party other than the client. We fully support remuneration models that are transparent, simple and easy to understand for the client. We also fully support transparent and simple performance reporting so that clients can see at a glance what value-added (if any) has been achieved by the advisors recommended asset allocation and/or fund and stock selection. Wherever possible, this should be performance after-taxes and after all fees and charges. We do not however consider that a simple, sliding scale asset-based fee determined using a fair and reasonable estimate of the time and complexity of the advisory responsibility is in any way in conflict with the best interests of the client. Ultimately, the "fee" debate in our view must give way to the "value" debate in which clients are able to clearly assess both the costs and benefits of their financial advice and make their choice of financial advisor accordingly.

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			5. **Fixed asset based fees** – we are aware that fund managers frequently charge the same fixed level of asset-based fees regardless of scale and complexity and agree that there is a conflict in that business model which may encourage asset accumulation rather than asset performance. In the medium to long term however, the funds management industry is a competitive industry and an asset manager who underperformed would be expected to lose their funds under management and therefore their fee income. 6. **Scale and complexity asset based fees** – we consider that asset based fees that are tiered to reflect both the economies of scale in managing larger sums and set to reflect the complexity and time involved in the full asset allocation, portfolio construction, investment selection, investment implementation, investment administration, investment monitoring and investment reporting tasks (particularly if this is supported with timesheet records) meet all the requirements expected of our profession. In particular, we contend that such fees are consistent with our fiduciary duty towards clients, are consistent with the clients best interests and are consistent with our ultimate obligation that our profession has towards the public interest. 7. **Annual opt-in** – we note that APES230 proposes that members disclose and agree with the client the terms of the Financial Advisory Service, including the fees, on an annual basis. This is consistent with the proposed Future of Financial Advice reforms. Under this system, a discussion will be held annually with each client about the fees charged, and the clients will consider the value of the advice they have received each year. We agree with the transparency of this proposal, and believe that this will improve the clarity surrounding advice and the value of that advice across the industry. We believe that an asset-based fee in fact creates greater transparency, as it is difficult to accurately estimate the time required to provide timely, accurate and informed advice to a client over the ensuing 12 months. 8. **Client's right to choose** – we believe that the provision of financial advice should be a collaborative process, with the adviser listening to the client being an imperative part of the advice process. Although as a business, our standard practice is to charge asset-based fees, we believe it is important to have flexibility. If a client would prefer to pay a time based or fixed fee, we should have the ability to provide for this. Likewise, if members practices were only permitted to offer time based fees, yet the client has a preference for an asset-based fee, member firms would be unable to service the client. The client would then seek the advice from a non-accountant based adviser. 9. **Future of Financial Advice** – the financial services industry is undergoing an unprecedented level of regulatory change. Following extensive reviews from the Ripoll report, the government has proposed numerous changes to the industry through the Future of Financial Advice. These recommendations do not propose a change to asset-based fees. We do not agree with the proposal that financial advice businesses attached to accounting firms should impose a more restrictive standard, in addition to all of the other mandated changes for the industry. In summary, we respectfully request that the Board reconsider its proposal that accountants abolish all asset-based fees from 1 July 2011 in favour of a proposal that asset based fees must be based on the scale and complexity of the financial advice to be provided.
80	From SC 8 Item 26	MS	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.

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			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. 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. 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. 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. 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.
81	From SC 8 Item 27	KEN	**Fee for Service**: We agree that commissions and production bonuses should not be considered as appropriate components of fee for service. However, we argue that percentage based asset fees applied to all funds under management, with no reference to the underlying products or product providers, do not cause a conflict of interest. A percentage based asset fee is an appropriate way to reflect and apportion the cost of two major expenses for financial planning practices, namely professional indemnity insurance and acquisition of independent investment

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			research. Business risk associated with investment recommendations increases proportionately with the quantum of funds under management, and a percentage based asset fee reflects this. (We predominantly charge clients a percentage based asset fee in relation to ongoing portfolio review, and a flat dollar fee for other services.) **Personal Risk Management and Related Advice**: The proposed standard requires fee for service to be levied to clients in relation to personal risk services. (ie life assurance etc.) We maintain this places members at a competitive disadvantage in the market place. The Financial Planning Association is continuing to allow members to receive commissions in relation to personal risk services. Currently, the practice used by most advisers is to receive commission from the life assurance company, which recovers this over time in the premium paid by the client. (usually monthly) We are not aware of any life assurance companies with the operating facility of paying advisers a flat dollar fee, rather than a percentage based commission. Again, clients could be invoiced separately for this type of advice, but invariably the clients needing personal risk products and advice are constrained in their cashflow, and would prefer any agreed fee to the adviser, to be paid by the life assurance company.
82	From SC 8 Item 29	GGBW	In our opinion, there is no 'silver bullet' in terms the basis on which financial advisory services fees should be levied as every basis, including the accounting profession's classic hourly charge-out rate, is open to manipulation and potential conflict of interest if the DNA and character of the individual or firm is questionable. **The crux of the issue, in our view, is that an advisor should only be paid by the client as this aligns behaviour, avoids conflict and forces a 'conversation' about the fees being proposed.** Accordingly, we are supportive of the clamping down on sales related commissions, production bonuses and product manufacturer trail fees as these, in our opinion, are designed to inappropriately influence advisor behaviour and do result in recommendations being made which are not in the client's best interest. The common factor here is that the client pays none of these to the advisor – they are all paid out of the product provider or 'house' portion of the fees as an inducement to, or reward for, required advisor behaviour. We feel that percentage based asset fees are something entirely different and find it difficult to understand why they have been placed in the same category as those mentioned above. **Charging a client based on a percentage of assets is just another way of levying a fee for service**. If the APESB wants to provide some guidance to practitioners in this regard, our thoughts are that the following could be considered: • invoices be raised by the advisor and specifically paid by the client • some form of sliding scale, appropriate to that advisor's business, should exist • an acceptable percentage range be proposed • it should apply to net and not gross assets in cases where leverage is used In our view, there has to be a better, fairer and more elegant approach to regulating inappropriate financial advice and conflicts of interest by a small minority of Chartered Accountants to ensure that the public interest is better served than by including the wholesale banning of percentage based asset fees in APESB 230. Interestingly, if one speaks to the Chief Executive of any listed organisation, who is attempting to put in place a sustainable cultural framework underpinned by ethical behaviour (much as is incorporated in the APESB's mandate), you will find that introducing rules and sanctions which impact everyone in an effort to eradicate the behaviour of the 'delinquent 3%' undermines much of what is being created as it sends the wrong message to the 97% who operate within the framework. The solution is to implement processes which highlight such

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			delinquent behaviour and then to act proactively, decisively and consistently in removing it from the fabric of the organisation. Additionally, we believe that the proposed requirements of APES 230 extend beyond the requirements of current legislation such that Chartered Accountants will be placed at a distinct competitive disadvantage to those financial service advisors not subject to the requirements of the standard. As we all know, the foundation of the revenues earned by the advisory services divisions of the private banking, asset management and wealth management industries is an asset-based fee charging structure. It is also in these industries that many Chartered Accountants operate as financial advisors. **Concluding observations** Consequently, if one stands in the shoes of the Chartered Accountant who works as a principal, partner or adviser in an organisation in the broader financial advisory services industry where percentage based asset fees are the predominant form of charging, it could reasonably appear that his/her controlling body, via APES230 as currently drafted, may not have taken the necessary time to deeply understand the potential consequences of the proposed standard from their perspective. Questions, which could potentially be on any such Chartered Accountant's mind, include: • Am I going to need to resign from my current employer and attempt to get re-employed by a business whose practices are APES 230 compliant so that I can fulfil my KPI's without being in conflict with my regulatory body? • Why are the real issues that underpin the current environment of conflict of interest within financial services not being proactively addressed? • Will the banks, wealth managers and product manufacturers which employ Chartered Accountants in advisory positions successfully lobby for some form of exemption for their employees, thereby varying the landscape for fellow Chartered Accountants based on their selected employer? • Have the ICAA, and the other two accounting bodies, contemplated the potential resignation of a material number of members as a consequence of the implications of APESB 230? • If such fallout occurs, will the needs of the remaining members be able to be adequately served by a lower membership base and a further fragmentation of the professionally qualified accountant? • How are the needs of the general public better served by making the most qualified individuals within the financial services industry materially change the structure of their businesses and the basis of their value proposition? Accordingly, we strongly urge the APESB to reconsider the proposed banning of percentage based asset fee arrangements.
83	From SC 8 Item 30	RT	Charging a fee for service on a per hour basis is clearly the least conflicted remuneration model for the provision of financial services. Until recently I worked in financial services as a CFP and have previously worked at length as an accountant in both Chartered Accounting and CPA firms. During the time that I spent working within the accounting firms, it was very clear to me that the accountants I was working alongside were heavily influenced by remuneration structures that incorporated high percentage commission payments and volume bonus arrangements. In-fact, it has been my personal observation, that accountants who later enter into financial planning tend to be influenced far more by these forms of remuneration than direct entrants into the financial planning industry. A close examination of investors who have lost money in failed property syndicates or agricultural schemes would reveal an embarrassingly

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			high percentage were placed into such products by their accountants who were also authorised representatives. It would also reveal that their accountant "advisers" regularly received commissions in the vicinity of 10% for that advice. I note from a recent article in Money Management (Vol 24 No 33, Sept 9, 2010) that one of the accounting firms that I worked for is a member of the Accountant Financial Advisers Coalition (AFAC), an organisation which I believe is opposing your proposed reforms. Whilst I was working at that firm, I was appalled by the actions of the accountant in charge of the financial services division as he certainly did not act in the best interests of his clients. One example of this was the way that he had negotiated with the Wrap provider to increase the administration fees charged so that it could pay him a large volume bonus without the need to apply an adviser fee. By doing this the only fee shown as being deducted from his client's cash account was the administration fee and no adviser fee would show up. There is an argument that commission arrangements are necessary to ensure affordability of advice for smaller clients. This is not a valid argument if we assume the premise that it is fair for a client to receive what they pay for. Why should a large client subsidise the management of a smaller client? Surely they should only pay for the service that they receive, not for the service that somebody else is to receive. Some accounting/financial planning practices have chosen to rebate all commissions, but charge a fee for service based upon assets under management. This arrangement is structurally flawed as sometimes it is in the clients best interests to not be invested. No accounting/financial planning practice will, during periods of extreme overvaluation, issue instructions to exit the market if their business model is based upon assets under management. Instead, when the portfolios of their clients are halved, they will argue that it is important to "stay the course" and that the investments are long-term in nature. Whilst these arguments may have some validity, sometimes it is in the client's best interest to be out of the market because of the presence of bubble conditions. If advisers are being paid to invest their client's money, then they are incentivised to invest money regardless of the investment climate and to push their clients into gearing their portfolios, regardless of whether or not it is appropriate. Unfortunately, there is a strong underlying truth in the saying, "Never ask a real estate salesman when it is the best time to sell your house". I understand that the AFAC will rail against this exposure draft being implemented, however I would argue strongly that those actions in themselves are not in the interests of their clients but rather an attempt to preserve the conflicts that exist in their own organisations because of inappropriately structured remuneration models. I urge the Accounting Professional & Ethical Standards Board not to give in to pressure from the AFAC or any other interest group but rather have the courage to hold firm with the proposed changes and remove from the industry, any incentive to act in a way that is not in a client's best interests. The benefit of these changes is that they will certainly serve to better protect clients and will create a true point of difference between members of accounting bodies who offer financial services and others in the industry.
84	From SC 8 Item 32	CFPL	I am writing to you as a fellow member of the ICAA. This email is in some respect, in response to your article (and also that of Robert MC Brown) in the October edition of Charter. I have also attached a letter I recently sent to the ICAA which comments on the Exposure Draft (ED) APES 230 and other issues. You would be aware that the major financial product manufacturers (which include platforms) and fund managers have income streams that are built on commissions and asset-based fees. They have lived in this world for many years. This is the source of the problem. In the late 1980's they began to infiltrate membership by providing sponsorship dollars to the professional bodies that enabled them to

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			make presentations at many seminars and PD sessions etc. The accounting bodies gladly accepted these sponsorship dollars. This continued for many years. There is a long list of organizations that gave these dollars but would include such businesses as Perpetual, Fidelity, Count, PIS etc etc etc. The professional accounting bodies were happy to expose their membership to these organizations. This enabled them to introduce business models based on the revenue streams (that the ED seeks to prohibit) to the members. Many members adopted these business models and have gone on to build significant financial planning divisions within their practices. A lot of the infiltration was also extended from Dealer Groups to Platforms, whilst the sale of 'product' was always the end game. The result is that today many members have business models (that are funded by banks) based on these income streams and also have supporting business valuations that are based on this. The asset is valued on the recurring income multiple which is aligned to asset-based fees. The ICAA and the CPA are, to some extent responsible for this by their prior acceptance of the sponsorship dollar from the product manufacturers. To now expect many members to change their business models by 01/07/2012 is a very dangerous expectation. As I said in the attached letter to the ICAA, membership of a professional accounting body is fast becoming irrelevant for many operating in the financial planning space. It is easy for me to say that the ED is about 15 years too late but that is not the issue. The issue is that the ICAA and the CPA both need to take some responsibility for the current situation (which took over 15 years to develop) and it needs to be fixed by a longer term process. A mandated professional and ethical obligation will not fix this. It has to be fixed at a grass roots level. The professional bodies may need to roll out a professional remuneration model in the financial planning space. This will take time and effort. Each has the resources to do this but neither has risen to the challenge. Unfortunately the APESB is not, in my opinion, the place to start.
85	From SC 8 Item 34	FERB	I have no issue with the Board's attempts to raise professional standards, but there are particular proposals which I simply cannot support. These relates to the area of Fee for Service. . As you are aware, through legislation and self-regulation, commissions are being phased out in financial planning. In addition, disclosure rules are such that clients are made aware of any commissions or alternative remuneration being paid to an adviser. I would be the first to agree that, in practice, there are many instances where this disclosure is lacking or obscured but this does not change the fact that, in a good adviser/client relationship, the method of remuneration is known to both parties. The Proposed Standard requires the CPA member who provides a Financial Advisory Service to only charge clients on a 'Fee for Service' basis. There are two issues with this which I believe will create unnecessary problems. I refer to the exclusion of asset based fees as a form of Fee for Service and secondly the move to ban the acceptance of commission for placement of insurance. **Asset Based Fees** The Proposed Standard specifically excludes 'percentage based asset fees … whether paid by the Client or a third party such as a

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			manufacturer'. With respect, any agreement between a client and an adviser, where an amount is agreed upon for a service, must be a fee. Why is this standard attempting to redefine something which is simply a fact? It would appear that the Board has reservations that somehow asset based fees carry conflicts of interest and as such are unacceptable. I would argue that all forms of remuneration have potential for abuse. However, an asset based fee is levied only after extensive discussion and negotiation between an adviser and a client. In fact, even commission based remuneration, correctly disclosed, is not inherently flawed. In our practice, we have many clients whose fees, asset-based or otherwise, would not be sufficient to cover the cost of advice at this stage. As such there is an element of cross-subsidisation but surely this is an issue for us as business people. The fact we choose to levy fees in this way is our business choice and I fail to see how it is the business of the Board to determine how a market based business should be remunerated! Taken to its logical conclusion perhaps the Board should nominate maximum hourly rates for accountants? As you may be aware, there is considerable antipathy from clients over the use (or alleged abuse) of hourly rate fees. There is an inherent encouragement to unnecessarily prolong tasks; and inefficiency can be rewarded. Naturally a professional CPA would never unnecessarily prolong tasks and will write off any time that is due to inefficiency, but the potential conflict still exists. Similarly, I do not promote unnecessary investment of funds to the detriment of my clients' best interests, even though there is a potential conflict. In recent years, I have become somewhat frustrated by the overkill of the various bodies, implying that financial advisers cannot be trusted to 'do the right thing'. In fact, like all occupations, the vast majority are keen to assist their clients. There will always be rogues, just as there are in other areas of the accounting profession. Commission on Insurance Placement The second area of contention is commission for insurance advice and placement. I believe insurance should be differentiated from financial planning. It is a service that is 'sold' rather than purchased. Often there is considerable initial resistance when the subject is broached and it is difficult to see how a demand for a fee at that stage would actually enhance the client engagement experience. Insurance advice is complicated, with issues involving estate planning, asset structuring, Capital Gains Tax, income tax, plus calculation of appropriate amounts and knowledge of a wide variety of products. Unfortunately, there seems to be a perception that it is easy money. In our practice we have a dedicated financial planning division and risk division. The financial planning division is more profitable, despite apparent high commission for insurance. Commission in insurance should be seen as a success fee. Its payment covers those that accept cover and also compensates an adviser for those potential clients who either refused their offer or were rejected owing to health or financial issues. In general, commission rates are similar across the industry and premiums are directly comparable, meaning a client has the ability to check with other advisers if they are uncertain. A client can also seek alternative insurance at any time without penalty if they consider they have been poorly advised. If commissions are banned on insurance, I believe a natural consequence will be a move to salary-based advisers, working solely for one institution. These advisers will be paid salary plus 'bonus', ie not a commission. It will therefore comply with all laws and regulations, but hardly seems a great outcome for the consumer.

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			Summary In summary, I believe elements of these proposals are merely caving in to a desire to be seen to be professional rather than actually considering what may be in the best interests of the consumer. If the standard is proposed in its present form, I will have little choice but to resign as a member of the CPA's, as I will continue to charge in any manner agreed between my client and my practice. This is not in any way meant to sound like a threat, but merely reflects our desire to remain independently owned and offer a full range of services to our clients. This proposed standard would severely damage long standing independently owned firms such as ours. Please reconsider this stance.
86	From SC 8 Item 35	WB	The Wealth Advisory Focus Group, which comprises representatives from each State office, have considered the contents of the APES 230 Exposure Draft, and comment as follows. **Commissions and Conflicts of Interest** The Exposure Draft contends that charging for the provision of financial advice on any other basis than fee for service creates conflicts of interest and, as such, compromises the ability of members to fulfil their fiduciary responsibility to their clients. We do not believe that the charging of commissions in itself creates conflicts of interest provided the best interests of the client are always maintained. Those providers of financial advice who do not act in the best interests of the client will continue to act in that fashion irrespective of the form of their remuneration. The charging of commission is common place, embedded in many industries, and a concept that is understood. It is prevalent in industries such as real estate and stock broking and it is a method of remuneration used by corporate finance divisions of accounting firms in respect of fundraising and where success fees are charged based on outcomes. **Determination of Fees Based on Accumulation of Funds under Management** Despite its shortcomings, we believe that remuneration based on the accumulation of funds under management is the best method for determining the appropriate level of fees. This is because it is the most relevant, accepted, tangible and transparent basis for determining remuneration. It is well understood, practical and easy to communicate to clients. Other factors that are relevant in the determination of remuneration are the composition of funds under management in terms of asset classes, the level of complexity associated with those assets and the structures within which they are held. Also relevant is the level of responsibility being taken by the advisor in respect of those funds under management. However, we cannot see any better alternative than funds under management for the determination of remuneration. The client knows what they are paying, have the ability to compare fees with what other service providers charge, can assess the worth to them of those services provided and, if appropriate, use this basis as a means of negotiating the level of fees. **Members do not set the Structure of Remuneration** For some products, particularly insurance products, it is the product provider that sets remuneration level not the provider of the financial

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			advice. To change existing practice and remove commissions it must start at the level where the structure and remuneration implicit in the product is set. That is with the product providers over which of course this Exposure Draft, if adopted, would have little or no influence Members are takers of the fee determined by the provider and have no influence over the remuneration paid. This is so regardless of the particular product. Whilst the service provider can rebate commission the form of remuneration is largely out of the hands of the service provider. **Impact on Member's Business Activities** As this Exposure Draft only has application to members of the accounting profession the document in its current form would create a commercial competitive disadvantage to member firms. This will be because those not covered by this ruling will continue in the same manner as they have done in the past because this Exposure Draft would have no impact in their businesses. It is also possible that member firms could renounce their membership if they see having to abide by this Exposure Draft as having such a commercial disadvantage that it damages their business going forward. Permanent damage could be done, impacting on the value of businesses and the ability to provide financial advice. Further, commissions are paid to member firms by the product provider rather than the client. This is an advantage to member firms in that it improves their cash flow substantially as they do not need to chase the client for the fee. Further, clients do not like drawing cheques to pay for financial advice, they understand they are still paying it but it is being paid by the product provider on their behalf. To change that system would have a major impact on the viability of financial advice providers. Most financial service businesses are valued on the basis of a multiple of ongoing income. Whilst we are of the view that a net earnings based calculation provides a more accurate value, multiples of ongoing income are applied and understood in the industry. If this ongoing income which is being paid in the form of a commission was removed, the basis of valuing a business may be destroyed in the short term. Any new remuneration methods will need to be operative for some time before they could be used as a basis for assessing the value of a financial advice business **Existing Clients** We do not agree with the application of this Exposure Draft, should it be adopted, to existing clients. This is retrospectivity and should be avoided. Apart from the fact that the client has already agreed to the remuneration arrangements, often ongoing commissions are paid to enable that client to be properly serviced in future years. **Public Interest** We do not believe that the best interests of the public would be served by banning all other forms of remuneration than fee for service particularly if it results in substantially lower advisor remuneration. The majority of financial advisors currently charge a reasonable fee for the service provided irrespective of the form in which that remuneration is paid. The risk is that the public will be underserviced because of the unpreparedness of quality service providers to get involved in an industry where remuneration is insufficient. This is particularly relevant in the insurance industry where the product must be sold. The general public do not have the skills to assess what protection they need based on factors such as their debt level, family circumstances etc. Once again, if the remuneration is insufficient

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			to attract the appropriately skilled advisors the outcome will be a public that continues to be underinsured with the flow on risk to the public purse. **Summary** — The payment of commissions does not create conflicts of interest if the best interests of the client are always uppermost in the advisor's mind. — Funds under management is the best and most practical method of determining remuneration. — Methods of remuneration are set by product providers who are outside the influence of this Exposure Draft and it is not under the control of members to change that system which has evolved. — Members would be at a commercial disadvantage to their competitors by being subject to the provisions in this Exposure Draft. — Members' businesses would be adversely affected by the adoption of these provisions. — If the Exposure Draft is adopted it should only apply to new clients and not existing clients. — There is the potential for members to relinquish their membership if forced to comply with this Exposure Draft. — We do support the banning of commissions on tax effectives.
87	From SC 8 Item 39	LFM	I am writing to comment on APES 230 Financial Advisory Services, specifically the impact of paragraphs 2 and 9.1 regarding "Fee for Service" that have the combined affect of preventing members from charging for Financial Advisory Services using percentage based asset fees. <u>The Issue</u> I am vehemently against the proposal to mandate that professionals such as myself cannot charge our clients a fee based (either fully or partially) as a percentage of funds under advice. My objections to this proposal are for a number of reasons: 1. Philosophical I object to the notion that APESB has a role in deciding what formula or basis we should use to calculate the fee for our client. I mentioned before that we have always operated on a fee for service basis. For initial advice and implementation we determine a dollar fee reflecting the time, complexity and value of the work provided. For ongoing service, we generally charge either a minimum $ annual retainer or a % of funds under advice – whichever is the greater. This model reflects my strong view that the definition of a fee is that it has the following three characteristics (i) it is fully transparent to the client (ii) it is agreed between the adviser and the client and not determined by some 3rd party such as a fund manager (iii) it can be terminated by the client at their discretion. Once these 3 features are in place, in my view, the manner in which the fee is calculated is irrelevant – the client is in full control of assessing (a) how much the advice will cost (b) whether they feel they are receiving value for money and (c) whether to continue or terminate the engagement at any time. My view is that the APESB proposal should be amended to define these three elements as the essential elements in the definition of "fee for service" and should absolutely not be dictating to individual practices how they calculate their fees. 2. What is a "Professional Fee Basis?" I suspect that the definition of "Fee for Service" proposed is the result of a misguided notion that % based fees are somehow less

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			professional than other methods of fee calculation. I strongly disagree with this notion for several reasons: (i) some argue there is the potential for conflicted advice with % based fees. My response to this is that there is the potential for conflict on any fee structure. For example – if I charge hourly based fees I am incentivized to either operate inefficiently or worse, spend more time on an issue than it deserves in order to increase my chargeable hours – and I have seen many examples of this over the years by both accountants and solicitors who charge by the hour. Similarly, if I charge a flat dollar fee to administer a self managed superannuation fund – it is not in my interest to suggest to the client that they would actually pay less and probably receive a better service by using a low cost industry superannuation fund – and indeed I have seen numerous examples of clients in self managed superannuation funds because their accountant has recommended it despite that the client has no interest in managing their own investments and where they are paying much more in fees and receiving worse service than other alternatives. No simple and transparent fee basis will ever be able to remove all potential conflicts. It is the job of professional advisers to manage these conflicts through their ethical behavior, transparency and delivering value for the fees they charge. (ii) we have on several occasions over the years surveyed our clients as to whether they would prefer us to use time based, flat dollar or % based fees – most recently in the past 2 years after the GFC. On every occasion the overwhelming response is that they prefer % based fees as they view it as a better alignment of our services with their desired outcomes. Put simply – if we help their wealth grow – we both benefit, if their wealth declines we both suffer. Whilst I acknowledge this is not a perfect alignment of interests (because many factors can contribute to wealth growing or falling) I would strongly argue it is a closer alignment than say hourly rates or flat $$ fees (and that is certainly what our clients have told us). I would ask how many of the proponents of this proposal have ever bothered to ask clients what they think? (iii) One of the fundamental differences between Financial Advisory Services and traditional tax and compliance accounting services is that the latter tend to be reactive in nature and the former proactive. For example, much of the work accountants generally do is reacting to things that clients must do due to legislation such as tax returns, BAS returns etc. Financial Advice on the other hand is fundamentally about getting clients to do things that they do not have to do – and have no lodgment deadline – but are significantly in their long term interest e.g. providing for retirement, having adequate insurance in place, putting wills and estate planning in place. I know from talking to many accountants that time or activity based fees are a major barrier to clients addressing "discretionary" (i.e. no fixed legislative deadline) advice needs. Put simply, when an accountant rings to suggest they do some work for the client on tax or estate planning the client often thinks "the clock has started ticking" and says "no" or "lets look at that later". Retainer style fees (whether % or dollar based) are much conducive to a relationship where the adviser drives proactive decision making. Put simply – if a fee based adviser is not regularly seen by clients to be contacting them and suggesting ways to add value – they will simply not continue with the fee. The fact is that $ or % based fees retainers help facilitate a much better, proactively based relationship between adviser and client than hourly or activity based fees and are much more suited to Financial Advisory Services for this reason. 3. Practical Problems There are a number of practical problems with the proposal. (i) Some products (such as life insurance) can largely still only be placed using a commission style form of remuneration. Even if these commissions are rebated (which often cannot be effectively done) and the client is charged a fee instead – the client suffers because initial financial planning fees are not tax deductible whereas a commission that forms part of a tax deductible income

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			protection or life insurance through superannuation policy – is in affect be tax deductible to the client. The result of the proposed "fee for service" model would be to contribute to a massive fall in the degree of insurance advice provided to clients and an exacerbation of an already chronic and well documented underinsurance problem in Australia. (ii) The submission does not facilitate hybrid fee models. For example, for some clients we charge a flat annual retainer for our "strategic advice" and a % based fee for running their portfolio. This model is very well aligned to their interests in that the service of managing their portfolio is fundamentally about achieving good risk/return outcomes and is ideally suited to a % based fee whereas the strategic advice is set at a level based on the complexity of the client. I would find it hard to imagine anyone arguing that this is not an appropriate professional model – yet the proposal would ban such models. (iii) Current Federal Government policy under the Bowen Future of Financial Advice Reforms is that in addition to the full disclosure of financial planning fees that has been in place for years, that clients will need to "Opt in", in writing, to agree to pay their fees each year. Given such a system that is so heavily weighted towards consumer protection and ensuring consumers only pay for advice they value – it is hard to imagine what extra benefit clients would receive by also having their advisers fee charging methodology dictated to them in this way. Concluding In conclusion, I have tried to keep my comments succinct and constructive. I am the last person prosecute sensationalist or overblown rhetoric. But having been a professional adviser and CPA for around 20 years, were this proposal to be adopted, I would see no other course than having to resign personally and as a business from the CPA for both philosophical and practical reasons – and I would expect many other professional advisers would do the same. This is thoroughly misguided proposal and should be dropped immediately.
88	From SC 8 Item 41	FPAA	**Confidential Submission**
89	From SC 8 Item 43	BG	Thank you for providing the opportunity to comment on Exposure Draft APES 230. My comments are limited to the impact of the proposed Standard on Insurance and Finance advice as I expect may respondents will comment widely on the provision of financial product advice. As a broad comment I believe industry bodies, government and consumer groups concentrate their energies on remuneration methods rather than on the quality of advice provided to clients. It is absurd to believe in our heavily regulated industry that changing remuneration methods will affect the quality of advice – indeed it is likely to have the opposite affect which is alluded to in this submission – albeit an unintended consequence of the proposed changes. I would be pleased to meet with you to answer any questions about the concerns raised in the attached Issues paper. **Section One - Insurance** **Dangers** ▪ The introduction of a Retrospective Ruling is clearly an intolerable dent in our democratic system of Government. We are all acutely aware of the dangers involved in any form of retrospectivity. This aspect of the draft is completely unacceptable and any changes must be prospective only. Retrospectivity of any type is completely unacceptable.

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			The danger here is that you will establish a precedent which goes against every principle that we believe in as Australians. I discussed this issue of "retrospectivity" with a member of "The Bench" and the analogy he used was as follows. He is a member of a defined benefits superannuation scheme. At age 64, 2 to 3 years prior to his retirement, a retrospective change is made to his defined benefits super scheme. The change converted it to an accumulation scheme – "Oops sorry you have lost so much because of the GFC, sorry about all those years where you thought that you had built up an asset to provide for your retirement. Better luck in the next life." Clearly this is not acceptable. The key danger with insurance is that people often don't understand the actual "sales process". In my 43 years, I could count less than a dozen people who have proactively called up to buy life or income protection insurance. Unlike car or household insurance, it's a product that needs to be sold and sold properly to ensure that adequate cover is provided to the policy holder. People genuinely believe that they will never die (Appendix 1 Independent Bushfire Commission Facts). There is almost always initial client reluctance and it's often difficult to convince the clients to proceed with the insurance. Unlike tax or accounting services, where clients are pro-actively seeking effective solutions, people so rarely pro-actively seek life/income protection as they never truly believe that "something will happen to them". A good question to ask is "can each committee member recall the process they went through when they were approached to buy life or income protection insurance?" I have provided a list of claims that we have processed for my clients in the last 12 months. None of these clients pro-actively asked me for insurance (Appendix 2 List of Claims). However, when my clients have called me, they invariably have had health problems. By understanding the process involved in selling insurance, the committee will see that a fee for service approach is impossible, completely impossible, to operationalise. There is however an acceptable alternative which I have proposed under the "opportunities" section of this paper. Typically, which I will gladly explain at a face to face meeting with the committee, establishing and confirming the need for cover with a client is a difficult task. Often, the client doesn't proceed. If there was a process by which we could interview some of the people who so sadly perished in the 2008 Bush Fires in Victoria, we would probably find that a large percentage of them had, at some time in their life, had insurance proposed to them but had rejected the idea. The low level of cover would indicate that this is the case. Or perhaps some had purchased insurance then cancelled. Perhaps some had never been approached. The danger with a "Fee for Service Model" becomes increasingly apparent where there is an insurance claim. In addition to the list of the insurance claims made by my clients in the last 12 months, I have also included an email example which highlights the highly emotional and fragile state of the claimant. We are dealing with people who find themselves in extremely challenging situations. Could we seriously send someone an invoice, a "fee for service", at an emotional time like this? However, some claims such as numbers 3 and 5, are complicated and have taken up 40 to 50 hours of work and are still a "work in progress". The work I have done to date on these claims has been at no charge to the client. And herein lays the key danger with the proposed ruling. While it is inconceivable that I could send these clients an invoice during their time of suffering (Appendix 3), I could not afford to dedicate such significant time to the claim without some form of remuneration. In addition, if I was to charge a "fee for service", there would be instances where the fees would outstrip the claim!

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			I welcome the opportunity to bring on my witnesses, the claimants, to advise you on how time, effort and compassion are needed in these delicate scenarios. You would then witness firsthand what's involved. We would welcome any committee members to sit in on such a meeting. In addition, I believe clients would find a "fee for service" model unacceptable, specifically for smaller sums insured. The sales process is complicated and time consuming and consumers would be disadvantaged if they had to pay for the time involved in writing the insurance policy. For example, establishing a $2m sum insured with a $1000 premium could require 8-10 hours of work. This could result in a fee of up to $3000, which would not be tolerated by a client. Even if commission was to be rebated at the rate of ~$750 in the first year and ~$200 in subsequent years, the client would still be worse off for up to 10 years. The complexity of introducing a "fee for service" model cannot be ignored and becomes more apparent when considering that I provide a holistic offering to my clients. Rarely would I meet with a client purely for the purpose of discussing insurance. Rather, my experience, qualifications and authorisations permit me to advise clients across insurance, accounting and taxation, financial planning and finance. It would be difficult to attribute a specific "fee" to the time I spend discussing "insurance"? It is obviously in the very best interests of my clients for them to receive this advice in a holistic and integrated manner, yet there is no transparent and effective means of charging exclusively for the "time" spent positioning the insurance product and understanding the client's needs in order to advise on the correct level of cover. We simply do not operate in the straight forward manner of other "fee or service" professionals such as Solicitors in respect to "fees". Conversely, at what point in time would we commence charging a fee? As previously mentioned, many hours can be involved in performing a client "needs analysis" and in "selling" the product. At exactly what point in the "sales process" would the "charging" commence? **Opportunity** The opportunity that we are presented with is to create a changing environment which will reward the adviser while simultaneously giving the client (potential client) a comprehensive needs analysis in order to satisfy their cover and protection requirements. We believe that as a group, we have been "agents of change" in the industry: **Fact**: In 1977, the Bongiorno Group was the first group in Australia to approach NML (National Mutual Life) to change the Commission structures on Life Policies from payment based on the Sum Insured to payment as a % of premiums. Eighteen months later, all life insurance companies followed suit. **Fact**: In 1993, the Bongiorno Group introduced to the then Norwich Union (Aviva Australia) the concept of Level commission rather than Up Front commission. We also introduced what is called Hybrid commission at that same time. Don Campbell (then General Manager) and Dr. Peter Johnson can confirm this. Both AXA and Aviva will confirm that these two initiatives have revolutionised adviser remuneration. **Fact**: We have just completed our new "administration fee process" with a major insurer and propose to release this onto the market early 2011. It has been 14 months in the making to date. Our client Statement of Advice (Appendix 4) clearly shows that we give clients a choice on fee for service or commission including ongoing. Under the new administration fee for service model, we will be billing the insurance company a % of premium as an administration fee for carrying out a multitude of services on their behalf. This will probably be done via a recipient created tax invoice. The abovementioned facts illustrate that we are committed to the continuing evolution of our industry. We are agents for change and have

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			been at the forefront of change in our industry for 43 years. We believe that it should be compulsory for all accountants to give clients the choice – Fee for Service or Commission. In a free market, we (as CPAs/CAs who also sell insurance) should not be placed at a competitive disadvantage with insurance advisers who would be exempt from this ruling and who could therefore provide a more competitive client offering. I propose that we empower the client from the onset via a "Terms of Engagement." A quote should be given up front so that the client can make an informed decision. If the client chooses the "fee for service" option, then the commission must be rebated. This is a time for careful consultation and with so many other changes occurring within and impacting upon the industry; the timing of July 1st 2012 seems the only appropriate way forward. The issue on retrospectivity is not only unacceptable but will also create legal issues with existing policies. I am waiting for the "Legal Team" at one of our major insurers to call back with the issues surrounding this. It may well be that the insurance company cannot rebate to clients the existing trail commissions and that they need to retain them. What would be in it for the consumer if the life companies just kept the extra commissions because they cannot change existing policies? The view initially expressed is that the insurer may need to alter every policy in a particular "class". Counsel advice in regards to the terms and conditions of all policies will be sought. **In conclusion** Arthur Miller wrote a wonderful play titled "The Death of a Salesman". The story of Willy Loman is very sad. Is it happening again? Perhaps, albeit in a different way. I am making an impassioned plea – don't let it happen. Circa 1988 – 89; NML and AMP had around 3,000 Life Agents. Today there are approximately 20,000 Financial Planners in Australia. I believe that industry statistics will show that less than 2,000 sell more than $10,000 of premium a year. We are grossly underinsured as a Nation and we need to encourage not discourage the process. Sell is not a dirty word. And by all means make it compulsory to give clients the choice up front. **Section Two – Finance** **Dangers** Again, the proposed timing of the implementation of the ruling, 1st July 2011, is unrealistic, particularly in light of other recent changes impacting the industry. To apply the ruling "retrospectively" is equally unacceptable. On 1st July 2010, the Government introduced a new Credit Regime. The introduction of yet another change, within such a small time frame, will impose compliance pressures on our business and will, importantly, place us at a significant competitive disadvantage to Banks and Brokers. This disadvantage would extend to the client who would be incurring additional costs. As such, we would be harming rather than assisting the client. **Why is this so?** Pricing models at Banks don't give them the ability to price an "off the street" loan any cheaper than if the loan was processed via a "finance referring accountant". This is because the banks give their Managers (home and business lenders) targets and reward target achievement

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			via a commission payment, known as "a bonus". The cost of this "bonus" payment means that the bank cannot offer loans any cheaper directly than through a third party (e.g. brokers or finance referring accountants). If the client has to pay us, as referring accountants, a "fee for service", then they are essentially paying for "something" (i.e. the loan) which they could get for "nothing" by dealing directly with a Bank or a Broker. A client would simply not pay a fee. Why would they accept additional costs when their underlying objective is to minimise the cost of their Finance arrangements? This proposal actually seems to be more in line with assisting the larger Banks rather than the smaller groups. We are confident that we adopt a very responsible approach when organizing finance for a client. The process begins with a Terms of Engagement (Appendix 5) which is completed in conjunction with a Preliminary Assessment (Appendix 6), the objective of which is to assist the client with appropriate structuring to meet their goals and objectives. The danger with the proposal is that it would not only place us at competitive disadvantage, but would cost the consumer more and reduce competition, giving the Banks even more power. Importantly, the consumer is placed at a further disadvantage as the Banks and Brokers do not provide professional advice on finance structures to ensure that the client ends up with the most effective solution. Please don't let the actions of some Accountants taint the image of our group at large. **Opportunity** We must allow the new credit licensing regime to operate for a few years. We are all liable for the advice we provide in this area and are in no way abrogating any responsibility. Provided that they (Finance referrer Accountants) comply with the new regime of licensing and that society members give their clients a choice, Fee for Service or Commission (which would be mandatory for all society members) how could a consumer be disadvantaged? I invite you to interview any of my clients and to gauge from them their level of satisfaction with the choice that we provide them. **Strengths** By the committee putting their weight behind the Government's new rules and making society members give their clients a choice, the system can only be improved. Consumers are not foolish when it comes to Finance. By the time a consumer takes the first step to meet with someone who can organise their Finance, they typically will have spoken to their existing bank and in most cases would have "cyber-shopped" at one of multitude of Finance web-sites. Gen Y's and X's are very savvy about rates and are very rate sensitive. **A Case Study: How advice from a "Finance Referrer Accountant" results in a more beneficial consumer outcome** When my clients Mr. X and his wife divorced recently, they decided to sell the family home and divide the proceeds up between themselves in an agreed manner. Their Bank was preparing settlement documents and assured each party (both professionals) that they each qualified for a new loan. If we had not become involved and it had been left to the Bank, the bank was going to pay out all loans and leave the balance in cash in two separate accounts. The gross error of this would have been that tax deductible loans would have been paid out instead of retained. Fortunately, we managed to have them secured at settlement by cash and that cash was used by the two clients to buy their next home while the deductible loans were subsequently secured against the new houses purchased.

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			The proposed ruling, as it currently stands, will minimise market place competition and result in less constructive consumer outcomes. I urge you to consider the alternative opportunities I have presented and welcome the opportunity for further open dialogue.
90	From SC 8 Item 44	AMP	**Confidential Submission**
91	From SC 8 Item 45	AFAC	However, AFAC has some fundamental concerns with Exposure Draft APES 230, including the following: An important example where APES 230 is prescriptive or rule based is in the definition of appropriate remuneration models, and the definition of appropriate Fee for Service models. In the introduction to APES 230 ("Key Requirements and guidance in ED 02/10") it appears that the precepts on permitted remuneration models are based on the presumption that certain remuneration models are inconsistent with fiduciary obligations. We submit that this underlying presumption is flawed, and we include a Barrister's legal opinion in support of this contention. If the APESB accepts this contention, there are sections of APES 230 which require material reconsideration and also redrafting; We submit that an accountant member who is a financial adviser can serve their professional and fiduciary obligations to clients with a range of fee models by acting in clients interests (with this definition to be reinforced in statute), ensuring that they don't violate the profits test and the conflicts test, operating with transparency and full disclosure, and operating with objectivity and total integrity (as required by APS 12). Imposing additional responsibilities beyond that is both inappropriate and detracts from the principles-based approach; Based on the foregoing, we submit that the most appropriate "fees for service" model is that agreed between the accountant financial adviser and their client, providing it is consistent with their fiduciary obligations and there is total transparency and disclosure. Permitted fees models would include hourly fees, fixed fees, and asset based fees, and often a combination of the foregoing. It is not for APES 230 to mandate permitted and non-permitted fee models when the basis for any prohibition remains flawed and there is little or no corresponding benefit to clients. We submit the proposed prohibition of asset based fees should not be accepted, and include arguments in this submission as to why these are a legitimate fees model; We submit that Informed clients should be able to exercise choice, and the proposed standard, APES 230, would deny such choice; One vexatious issue that the Government has been wrestling with in the FOFA reforms is the issue of commission payments for life insurance, due largely to a significant concern that banning commissions would exacerbate the very real problem of underinsurance. We are concerned that APES 230 does not have regard to these concerns. If the Government understands the difficulties in this sector, why don't the sponsors of APES 230? We submit that commission/brokerage on risk insurance and lending be permitted providing accountant based financial advisers are meeting fiduciary duty obligations and APS 12 professional obligations; Further there is a presumption in APES 230 in the areas of lending and insurance that commission costs could be readily stripped out of products and reflected in consumer pricing. This is far from likely to occur and involves a degree of misunderstanding in our view. For example, if lenders were to strip out brokerage from loans, and were to reflect these in product pricing, then the banks would have major channel conflict issues between their proprietary branch channels and the broker channel, as the pricing of their loans would appear cheaper for the latter (before the accountant financial adviser applied their fees). This would be unacceptable to the bank, which would therefore need to equalise loans product pricing across channels. This would then effectively increase the price for loans which are sourced through independent advisers/brokers, and reduce the portion of loans implemented through the independent advice channel and there would be a diminution in the independence of advice and choice for consumers; Good legislation avoids retrospectivity – so too should good standards. APES 230 involves retrospectivity, and seeks to over-ride and violate

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			current commercial legal agreements and obligations (e.g. truncating trail commission and brokerages on business written prior to the implementation date of APES 230); The broad intent and objective of APES 230 – i.e. quality, objective and professional financial advice – is to be applauded. Unfortunately, the objective of quality, objective and professional financial advice is poorly translated into the drafting of APES 230, including the following: **2.2. Objective of Exposure Draft APES 230** As we seek to demonstrate below, especially in Section 2.7, the precept that certain remuneration models are incongruent with fiduciary duty is flawed. This is a major issue for the standard as this misconception is a fundamental foundation in the drafting of key sections of the Exposure Draft; The objective needs to be reasonable and professional identification and management of conflicts, rather than total avoidance of conflicts as inferred above. The reality is that any remuneration model (including hourly based billing) has the potential for conflicts – the key issue is how professionals manage such conflicts in the client's interest. **2.3. Comment on the APES 230 Objective & Potential Unintended Consequences which may be inconsistent with APESB's Objectives & Intent** **Unintended consequences**: the effect of APES 230 will most likely be to diminish the portion of financial advice delivered by accountant based financial advisers (because they are placed at a competitive disadvantage) and hence diminish the portion of advice delivered by professionals –this appears to be inconsistent with APESB"s public interest responsibility. Behavioural economics and behavioural finance is an important consideration here – these are defined as follows (per Wikipedia): "**Behavioural economics** and its related area of study, **behavioural finance**, use social, cognitive and emotional factors in understanding the economic decisions of individuals and institutions performing economic functions, including consumers, borrowers and investors, and their effects on market prices, returns and the resource allocation. The fields are primarily concerned with the bounds of rationality (selfishness, self-control) of economic agents. Behavioural models typically integrate insights from psychology with neo-classical economic theory." These are important considerations because people (clients) often make decisions more on emotion and perceptions than rationality. There is anecdotal evidence to suggest that many clients eschew fee models, especially fixed fee models, which may actually be cheaper for them than other fee models, because they perceive such fees to be higher. The consequence is that they would then seek out a financial adviser who has no imposed limitation on their fee models but who does not have the same professional status and expertise as the accountant based adviser. By enforcing certain remuneration models, an uneven playing field is created with regard to the provision of financial advice. Clients who potentially cannot afford a fixed fee financial advisory service, may be priced out of obtaining advice, or may seek advice from an alternative source operating under a different fee structure. Whilst the accountant may consider themselves (and in fact be) the ideal provider of financial advisory services to a particular client, in reality they may be placed in a position where those services cannot be provided due to the restrictions placed on them as contained in this ED. For those smaller practices this represents an impediment to providing advice services, and in fact they may look to move away from this specialist area to more traditional accounting services. For financial advisers in this position, they are placed in a difficult situation as they want to service their clients to the best of their ability and provide ethical, quality

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			advice - however may be unable to do so under certain prescribed fee models. If this occurs, where will clients proceed for advice? Another likely consequence is that, in fully following the prescriptive detailed processes outlined in APES 230, and determining the corresponding fixed dollar fees, an accountant based financial adviser will become priced out of "middle Australia" (partly driven by perceptions of fixed fees), and therefore that "middle Australia" is denied access (or their access reduced) to accountant based financial advisers. We submit that this likely outcome is inconsistent with the APESB's public interest role. Also, what of a situation where an accountant operates with other non-accountant financial advice providers within a financial planning practice? Is the accountant under a different fee charging regime than his or her colleagues? We submit that a number of areas in APES 230 as drafted would not assist with the development and professionalism of the financial advice industry, and likely does not meet the objectives of the standard in ensuring the professionalism of accountant based financial advice. In fact APES 230 will lead to division in the advice industry due to the proposed implementation of this uneven playing field. It is our belief that this standard should be focussing on ensuring professionalism in the industry (which we support) through the implementation of statutory fiduciary obligations (in line with Government reforms), rather than simply placing restrictions on commercial business arrangements which will be suitable for some clients. The accountant financial advisers that are part of the AFAC regard themselves as absolutely focussed on providing advice services to clients which are in the client's interest. **2.5. Alternative Fee Models, Merits & Demerits & Potential Impact of APES 230** Research from Investment Trends on the provision of SMSF advice, indicates that 40% of financial planners fees relating to SMSFs derive from asset based fees for service, and 39% from "fixed price" fees for service. It is important to note that this research relates to SMSF clients only, and the relativities would shift strongly to "asset based fees" if all clients were included. The key alternative fee models are: Time based Fees (hourly charging) Fixed fees – either for initial strategic advice and implementation services, or Asset based fees – usually for ongoing service/advice, or Some combination of the above There is no "one size fits all" pricing model, and consideration needs to be given to allowing flexibility in fee charging regimes for different commercial models, and different client relationships (and the type of advice that is being provided as part of that relationship). Financial advisers and clients may prefer asset based fees (or a combination) to give greater client/adviser alignment particularly where the advice given relates to portfolio management. A not unusual hybrid fee model is fixed pricing for strategic advice, and, after that, asset based pricing for investment advice, product advice and plan implementation. As mentioned earlier, client choice should rule providing full transparency and disclosure and fulfilment of professional and fiduciary obligations by the accountant financial adviser. In regards to time based billing, such a remuneration practice can offer some significant disadvantages such as: Reward to the financial adviser for inefficiency – this is clearly not in the best interests of the client if they are paying additional fees due to

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			the inefficiency in the provision of the work provided. This is particularly the case in financial planning advice where time taken for certain tasks (such as Statement of Advice preparation) can vary significantly between financial advisers. Potential discouragement of client contact – financial planning services are ideally suited to a long term and ongoing relationship due to the monitoring of implemented strategies and potential ongoing investment management. If a client feels they cannot contact the financial adviser as they will be billed, this is clearly not in the interest of either party. Potential inadequate client knowledge up front of the ultimate fee – whilst a quotation system may reduce this impact, unexpected complications or additional work will increase the fee which the client will not be aware of until completion and billing. This can lead to poor client satisfaction and disagreement. Analysis of work where limited changes are made – when creating a financial plan for a client, several strategies may be investigated before one is selected and proceeded with. It is important that the client is aware of the work undertaken and the alternative strategies considered as part of the advice, however with time based billing, the client will be charged for these investigations which they may regard as unnecessary and simply adding to the hours spent on the advice. Also, in the case of portfolio management, research and work may be done which leads to no changes being made for example on alternative products – however a client will certainly not be impressed with a bill where they see no change to the recommended outcomes. Given these factors, time-based billing is not an appropriate charging model for financial advice. Whilst this is still a common form of fee calculation for professional services (e.g. accounting, legal services), there have been previous Government enquiries into the downside of time based billing, and it does appear that professional service firms are moving away from such a model. An excerpt from the UNSW Law Journal (2004) UNSW Law Journal Volume 27 (1) p201) states: "While hourly billing has the appearance of objectivity and may be beneficial in that it allows a practitioner to provide a client with an itemised statement as tangible evidence or work done, it fails to provide the client with information about the value of the service provided and obtained". The impact of the APES 230 ED, if implemented, would be to prohibit any fee models which have asset based fees. This would effectively then leave only one permitted and appropriate fee model for financial advice – i.e. flat fees. The draft standard therefore effectively promotes flat fees, which may be certainly be appropriate for some clients, and indeed this fee modal can have many advantages. However, this form of fee charging can provide some disadvantages, including: Portfolio management – where the advice relates to ongoing portfolio management, clients may be unhappy with flat fees as they may have received a reduction in capital due to market performance. In essence as a percentage, the fee applicable to the client has increased. Indexation of fees – unless an agreement is reached on fee indexation, the financial adviser's business may suffer as a result of stagnant revenues, which may affect the ability of the business to provide the advice that it has previously to clients (due to a reduction in profit which may affect staffing levels). No perceived alignment with the clients interests – much like "success" fees, for some clients fixed fees will not be appropriate as they would like the financial adviser to be involved not only with their financial planning strategies, but also in terms of their wealth improvement, i.e. the is alignment between the increasing wealth of the client and revenue stream of the financial adviser. No pricing of risk – where a financial advisory business is providing portfolio management services, with a larger balance there is greater risk

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			and potential work in terms of ongoing management, review, and portfolio construction amongst other advisory activities. A pure flat fee model may have difficulty in addressing this unless a different charging level was implemented to reflect this increased risk, thus looking more like an asset based fee model. Outcome alignment – ultimately financial planning services are about the achievement of the client's goals and objectives and the ongoing relationship with the client to "get them where they want to be". A flat fee model offers no outcome based result, only a fee mechanism based on work performed. There can be a perceived lack of association with the work performed and the result obtained. One of the unintended consequences of a flat dollar fee regime is the perception that advice is inaccessible to all but higher net worth individuals. In reality, advisory services can be of benefit to people of all ages, however for potential younger clients, or those with limited available funds, a flat dollar fee has the implication that advice may be expensive and out of reach. Whilst this may be perception only, it has the impact of clients seeking alternative advice, such as single issue (limited) advice, or even intra-fund advice from a superannuation fund. This takes advisory clients away from the professional service that we know our accountants can provide. In regards to asset based fees, we acknowledge that in some situations, this may not be an appropriate fee mechanism. However, we see the advantages of allowing such a fee model as follows: Alignment of interest – a client may be more comfortable with a fee model that aligns their increase in wealth with their financial adviser. Reduced administration costs through simplified fee collection – this allows a more efficient advisory service resulting in reduced costs which can factored in the fee to the client. Flexibility - for different advisory services provided, a different fee mechanism may be appropriate, for example, a fixed fee for strategic work and a percentage asset based fee for portfolio management. Client choice - A practical difficulty of the proposals in APES 230 is where the client may request a certain fee model to be implemented. For example, a client seeking advisory services may agree with their financial adviser to a fixed fee for the initial advice, and then a percentage based fee for the ongoing portfolio management, and an hourly fee for any additional work that is undertaken. Not only is this a suitable model for both client and financial adviser, it is one that overcomes potential issues with various forms of fee charging such as expensive up front advice that may be applicable if fees were determined on an hourly rate for the up-front advice. Similarly where the advice sought is entirely strategic in nature, a fixed fee may be the agreed option for the financial adviser and client. Whilst examining these fee models, it is also important to note that the provision of financial planning advice is generally unlike accounting based activities which are much more transaction focussed. Financial planning services are generally provided on an ongoing relationship basis that looks to meet clients' goals and objectives. This is also important as strategies that are put in place may have a long maturity date, and require ongoing review to ensure they remain appropriate to the client's circumstances. In allowing a variety of fee models to be implemented, choice is provided to both the providers of advice, and the client as to what is the most suitable for their circumstances. Again we state, there is no "one size fits all" pricing model, and consideration needs to be given to allowing flexibility in fee charging regimes for different commercial models, and different client relationships (and the type of advice that is being provided as part of that relationship). In our view, it is not the role of APESB to be mandating this lack of choice, rather than having informed clients making informed choices? **2.6. Regulatory Developments**

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			The Parliamentary Joint Committee on Corporations and Financial Services inquiry into financial products and services in Australia (the Ripoll Inquiry/Report) received submissions and generated debate as to the extent to which commission based remuneration conflicts advice, and whether disclosure mechanisms are sufficient to manage this conflict. Asset based fees were similarly criticised by some – particularly in relation to "incentives on advisers to favour strategies that involve debt in gearing to build assets that generate fees for advisers". In response, the Government proposed in the FOFA reforms the prospective banning of "conflicted remuneration structures" including commissions and volume based payments between fund managers, platform providers and dealer groups. It also proposes that percentage-based fees (known as assets under management fees) may only be charged on ungeared products or investment amounts. According to the Government, these reforms will "greatly reduce the incidence of investors being recommended financial products as a result of sales incentives offered to advisers". Based on the Government response, it is apparent that fee for service structures, including asset based fees for ungeared investment strategies, are consistent with non-conflicted advice (providing the usual caveats of meeting fiduciary requirements are fulfilled – see below). The Government is also has concerns regarding the potential bans on commissions in relation to insurance, and the potential to exacerbate the very real problem of under-insurance. It continues to consult the financial services industry on this matter. **2.7. Emerging Legal Position** Legal opinion obtained by AFAC sets out what a fiduciary duty entails and serves to highlight that: neither commissions nor percentage based asset fees are inconsistent with fiduciary duty, provided there is no breach of either the profit and conflict rule; assuming disclosure of fees and commissions, there will normally be no breach of the **profit rule or the conflict rule** ("unless the adviser actualises the conflict by advancing his own interests at the expense of the client"). as a matter of legal principle there is no apparent justification for confining accountant based financial adviser to a fee for service definition used by APES 230 (reasons outlined in the piece); there is nothing in the fiduciary principle that would as general practice dictate **the removal** of conflicts of interest that may be caused by certain types of fees and remunerations. In order to better understand the nature of fiduciary duties and how they impact with remuneration models, advice was sought to help clarify the position from a legal perspective (see Appendix 3 Memorandum of Advice prepared by Gregory M Drew of Ninth Floor Selbourne Chambers). The key aspects of the advice and how they relate to the fiduciary duty and remunerations aspects considered under APES 230, are included below. **Fiduciary Duty and Remuneration Models** There is nothing in fiduciary principles to prohibit percentage based asset fees or commissions from being paid to financial advisers unless there is a breach of the profit rule or conflict rule. This means that remuneration or fee structures such as commissions or percentage based asset fees are by their nature not inconsistent with fiduciary duties in and of themselves. This is an important point to highlight as the ED proposes to prohibit both percentage based asset fees and commissions (including insurance) as being inconsistent with fiduciary duties which is somewhat of a misunderstanding. Remuneration structures are inherently conflicted in and of themselves creating tension between the self-interest of the financial adviser generating a fee and the interest of the client in paying a fee for that service.

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			Conflicts can be managed through full disclosure of commissions and fees to the client. Where there is full disclosure of fees and commissions by the client, there can also be no breach of either the profit rule **unless** the adviser '**actualises** the conflict by advancing their own interests at the expense of the client. "The key point in this regard is not the mere existence of a conflict but that the adviser has acted on the conflict and furthered their **own interests 'at the expense of the client**."The trigger point, for actual breach of fiduciary duty, is acting on the conflict to place the adviser's interests ahead of the clients. Where this relates to commissions or generation of fees, simply placing a client into a product which pays the highest commission or generating a strategy which pays the highest fees does not necessarily breach the conflict rule or the profit rule. There may be legitimate reasons for placing a client in such a product or developing such a strategy. The key point in this regard is advancing the client's interest first and ahead of the self-interests of the financial adviser. **No Legal Basis for Ban** There is also no apparent justification from a legal perspective for limiting or restricting remuneration to the fee for service definition included in APES 230 there is nothing within fiduciary duty which would require the removal of conflicts of interest that may be caused by certain remuneration structures or fees, such as percentage based asset fees or commissions. A fundamental issue with the ED is the belief that it is necessary to **remove** conflicts of interest rather than to identify and **manage** any potential conflicts of interest. Conflicts of interest can be appropriately managed. The key issue is ensuring that accountant based financial advisers understand their ethical and professional duties to manage conflict of interest and not to misuse their position for personal advantage. This is an achievable measure, whereas removing conflicts of interest as a matter of principle may prove difficult, if not impossible, bearing in mind that conflicts are inherent in any charging model. For example, the tension between advancing a financial advisers own interests that pay higher fees at hourly based rates and advancing the client's interests by recommending an appropriate strategy or suitable products in the shortest time possible may not always be the most profitable in terms of the fees generated. Page 5, Memorandum of Advice (2010) Gregory Drew We understand and appreciate the Exposure Drafts "intent is to hold accountant financial advisers to a higher standard of conduct in relation to fees and commissions than is required by general law, or will be required by the FOFA changes (effective July 2012). According to the ED authors, this is to "*create relationships of trust with their clients, which is a central feature of any professional relationship*". The nature of professional obligations – especially objectivity and integrity – are however already proscribed elsewhere in the accounting professional standards (especially APS 12) covering many of the objectives which APES 230 aims to cover. Rather than risk duplication and watering down of the existing APS 12 standard, it is suggested that APES 230 be reviewed in light of the fact that the objectives and standards imbedded in the ED exist within other accounting professional standards and will be further defined and governed through the FOFA reform process including fiduciary obligations and the prohibitions on investment commissions and asset based fees on any geared product or investment amount. **2.8 APES 230 Disruption to Industry and Unworkable Elements** In terms of the proposals in the ED, consideration needs to be given to the practical implementation of these measures in light of the current operation of other parts of the financial services industry. For example, the insurance industry at present operates predominantly on a commission basis, which has been built into product design and manufacture. To impose a standard on a section of the advice industry may

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			be difficult to implement purely in terms of the current product availability. However, one of the larger issues is the consequences of this action and what the consequences will be. Implementation of APES 230 would have the impact of completely changing the way insurance advice is provided. This is something the Government is widely consulting on to understand and minimise any unintended consequences as an extension to the FOFA reforms. For example, from a product manufacturer perspective would the insurance product provider simply cease any commission and retain the amount? Would there be a separate class of product for these financial advisers? How would such an amount be rebated to the client if this was required? Prior to implementation of the current form of APES 230, significant investigation would have to be undertaken into the impacts on these changes not only on the providers of financial advice, but also the public. This is at the heart of the debate on the public good – we know that there exists issues such as the underinsurance problem in Australia, however what investigation has been made into these impacts as a result of these changes. Would the provision on insurance advice decrease? Certainly 77% of our survey respondents believe this is the case. It would appear this is directly in contradiction with the aims of the APESB and this standard. Not only is insurance a significant issue here, but also other investments and lending products. The Government has a taken a sensible position here in proposing the implementation of the FOFA reforms as a prospective measure rather than a retrospective one and is also undertaking significant consultation on issues such as insurance. Not only does this give advice firms time to adjust their business if required, but also allows product providers to meet the demands of this changing fee landscape so that all will be ready by 1 July 2012. With lending products, to impose the recommendations in the ED would potentially reduce the independence of advice in this area. The ED assumes that commissions for lending products could simply be removed and reflected in product pricing. We are of the view that this simply will not occur, as the lending products sold through intermediaries such as brokers would be cheaper than those sold through the banks internal network. Obviously the banks would not allow this price differentiation to occur and they would need to equalise their loan product pricing. This would subsequently flow through to the broker channel and make these products comparatively more expensive after fees were charge (to cover the advice cost). This would reflect in poorer loan choice in terms of advice for consumers. **3. DETAILED COMMENTS** *[Technical Staff Note – the following ten paragraphs are repeated in Specific Content Table 6]* **3.1. Fiduciary Duty** Central to the proposed standard is the clear statement that the accountant who provides a Financial Advisory Service to his/her client is under a fiduciary duty to the client and is subject to the profit and conflict rules. Reflecting on recent proposed reforms within the Financial Services Industry arising from the Ripoll Report (Ripoll) with regard to forms of remuneration to financial planners, APESB has sought to address this area for accountants by proposing the following:- **'Fee for service means fees determined by taking into consideration factors such as the complexity of the Financial Advisory Service, the required skills and knowledge, the level of training and experience of the Member and the Member's staff, the degree of responsibility applicable to the work such as risk and the time spent on the Financial Advisory Service.** **Fee for service does not include Commissions, percentage based asset fees, production bonuses or other forms of fees or remuneration that are calculated by reference to product sales or the accumulation of funds under management, (emphasis added) whether paid by the**

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			Client or a third party such as a product manufacturer.' It is clear that fees calculated as against that underlined in the 2nd paragraph above are disallowed by APESB on the basis that such remuneration is inconsistent with the fiduciary obligations and duties imposed upon an accountant in the relationship with the client by APESB. The inference being that in such circumstances there is a clear breach of the profit and conflict rules in that the remuneration received and calculated by reference to either product sales or asset based percentages may not have had any bearing on the actual professional work carried out, and that the payment of remuneration where there is not a direct link, or proportionality to the professional work carried out, puts the accountant into a conflict position with regard to the bests interests of the client. **Fiduciary Duties and Remuneration Models** However, from a fiduciary duty perspective there is nothing to prohibit percentage based asset fees or commissions from being paid to financial advisers unless there is a breach of the profit rule or conflict rule. Further, there will normally be no breach of either the profit rule or the conflict rule provided that adequate disclosure of fees and commissions have been provided to the clientThe key principle in the fiduciary remuneration question is whether the profit and conflict rules have been breached. In short, whether the fiduciary has been improperly remunerated (usually being overpaid compared to the actual degree of work carried out) and that the fiduciary's obligations to put the clients‟ interests before his/her own has been conflicted in that the fiduciary has profited at the expense of the client. Where a fee characterised as a percentage of a portfolio's sum, such as a percentage based asset fee, but nevertheless arrived at by reference to factors such as complexity, degree of difficulty, professional knowledge, skill and expertise, responsibility, risk, time and resources, is fully disclosed to the client, as well as accepted by the client there **can be no breach of the profit and conflict rules**. Also, in such circumstances should the client authorise a third party to make the disclosed and agreed to payment to the fiduciary, there can be no breach of the fiduciary obligation and duty to the client in this regard. Where fees are calculated by reference to accumulation of funds under management, and such fees are acknowledged and assented to by the client, there would be no conflict, but a clear alignment of both the professional and the clients' interests in that the adviser and the client are both focused on the portfolio performance remaining positive for the client. Asset based fees are neutral to the duties owed under a fiduciary duty and do not in and of themselves create a conflict. **Point of Difference between Commissions and Asset Based Fees** Neither asset based fees nor commissions are inconsistent with, or by their nature prohibited by, fiduciary duties. There is however a fundamental distinction between the two which warrants further clarification. Asset based fees are paid by the client whereas commissions are paid by the product provider. For example, where a client chooses to pay for the advice through asset based fees, the client agrees to pay the financial adviser a percentage of their portfolio and the payment will be made either by the client or directed to be paid from the client's investment. In each example the payment is agreed to by the client and is made from the client's money. Common practice with this kind of payment frequently involves capping fees altogether or scaling fees at certain thresholds thereby reducing the percentage based fee as the investment increases. What is important here is that the client agrees to the payment, it is disclosed and the payment is made by the client. Commissions however are different. It is the product provider which pays the financial adviser for the investment made into a particular product.

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			Conflicts of Interest and Remuneration Structures The prohibition of various remuneration structures is founded upon the prohibition against conflicts of interest. As noted earlier, all remuneration models are by their nature imbedded by conflicts including hourly based fees. **Commissions** The insurance industry aside, (this issue has imbedded complexities such as underinsurance which remain unresolved and will need to be considered) we concede the move away from commissions recognising the conflict where payment is made by a product provider and not by the client. The industry recognises the potential for conflict and is now moving away from commissions. Under the government's proposed FOFA changes it is likely that a ban on commissions will come into effect from 1 July 2012. Many businesses and dealer groups across the industry have in fact already moved away from commissions to a fee for service regime. **Asset Based Fees** With respect to percentage based asset fees, we have also highlighted the important distinction from commissions, which is the source of the payment which in this case is made by the client and not the product provider. Where the concern with asset based fees relates to concern that there will be an inappropriate inflation of assets under management in order to increase revenue, which is inconsistent with the client's personal objectives thus giving rise to conflicts of interest, the government has moved to address those concerns by prohibiting asset based fees related to gearing. We believe this adequately manages that conflict. What is of key importance in this regard is managing conflicts and understanding fiduciary obligations owed by accountants who provide financial advice. The bottom line is not the remuneration methodology which gives rise to a conflict or breach of fiduciary duty. It is the manner of the fee calculation and that the fee is calculated honestly and accurately referenced against the work actually carried out and that full disclosure to, and agreement from, the client has been obtained and that any conflict in this regard is avoided. If the nature of this proposal is to regulate against inappropriate advisory practice, there are proposals already in place to cater for these circumstances. This includes the Government proposal regarding "opt in" arrangements, where the client will have to positively engage the financial planner on a regular basis. **We would recommend that defining a fiduciary duty ahead of proposed Government reforms is unwise and premature. An unintended consequence of the proposal may be that a different requirement is legislated by the Government, requiring either an amendment to APES 230, or accountants providing financial advisory services operating in a different competitive environment.** An alternative to this proposal is to introduce a positive obligation regarding the nature of the advice provided. This is a reasonable proposal in our view and caters for the client's circumstances. **3.2. Imposition of prescribed fee models** One of the issues with APES 230 is the imposition of dictated or prescribed charging models on accountant based financial advisers by their professional body with little corresponding benefit to clients or the public at large. APES 230 seeks to restrict accountant financial advisers to „traditional" fee based models to a subsector of the accounting profession only, namely accountant based financial advisers. This is inequitable when compared with the rest of the accounting profession (does APESB intend to extend this standard to Corporate Advisory work done by leading Big 4 and Mid-Tier accounting firms, where the most significant

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			basis of remuneration are success fees, namely percentage of transaction value?) and for the reasons outlined in this submission we would assert it is also unnecessary. As outlined in section 2 of this paper, there are a wide variety of relationships, advisory services and arrangements established between advisers and clients which need to be accounted for and reflected in the availability of choice around remuneration arrangements. APES 230 seeks to restrict accountant financial advisers to "traditional" fee based models – this is anachronistic and limits members and the professions. What relevance does a fee model based on time spent (input model) have to the value delivered for the client (output orientated?). Would the APESB then extend this standard to Corporate Advisory work done by leading Big 4 and Mid-Tier accounting firms, where the most significant basis of remuneration are success fees (percentage of transaction value)? Furthermore, the issue of competitive disadvantage from non-accounting financial advisers against the rest of the industry is a very real and important consideration. We are of the view that 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 and does not breach fiduciary duties (as recognised by a court of equity and soon to be imbedded in regulation). The mandatory requirements of APES 230 in relation to a fee for service model reduce customer choice with little or no corresponding benefit. A possible solution may be to require members to offer a fee for service model to customers as one option and then allow customers the choice as to whether they would like a fee for service or another remuneration model to be used. To the extent that the APESB is concerned about certain remuneration practices, we would assert that the government has recognised key areas of concern and is proposing to address these areas by prohibiting investment commissions and percentage based asset fees on any geared product or gearing amount, which we believe are sufficient to address remuneration concerns. **We recommend that rather than prescribing fee models as a means of quality advice control, an alternative is implemented to demonstrate the appropriateness and quality of the advice.** **3.5. Competitive disadvantage** For a professional body to expect more from its members than the Federal Government expects of non-members, or to place them at a commercial disadvantage as compared to non-association members, could give rise to resentment in the membership affected and be interpreted by those affected members as prejudicial to their professional practice. To impose under the banner of professional ethics and standards, a regime that not only demands of its members practice standards in excess of what the Federal Government requires of others practicing in the same field, could have the effect of being anti- competitive and commercially damaging. Also, this could potentially create uncertainty and confusion for clients who seek advice as different financial advisers will have different prescribed (not by choice) fee models under which they operate. The impact of the proposed standard will disadvantage smaller to medium size accounting firms rather than larger professional based accounting firms given the distinctions in revenue streams. Smaller to medium sized accounting firms may be reliant on income generated through financial advice as a necessary part of their income whereas larger professional firms may not (their income tends to be well diversified across other business areas such as liquidations/mergers and acquisitions etc). It is likely that the ramifications of the proposed charging models will disadvantage the smaller based accounting firms over the larger practices. Any standard proposed needs to ensure

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			equity of application amongst the members. **We recommend a level playing field be provided across the financial advice landscape to ensure that consumers are not confused or disadvantaged by different fee mechanisms in the same profession.** **3.7. Retrospectivity** APES 230 seeks to impose retrospective application in relation to the receipt of certain income prior to the commencement of the standard. An accountant financial adviser may have charged a lower fee to clients for advice or services on the basis that the financial adviser will continue to receive trail commission for a period and so the planner will be unfairly disadvantaged as a result of APES 230. The perceived conflict APES 230 is aimed at has also already occurred in that the product has already been recommended. We note that commission is not a cost to the client – only the product provider, and that commission is not paid for services provided by the financial adviser to the client. The conflict of keeping a client in a product due to trail commission receipts can be better addressed through other methods (e.g. mandated disclosure of commission and offer of review on a regular basis). The retrospective nature of these proposals represents a substantial issue both in terms of implementation, but also in the impact on existing business structures. Has thought been given to the implications of this recommendation even in terms of the provision of advice documents? Will additional documentation need to be provided and agreed with clients regarding existing income received from such sources as life insurance commissions? How does the APESB propose businesses deal with this issue for thousands of clients? This would surely represent an unacceptable outcome to a substantial number of financial advisory practices and would impose an enormous administrative/ cost burden, not to mention the possible restructure of how the business operates. We do not believe this can be done nor is it a practical option for advice providers. There is also the issue of existing contractual arrangements being in place with clients that are impacted by these changes. This is not something that can simply be altered by a change in policy – this represents a significant legal risk that would need to be investigated and determined prior to changes being made - hence our recommendation for prospectivity and not retrospectivity. A practical example of the difficulties associated with this is in relation to a potential rebate of commissions received assuming these cannot be refunded by the provider. Is an adviser to refund a minimal amount received via commission back to the client? Would this depend on the materiality of the amount? The administrative burden would simply make this impossible to comply with and we believe would not be in the public interest. As mentioned previously, to pre-empt this timing of the Government reforms seems unreasonable, and also proposes significant structural implementation issues. To place advisers in a position where their obligations are so significantly different legislatively as opposed to the standard creates confusion and potential non-compliance. The Government has put in place measures through the FOFA reforms from 1 July 2012. We recommend this time line be implemented as part of APES 230, along with the change to making these changes prospective only. **We do not believe that this proposal acts in the best interests of consumers or the industry. Existing products may not even be capable of this provision, placing the accountant who has provided financial advisory services the clients in good faith in a very difficult position. This may require a complete re-engineering of the business model, and substantial further advice documentation to be provided to clients – who would be unwilling to pay for such further disclosure.**

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			We recommend that the retrospective nature of the proposal be removed and aligned with the Government's Future of Financial Advice reforms. **4. MEMBER VIEWS – Synopsis of Survey Results *[Technical Staff Note - Please see survey detailed results in Table 6, Appendix 1]*** The full survey results are covered in AFAC's full submission to the APESB. These comprise of 272 responses from accountant financial planners across the AFAC dealer groups. Some interesting highlights are: 83% disagreement that it is the domain of professional bodies to prescribe fee charging models 76% disagreement that it is appropriate for APES 230 to be more prescriptive than the Government regulations 85% agreement that accounts engaged in financial advice will be disadvantage as compared to non-accountant financial planners 78% disagreement in banning asset based fees, with more than half in strong disagreement 77% in agreement that the provision of insurance advice will reduce 90% in disagreement with the retrospective nature of the proposals 55% indicating that they would reconsider their membership of their accounting body if the proposals were implemented (although this reaction needs to be tempered by the likelihood that if one is operating within a public accounting practice, the standards are likely still applicable under current professional body by-laws) **5. CONCLUSION** APES 230 is based on a questionable premise regarding the interaction of fiduciary duty and the management of conflicts, and their intersection with various remuneration models. We have submitted an extensive legal opinion in support of this contention. **Technical Staff note - Please see Appendix 2 for Advisers feedbacks**
92	From SC 8 Item 46	SPAA	Comments provided by SPAA are predicated on the assumption that key elements of the Government's future of financial advice reforms will apply from 1 July 2012. These key elements are: · A prospective ban on conflicted remuneration structures, including commissions and any form of volume based payment. · The introduction of an advisor charging regime, which retains a range of flexible options for which consumers can pay for advice and includes a requirement for retail clients to agree to the fees and to annually renew (by opting in) to an advisor's continued services. Fee for service 14. SPAA considers that Members should be required to charge fees on a fee for service basis as defined. SPAA would expect that Members are able to explain how the fees they charge fairly reflect the work performed. As a starting point, fees should be charged on a flat dollar basis with the fee reflecting the knowledge, skill and experience of the Member. 15. A remuneration model which is based in full or in part on charging asset based fees should be permitted but only if all the other standards are complied with.
93	From SC 8	PWC	It appears that the requirements in the ED may give rise to a number of consequences that require further consideration. For example, we note that:

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	Item 49		• It appears that accountants providing services related to insurance would not be able to accept income according to the long standing practices of that industry. Is it APESB's intention to change the usual practices of the insurance industry in the same way as the announced intent to regulate accountants in financial planning? • It also appears that members in business, who are employees (for example) of large organisations providing financial planning services, may be placed in the position where they are subject to a standard which they cannot comply with if they remain in their present employment. This might be a particular problem if the ED becomes a standard before any relevant government legislation. We assume it if not APESB's intention to cause such members to either resign from their employment or renounce their membership of a professional accounting body.
94	From SC 8 Item 50	WHK	Set out below are the key aspects that WHK wishes to comment with respect to APES 230. WHK is a member of Accountant Financial Adviser Coalition (**AFAC**) an has also been working with the Mid-Tier Accounting companies on APES230. **1. Imposition of Prescribed Fee Models** We do not agree with APES 230 seeking to impose prescribed fee models. Our concerns include: - the model proposed is largely input based and has no consideration to the value delivered to a client; and - it limits a consumer's choice with no benefit – indeed, providing the consumer with more choice may be in the consumer's best interests. Furthermore, we would question whether the role of a professional body should encompass imposing fee models to be used by its members. We are of the view that consumers should be given the 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. We believe in an open architecture of fee models, as long as the client is fully informed and in agreement with both the amount of the fee and how it is charged. **Recommendation: We recommend that APES 230 should not prescribe fee models as a means of quality advice control.**
95	From SC 8 Item 51	CNIS	I agree that clear guidance on professional standards of advice will provide consolidation of the current level of high quality financial advisory services being provided by Accounting professionals. However, I cannot in any way, agree with the changes to the proposed Fee for Service remuneration model by banning percentage based asset management fees. **Percentage Based Asset Management Fees** The imposition of such a measure on Accountants will create a significantly uneven playing field in the Financial Planning industry. You would be aware that the vast majority of financial planning advice in Australia is not provided by Accountants, so automatically there would be a market imbalance if the proposed APES 230 was adopted, placing our Profession behind that of the Financial Planning Association. Fees, regardless of how they are calculated, need to be clearly disclosed and understood by the client. Disclosure and understanding are the real issues here, not the calculation method used in determining the fee. As you would be aware, the majority of non-accountants are aligned with financial product providers such as banks and insurance

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			companies. Should APES 230 be adopted, it is inevitable that non-Accountants will secure greater market share as it will be difficult for Accountants to complete on commercial grounds. I fail to understand why APES 230 would even be suggested. It is totally illogical why Accountants will be required to adhere to work practices others in the financial planning industry will not be required to follow. Creating disincentives for Accountants in the financial planning industry will result in overall decline in the quality of financial advice in Australia. The Accounting Professional & Ethical Standards Board (APESB) should be encouraging Accountants to be financial planner rather than creating these uncompetitive hurdles. Whilst no doubt drafted with the best intentions, the exposure draft has failed to consider the uneven playing field and adverse commercial ramifications for Accountants in the financial planning industry. Fewer Accountants in the financial planning industry will result in it remaining an industry, and never progress to the standards of Profession. In conclusion, I believe that the exposure draft should be amended to remove the ban on percentage based asset management fees.
96	From SC 8 Item 52	FTS	It is our considered opinion that the current structure of the financial advice industry (predominantly a three tier distribution model) and the remuneration structures that exist within that model do not place the client's needs and objectives first. It is true that financial advice is complicated and expensive to provide. One of the reasons for the expense is the complicated regulatory environment surrounding financial advice. The Government has been forced to impose this complicated structure because financial advisers and advice firms have been unwilling to provide a consistently better service to their clients. It is true that at present many financial advisers find it difficult to justify their fees to clients (and would find it even harder if they had to charge an hourly rate). Often clients cannot see a reasonable benefit for fees they are being charged. It is for this reason that many costs in financial services are described in percentage terms. In our experience most clients do not understand the implications of these percentage costs. For example, suppose a person with $10,000 to invest is told by a financial adviser that his fees will be 2% per annum to look after the client's affairs in relation to that money each year. Some clients will work out that this is $200 or roughly $4 per week. Lets assume that in 10 years time the $10,000 has grown to $20,000. The financial adviser is still receiving 2% p.a. This will mean he is now earning $400 per year. Most clients won't do, perhaps in some cases cannot do, these calculations in their head. They certainly will not do these calculations over a five or ten or twenty year period. The two per cent sounds like a small number and so it's assumed that it must never grow to be a large amount of money. When these percentages are described at "basis points", clients typically get even more confused. As the saying goes, "sunlight is the best disinfectant". It is no co-incidence that many financial advice firms sell for more than two times one year's recurring revenue because their current business model has an almost guaranteed growing revenue stream. This is very different to other professions where the business will sell for

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			less than 1.2 times one year's recurring revenue. The fees charged by financial planners must be disclosed in dollar terms and cannot relate to a product sold or an amount of money invested. The APESB Board must make sure their document covers all remuneration from financial services firms including all fees paid by financial services companies to financial advice firms. It is likely that many people will not want APESB 230 to be finalised. Or alternatively if it should be finalised but not made compulsory. We hope that the Board resists the temptation to water down or not proceed with finalising the current draft.
97	From SC 8 Item 53	SHRB	**<u>Objections to APES230</u>** Nevertheless, we realize that for some members of our profession who are currently involved in financial planning, especially those who receive commissions, asset-based fees, and other conflicted remuneration, the adoption of APES230 may be confronting. We have heard a number of objections to the adoption of APES230 from these members (and from their related dealer groups and product manufacturers). In the following pages, we have outlined and responded to each of these objections. **<u>Objection 1)</u>** **Members should not be told by their professional bodies how to charge their clients. Indeed, it's none of the professional bodies' business. APES230 is an unwelcome intrusion into their commercial lives.** As a general rule we agree with that proposition; however, membership of a professional body is conditional upon members complying with a set of ethical standards that distinguish us as a true profession and support the worth of our designation. We have a duty to protect our designation and the reputation of our profession by prescribing what members **should and should not do ethically** and then disciplining them when they cross the 'ethical line'. If that were not so, our designation ('brand') would become worthless very quickly and we would become an industry lobby group whose role would be to protect the multitude of contradictory and competing commercial interests of members. It seems that some members erroneously believe that protection of their commercial interests should be the main priority of our professional bodies. An analogy here is if auditors started charging a "fee for service" based on a percentage of the value of a company's assets. Would that be acceptable to us? Would we seek to stop that practice? Would we "back off" on the basis that we shouldn't be telling members how to charge their clients? No doubt, we would move quickly to stop this practice on the basis of an unacceptable conflict of interest having the potential to bring our profession and our designation into disrepute. Similarly, if the medical profession moved away from flat fees for service and adopted a "fee for service" definition based on a percentage of the value of drugs prescribed by doctors, there is no doubt that community outrage would act to stop such a conflicted remuneration practice. **And yet, that model is essentially what many financial planners are using in their practices, or will use when commissions are phased out by proposed government legislation. APES230 seeks to stop such fundamentally conflicted remuneration arrangements in the practice of financial planning and we support its intent in doing so.** **Objection 4)** **APES230 cannot be adopted without major commercial inconvenience, and accordingly, it should be dropped.** **Sub-sets of this objection include "it can't be done", "it's not been done before", "APES230 is right in principle, but it's very difficult to**

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			change the way I do things", "it's not necessary because accountants are more ethical than other financial planners and to suggest otherwise is a personal affront to my integrity as an accountant", "it's unfair because it's retrospective" and "you're going to send me broke and my professional body should not be doing that". Whichever way this objection is couched, its purpose is to avoid the implementation of APES230 by emphasising (and distorting) the practical difficulties that some members perceive will follow if they are forced to adopt the standard. The challenge for the professional bodies is to present an "implementation framework" in order to demonstrate to members that making the change is not as difficult as they perceive it to be, that the principles in the standard have been adopted before and that APES230 has some significant benefits in terms of members' ongoing incomes, the sustainability and value of their financial planning practices, and the improvement in their relationships with clients. The practical process of implementing a true "fee for service" model (as proposed in APES230) is well documented. In addition to dealer groups offering training courses, there are consulting firms offering specialist implementation services to accountants (and others) wishing to make the change. At least three of these consultants have published "how to" guides illustrating the process: **Jim Stackpool, "What Price Advice?", Strategic Consulting and Training, 2009,** **Sue Viskovic, "Pricing Advice", Elixir Consulting, 2010,** **Johnny Grohavaz, "The Financial Adviser's Guide to Fee for Service", 2010.** A significant number of financial planners have already successfully implemented the principles outlined in APES230. For example, in "Pricing Advice" (page 88), John Strange, CFP, Principal of Personal Financial Designs, says: **"We charge flat fees….in eight years we have never lost a client…we have experienced 40% growth every year, except during the GFC when our growth dropped to 25% (due to a temporary drop in new clients joining us)….we are very clear about the fees we charge. We are paid by direct debit from our clients' bank accounts or credit cards-never from their investments".** This experience is in stark contrast to the bulk of planners whose incomes suffered significantly during the GFC, so dependent were they on the receipt of percentages. There are many cases where planners' incomes dropped by up to 50% during the GFC, just at a time when their clients needed their independent advice more than ever. The GFC demonstrated the illogical nature of remunerating planners based on percentages, whose role is not to predict the rises and falls of markets, but to offer independent strategic financial planning advice based on a wide range of considerations including asset allocation, taxation, structures, product assessment, debt, risk and estate planning. None of these considerations are directly or indirectly related to the vagaries of markets, so that charging commissions/fees based on percentages of amounts invested in certain products or funds under management is both illogical and corrupting of the independence of advice. Another example in "Pricing Advice" (page 110) is Kay Aarons, B.Ec., CFP, Director and Financial Planner, Strategic Financial Solutions, who says: **"Having charged fee for service for years now, I would say the biggest obstacle for most advisers is the self-belief that they are worth paying….first valuing yourself and then valuing the advice that you give-once you understand that, then you can appropriately structure**

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			your fees….we have been charging flat fees for all of our new clients and we are just about to embark on a process to work through all of our existing clients who pay us asset-based fees and move them to a flat fee model….the few clients who have not seen the value in our flat fee model, probably don't see the value in what we provide. If we want to retain those clients, it is our challenge to communicate our value more effectively". It is important to note that the planners who have made the transition to true "fee for service" (as proposed in APES230) are not limited to independently owned practices with their own Australian Financial Services Licence. For example, in a recent article in **The Australian Financial Review** (5th October 2010), AXA's General Manager for Advice and Licensing is reported as saying that 75% of AXA-aligned advisers had started charging flat fees based on the complexity of the client's situation, and the firm's research and calculations of how much it actually costs to provide ongoing advice. And in a recent report in **Professional Planner** magazine, **Catherine Robson** (an NAB/MLC affiliated planner and winner of the 2010 Outstanding Investment Adviser of the Year Award by the Australian Private Banking Council) says: **"We work on an agreed fixed-dollar-for-advice basis….making that change involved reviewing what it cost us to deliver our services, and then putting in place a pricing structure that delivered what clients were looking for, that is obviously profitable for us and for us to have a mechanism to determine what it's going to cost us to deliver the service. It's not a flat fee in the sense that every single client pays the same amount; the fee is determined on the complexity of the client's need and the level of intensity of the service…. We wouldn't be able to run a profitable business if we did not understand what the input costs of doing business looked like….it didn't take long."** Of course, there is no denying that making the change will be commercially inconvenient for some members, particularly where they are currently in receipt of large amounts of trailing income (commissions or asset fees) for which little or no work is performed; however (as we have demonstrated in this submission), there are many practical examples of members who have made the change, through which it can be readily demonstrated that the so-called "difficulties" of implementation are more matters of perception than reality. **Objection 5)** **APES230 will put accountants at a commercial disadvantage. There should be a "level playing field" in financial planning for all participants in the industry.** In an ideal world, we agree that there should be a "level playing field" for the delivery of financial planning services; however, given the imperative that members of a true profession must place their clients' interests before their commercial interests, it is vital that accountants adhere to "conflict-free" ethical standards proposed by APES230. In so doing, we submit that accountants are not placed at a disadvantage at all. They will be unambiguously trusted by their clients, their practices will flourish, their incomes will not fluctuate with the movement of markets over which they have no control, the value of their practices will grow, and they will not be "held hostage" by the commercial requirement to sell products and to accumulate of funds under management. In short, they will be at a significant advantage, both ethically and commercially, over those planners who have not adopted the principles in APES230. **Objection 6)** **Percentage-based asset fees are simply a convenient "fee pricing mechanism" and are not inherently conflicted because the same**

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			percentage is charged on every product and/or all the client's investments. This proposition is incorrect because: **1)** Percentage-based asset fees require clients to own a reasonable level of assets on which to charge a percentage. Many clients do not own assets, and yet they are in need of financial planning advice in areas such as budgeting, estate planning and taxation, none of which give rise to the ability of a planner to charge a percentage-based fee on assets. In the worst cases of abuse of percentage-based asset fees prior to the GFC, clients with very little in "investible assets" were convinced to take out very large margin loans (secured on their private homes), thus "creating" funds under management on which percentage-based fees could be levied. In one sense, this is worse than a commission-based arrangement, because it presents clients with an appearance of "commission-free independence" without actually being so. Curiously, the proposed FoFA legislation will ban commissions and percentage-based asset fees in these "geared" situations (clearly conceding the conflict problem); but it will not ban percentage-based asset fees in un-geared situations, thereby allowing conflicts of interest inherent in percentage-based asset fees to continue unabated for the vast majority of clients; **2)** Percentage-based asset fees cannot be charged (or at least at the same rate) on all assets. For example, it is highly unlikely that a percentage-based asset fee can be charged on investments in cash, on direct real estate investments, on a client's principal residence or on a client's assets in an employer sponsored superannuation fund. As a result, the planner would have a conflict of interest, which may lead to a planner avoiding the client altogether, seeking to "create" funds under management by way of gearing, convincing a client to liquidate assets, or selling insurance on which a commission can be earned; and **3)** Percentage-based asset fees cannot be charged in situations where, for example, a client uses an inheritance, a bonus or a windfall to pay down a loan or salary sacrifice cash into an employer-sponsored superannuation fund. In that situation, the planner is conflicted and may be inclined to "sell" against these strategies that are otherwise appropriate to a client's circumstances. In a recent comment in **The Australian Financial Review** (5th October, 2010), financial services industry consultant **Jim Stackpool** succinctly summarized the move to percentage-based asset fees: **"It's great that commissions are gone, but they are being replaced by a high fence in the form of asset fees, so the shift to fees could be seen as another marketing ploy to sell more product….There is no real connection between buying more product and advice".** In summary, percentage-based asset fees are inherently conflicted, and demonstrably lead to situations in which poor quality advice is offered. The principles in APES230 will avoid the situations described above and will give rise to unambiguous trust between a client and a planner. **Objection 7)** **APES230 should not be adopted because it is retrospective and should not be applied to existing clients.** The aim of APES230 is to reduce conflicts of interest, not to create additional ones. Therefore, the principles of APES230 should apply equally to existing and new clients. It is unacceptable that existing clients should continue to be subjected to conflicted remuneration models such as trailing commissions and percentage-based asset fees, while new clients are not. A significant concern here is that ongoing advice may be compromised where members are allowed to continue to receive percentage-based trailing incomes "in perpetuity" while clients remain in existing products after the standard's commencement date. Allowing this may

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			improperly influence members not to recommend appropriate changes in clients' portfolios due to a preference to continue receipt of trailing income, as opposed to true "fee for service". Objections will be raised to this requirement on the basis that it is **retrospective** in application. That would be so if trailing income were of the nature of a deferred income that ceased after a contractually agreed timeframe; however, the reality is that trailing income continues indefinitely, in many cases even after any service to the client has ceased. Therefore, the claim that applying the standard equally to existing and new clients is retrospective, is simply incorrect. Of course, there may be exceptions to the rule in cases where members can demonstrate in writing a client's unwillingness to move to the new basis or a genuine inability to unravel an existing service contract until after the standard's commencement date. While a certain amount of resistance to change is inevitable, it does not alter the fact that transitioning all existing clients to a true "fee for service" is achievable once a business has embraced both the principles in APES230 and the process by which the principles can be readily adopted. As shown above, there are many examples of successful transition to a true "fee for service". A number of planners who have made the transition (and have dealt with these so-called "legacy issues") without any financial detriment to their practices have indicated their willingness to voluntarily assist in developing a "step-by-step" implementation guide (including the writers of this submission). **Objection 8)** **APES230 is unfair because clients should have the right to choose how to remunerate members.** We rejected a similar proposal earlier in this submission from the point of view of members who submit that the accounting bodies should not interfere with the manner in which they charge fees for professional services. We certainly accept that clients have the right to choose whether to pay a "fee for service" from an investment platform/product or via their credit card or bank account; however, of far greater importance is that clients have the right to expect that members will provide financial planning services free of conflicts of interest (which is not the case with commissions, percentage-based asset fees and similarly conflicted remuneration structures). Therefore, we reject this proposal on the basis that to accept otherwise would allow members to offer two levels of service, "conflicted" and "un-conflicted" which is neither in the interests of clients, nor in the interests of the accounting profession. **Objection 9)** **APES230 is unrealistic because it requires members to charge fees for financial planning services on the basis of hourly rates. Hourly rates give rise to conflicts of interest in the same manner as percentage-based arrangements (commissions and asset fees). Therefore, percentage-based remuneration should not be banned.** APES230 does not require members to charge fees on the basis of hourly rates. Members may choose to do so; but they may use any other basis (for example, flat fees, annual retainers, task-based fees), so long as the fees are not calculated by reference to the sale of products or the accumulation of funds under management. We accept that hourly rates may give rise to inefficiencies and over-charging, but they do not give rise to conflicts of interest that result in the sale of products or the accumulation of funds under management. **Objection 10)**

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			(continued below)

Risk Insurance is a "special case" and should be "carved-out" of APES230.

Financial planning is an integrated advice discipline. It should not be "unbundled" in such a manner that certain sub-disciplines are required to reflect the profession's fundamental ethical standards in APES230 and other sub-disciplines are not required to reflect them. This is neither logical nor appropriate for a true profession and the public who deserve to be able to trust us without qualification.

Concerns have been raised that it is too difficult to offer insurance advice on a true "fee for service" basis because clients cannot or will not pay a fee for initial advice, implementation and annual review of their insurance needs.

As a result, it has been suggested that commissions on insurance should be "carved-out" of the requirements of APES230. We strongly disagree with this argument.

Clients already pay for insurance advice in their premiums, a significant proportion of which (often as high as 140% in year one and 20% on-going) is paid out as commission to advisers.

A number of financial planning practices are already successfully charging a true "fee for service" for insurance. For example, the long-established advisory firm, **Hewison and Associates**, offers the following case study:

"The table below illustrates the fee for service versus commission difference for the cost of insurance for a professionally employed, healthy, 45 year old, non-smoking male for a life insurance policy with a payout of $2 million, increased each year to offset inflation.

Year		Fee for Service		
	Premium pa with Commission	Premium pa	Planner Fee	Total Cost
1	$2,178.70	$1,377.84	$600.00	$1,977.84
2	2,494.50	1,793.19	300.00	2,093.19
3	2,878.78	2,064.25	300.00	2,364.25
4	3,344.07	2,397.06	300.00	2,697.06
5	3,872.09	2,772.25	300.00	3,072.25
TOTAL	$14,768.14			$12,204.59

The Planner Fee is an estimate only. Simple cases may have lower fees, while more complex cases would involve higher fees.

The saving in the above example is $2,563.55, or around 17% over five years. The savings increase, the longer the policy is held."

John Hewison commented on this case study as follows:

"….Insurance is the next frontier in the battle to give Australian consumers access to commission-free, independent advice and is also the key to unlocking the chronic under-insurance problem in Australia….wiping out commissions on insurance is a sure fire way to reduce the cost of personal insurance as well as to encourage people to seek advice on how best to protect their income and their family, without paying excessive premiums….Every person will have a different insurance need….for instance, as an individual moves through life and their debts are repaid their adviser should consider reducing their insurance cover, but often this creates a conflict of interest for the

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			advisor as it reduces the commissions on the insured amount….when there isn't the conflict of commission clients can feel confident knowing that we will find the best and most affordable outcome for them….the fee for service model should be extended to insurance". **Catherine Robson** (quoted earlier in this submission): **"….rebates all commissions to the client, including commissions on risk products. An amount for the work involved in setting up insurance is built into the initial and annual fees….rebating and charging a fee on risk business works better for the firm….because we're so confident it's in our client's best interest, and because we've got no vested interest in strongly recommending they take the insurance cover we think is appropriate for them-and it's very clear to the client that's the case-invariably the client will take our recommendation….previously, it was much more like as sales conversation: I know I'm going to get $10,000 commission, but you should take what I'm saying, and do what I say....".** In order to make the transition to true "fee for service" on insurance, planners who provide insurance advice would need to cost the various services they provide. For example, what does it cost to assist a client with a claim and what fee should a client then pay for this service? The "fee for service" model ensures that planners are paid for the genuine value provided during, for example, the underwriting process, even if the client is rejected or does not proceed for any other reason. As a justification for having a special "carve-out" for this service, it is often argued that insurance is "sold not purchased". Indeed, it is suggested that given the "chronic underinsurance problem" referred to above, planners must be able to continue to receive commissions; however, we suggest that if commission is the answer here, clearly, it has not worked well over the last thirty years, otherwise the "problem" would not still exist. The reality is that under any remuneration model, members should demonstrate the value and benefits of insurance. This would continue under APES230. The difference in the approach under APES230 is that conflicts of interest would not exist and the "selling" of the benefits of the insurance would clearly be based on the value to the client and not the value to the member. This is much more likely to solve any underinsurance problem in Australia than continuing with an expensive and conflicted system. **Objection 11)** **APES230 bans (volume) bonuses/rebates/fees paid by platform providers to planners. This is unfair and unnecessary because "platforms" (aka wrap accounts) are administration systems (not products) and the payments to dealer groups (and then to planners) are not of the nature of incentives paid for placement of funds in a platform.** This is an illogical argument. After all, if the "platform" is providing a valuable administration service to dealer groups/planners, why is the payment from the platform provider, and not in the opposite direction? The reality is that the payments (however described, characterised or constructed) are of the nature of an incentive to encourage the placement of funds in the "platform product". In that sense, it gives rise to conflicts of interest, and should be treated in the same manner as any other commission or incentive payment from a product manufacturer. **Objection 12)** **Percentage-based remuneration models must stay in place because Australians who want or need financial advice will not or cannot pay flat fees (the true "fee for service" proposed by the APES230).** This argument is flawed on five grounds:

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			First, it conveniently overlooks the fact that under the current percentage-based remuneration regime "ordinary Australians" are avoided by the majority of financial planners because they are not attractive sales prospects; **Secondly**, it fails to recognise that much of the remuneration of financial planners is unearned, excessive and undeserved, particularly the receipt of "drip feed" trails/fees based on a percentage of funds under management; **Thirdly**, it does not acknowledge that flat fees will lead to community trust of the financial planning industry because clients will be comfortable that they are buying an independent strategic consulting service, not a product sale disguised as a service; **Fourthly**, it does not accept that by removing conflicts of interest caused by flawed remuneration models, the cost of compliance will recede, as will the cost of advice. Therefore, many more Australians will be inclined to retain the services of a financial planner; and **Fifthly**, Australians have a healthy appetite for financial planning services, provided that planners are trustworthy (not conflicted), their services are reasonably priced and they are perceived to "add value". Removal of percentage-based remuneration models will lead to all three.
98	From SC 8 Item 54	NCA	As a consequence of my years of experience I am strongly of the view that the Proposed Standard : 230 APES 230 Financial Advisory Services whilst well intentioned as regards the areas where the APES Board should be acting in particular ethical and practice standards, is not appropriate as regards the proposals in the area of fees. I well understand the background that has lead to this Proposed Standard. The impact of such financial fiasco's as Westpoint, Storm Financial , Opes Prime, Timbercorp, Great Southern etc .... have been well reported in the media. I consider that the focus is too narrow as regards the issue of fees. It is my contention that the focus should be on appropriate ethical and moral standards **and not the remuneration model**. As a member of five professional bodies I am well versed in the ethical standards that apply. I have the strong view that the problems that I have referred to above are primarily a result of poor professional advice and lack of application of ethical standards (and possibly knowledge/ educational standards) – not the remuneration model. It is a requirement of legislation that all fees are appropriately disclosed to clients and in my experience this is accepted by clients – I believe that the real issue is the appropriateness and quality of advice given to clients and the monitoring of their investments over time! I have summarised below the main concerns that I have (and several of my colleagues who have reviewed this Proposed Draft together with me): **Fees** **a) Investment and Superannuation** This draft seeks to ban all but fee for service. This seems to assume that in fact any form of commission is BAD – however my experience is that the level of commission does not/ should not influence an investment recommendation (providing that the level is not exorbitant!). The banning of all but fee for service is impractical and does not recognise what is happening in the commercial and legislative world. Many areas of government charges are based on some form of asset value linked fee – e.g. Council rates, land tax, various levies , or income linked e.g income tax, and a number of other taxes. There is no concept of fee for service in such areas – and this is commonly accepted by the public.

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			Our financial planning business is associated with Count Financial Limited and we have a professional and hybrid fee-for-service based business that includes fixed fees upfront, ongoing fixed fees, ongoing commissions and asset based fees. All methods are discussed with clients and fully disclosed in the final Statements of Advice in both dollar cost and percentage terms (as appropriate) The asset based fee pays for unlimited access by the client to us by phone or in person throughout the year. This gives us a real commitment to the client to grow the funds under our management. Clients understand (due to full disclosure) that if asset values increase we benefit and that if the asset values fall we also share the pain through a reduction in our fee income. As an FCA Financial Planning Specialist I don't entirely agree with the ICAA's submission that there should be no link between the product advice and remuneration. I have no doubt that a number of our clients could not have afforded their initial advice and ongoing annual review were it not for the ability to have this advice paid for from the investment. Sometimes due to circumstances and the investment being made we charge no upfront fee in return for an ongoing fee or asset based percentage. This is particularly the case for advice on existing super funds, and/or their consolidation where non-super cash is limited. We always provided full disclosure as to both the initial cost of our advice, and ongoing costs. In addition we always give clients the choice to pay the upfront cost from an account separate to the investment or super. Most choose to have the cost deducted from their investment. It is my observation that the general public shuns writing cheques out of their general funds for investment and insurance advice – they have been conditioned over decades primarily by risk insurers to think this way! Low value investors (e.g. less than $20k) must have an ongoing fee because they simply can't afford to pay a high upfront fee for advice. E.g. 25 year old with $5,000 to invest won't pay 2/3 of their savings to us as an advice fee, yet on an hourly time basis, we spend between 2 – 4 days in interviews, collecting information, preparing strategy and Advice documents, and ensuring the money is invested correctly (rollovers are particularly time-consuming). If the ability to deduct advice costs from the product is removed, I see that an inevitable outcome will be that the ability to access appropriate professional financial planning advice will be beyond the reach of the majority of Australians who need it most. **In fact this is exactly opposite what I believe is a desired goal!** Being remunerated by the hour (where there is less reward for being efficient) or even an agreed flat fee from a client's bank account no more guarantees good advice than being paid for from a product, as long as the client agrees to the fee. These arrangements are ALWAYS disclosed in the Statement of Advice in percentage and dollar values. Almost all large Dealer Groups take their remuneration directly from products, before passing on the balance to the Authorised Rep (or in the case of Banks and Insurance companies, build their profit into the MER of the product that they own in-house or as shareholders of Financial Institutions). This makes an unlevel playing field for Planners like me who do not simply receive a salary from a Licensed Dealer who is selling products. It is impractical and inequitable to ask Planners to source their revenue exclusively outside the investment product, when the very organisations ASIC gives the Licenses to source their revenue FROM the investment product. If Planners have to use Fee for Service, then Licensed Dealers should have to do the same. Removing the ability to charge an asset based fee on say Wrap products due to a belief that such a fee can cause conflicts of interest shows a fundamental misunderstanding of how wrap accounts generally work. If we charge a flat percentage fee on the whole investment, and then select underlying funds which have NO entry fee and NO trailing fee or shares which have NO part of the transaction cost coming back to us, how are we conflicted? There is no incentive to choose any one product over the other as we get paid the same whether the

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			investment is in direct shares, funds A BC or XYZ. **In fact when clients have this explained top them, they actually grasp it and gain confidence that we are not biased in the selection of the underlying fund.** Industry super funds offer house financial planning for no or very low cost with "restricted" advice options. As usual, those with no fee will not disclose as to who bears the cost, so the "no fee" model is a furphy. As a generalization, Industry funds make it difficult for us to get information on behalf of clients, particularly unit prices, client units held, and asset allocation on a daily basis. Public offer fund managers do provide this information, and also contribute significantly to assisting us in providing ongoing advice to our clients for asset reallocations, and general advice. This support has a cost, and Industry funds are simply providing less Service/advice/support for a lower cost. In addition I add that it is very difficult for Industry Fund members to get appropriate personalized advice from these funds – they do not have many resources as regards appropriately trained and qualified financial planners available for members. I am disappointed that the ICAA, FPA, FINSIA and other professional bodies that represent Financial Planners have done little to counter the Industry Super fund advertisements that imply commissions to Financial Advisers are a waste of money. I am aware that there are many studies that show the value of Advice in reaching client goals can far exceed the fee cost whether the fees be by way of commission, a hybrid model or asset based (or fee for service). The real question is for individual investors to ensure that they feel they are getting value for any fees they pay. In addition, a product cannot be judged superior simply because it's fees are lower - that's like saying you have a better accountant because you paid less tax - it may simply be because you earned less income in the first place! One significant factor that has been overlooked in the value that most good planners provide is the unwritten discussions that we have with clients who "have been told about the next best thing…..or a great thing to get into". We save them from themselves and assist in avoiding the sucker schemes. We have never recommended to any of our clients such investments as Westpoint, the various agri- ventures (wine grapes, almond , jojoba, tea tree etc…projects), Timbercorp, Great Southern, Centro, Opes Prime or other tax driven wishful get rich quick schemes. In fact We have all ways held the view that if it looks too good to be true…..it is! We have the added advantage of having extensive rural and agriculture based clients and I am personally involved in family enterprises in citrus and viticulture as a third generation participant – I am acutely aware of the costs and vagaries of the primary production sector and have used this personal knowledge in advising clients. Yes some companies that have had high recommendation from sharebrokers have failed (e.g.ABC Learning, Babcock & Brown – primarily as a result of excessive gearing) but the thrust of our discussions with clients has always been on the basis of the ethical standards that we are obliged to follow. These standards are echoed on the Proposed Draft. If planners from firms such as Storm Financial (etc) other backgrounds had been appropriately qualified and required to operate under these ethical standards over the years, I have no doubt that some(many) clients in Storm and Opes Prime (etc…) would not have made the investments that they did , or in the manner they did (i.e. with inappropriate margin loans). It is not the attraction of high fees, commissions or other remuneration that drives the quality of advice that we provide. **As a financial planner the cardinal principal is KNOW YOUR CLIENT**. All advice given is based on this and thus ensures that appropriate quality advice is provided to clients. I have no doubt that some of the commentators and critics of the remuneration models that are currently used in the financial planning profession are ignorant of this basic premis. I recognise that there have been advisors (who I would not regard as professionals – often only holding say only a PS 146 accreditation and who are not a member of any of any of the professional bodies specialising in financial planning

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			and investment advising) who would not even be aware of ethical standards that ought apply – at least this is apparent when viewing the outcomes for many of the investors in Storm Financial!. I reiterate that it is the appropriateness and quality of advice and not the remuneration model that is the issue! **b) Insurance** Apart from investment and superannuation advice, insurance is an even more delicate area. we have seen one so called fee for service model from a major insurance company representative, whereby the fee set was about the same level of commission that would have been earnt. If this is to be the norm it is a furphy. Each client will face varying levels of "fees" as against commissions that would have been earnt. Same cost only a different name, so what is achieved. Furthermore, if we are forced to charge in only one fashion such as is to be mandated, how am we to compete in insurance. We put to you the following scenario. Firstly we have to educate the client in the fee based model for insurance. We say to a client you need to pay me an upfront fee (which has to be non-rebatable if it a fee in the true sense of the offering), and if the application fails for whatever reason, bad luck because you (the client) have paid us for our valuable time doing the SoA and the application etc, the application has been refused and you are out of pocket. To refund the fee smacks of charging the commission under the guise of a "fee". (we don't think that the hardliner fee modellers have grasped this). In that scenario, the client says thanks but no thanks, there is a firm down the road that will get commission to the same level as the fee based model but will get paid by the insurance company only if the application is successful and the client is not out of pocket. End result – we don't do the business. The standard prevents me competing in the commercial world if I want to be a member of the ICAA. It is acknowledged that Australians are significantly under insured when compared to other OECD countries – particularly in the area of personal risk insurance. To add to the difficulty of getting them to insure at a reasonable cost by complicating the issue with non competitive fee models will only serve to have them further under insured. The government report "The future of financial advice" (FOFA) recognises that under insurance, and also exempts insurance from the commission ban for the present. I see no reason why the APES Board should go further. We believe that to proceed with the Proposed Draft would be extremely counterproductive as regards personal risk insurance at this time. **Costs of Advice** If planners are to reduce the cost of advice then the ICAA, FPA, FINSIA and other relevant bodies should be lobbying for a reduction in the administrative burden of planners in producing nonsensically long Statements of Advice for lower range investments up to a minimum limit of say $50,000, in conjunction with the implementation of the range of initiatives in the FOFA. It would be a trade off between higher standards and ethical and fiduciary responsibilities (which I support and also comply with through the ICAA standards already) but given that they will be law, I consider that there should be the ability to reduce the size and complexity of SoA's. That would then impose those liabilities on planners but allow access to professional advice for those at the lower end of the investment scale who probably need investment advice and guidance more than some others at a reasonable price. **Other standards** APES 110 does not dictate methods of charging fees. It in fact recognizes that accountants are allowed to charge contingency fees. It seems this in inconsistent with the thrust of the Proposed Draft : 230 Financial Advisory Services as APES 110 by default allows a commission based

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			payment or a success fee because they are not banned. Why is the APES Board so intent on highly regulating the financial planning sector of the profession (generally small firms) when it leaves the other generally larger firms to operate how they like without regulating their method of remuneration, whether they choose to use commission based or success payments or not. The APES Board must be consistent across the whole profession or it will rightly be seen to be unreasonably discriminating against one small sector of the profession **Small business** Most planners are small businesses. The draft standard assumes that we have the ability to influence what the Dealers do. We cannot dictate to them how to pay us or how to work their remuneration models. That is the job of government, as we have seen in the recent reviews of the industry. Why is the APES board intent on imposing on what are generally small businesses (as defined in the Tax Act) much more restrictive models than the government itself? This draft will impose on our small business a huge administrative burden in changing procedures, and remuneration models (whilst still trying to run the practice) without any improvement in the service and advice provided to clients. Such a change is unworthy unless it can be demonstrated by anyone in the ICAA or APES board that this change in fees WILL improve advice, not just give the PERCEPTION that advice will be improved. If that can't be demonstrated categorically then the standard in relation to fees must not be approved. The APES board must be accountable here. **Competition** Whilst I am not an expert in competition laws, I wonder if this draft contravenes those laws by not allowing accountants to use the variety of models for charging that are allowed by Government and used by our competitors. The apparent discrimination within the profession as pointed out above would also be of interest. I'm sure that the ACCC would find this of interest. **Summary** This draft adds nothing to the ethical standards of the ICAA, FPA, FINSIA or SPAA and really is superfluous. It repeats what we already have as high ethical standards, adds some of the FOFA proposals, and then attacks the fee issue as the only stand out difference. Unfortunately the APES board has followed the herd with the fee debate and has made proposals above and beyond the governments own reports for no demonstrable result. The fee area is the only discernable area where the APES Board has gone beyond FOFA. Neither the ICAA nor the APES board has shown that this change in fees WILL improve advice, not just give the PERCEPTION that advice will be improved. If that can't be demonstrated categorically then the standard in relation to fees must not be approved. The APES board must be accountable here. The standard should include the FOFA proposals so that there is a level playing field for accountants to compete in the industry, not by just standing out on fees (that's just a cop out) but by complying with the high ethical standards that we have always complied with I believe that the costs of advice should be investigated to reduce those costs by removing compliance costs that add nothing to the quality of advice, and that there should be a lowered limit where Statements of Advice should be reduced in size and complexity in exchange for increased legal liability. As I commented at the outset I consider that the issue is not the remuneration model but the appropriateness and quality of advice. For your information I will be sending a copy of this email to the ICAA, FPA, FINSIA and SPAA and my dealer group, Count Financial Limited.
99	From SC 8 Item 55	ISN	**Proposed Regulation of Acceptable Forms of Remuneration** The Draft Standard APES 230 proposes that the only acceptable form of remuneration for accountants providing financial advisory services is

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			a true "fee for service" fee arrangement, which is defined to exclude not only commissions but also percentage based asset fees, production bonuses and other fees related to product sales of the accumulation of funds under management. The stringent regulation of acceptable remuneration is critical to ensuring that financial advisory services are uncompromised by any financial payment or other benefit. ISN would commend the approach taken in paragraph 9.1 of APES 230 as the tolerance of ongoing advice fees are highly problematic and are not consistent with completely independent, professional financial advice services delivered exclusively in the client's interests. Ongoing fees of any kind inevitably embed a serious conflict of interest in the financial advisory relationship and often lead to advice services being used for product distribution. In particular, ongoing asset based fees for advice obscure the full cost of advice, erode savings as cost escalates over time with assets, and create an incentive for advisers to recommend strategies or products that pay such fees over those that do not. Remuneration of advisers through asset based fees ensures that the adviser's income remains dependent on the sale of a product. Indeed the inherently conflicted nature of asset based fee arrangements is reflected by the fact in the FoFA Reform package, they will be banned where the advice involves geared investments or products. In addition, ISN would commend the APESB's proposal (in paragraph 9.2) to ensure that all accountants adhere to these higher standards by the implementation date, and renegotiate the basis of client charging to remove existing conflicted forms of remuneration. Given that many existing advice fees continue indefinitely without what's proposed in paragraph 9.2, the negative effects of conflicted forms of remuneration would also continue. This could give rise to an additional perceived or actual conflict, that is, an accountant being reluctant to give advice which would disturb these conflicted forms of remuneration were they permitted to continue. *[Technical Staff Note – The following paragraph is repeated in Specific Comments – Table 9]* The Standard also proposes to prohibit the receipt of any soft dollar benefits in paragraph 10. ISN would support this prohibition, as any benefit received and retained by the provider of financial advice has the potential to seriously compromise or bias the advice. ISN particularly supports the concept that any benefit which the accountant derives from volume or scale should be rebated in full back to the client. Given the multiplicity of existing business models through which rebates, benefits or other payments can be made to providers of financial advice, ISN would urge the APESB to consider whether it is necessary to ensure the ban extends to receipt of any benefits by related parties who might influence the accountant. In addition, there are some arrangements whereby the benefits flowing in relation to volume based benefits are delivered by way of equity arrangements, and so it may be worthwhile considering whether the Standard should explicitly prohibit this type of arrangement. The only type of fee arrangement which is consistent with delivering an independent, professional service in the client's best interests is a fixed or one off fee which is determined by the complexity of the advice, the required skills, knowledge and experience of the practitioner, and the risk and time involved in providing the service. ISN strongly supports the comprehensive and stringent approach taken by APESB with respect to banning the receipt of any form of conflicted remuneration. There is little point in addressing the more obvious form of conflicted remuneration (i.e. commissions) if others are permitted to continue. This Exposure Draft Standard will ensure that accountants delivering financial advice adopt the higher professional standards applying to other fields of accounting, rather than permitting accountants who provide financial advice to deteriorate into the often structurally conflicted remuneration structures which typify the financial advice industry. ISN is aware of the significant opposition to the Draft Standard by elements of the accounting industry, who advocate the watering down of the Standard so that it is more aligned with the proposed FoFA reforms. Clearly there are significant commercial arrangements which will be

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			disturbed by the proposed APES 230. However, to ensure that financial advisory services delivered by accountants are highly professional and not biased in any way by receipt of payments from product providers, the requirements of the proposed APES 230 must be implemented in full.
100	From SC 8 Item 57	PPA	Thank you for inviting comment on the proposed Standard APES 230. Specifically we provide the following responses to the proposed ban from 1 July 2011 of percentage- based asset fees for members providing financial advisory services. **Fee for service –** we agree that numerous providers of financial advice as well as many commentators incorrectly consider asset-based fees as fee for service. They are not. Fee for service refers to time based or job based remuneration models. The crucial difference providers of financial providers should be informing their clients about is whether they are "fee only", "commission only" or a "mixture of fees and commissions". We reject commissions as a conflicted source of remuneration for the provision of financial advice. We also reject pure time-based fee for service as potentially both providing insufficient advice to clients and/or encouraging inefficiency. We fully support however the provision of genuinely independent financial advice on a fee only basis. **Competitive disadvantage** - we do not understand why the Board wishes to impose a more onerous standard on accountants providing financial advice than others within the financial planning industry. Such a standard would place accountants at a permanent competitive disadvantage against major organisations that could be expected to continue to provide asset-based fee advice. We are not aware of evidence that accountants providing financial advice have been a major cause of the numerous problems within the financial planning industry that have come to light over recent years. There have also now been numerous reviews of the industry and none have made the recommendation to abolish asset-based fees. There is a risk that accountants could be rendered uncompetitive and irrelevant yet we can do much to improve standards in this industry. **Conflicted remuneration models –** we completely reject conflicted remuneration models in which the providers of financial advice are paid by product providers, administration providers or any party other than the client. We fully support remuneration models that are transparent, simple and easy to understand for the client. We also fully support transparent and simple performance reporting so that clients can see at a glance what value-added (if any) has been achieved by the advisors recommended asset allocation and/or fund and stock selection. Clients in our experience like the transparency of an asset-based fee. We do not consider that a simple, sliding scale asset-based fee determined using a fair and reasonable estimate of the time and complexity of the advisory responsibility is in any way in conflict with the best interests of the client. Ultimately, the "fee" debate in our view must give way to the "value" debate in which clients are able to clearly assess the costs and benefits of their financial advice and make their choice of advisor accordingly. **Fixed asset based fees –** we are aware that fund managers frequently charge the same fixed level of asset-based fees regardless of scale and complexity and agree that there is a conflict in that business model which may encourage asset accumulation rather than asset performance. In the medium to long term however, the funds management industry is a competitive industry and an asset manager who underperformed would be expected to lose their funds under management and therefore their fee income. **Scale and complexity asset based fees –** we consider that asset based fees that are tiered to reflect both the economies of scale in managing larger sums and set to reflect the complexity and time involved in the full asset allocation, portfolio construction, investment selection, investment implementation, investment administration, investment monitoring and investment reporting tasks (particularly if this is supported with timesheet records) meet all the requirements expected of our profession. They also provide a very reasonable basis to allocate the significant fixed charges involved in research and compliance. In particular, we contend that asset-based fees are consistent with our fiduciary duty towards clients, are consistent with the clients best interests and are consistent with our ultimate obligation that our

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			profession has towards the public interest. In summary, we respectfully request that the Board reconsider its proposal that accountants abolish all asset-based fees from 1 July 2011 in favour of a proposal **that asset based fees must be based on the scale and complexity of the financial advice to be provided.**
101	From SC 8 Item 58	PB	**Comments on proposed standard** Notwithstanding our comments above, we also make the following observations in respect of the current exposure draft: • Fee for service should be the preferred remuneration model to reduce conflicted remuneration structures. • In recognition of the complexities that exist in insurance and the new legislation regulating consumer credit advice commissions should not be banned on risk insurance products and other non-financial planning products. • Percentage asset based fees substantially fulfil the characteristics required to be considered Fee for Service where they are determined taking into consideration the relevant factors listed in the definition of Financial Advice and therefore should not be unilaterally banned at this time. • Any implemented reforms should be on a prospective basis as there are considerable and often intractable issues when implementing retrospective standards (as demonstrated when legislative settings have tried to be implemented retrospectively). **Summary** **Other Comments** While the Joint Accounting Bodies do not support issuing the standard at this time, we have reviewed the ED and make the following comments for consideration when that document is redrafted. • The ban on commissions should be prospective. Any implemented reforms should be on a prospective basis as there are considerable issues when implementing retrospective standards (as demonstrated when legislative settings have tried to be implemented retrospectively. • Members should be encouraged to charge on a Fee for Service basis when providing risk advice. However in recognition of the complexities that exist in this area, the banning of commissions on risk products should be excluded from APES 230 and reviewed in due course. • Members who provide advice and services related to the procurement of loans and other borrowings provided pursuant to an Australian Credit Licence should be exempt from the requirement to only charge on a Fee for Service basis at this time. The following paragraph should be incorporated in Section 9.0 to reflect that Members are encouraged to charge on a Fee for Service basis where practical. However they can still be remunerated via commissions for the provision of risk advice and licensed credit activities:

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			9.3 A Member who provides Financial Advice under either an Australian Financial Services Licence in relation to risk products or under an Australian Credit Licence in relation to credit activities should charge on a Fee for Service basis where practical. • A new paragraph should be added to 9. Fee for Service to confirm Members who receive a commission from a Legacy Product will not be in breach of APES 230, provided they have met their recording obligations as follows: **9.4** A Member whose Client holds a current interest in a Legacy Product is exempt from the provision of 9.2 provided the Member documents in a designated register the details of the Client and the legacy product in which they are invested in. Paragraph 9.2 be amended as follows to ensure it provides clear and concise guidance in regards to the charging of fees: **9.2** A Member shall not charge nor receive Commissions for providing Financial Advisory Services. • Should the Government elect not to prohibit percentage based asset fees on geared investments, this should be included in APES 230 when next reviewed. **Detailed Analysis** **Remuneration - Fee for Service** The past two years have seen a shift in remuneration practices from what have been traditional charging methods to the financial adviser now setting a fee that is appropriate for the advice and reflects its value to the consumer. We believe this must be the underpinning principle of genuine fee-for-service remuneration and therefore support the intent of the remuneration reforms proposed in draft standard APES 230. The Joint Accounting Bodies also strongly support principles based guidance. The implementation of a professional statement that is principles based ensures that it will be capable of being applied to a dynamic and evolving environment such as the financial services industry. It will also allow the Members of the Joint Accounting Bodies to use professional judgment on how they will comply with the provided guidance. In setting any standard, it should be noted that the financial advisory services industry is highly regulated and Members already face a wide range of obligations from government, regulators and other associations. **Percentage based asset fees** The issue of fees and remuneration has been widely debated over the last couple of years and a key issue is to also ensure that clients are protected from conflicted remuneration structures.

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			The first paragraph of the definition **Fee for Service** which details the factors Members can consider when calculating their fee, has deliberately been broadly defined to allow Members the flexibility to determine the appropriate fee for the advice and service they will provide to each Client. This is consistent with the principles based guidance in APES 110, section 240.1 which states: *When entering into negotiations regarding services, a Member in Public Practice may quote whatever fee is deemed appropriate* The factors listed in this paragraph include the level of training of the Member, the Member's staff, the degree of responsibility applicable to the work such as risk and time. Further factors that are not explicitly stated but will also be considered include costs to the business such as research, compliance and overheads. The final consideration will be the need for an inbuilt margin to ensure a profit is returned to preserve the viability of the business. Our Members have indicated that they believe they can demonstrate that they use these same factors to determine their percentage based asset fees for their Clients. (With further clarification this may well align with APS 12 which states that 'A mere standardised percentage basis applied to all funds under management is not a fee for service.') As the level of funds under management, or the degree of responsibility applicable to the work such as risk, is also considered to determine the level of fees that will be paid, these factors and costs are apportioned to each Client. Therefore if **Fee for Service** did not explicitly exclude percentage based asset fees from its definition, percentage asset based fees would fulfil the requirements to be considered **Fee for Service**. The ED states the fundamental reason why Members should only charge on a **Fee for Service** basis is to eliminate actual or perceived conflicts of interest. All methods of remuneration however have the potential to create actual or perceived conflicts of interest, even the proposed **Fee for Service** remuneration method proposed in APES 230 ED. It is therefore critical that a Professional Accountant use their own professional judgment to ensure that their objectivity and professional competence and due care is not compromised. This is consistent with the principles of APES 110. We should also be mindful that the financial advisory services industry is now highly regulated and Members already face a wide range of obligations from Government, regulators and other associations. The Government will also be implementing further reforms through their Future of Financial Advice initiative, which will is likely to see the introduction of a statutory fiduciary duty to act in the Client's 'best interests' and the banning of percentage based asset fees on geared investments. The Joint Accounting Bodies supports both of these proposed reforms and believe these initiatives will further mitigate any actual or perceived conflicts of interest in respect of remuneration. We also believe that consistent with APES 110, APES 230 should provide principles based guidance for Members on how to charge for Financial Advice and the definition of **Fee for Service** should be amended by removing the second paragraph:

Item No.	Reference to Table	Respondent	Respondents' Comments
			Fee for Service means fees determined by taking into consideration factors such as the complexity of the Financial Advisory Service, the required skills and knowledge, the level of training and experience of the Member and the Member's staff, the degree of responsibility applicable to the work such as risk and the time spent on the Financial Advisory Service. ~~Fee for Service does not include Commissions, percentage based asset fees, production bonuses, or other forms of fees or remuneration that are calculated by reference to product sales or the accumulation of funds under management, whether paid by the Client or a third party such as a product manufacturer.~~ This amendment will ensure the standard will be capable of being applied to a dynamic environment such as the financial services industry and that the Member, as a Professional Accountant, can use their own professional judgment, within the bounds of the law, to comply with the issued guidance. (It should be noted that under the proposed FoFA reforms asset based fees for geared investments are to be banned. Should this not proceed it should be addressed when APES 230 is next reviewed.)
			Recommendations: • **APES 230 provide principles based guidance for Members on how to charge on a Fee for Service basis for the Financial Advice they provide to their Clients and that this is achieved through deleting the second paragraph from the current definition of *Fee for Service*.** • **Should the Government elect not to prohibit percentage based asset fees on geared investments, this should be included in APES 230 when next reviewed.**
			Proposed banning of commissions It is widely accepted that commissions can create a conflict of interest. The financial planning industry for the most part has now accepted this, evidenced by many of the large financial planning dealer groups moving to a form of fee-for-service remuneration models prior to the Government announcing its intention to ban commission payments from 1 July 2012. The proposed Government ban however currently both excludes commissions received on risk products, and will also be prospective in application. Both of these decisions are in acknowledgement of the complexities within the financial planning industry and the need for further consideration before making any final decisions. The Joint Accounting Bodies also support this approach. APES 230 will also regulate advice and services related to the procurement of loans and other borrowings, including credit activities under an

Item No.	Reference to Table	Respondent	Respondents' Comments
			Australian Credit Licence (ACL). This proposed reform also warrants further consideration before final implementation as the impact of APES 230 should be considered in light of the legislation now implemented in this area. **Risk Products** The transition by the financial planning industry to move away from commission based remuneration has arguably been triggered by the Inquiry into financial products and services in Australia, which has resulted in the FoFA reforms and the Financial Planning Association (FPA) releasing its remuneration policy in 2009. Both of these currently exclude risk insurance. The Government acknowledges that risk products have structural issues that differentiate them from investment products. Unlike investing, there are no investment funds which may be used to pay for this advice. It also acknowledges industry concerns regarding affordability of personal risk advice under a fee for service arrangement and fear that it may fuel the current under-insurance problem in Australia. Therefore the Government has proposed to delay the banning of Commissions on risk products until there is further industry consultation. Risk advice, like all financial planning advice, requires both time and expertise to provide. Risk advice for an average consumer may require approximately ten hours to complete the needs analysis, prepare the statement of advice and organise the insurance cover to be underwritten with the insurer. Under a Fee-for-Service model this may cost $1500-$2000. The commission may however only be $500. Where the Client is a key partner in business, the process involved is much more complex and will also include analysing how the cover should be structured and held, as well as other key considerations to ensure the ongoing viability of the business. It is likely that this type of complex risk advice may cost the Client $10,000 to $15,000 under a fee for service remuneration model. Given that underinsurance remains a problem in Australia, the potential impact of banning of commissions on affordability warrants further consideration. Further the risk insurance industry is largely based on commission based remuneration. The likelihood of the industry transitioning to fee for service remuneration must therefore also be considered. This issue has been discussed with a senior actuary within the risk industry who has advised they are aware of a number of insurers who are currently exploring how the commission can be separated from the cost of the premium so that these products can be sold on a genuine fee for service basis. This transition however will take some time. We also believe that those limited number of policies currently available on a no-commissions basis have only reduced their premiums by approximately 15-20%, which is not commensurate with the amount of commission being waived, significantly lower than the cost of providing this advice and therefore arguable not in the client's best interests. Member feedback has also noted that should they be compelled to charge for Fee for Service for risk advice, while being placed at a competitive disadvantage they would also be required to employ additional staff and incur further IT costs to refund any commission they received manually to the Client. Some Members noted they would have no choice but to discontinue providing risk advice to their Clients. This is of concern to the Joint Accounting Bodies as potentially this may place the consumer at risk, especially in regional communities where there are limited licensed advisers. A further consideration is that the trail income that the financial adviser is currently receiving is in fact their remuneration for the risk advice

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			and services that they have previously provided to their Client, which they have elected to collect over a period of time. Given that each life insurance policy constitutes a separate contract between the consumer and the insurer, the financial adviser is now unable to ask the insurer to stop the payment of the trail commission and rather now have the balance of their fee paid so that they are paid for the advice they have provided and will comply with the proposed requirements of APES 230. As previously stated, the Joint Accounting Bodies support the principles of APES 230 and the banning of commissions. We believe however that the banning of commissions on risk products should be excluded from the proposed reforms in APES 230 at this time, in line with the FoFA reforms. There are complexities in this area that must be considered and insurers should be allowed further time to explore how they enable a smooth transition to fee for service, rather than simply electing to impose such an uncompromising reform on the Members of the Joint Accounting Bodies who provide risk product advice. To enable this recommendation, reference to 'risk products' should be removed from the definition of ***Commissions*** in the draft standard. We believe that this position should be reviewed in due course to assess what developments have been made by industry during this time and what, if any further guidance may be necessary. Members who provide risk product advice should still be encouraged to charge on a Fee for Service basis where practical.
			Recommendations: • **A prospective ban on commissions from 1 July 2012 as per the FoFA reforms** • **Members should be encouraged to charge on a Fee for Service basis when providing risk advice. However in recognition of the complexities that exist in this area, the banning of commissions on risk products should be excluded from APES 230 and reviewed in due course.** • **The definition of Commission to be amended to remove reference to 'risk products'.**
			Procurement of loans and other borrowing arrangements While some lenders do not pay commissions and a brokerage fee is charged to the Client, it is more common that mortgage brokers and other providers of credit advice are paid by way of an upfront and trail commission. Traditionally this has been largely unregulated. However this has changed with the implementation of the National Consumer Credit Protection Act 2009 (National Credit Act) regulated by ASIC. Australian Credit Licensees and their representatives must now meet initial and ongoing requirements, including:

Item No.	Reference to Table	Respondent	Respondents' Comments
			• A general conduct obligation to ensure that adequate arrangements are implemented so Clients are not disadvantaged by any conflict of interest that may arise either wholly or partly in relation to credit activities that the licensees or their representatives may engage in • A well researched and comprehensive product list representative of the products on the market (being the market available to the Client) • A credit guide that must be provided to the consumer which includes details any commissions that are likely to be received either directly or indirectly, including a reasonable estimate of the amounts and methods for working out those amounts; and • They cannot provide credit assistance unless the consumer has been provided with a quote detailing any amount that will be payable by the consumer, which the consumer must also sign and date. Commissions remain the dominant method of remuneration for credit brokers and intermediaries and there are no planned reforms to change this practice. However threats to independence and conflicts of interest that may have previously existed must now be addressed and adequately managed to ensure that the consumer will not be disadvantaged. Given the implementation of this new and extensive regulation, the Joint Accounting Bodies do not believe requiring Members who provide licensed credit advice to charge purely on a Fee for Service basis is warranted at this time. The new disclosure requirements and the mandatory requirement to ensure all conflicts of interest are adequately managed largely mitigate any mischief that may have been an issue prior to the new regulation.
			Recommendation: • **Members who provide advice and services related to the procurement of loans and other borrowings provided pursuant to an Australian Credit Licence should be exempt from the requirement to only charge on a Fee for Service basis at this time. The following paragraph should be incorporated in Section 9.0 to reflect that Members are encouraged to charge on a Fee for Service basis where practical. However they can still be remunerated via commissions for the provision of risk advice and licensed credit activities:** **9.3 A Member who provides Financial Advice under either an Australian Financial Services Licence in relation to risk products or under an Australian Credit Licence in relation to credit activities should charge on a Fee for Service basis where practical.**
			Legacy Products The following paragraph should then be included in 9. Fees to confirm that Members will not be in breach provided they have met their recording obligations for such products:

Item No.	Reference to Table	Respondent	Respondents' Comments
			9.4 A Member whose Client holds a current interest in a Legacy Product is exempt from the provision of 9.2, provided the Member documents in a designated register the details of the Client and the legacy product in which the Client is invested in.
			• **A new paragraph should be added to 9. Fee for Service to confirm Members who receive a commission from a Legacy Product will not be in breach of APES 230, provided they have met their recording obligations as follows:** **9.4 A Member whose Client holds a current interest in a Legacy Product is exempt from the provision of 9.2 provided the Member documents in a designated register the details of the Client and the legacy product in which they are invested in.**
			Further amendments to Paragraph 9. Fee for Service Feedback from both Members and the industry has suggested that the requirements detailed in Paragraph 9. Fee for Service require further clarification. There is a view that a Commission could still be accepted by a financial adviser depending on whether the Commission is charged by the financial adviser as opposed to the financial adviser receiving a Commission paid by the product provider. To provide clarity on this point we recommend paragraph 9.2 is amended to the following: **9.2 A Member shall not charge nor receive Commissions for providing Financial Advisory Services.** This amendment in conjunction with our previous recommendations will ensure that there is no confusion in regard to acceptable remuneration practices and will ensure that Members are not in breach of the standard due to circumstances beyond their control. Recommendation:
			• **Paragraph 9.2 is amended as follows to ensure it provides clear and concise guidance in regards to the charging of fees:** **9.2 A Member shall not charge nor receive Commissions for providing Financial Advisory Services.**

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	CFP	Crossing Financial Partners
2	DMJ	Daniel Mendoza-Jones
3	DFG	Davidson Financial Group
4	LBA	Lockhart Business Advisors
5	FFA	Fitzpatricks Financial Advisers
6	ORT	Ortmanns Pty Ltd
7	CRA	Cooper Reeves Accountants
8	SG	Surbal Group
9	SD	Shane Dumbrell
10	RMFA	Roberts & Morrow Financial Services P/L
11	FFP	Forsythes Financial Planning Pty Ltd
12	FAA	Forum Accounting & Advisory
13	FMFS	FM Financial Solutions
14	RIA- MR	Roskow Independent Advisory - MR
15	RIA - NS	Roskow Independent Advisory - NS
16	BIA	Brocktons Independent Advisory
17	IFAAA	IFAAA
18	NEX	Nexia Court Financial Solutions Pty Ltd
19	CONFP	Continuum Financial Planners
20	HPW	Hewison Private Wealth
21	DMR	DMR Corporate Pty Ltd
22	AP	Advantage Partners
23	PMHFP	Port Macquarie Hastings Financial Planning Pty Ltd
24	CFS	Colonial First State
25	MFS	Managed. Financial Strategy
26	JR	Johnston Rorke
27	MS	Moore Stephens
28	KEN	Kennas
29	QPPC	Qld Public Practice Committee
30	GBWW	GBW Wealthcare
31	AIES	Australian International Education Services

32	SCT	Strategic Consulting & Training Pty Ltd
33	PPA	Pitcher Partners Advisory Pty Ltd
34	CFPL	Curran Financial Pty Ltd
35	MHGL	McPhail HLG Financial Planning
36	FERB	Ferguson Betts
37	WB	William Buck
38	DFP	Direction Financial Planning
39	PU	Peter Uhlmann
40	BAG	Bosco Accounting Company Aust Ltd
41	OHM	OHM Australia Financial Services Pty Ltd
42	PWC	PwC Australia
43	LFM	Landmark Financial Management Pty Ltd
44	KHFG	KH Financial Group
45	FPAA	Financial Planning Association of Australia Limited
46	DELOITTE	Deloitte Touche Tohmatsu
47	BG	Bongiorno Group
48	WHK	WHK Group Limited
49	KCA	Kothes Chartered Accountants
50	AMP	AMP Financial Services
51	AFAC	Accountant Financial Adviser Coalition
52	SPAA	SMSF Professionals’ Association of Australia
53	Count	Count Financial Limited
54	MSC	Confidential Submission
55	CNIC	Cutcher & Neale Investment Services
56	FTS	Financial & Technical Solution Limited
57	GT	Grant Thornton Australia Limited
58	SHRB	Suzanne Hadden & Robert M. C. Brown
59	NCA	Noble Chartered Accountants
60	ISN	Industry Super Network
61	PB	The Joint Accounting Bodies
62	APPC	Australia Public Policy Committee
63	KPMG	KPMG
64	EY	Ernst & Young

65	FSC	Confidential Submission
66	ASIC	Confidential Submission