



**The Institute of  
Chartered Accountants  
in Australia**

## **A Guide to APS 12**

### **Statement of Financial Advisory Service Standards**

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## 1. BACKGROUND

This Guide is jointly issued by CPA Australia and the Institute of Chartered Accountants in Australia (“the Institute”) and to assist members to comply with the requirements of APS 12 – Statement of Financial Advisory Service Standards (“APS 12”).

The Guide is advisory only and does not replace APS 12, nor interpret the requirements of APS 12, the Constitution/Charter, By Laws, Code of Professional Conduct or other Standards of CPA Australia/ the Institute.

APS 12 is also not intended to detract from any responsibilities which may be imposed by law. Members must also be familiar and comply with any duties, obligations and responsibilities that apply under common law, the Corporations Act (2001) (“the Corporations Act”) and other relevant legislation.

The Guide provides examples of situations involving judgment in the application of the Joint Code of Professional Conduct. Examples and Templates used in both APS 12 and the Guide are intended to be illustrative, not prescriptive.

In developing this Guide, reference has been made to material published by the Australian Securities and Investment Commission (“ASIC”), the International Organisation of Standardisation (“ISO”), Standards Australia and joint documents published by CPA Australia and the Institute.

## 2. INTRODUCTION

With the continued growth in members from both bodies taking on financial planning activities there has been a necessity to formulate a standard by which members engaged in the provision of financial planning and/or advisory services could be objectively measured.

The creation of a professional standard in financial planning has been on the joint work program of CPA Australia and the Institute for several years, as both professional bodies recognised the need for a financial planning standard to be developed.

APS 12 is the result of this. It sets an objective standard for members involved in the provision of financial advice. It demonstrates the value offered by members through the provision of their joint accounting and financial planning skills. It also maintains the high professional standards already associated with CPA and Institute designations.

APS 12 outlines industry best practice which enhances the requirements of existing legislative provisions. It elaborates and expands on what is expected of members of CPA Australia and the Institute in the provision of professional and ethical financial advice and adopts a strong stance on key issues such as professional independence, conflict of interest, fee for service and soft dollar remuneration.

APS 12 is unique in terms of its public interest clauses and focus on adviser/client communication. It builds on international best practice as articulated in recent ASIC reports on the financial services industry<sup>1</sup> and ASIC Policy Statements; and the proposed standard on personal financial planning recently published by Standards Australia<sup>2</sup>.

APS 12 is also a public announcement to all stakeholders of what they can expect from a CPA/Institute member when they access financial advice from them. In this sense it is a public

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<sup>1</sup> ASIC Reports include: Preferential Remuneration Project, an ASIC Report of April 2004; Disclosure of soft dollar benefits, a research report of June 2004. See Reference List on page 32 for a full list of ASIC Policy Statements .

<sup>2</sup> Standards Australia International, 2004, *Proposed Australian Standard on Personal Financial Planning*, SAI GLOBAL, Miscellaneous Publication.

reiteration of commitment to the Australian community and stakeholders in the provision of such advice.

The objectives in releasing APS 12 include:

1. Promoting the confident and informed participation of consumers in the financial advisory process;
2. Facilitating and improving the performance and efficiency of financial advisory services;
3. Promoting consumer confidence in using financial services; and
4. Ensuring the provision of fair, ethical, and professional services from CPA/institute members, in the best interests of their clients.

The need to identify appropriate quality assurance requirements has also been addressed within the Statement. APS 12 clearly outlines requirements that are expected to be addressed by members associated with financial advisory services.

CPA Australia and the Institute view the release of APS 12 as an important step forward in addressing a number of key issues within the financial planning/advisory profession, in addition to bringing this growing area into line with other professional accounting standards.

You are referred to the **CPA/Institute FSR Accounting Industry Guide: Your Obligations and Options** (updated April 2005) for information concerning the requirements for an Australian Financial Services License ("AFS Licensee") and when accounting services are not considered to be financial services for the purposes of the Corporations Act.

### 3. APPLICATION OF APS 12

Members of CPA Australia and/or the Institute in public practice in Australia must follow APS12 when they provide financial advice

Members in public practice outside Australia must follow the provisions of APS 12 to the extent to which they are not inconsistent with their local regulations and laws.

All other members are required to follow the provisions of APS12 to the extent to which they are not prevented from so doing due to the specific requirements of an employer or AFS Licensee.

In such cases the member is required to document the departure from the Standard and note the reason/s. The member should also bring the departure to the attention of their employer or AFS Licensee with a view to encouraging them to comply with the provisions of the Standard.

APS 12 covers the professional aspects of financial advice undertaken by a member, whether they:

- Hold an AFS License;
- Are a Representative or authorised representative in the provision of financial services under the Corporations Act; or
- Give financial advice which is not subject to licensing requirements.

The purpose of this is to ensure that there is a uniform industry standard applying to all financial advice given by CPA/Institute members.

Members providing advice in the areas of mortgage broking, finance broking or the procurement of loans on behalf of clients will not initially be required to meet the standards in APS 12, but are encouraged to use them as a guide to professional practice in these areas.

The Standards are identified in BOLD under each Clause within Parts 3 and 4 of APS 12. There are in excess of 50 standards of a mandatory nature within the document.

The commentary under each section within Parts 3 and 4 of APS 12, contains best practice guidance for members, elaborates on the obligation or standard and what is expected of members in implementing those obligations in their practice.

Appendices One, Two and Three of APS 12 provide sample templates to assist members in complying with the Standards in relation to:

- Fee Disclosure;
- Terms of Engagement; and
- Alternative Remuneration Practices.

Appendix A of this Guide contains a checklist of risk/compliance factors to further assist members in meeting the Standards.

## **4. GUIDANCE ON THE APS 12 STANDARDS**

The fundamental principles of the Joint Code of Professional Conduct form the basis of professional conduct by members in the provision of all professional services. APS12 amplifies the meaning of these principles as they apply in a financial advisory services context.

### **(a) CLAUSE 6 - THE PUBLIC INTEREST**

The definition of “public interest” and the wording used in Clauses 6.1 and 6.2 of APS 12 are derived from the Joint Guidance Note 1 – Members in Business Guidance Statement (“Joint Guidance Note 1”), which can be obtained from the Members Handbook.

Two specific sections in Clause 6.3 of APS 12 make a very unique public statement about what is expected of you in relation to:

- Increasing consumer confidence in financial advice;
- The provision of advice in the best interests of the client;
- The need to ensure confident and informed decision making by clients; and
- The acceptance of the accounting profession’s overarching responsibility to ensure the public interest is met.

In relation to financial advisory services:

- i) Members should help the public to identify and achieve their financial objectives through the provision of expert objective advice, so as to assist in the accumulation and protection of financial assets and to ensure provision for retirement; and
- ii) Members have a responsibility to increase community confidence in financial advice. Advice must be of a high quality, objective, ethical and in the best interests of the client. The aim is to ensure confident and informed decision making by clients.

### **How do I comply with Clause 6?**

In fulfilling the duties owed to the public, you are bound to observe high standards of conduct that may appear at times to be contrary to your personal interests.

In addition, your obligation to safeguard the interests of your employer continues throughout the period of employment and it also applies when you wish to change employment. However, when acting to safeguard the interests of your employer, you must have regard for the law and any duties and loyalties owed to the community.

### **(b) CLAUSE 7 - INTEGRITY**

Clause 7 of APS 12 is concerned with professional issues of integrity. The relationship between a financial adviser and a client is a fiduciary one and clients should feel confident that professional services and advice are underpinned by honesty, accountability and sincerity. Advisers are in a position of trust and a high standard of integrity is therefore demanded. It is vital in this context that advisers do not engage in an act or conduct that misleads, is deceptive, dishonest or fraudulent.

Members also have an obligation to be responsible and accountable and act with respect in all professional relationships.

### How do I comply with Clause 7?

If you are instructed or encouraged to engage in any activity that is inconsistent with these principles, you are entitled and required to decline. For example, you should not be a party to the falsification of any record or knowingly or recklessly supply any information or make any statement which you know to be based on incorrect or misleading information. You are referred to Joint Guidance Note 1 for further information and assistance.

In order to comply with clause 7.2 of APS 12 you will, for example, have to demonstrate that you have systems in place to ensure:

- Responsive and timely action to client requests; and
- Suitable time management and diarisation systems.

#### ❖ Case Study

*Ben has been referred a new client but due to pressing work commitments has decided to place the client's funds in a particular master trust for the time being which should meet their short term objectives until he has time to review the client's objectives in more detail at a later date. The client is asked to authorise this at an initial meeting and is given a PDS and told to sign the application form. Ben advises the client that he will complete the rest of the form. The client does not complete the signatory clause properly and Ben decides to simply sign on behalf of the client to save time.*

In addition to the legal obligations Ben has under the Corporations Act, matters of integrity arise here. The provision of services to the client should have been undertaken in a prompt and thorough manner and with proper planning. For example, Ben should have, among other things, prior to placing funds in the masters trust:

- Ensured the client's details were obtained, client's objectives were understood, written advice was received, services were delivered in a timely way, implementation was handled effectively; and
- Ensured the client was given appropriate time and opportunity to review work prior to implementation/sign off/consent.

Completing and signing forms on behalf of clients is a topical issue. The key issues are that the client must understand the financial product recommended, have made an informed decision to proceed with purchase and have received appropriate disclosure of key information to have made that decision. From a professional and liability perspective it is prudent to ensure the client completes the form albeit with assistance from you or your staff. It is not considered appropriate and in many instances be illegal, for the adviser to sign the form on behalf of the client.

### (c) CLAUSE 8 - OBJECTIVITY

The requirement for objectivity outlined in Clause 8 of APS 12 lies at the heart of professionalism. This includes acting fairly, maintaining an impartial attitude and not allowing advice to be tainted by bias.

Any financial advice or recommendations, for which you are responsible, must be prepared with objectivity and impartiality. In acting impartially, you should give advice which meets the client's needs, situation and objectives. These duties are coupled with an implied contractual obligation that an adviser will exercise due care and skill when providing advice and will place the interests of the client before the adviser's personal interests.

Financial advisers also have fiduciary duties to their clients. A fiduciary is required by law to act in the best interests of the client and must not act where there is a conflict between their own interests and the interests of the client. The exception is where the client has given fully informed consent.

The clauses on Objectivity within APS 12 reflect best practice from ASIC Policy Statement 181 on the management of conflict of interest<sup>3</sup> including controlling, avoiding and disclosing real and potential conflicts of interest where appropriate. The clauses also reinforce the obligations of members in relation to professional independence.

Policy Statement 181 says that an AFS Licensee must:

- Identify real and potential conflicts of interest;
- Assess and evaluate the conflict; and
- Decide upon and implement an appropriate response.

If the conflict cannot be adequately managed through controls and disclosure, the Licensee must avoid the conflict or refrain from providing the financial service.

CPA Australia and the Institute recognise that individual members, whether or not an AFS Licensee, should comply with this industry standard as it encompasses the professional obligations relating to Objectivity and Professional Independence.

### **What Types of Conflict of Interest Might Arise?**

Conflicts of interest are likely to arise in circumstances where your personal or business interests, or those of your employer, are at odds with those of the client. However, the interests of your employer or your own personal interests should not affect either your objectivity or professional judgment.

There are numerous real and potential conflicts of interest that may be encountered in the provision of financial advisory services. Some examples of conflict of interest used in ASIC Policy Statement 181 are:

1. A Licensee or adviser who has an interest in encouraging clients to invest in a high risk product which pays a high commission when a client wants a low risk product; and
2. A Licensee or adviser who benefits from maximising trade volume in order to increase commission revenue, when a client wants to minimise investment costs;

You have a professional obligation to act in the best interests of your client. In the financial services industry, the best interests of the client include their best financial interests. In each example outlined above the service provider's interest in maximising profit has the potential to conflict with the interests of the client.

Your response to conflict of interest situations may include:

- Disclosing the conflict to the client;
- Reporting significant conflicts internally for resolution;
- Resolving or avoiding the conflict by declining to offer services to the client; or
- Arranging another representative either within the business or by referral, to provide services to the client.

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<sup>3</sup> ASIC Policy Statement 181 – Licensing: Managing Conflicts of Interest, ASIC, August 2004.  
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## How do I comply with Clause 8?

In order to comply with the standard, you will be expected to, among other things:

- Adopt appropriate procedures to identify and manage real and potential conflicts of interest;
- Disclose relevant conflicts of interest to the client and obtain informed consent to proceeding; and
- Demonstrate that conflicts of interest that are significant to the provision of financial advice have been avoided (For example: by either declining to provide the financial service or referring the client to another financial adviser).

The proper management of conflicts of interest will not only ensure that you meet your statutory obligations, but will also ensure that you met your professional obligations.

You are referred to Appendix C of this Guide for a flowchart on identifying and managing conflicts of interest within your business.

### ❖ Case Study

*Andrew stands to gain significant commission from his client, June, purchasing a particular financial product. In addition, the sale of the product will allow Andrew access to certain alternative remuneration benefits from the Product Issuer. Andrew discloses this conflict and recommends the purchase to June telling her that it is in her best interests, even though there are other products which are just as appropriate.*

A failure to manage this conflict of interest appropriately could mean that the fairness and honesty of the financial services provided to June are compromised. The test that Andrew might have applied is will the services provided to June be of a significantly lower quality than those that she could have reasonably expected from an adviser unaffected by the conflict. If the answer is yes, then the conflict has not been managed appropriately by mere disclosure.

## (d) CLAUSE 9 - PROFESSIONAL INDEPENDENCE

Professional Independence is a fundamental principle of the accounting profession and is a key public interest issue.

The principles of independence of mind and appearance and the recognition and management of threats to independence are to be upheld by all members, but are reinterpreted for the first time in APS 12 for those members providing financial advice.

A member providing financial advisory services must recognise the potential threats created by personal and business relationships, the acceptance of commission and other benefits, and other financial involvements, which, by their nature or degree, might threaten his or her objectivity. Specifically, you must not be adversely influenced by third party remuneration in the preparation of advice to clients.

Clause 9 of APS 12 addresses these issues and provides you with references to Section F of the Joint Code of Professional Conduct, in particular Section F1 – on Professional Independence, for further information on these obligations.

In its proposal paper on Refinements to Financial Services Legislation<sup>4</sup>, the Federal Government has proposed that advisers no longer be legally obligated to include in the Statement of Advice, information on alternative products or strategies that were considered by the adviser but that do not form part of the final recommendations. If the proposals are accepted, going forward this type of information would be set out in the client file.

<sup>4</sup> Federal Treasury, Refinements to Financial Services Legislation, a proposal paper, 2005.  
APS12 Guide – November 2005

Nevertheless, in recommending one financial product in preference to another, under APS 12 you must explain in writing why the recommendation is appropriate and how it achieves the client's objectives.

APS 12 also contains specific obligations relating to the switching/ churning of financial products. This includes references to industry best practice as outlined in ASIC's Preferential Remuneration Project Report of April 2004; and Disclosure of Soft Dollar Benefits Report of June 2004.

You now have a professional obligation to provide:

- Written reasons for a recommendation to switch financial products;
- A concise summary of the costs and benefits of any switch; and
- The rationale for the appropriateness of the transfer.

Such a recommendation can also only be made when it is appropriate to achieve the client's identified needs and objectives and it benefits the client.

### How do I comply with Clause 9?

To comply with this standard, you will be expected to, among other things, have systems which allow for:

- The identification of real and potential threats to professional independence,
- The evaluation of the significance of these threats;
- The application of safeguards to reduce or eliminate these threats if significant;
- The disclosure of the threat to the client;
- The client to have received clear written reasons for recommending one financial product in preference to another; and
- The client to have received clear written reasons for recommendations to switch financial products and its appropriateness; and
- The delivery of a concise summary of the costs and benefits of any switch of financial product.

#### ❖ Case Study

*Mark works for Grow Finance. He receives a good bonus for any client who invests in or switches to a particular financial product. This product also happens to be high risk. Kevin is one of Mark's clients and is interested in the product, but to invest would necessitate switching from another similarly suitable investment.. Mark reassures himself that it is one of a range of products that would suit Kevin's immediate objectives.*

Mark cannot misuse his position, knowledge or the opportunities resulting from the client relationship, to his own possible advantage. He can also not, in any matter within the scope of the service, have a personal interest or an inconsistent engagement with a third party, unless the beneficiary is fully informed and consents, or it is authorised by the law. In this instance, Mark would seem to be compromising his professional independence.

Further, in recommending that Kevin switch financial products, Mark must provide him with clear written reasons for the recommendation, together with a summary of the costs and benefits of doing so. It is unlikely in the circumstances that Mark could justify his actions and that the benefits to Kevin of switching products would outweigh the disadvantages.

You are referred to Professional Statement F1 of the Code of Professional Conduct and Part 3 of APS 12 for further examples of practical application.

## (e) **CLAUSE 10 - CONFIDENTIALITY**

The importance of protecting a client's personal information is articulated in Clause 10 of APS 12 and recognises the trust placed in professionals when personal information is supplied.

The Privacy Amendment (Private Sector) Act 2000, which commenced on 21 December 2000, extended the Privacy Act 1988 ("the Privacy Act") to the private sector. Changes to the privacy legislation mean, that in addition to professional obligations, private sector organisations are now regulated in the way they collect, use, store, disclose and dispose of an individual's personal information.

### **Tax File Numbers**

APS 12 pays particular attention to best practice in relation to the handling of tax file numbers ("TFN's"). In addition to the guidance given in clause 10.4 on requesting tax file numbers from clients and clause 10.5 on the handling of TFN's once received, members are referred to the Australian Taxation Office website for further information in this regard.

### **How do I comply with Clause 10?**

Amongst other things, you should:

- Adopt appropriate procedures for maintaining the confidentiality and safe custody of working papers and the financial and personal information of the client;
- Ensure the file contains evidence that information relating to a client's affairs has not been conveyed or disclosed to a third party without the client's permission; and
- Have procedures in place to ensure tax file numbers are collected, stored, used and secured appropriately.

#### **❖ Case Study**

##### *(i). Sharing information with other businesses*

*In the provision of services to a client there may be a need to either confirm or share certain information across divisions of the business or with third parties such as fund managers or stockbrokers. Under the Privacy Act it is important to obtain your client's consent, preferably in writing, before disclosing any information externally. It is recommended that you give clients a list of third parties with whom it is necessary to liaise and share information about them in order to provide the services offered. Once the client consents to this liaison, you should limit your disclosure to those third parties and only disclose that information which is necessary. For example, do not disclose all of your client's financial information when specific details will suffice.*

#### **❖ Case Study**

##### *(ii). Sharing information within the business*

*You may use the personal information collected across a business provided it is for the primary purpose for which it was collected, in this instance the provision of financial advisory and other professional services. Generally speaking, the purpose of collection and the type of information clients need to provide to you should be conveyed to a client prior to the time of collection. For example, you should inform the client that the information you collect may be used to provide the products and services requested, to administer and manage service offerings, to provide access to a range of current and future services across the business. Once again it is important to advise your clients of the types of uses to which the information may be put and obtain consent to this up front.*

You are referred to the CPA Website for further information on your obligations under the Privacy Act and the development of a privacy compliance program. The website of the Federal Privacy Commissioner can be found at [www.privacy.gov.au](http://www.privacy.gov.au)

## **(f) CLAUSE 11 - TECHNICAL AND PROFESSIONAL STANDARDS**

Financial advisers have a duty to ensure their clients receive a competent service based on up to date technical knowledge and professional skills.

There are specific obligations within APS 12 Clause 11 to refrain from performing services that you are not competent to perform. To offer incompetent services is considered to be acting without integrity or honesty. This obligation is backed up by specific provisions relating to communication, professional development and ethical behaviour.

### **How do I comply with Clause 11?**

#### **(i) General CPD Requirements**

Continuing Professional Development (“CPD”) provides a reasonable assurance to the community that members have the knowledge and skills to perform the services offered. Routine checks on continuing professional development points will be undertaken by the Institute and as part of the CPA Quality Assurance Review Program. As outlined in Clause 11.5 of APS 12, CPA members are expected to comply with the CPA Bylaws paragraph 102.1(f) and undertake 120 hours of structured study averaged over a triennium. Members are referred to the CPA website where they can access further information on CPD programs and requirements and download forms to record their CPD activities.

Members of the Institute holding a statutory registration are required to comply with Institute Regulation 7, paragraph 1002, and undertake at least 40% of the minimum CPD requirement in each of the appropriate specialty areas.

#### **(ii) Training in Self Managed Super Funds**

Both CPA Australia and the Institute run regular CPD programs to maintain members’ skills in the area of SMSF advice.

#### **(iii) Taxation Advice**

Further, CPA Australia and the Institute require that you comply with APS 6 – Statement of Taxation Standards, in relation to the competencies and standards expected of members who provide taxation services, as defined in APS 6.

#### **(iv) Financial Planning Specialisation.**

Another way to ensure your competence to provide financial advisory services is to apply to hold a specialist designation.

Both the Institute and CPA Australia have a financial planning specialisation. The Institute uses CA-Financial Planning Specialist and CPA Australia use 'CPA (FPS)' – Financial Planning Specialist. Only members of the respective professional bodies can apply for these specialist designations.

## **(g) CLAUSE 12 – COMPETENCE AND DUE CARE**

Clause 12 of APS 12 outlines professional standards on:

- Reasonable care (clause 12.1);

- Advice in writing (clauses 12.2 and 12.4); and
- Effective communication (clause 12.3).

### **(i) Effective Communication**

Clause 12.3 is unique and articulates a concept missing from current financial services industry standards and that is effective communication skills. These skills were considered lacking from most of the advice reviewed in ASIC's 2004 Report on Preferential Remuneration and have now been proposed as a key competency area in the draft ISO Statement on Personal Financial Planning.

All professionals must be able to communicate with their clients in a way that builds a candid and trusting relationship and that assists and educates clients in identifying and understanding their needs and objectives. This includes verbal communication such as face to face meetings and telephone conversations and written communication such as email and letters.

The Corporations Act states that personal advice, recommendations associated with financial products and explanations of the reasoning behind the advice, must be clear, concise and effective. Clause 12.2 of APS 12 reiterates that legal obligation by requiring you to ensure the advice and recommendations are conveyed in writing and in a clear, concise and effective manner.

### **(ii) Statements of Advice**

Statements of advice are a communication tool that set out and explain to the client important and relevant information so they can make an informed decision about whether to act on the advice.

For your assistance, Appendix B to this Guide contains a Statement of Advice Checklist which you can use when preparing written advice to clients.

CPA Australia has also developed a series of Statement of Advice templates to assist you in giving financial advice to clients. These templates are available on the CPA Australia website for member use and can be located under the heading "Financial Planning Resources".

In preparing written advice you must meet the requirements of sections 947B(6) and 947C(6) of the Corporations Act in that the advice must be "worded and presented in clear, concise and effective manner". However, you must still also exercise care and discharge the other professional obligations required in the provision of financial advice to clients.

### **(iii) The Quality of Advice**

One of the current issues with the quality of financial advice is the failure on the part of some advisers to:

- Tailor the financial advice to suit the needs and objectives of the client;
- Explain the rationale behind the recommendations made;
- Articulate in clear and understandable terms what the advice is and why it is in the client's interests;
- Explain the reasons why a client should invest in one financial product over another, or move from one financial product to another and the costs and benefits of doing so.

It is envisaged that the introduction of a specific standard on adviser/client communication will assist in overcoming some of these problems.

Whilst some of the information you have relied on in reaching your recommendations may not legally need to be included in your written advice going forward, such as information on alternative products or strategies that were considered, it is prudent to ensure the client understands how the advice suits their objectives and the rationale behind your recommendations. At a minimum, the information should at least be documented on the file.

## Checklist on the quality of the advice

- Am I trying to sell or promote a particular product?
- Am I focused on my client, their needs, goals and objectives?
- Whose interests am I really serving?
- Have I tailored the financial advice to suit the needs and objectives of the client;
- Have I articulated in clear and understandable terms what the advice is and why it is in the client's interests?
- Am I explaining my recommendations in a way the client clearly understands?
- Have I explained the rationale behind the recommendations made?
- Am I using technical language and jargon instead of plain English?
- Have I explained the reasons why a client should invest in a financial product?
- Or move from one financial product to another and the costs and benefits of doing so?
- Is my client engaged in the process?
- Is my body language consistent with what I am saying?

The professional standard outlined in Clause 12.4 of APS 12 is self explanatory. Part (i) of the Clause is derived from the legal obligation on financial advisers pursuant to the Corporations Act to make reasonable enquiries into a client's personal circumstances prior to the provision of advice. Parts (ii) and (iii) are consistent with the Reasonable Care standards contained in Clause 12 of APS6 Taxation Standards. It is recommended that these paragraphs be included in the written advice given to clients, and/or the Terms of Engagement letter.

## How do I comply with Clause 12?

To comply with Clause 12, you will be expected to demonstrate, among other things, that:

- Reasonable care has been taken in the provision of financial advisory services; and
- This is reflected and documented in the client file.

Ask yourself, do I have file notes or other records on the file that demonstrate:

- The client's relevant personal details;
- The enquiries I have made about the client's circumstances;
- The consideration and investigation conducted on the subject matter of the advice; and
- The reasons why the advice was considered to be appropriate.

## (h) CLAUSE 13 ETHICAL BEHAVIOUR AND OTHER MATTERS

Clause 13 of APS 12 reiterates the standards expected of you in relation to ethical behaviour. CPA/Institute members have had the benefit of specific guidance on ethical matters and the resolution of ethical conflict for some time and you are referred to Joint Guidance Note 1 for further information in this regard.

Clause 13.3 of APS 12 also outlines the behaviour expected of members in public practice when a client moves from one member in public practice to another. The objective is to reduce the unnecessary ethical and commercial disputes which sometimes occur between advisers on these occasions. In this regard you are expected to comply with Sections D.6, F3 (Changes in Professional Appointments) and F.4 (Referrals) of the Joint Code of Professional Conduct as if they applied to the provision of financial advisory services.

Clients have an indisputable right to choose their professional advisers and to change to others should they desire. Where a member in public practice is asked to undertake financial advisory services the member must enquire whether the prospective client has an existing accountant. If the appointment will result in another public accountant being replaced, the procedure set out in Section F3 must be followed. As a guide this would mean you should:

- i. Request the prospective client's permission to communicate with the other member. If permission is refused you should, in the absence of exceptional circumstances, decline to accept the services;
- ii. On receipt of permission, request in writing from the previous accountant all information which is required to enable you to make a decision about whether to accept the services; and
- iii. Treat the information in the strictest of confidence.

The client's previous accountant has similar reciprocal obligations to cooperate.

### **How do I comply with Clause 13?**

To meet this standard, you will have to demonstrate:

- That you are familiar with the accounting practices and principles of the profession;
- Compliance with the ethical requirements of CPA Australia and the Institute;
- If you are a member in public practice, that you have complied with Sections D6 and F3 of the Joint Code of Professional Conduct, in relation to the transfer of a client's affairs from another member in public practice;
- That you have observed the requirements of Sections D7 and F4 (Referrals) of the Joint Code of Professional Conduct when consulting with other members in relation to your client's affairs.

### **(i) CLAUSE 14 - INCORRECT OR MISLEADING INFORMATION**

The standard outlined in Clause 14 of APS 12 in relation to incomplete information includes your legal obligations under the Corporations Act and ASIC Policy Statement 175<sup>5</sup> on conduct and disclosure. The standard is also linked to your obligation to take reasonable care in the performance of your work and the advice to be given to clients under Clause 12.

### **What are "reasonable enquiries"?**

Under the Corporations Act, a financial adviser must:

- Identify the personal circumstances of the client that may be relevant to the advice to be given; and
- Make reasonable enquiries about those circumstances.

ASIC Policy Statement 175 outlines that this obligation will vary depending on the circumstances such as the complexity of the advice, the financial literacy of the client and the potential impact of inappropriate advice. However, it will usually include, among other things:

- Making enquiries about the client's personal and financial circumstances and objectives;
- Their existing portfolio;
- The client's tolerance to risk;
- Their need for regular income; and
- Desire to minimise fees and costs.

Where client contact is not interactive, Policy Statement 175 recommends, among other things, that follow up questions be asked to ensure the client understood earlier questions and that the information is relevant and complete. Where ongoing advice is provided to an existing client, enquiries should be made about whether the information already held is up to date and complete.

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<sup>5</sup> ASIC Policy Statement 175 – Licensing: Financial Product Advisers – Conduct and Disclosure  
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Whilst you are expected to discuss your concerns about incomplete or inaccurate information with your client prior to the provision of advice, if you believe the client has deliberately provided misleading information, you may choose not to perform the service.

### **How do I comply with Clause 14?**

To comply with this standard, client files should:

- Contain evidence of all enquiries and investigations made, whether of the client or others;
- Contain evidence that you have considered whether the financial advice appears to be free from material misstatements, incomplete or inaccurate information;
- Document any enquiries made of the client as to the accuracy and completeness of information supplied; and
- Reflect that you have communicated any concerns in this regard to the client and any relevant warnings about reliance on the advice as a result.

Clause 14.5 of APS 12 also includes references to your obligations to report suspicious transactions under anti money laundering legislation.

To comply with this standard you are expected to use and retain checklists that assist in identifying:

- Any unusual or suspicious transactions; and
- Risk factors which could be associated with the identification of clients and the completion of client due diligence.

As at October 2005 the Federal Government had announced forthcoming legislation with regard to anti money laundering and we urge members to maintain awareness of developments in this areas. the professional bodies will communicate relevant updates in this area to members and will amend both APS12 and this guide as necessary based on the regulatory outcomes.

#### **• Helpful Hints**

If you are concerned that your advice is based on incomplete or inaccurate information, you must warn your client of this in the Statement of Advice.

This would include a statement that the advice may be based on incomplete or inaccurate information and the client should consider the appropriateness of it before acting on it.

As a matter of good practice, you should also include a summary of those aspects of the information with which you are concerned. It is recommended that you contact the client to discuss your concerns as well as providing them in writing.

### **(j) CLAUSE 15 - THE TERMS OF ENGAGEMENT**

Clause 15 applies to members in public practice only. It requires you to establish a clear and written understanding with the client regarding the terms on which you have been engaged. It will apply when discussing both new and recurrent work with your clients.

This is not a new obligation for members. The obligation is derived from APS 2 and its purpose is to ensure that the parties' expectations and obligations are documented at the outset of service provision. CPA Australia and the Institute believe that letters of engagement, which are used for other accounting work, are also relevant to the provision of financial services.

Documenting the terms of engagement adds great value to the client/member relationship as it should:

- Clarify the understanding of both parties about the services to be provided;
- Outline a mutual basis for entering the relationship;
- Record the expectations and responsibilities of both parties; and
- Provide a context against which to judge performance.

Most complaints against advisers are based on a communication breakdown or mismatch of expectations about the services that would be provided and the objectives to be met. Documenting the terms of engagement can minimize these risks thereby reducing the potential liability of the adviser.

Appendix 2 of APS 12 contains a sample terms of engagement letter for guidance. However, satisfaction of this requirement may be achieved in a number of different ways including the use of:

- An Authority to Proceed;
- A Client Agreement letter;
- A combination of the above; or
- Another form of agreement which meets the criteria outlined in Clause 15.2.

### Does it overlap with other documents?

There can be some overlap between the contents of a Financial Services Guide (“FSG”) and a Terms of Engagement letter (“TOE”), but they are different in purpose, form and content as the following table reflects:

	<b>FSG</b>	<b>TOE LETTER</b>
<b>Purpose</b>	An FSR disclosure document that helps retail clients to decide whether to obtain financial services from the providing entity.	Documents the agreed relationship between the client and the professional, once entered.
<b>Content</b>	The FSG must contain certain information so that consumers can make an informed decision on whether to hire a particular provider.	<ul style="list-style-type: none"> <li>• Clarifies the parties understanding of the services the professional will provide in this particular instance, not just in general;</li> <li>• Documents the expectations and responsibilities of both parties;</li> <li>• Documents the liability of the member to the client; and</li> <li>• Provides the context against which to measure the professional’s performance.</li> </ul>
<b>What information should it contain?</b>	<ul style="list-style-type: none"> <li>• Who will provide the service;</li> <li>• The kinds of financial services offered;</li> <li>• Who the service provider is acting for;</li> <li>• The means by which the service provider will be remunerated;</li> <li>• Remuneration, commissions and other benefits attributable to the provision of the service to be offered; and</li> <li>• Details of associations or relationships (particularly with</li> </ul>	<ul style="list-style-type: none"> <li>• Retainer instructions;</li> <li>• Explain process;</li> <li>• Seek the client’s informed consent and instructions;</li> <li>• Disclaim duties not in the retainer;</li> <li>• Explain the concept of limited advice; and</li> <li>• Warn regarding consequences if incomplete or inaccurate information is given.</li> </ul>

	the issuers of any financial product) which might influence the adviser in the provision of advice.	
<b>When must it be provided?</b>	Before the financial service is performed unless there is a time critical reason why this cannot occur.	Upon reaching oral agreement with the client that services will be provided.

Effectively the difference between the four main disclosure documents used in the provision of financial services advice can be summarised as follows:

<b>Document</b>	<b>Purpose</b>
Financial Services Guide	What service can I get?
Terms Of Engagement Letter	What services and obligations have we both agreed to?
Statement Of Advice	What advice am I getting?
Product Disclosure Statement	What product am I buying?

### **How do I comply with Clause 15?**

You will be expected to ensure that:

- There is a clear written understanding between the client and the member regarding the services to be provided and the terms;
- A terms of engagement letter or similar document was used to document this; and
- It complied with the minimum requirements outlined in Clause 15.2 of APS 12 in that it included:
  - i) Fee and billing arrangements;
  - ii) Service deliverables and timeframes;
  - iii) Duration of the Agreement/Period of appointment (if known);
  - iv) Expected frequency of contact; and
  - v) Confidentiality provisions.

#### **• Helpful Hints**

There is no requirement that the TOE be in any particular form. In circumstances where the advice will be simple or is limited in nature, it may be that you decide to incorporate the terms into the Statement of Advice, for example by way of an authority to proceed.

The challenge then is to ensure the client is aware that acceptance of the contents of the Statement of Advice includes acceptance of the terms of engagement.

Alternatively, for more complex advice, it may be more prudent to separate the process into three parts ( depending on the client and your own business processes):

- a) Provide an FSG to assist the client in their decision to obtain services from you;
- b) Once that decision is made, then prepare TOE;
- c) Followed by the Statement of Advice at a later time.

### **(k). CLAUSE 16 - ESTIMATES AND PROJECTIONS**

The standard in Clause 16 of APS 12 is consistent with your existing obligations in APS 6 - Statement of Taxation Standards.

### How do I comply with Clause 16?

To comply with this standard:

- You must demonstrate that you prepare financial or investment projections where it was impractical to obtain exact data or where it was generally acceptable to do so;
- If projections are used, estimates were presented so as to avoid the implication of greater accuracy than in fact existed; and
- In addition, the client must receive in writing a clear explanation as to the appropriateness of the estimate or projection rates used and the basis on which they are calculated.

## (I). CLAUSE 17 - REMUNERATION

One of the current issues concerning the financial services industry is its remuneration practices.

Australian financial advisers in general are under pressure to rethink their remuneration models and be less motivated by commission and incentive payments. APS 12 reflects the need to move from a focus on the sale of financial product within current remuneration models, towards advice related fee for service models. It is intended that APS 12 will evolve to a point where members embrace fee for service remuneration models as the preferred basis for professional advisers in financial planning.

Whilst you can currently be remunerated in respect of your financial advisory services by fees or commissions or a combination of both, members should adopt a fee for service approach as this is considered to be consistent with the principles of professional independence. This applies to both initial and ongoing remuneration.

Fee for service is defined in APS 12 to mean a charge to the client based on criteria outlined in Professional Statement F6 – Professional Fees including the:

- Skill and knowledge required for the type of work;
- Level of training and experience of the person undertaking the work;
- Degree of responsibility applicable to the work including the professional and financial risk involved; and
- Time commitment made by those who performed the work.

### • Helpful Hints

There are no restrictions on how fees for service are received. Collection can be made via a number of alternative methods depending on what suits you and the client.

These may include:

- Direct billing of the client;
- Automatic debit from the product, platform or administration service that the client invests in;
- Commission payments which are offset against fees for service payable by the client; or
- Converting an agreed fee for service into a percentage amount for the purpose of debiting against a financial product, platform or administration service.

As outlined in Section F6 (Professional Fees) of the Joint Code of Professional Conduct, professional fees rendered for financial advisory services should fairly reflect the work performed. Section F6 also states that where the type of service provided by you is in the form of advice which, if acted upon,

would result in a commission being earned from a third party, then the client must be informed in writing that the commission will be received and the terms of the commission. Whilst this professional obligation is now picked up in Corporations Act disclosure obligations, Section F6 also states that the receipt of the commission must not interfere with the overarching obligation to give advice that is independent, objective and in the best interests of the client. You are referred to Section F6 for further discussion of the obligations outlined in Clause 17.1.

If you currently accept commissions or other incentives, you should also adhere to Clauses 20 and 21 of APS 12. At a minimum, these benefits are to be fully and clearly disclosed to the client and the client is to receive appropriate advice for the total remuneration received.

### **How do I comply with Clause 17?**

Among other things, you will be expected to demonstrate that the:

- Client was advised in writing of the total costs of the service;
- Total amount paid fairly reflects the value of the work performed as outlined in Section F6 (Professional Fees);
- Fees greater than anticipated or expected by the client were discussed with the client prior to billing;
- Commissions and other incentives payments are received and disclosed to the client in accordance with Section F6 (Professional Fees) of the Joint Code of Professional Conduct and Clauses 20 and 21 of APS 12.

### **(m). CLAUSE 18 - DETERMINING FEES (Applicable to members in Public Practice only)**

Clause 18 of APS 12 is applicable to members in public practice only and is derived from Section F6 (Professional Fees) of the Joint Code of Professional Conduct.

The discounting of fees for initial engagements with the intention of recovering those discounts through higher charges or the provision of additional services in the future is considered inconsistent with the provision of a professional service.

However, the prohibition on fee discounting does not preclude you from having a standard 'plan fee' which may not fully cover your time and effort in preparation, nor does it exclude:

- Discounted or pro-bono work where there are not further subsequent charges or the subsequent charging level is consistent with your usual fee schedule; or
- Discounts on initial advice which are expressly agreed with the client and the full cost of all initial and on-going advice is disclosed at the time of the initial engagement;

Clause 18.5 outlines that you should consider the requirements of Section F6 in setting or charging fees for service, including the professional and financial risk associated with providing the advice and other matters.

### **How do I comply with Clause 18?**

In setting and determining fees, have you:

- Considered the items listed under clauses 18.1 and 18.3 of APS 12?
- Ensured that fees for initial engagements are not discounted and subsequently recovered through higher charges or the provision of additional services?
- Offered the client a fee for service alternative?

<ul style="list-style-type: none"><li>• <b>Helpful Hints</b></li></ul>
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It would be considered a contravention of Clause 18.1 if you were to:

- Advertise 'free financial advice' where the clear intention is to charge the client only by way of product placement fees or commissions; or
- Provide free or heavily discounted financial planning advice where the intention is to recoup the fees through other services such as accounting or taxation services;
- Provide free financial plans on the basis that the fees or commission payable upon implementation would cover all of the necessary charges.

#### **(n). CLAUSE 19 – RECEIPT OF FEES (Applicable To Members in Public Practice Only)**

APS 12 does not restrict members in how they collect fees, as professional independence is derived from how the fee is set, not how it is collected.

This means that fees for service can be collected via a number of different methods including direct billing of the client or via the product or platform the client invests in.

As indicated earlier in the Guide, collection methods can also include:

- Automatic debit of fixed or percentage amounts from financial product, platform or administration services;
- Commission payments where these are offset against other professional fees payable by the client; and
- Converting an agreed fee into a percentage amount for the purpose of debiting against a financial product, platform or administration service.

#### **How do I comply with Clause 19?**

To comply with the standards outlined in Clause 19 of APS 12 you will be expected to have documented the method used to collect fees and how that applies to each client.

#### **(o) CLAUSE 20 – DISCLOSURE AND REPORTING FEES (Applicable To Members in Public Practice Only)**

One of the fundamental premises outlined in APS 12 in relation to fee structures is that clients must be advised of the total cost and that this amount should fairly reflect the work performed.

Members must reconcile and report at least once per year to the client on all fees, commissions and other remuneration received from them or on their behalf, to demonstrate how fees were collected and applied.

The standards within Clause 20 of APS 12 mirror the obligations expected of AFS Licensees and financial advisers under the Corporations Act. The objective of these standards is to ensure clients fully understand how much they are paying for advice, what a member is paid indirectly for professional services, by whom those payments are made, and when. The focus is on transparency and accountability.

Good disclosure should be succinct, with sufficient detail to put the benefits into a context. It should be couched in plain English and in terms a client would understand.

ASIC Policy Statement 182 states that disclosure of remuneration and other benefits paid cannot be made using:

- A range of amounts;
- A percentage;
- A rate; or

- An estimate.

Therefore, most fees, commission, charges, benefits and interests should be disclosed in dollar terms as good practice, unless they are subject to an ASIC Class order to the contrary such as:

- ASIC Class Order 04/1430 – Dollar disclosure: Unknown facts or circumstances;
- ASIC Class Order 04/1431 – Dollar disclosure: Costs of Derivatives, foreign exchange contracts, general insurance products and life risk insurance products;
- ASIC Class Order 04/1432 – Dollar disclosure: Interest payable on deposit products;
- ASIC Class Order 04/1433 – Dollar disclosure: Non monetary benefits and interests;
- ASIC Class Order 04/1435 – Dollar disclosure: Amounts denominated in a foreign currency.

If you either hold an AFS License or represent an AFS Licensee, you are encouraged to read the class orders to understand your obligations and where disclosure may be undertaken by way of percentages, a description or some other manner.

### How do I comply with Clause 20?

Have you:

- Prepared a Client Fee Schedule and given it to the client?
- Fully disclosed all interests, both financial and non financial, relating to the provision of your advice, to the client and in writing?
- Ensured the disclosure is clear, concise and transparent?
- Disclosed benefits in clear dollar denominated terms?
- Provided a new Client Fee Schedule to the client if there has been a material change to the basis on which fees will be calculated?

#### • Helpful Hints

If you hold an AFS License or represent an AFS Licensee, you will have complied with the requirement to prepare a Client Fee Schedule if your Statement of Advice contains similar information.

### (p). **CLAUSE 21 - NON-CASH AND ALTERNATIVE REMUNERATION (Applicable To Members in Public Practice Only)**

It is the preferred position of CPA Australia and the Institute that members not accept alternative remuneration benefits.

You have clear legal and professional obligations not to be adversely affected by such benefits in the provision of advice to clients. The receipt of such benefits can create conflict, or the perception of conflict, between your interests and those of your client. Acceptance of such benefits can also impair your professional independence.

ASIC<sup>6</sup> has identified certain types of alternative remuneration benefits available to financial advisers that are often related to the sale of financial product to clients and are usually paid by third parties, such as Fund Managers and Platform Providers. Some of these benefits are articulated in Clause 21.2.

In setting a standard in this area, APS 12 matches other industry Codes of Practice on alternative remuneration/ conflict of interest and rebates<sup>7</sup>.

APS 12 also reflects the industry practice outlined in ASIC Policy Statement 181<sup>8</sup>. In applying the test outlined in Policy Statement 181, CPA Australia and the Institute recognise that mere disclosure to a

<sup>6</sup> Australian Securities and Investment Commission report on Soft Dollar Benefits – July 2004.

<sup>7</sup> IFSA/FPA Code of Conduct on Alternative Forms of Remuneration, the Mortgage Industry Association of Australia (MIAA) Code on Alternative Forms of Remuneration.

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client of the conflicts of interest arising from alternative remuneration benefits, for example, will not always be enough.

Accordingly, APS 12 bans receipt of some alternative remuneration benefits, particularly linked to product or volume sales, because their receipt places advisers in direct conflict with the interests of their clients. Further, you will not be able to accept free travel and accommodation to conferences based on the volume of sales of a manufacturer's product and in some circumstances computer hardware and office accommodation, cash or gifts over the value of \$300.

Standard revenue splits applied by AFS Licensees to their representatives will not be banned unless there is a product bias within the remuneration schedule, such that the sale of certain products qualifies for a higher split of additional benefits in comparison to other financial products.

APS 12 recognises that some other alternative remuneration benefits create conflicts or the perception of conflict that may be controlled by recording and disclosing them to the client and other stakeholders in an Alternative Remuneration Schedule. This Schedule should also assist you in demonstrating that you have met your professional obligation to identify the conflicts of interest relating to certain alternative remuneration benefits, assessed and evaluated that conflict and decided upon and implemented an appropriate response.

### **The \$300 limit**

Benefits, gifts or other incentives received by a member from one source not exceeding \$300 in total over any rolling 12 month period, will be deemed to be incidental and will not be subject to mandatory disclosure in the Alternative Remuneration Schedule. However, all benefits that influence or are capable of influencing advice, regardless of size, should be disclosed in the Financial Services Guide and Statement of Advice, if a relevant recommendation is made.

In setting the \$300 limit, CPA Australia and the Institute were concerned not to set a different limit than that which applies across the rest of the financial services industry as it would create confusion and a potential compliance burden, in particular for those members who are members of more than one Association<sup>9</sup>. Although this has not stopped the lifting of standards in other areas, it would be unwieldy for some members to implement two different systems and there was no clear consumer benefit in setting a limit lower.

### **Rebates**

Use of the term "Rebate" within the financial services industry can sometimes be misleading for consumers. APS 12 deals with this issue by recommending that the term only be used to describe an amount credited to the account of the client, with amounts retained by others being more appropriately described as commission payments. This usage is consistent with policy found within other industry codes.<sup>10</sup>

### **Buyer of Last Resort Agreements**

APS 12 is unique in that it specifically states that certain Buyer of Last Resort agreements with a bias for certain brands must be disclosed. This does not mean that we are trying to influence the value of an adviser's business in the event of a sale. What it means is that Buyer of Last Resort facilities which are biased toward the adviser building a large portfolio of a particular investment or platform can be a source of conflict of interest. As such we mandate that any such arrangements are disclosed to the client.

### **How do I comply with Clause 21?**

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<sup>8</sup> ASIC Policy Statement 181 - Licensing: Managing Conflicts of Interest.

<sup>9</sup>In particular the IFSA/FPA Code of Conduct on Alternative Forms of Remuneration

<sup>10</sup> In particular the IFSA/FPA Code of Conduct on Alternative Forms of Remuneration  
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### If you are a member in public practice:

- Do your files document the management of any potential conflicts of interest relating to alternative remuneration benefits, including the avoidance of those which cause significant conflict with the client's interests?
- Have you stopped accepting benefits, gifts or other incentives that are banned under APS 12 Clause 21.3?
- Have you kept an Alternative Remuneration Schedule that meets the requirements of Clauses 21.5 – 21.7 and Appendix Three?
- Are you using the term "Rebate" appropriately in your communication with clients and within documents on the file?

#### • **Helpful Hints**

Disclosure of non monetary benefits and interests must include the following:

- The nature and extent of the benefit or interest;
- Circumstances where the benefit or interest will arise, if it may arise in the future; and
- Its estimated value.

#### ❖ **Case Study**

*Smith Finance has an incentive program whereby each year the adviser who sells the highest volume of the firm's badged master trust, wins two tickets to Paris.*

The receipt of alternative remuneration benefits such as this can create conflict, or the perception of conflict, between the interests of the client and adviser. Licensees and advisers should not be adversely influenced by third party remuneration in the preparation of advice to their clients. Acceptance of such benefits can impair the professional independence required of them in some circumstances. Licensees and advisers performing financial services should therefore recognise the problems created by business relationships and financial involvements which by reason of their nature or degree might threaten their ability to give objective advice.

### **(q) CLAUSE 22 – NOTIFICATION**

You must notify the professional body of which you are a member when you either:

- Commence or cease to hold an AFS License; or
- Become or cease to become a Representative/Authorised Representative of an AFS Licensee.

This must be done as soon as possible, but no later than the return of annual membership renewals. In doing so, you should provide the full name of the AFS Licensee and the Licensee number and the effective date of the change.

If you are a member of both bodies then your obligation is to register these details with both bodies as well.

## **5. COMPLIANCE WITH THE STATEMENT**

It is very important you understand that you will be held accountable against the mandatory Standards outlined in APS 12.

APS 12 will be enforced in accordance with the existing disciplinary mechanisms of both organizations. Non compliance can lead to disciplinary proceedings under Article 27 of the Constitution of CPA Australia and By Law 40 of the Institute.

The potential penalties that can be imposed as a result of disciplinary proceedings by CPA Australia are outlined in Clause 27.2 of the Constitution and can include forfeiture or suspension of membership, fines, censure or reprimand, downgrading of membership status or the Institute or the obligation to undertake additional training or education.

## **6. TRANSITIONAL ARRANGEMENTS**

Pursuant to Clause 25, you must cease to receive all non cash and alternative remuneration benefits banned under Clause 21.3 by 31 December 2005.

In the interim, you must comply with the disclosure and recording standards for these benefits.

## 7. APPENDICES

### APPENDIX A – CHECKLIST OF RISK COMPLIANCE FACTORS

STANDARD	RELEVANT APS 12 CLAUSE	TASK
<b>Integrity</b>	Clause 7.1	Do you have systems in place to ensure: <ul style="list-style-type: none"> <li>• Services are undertaken in a prompt and thorough manner and with proper planning;</li> <li>• There is responsive and timely action to client requests; and</li> <li>• Suitable time management and diarisation systems.</li> </ul>
<b>Objectivity</b>	Clause 8.3	Have you adopted appropriate procedures to identify and manage conflict of interest?
	Clause 8.4	Have you clearly disclosed any relevant conflicts to the client and obtained informed consent to proceeding?
		Can you demonstrate that conflicts of interest that are significant to the provision of financial advice have been avoided?
<b>Professional Independence</b>	Clauses 9.5 & 9.6	Do you identify real and potential threats to professional independence?
		Have you evaluated the significance of those threats?
	Clause 9.6	Can you demonstrate that threats to independence are disclosed to the client?
	Clause 9.8	Have you applied safeguards to reduce or eliminate those threats if significant?
	Clause 9.9	If you have recommended that one financial product be replaced with another, has the client received written reasons for the recommendation?
	Clause 9.9	What about a concise summary of the costs and benefits of the switch?
<b>Confidentiality</b>	Clause 10.1	Have you or your firm adopted appropriate procedures for maintaining the confidentiality and safe custody of working papers and the financial information of the client?
	Clause 10.2	Has information relating to a client's affairs only been conveyed or disclosed to a third party with the client's permission?
	Clause 10.3 -10.5	Are there procedures in place to ensure tax file numbers are collected, stored, used and secured properly?
<b>Technical and Professional Standards</b>	Clause 11.3	Have you refrained from performing services that you are not competent to carry out?
	Clause 11.5 and 11.6	Can you demonstrate adherence to the minimum CPE hours required of members?
<b>Competence and Due Care</b>	Clause 12.1	Do your files reflect that reasonable professional care was taken in the performance of the services?

	Clause 12.2	Have you conveyed advice and recommendations to the client in writing?
	Clause 12.4	Does your written advice include the matters outlined in APS 12 Clause 12.4?

<b>Ethical Behaviour &amp; other matters</b>	Clause 13.1	Can you demonstrate compliance with the ethical requirements of CPA Australia and the Institute, including familiarity with the accounting practices and principles of the industry?
	Clause 13.3	If a client has asked you to replace another member in public practice, have you complied with the requirements of Sections D6 and F3 (Changes in Professional Appointments)?
	Clause 13.4	If you have consulted with another member in relation to the client's affairs, have you complied with Sections D.7 and F.4 (Referrals) of the Code of Professional Conduct?
<b>Incorrect/ Misleading Information</b>	Clause 14.1	Is there evidence on the file that you have considered whether the financial advice appears to be free from material misstatements, incomplete or inaccurate information?
	Clause 14.2	Where you have identified a misstatement, incomplete or inaccurate information, have you discussed the matter with your client and provided written warnings if the inaccuracy or omission is not rectified?
	Clause 14.3	Have you documented enquiries and investigations made as to the accuracy and completeness of the information required to provide the advice?
	Clause 14.5	Are checklists used and retained on the working file, that assist in identifying any unusual/suspicious transactions?
<b>Terms of Engagement (applicable to members in public practice only)</b>	Clause 15.1	How did you ensure that there was a clear understanding between the client and yourself regarding the terms of engagement?
	Clause 15.1	Was a Terms of Engagement letter used or another form of agreement which meets the criteria outlined in Clause 15.2?
	Clause 15.2	Did it comply with the guidance given in APS 2?
<b>Estimates/ Projections</b>	Clause 16.1	Have you prepared financial or investment projections involving the use of estimates, only where it was practical or acceptable to do so?
	Clause 16.2	If estimates have been used, are they presented so as to avoid the implication of greater accuracy than in fact exists?
	Clause 16.2	Has the client received in writing a clear explanation as to the appropriateness of the estimate or projection rates used and the basis on which they are calculated?

<b>Remuneration.</b>	Clause 17.1	Has the client has been advised in writing of the total cost of the service and does it fairly reflect the value of the work performed?
	Clause 17.3	If your fees will be greater then anticipated or expected by the client, have you discussed this with the client prior to billing?
<b>Determining Fees (applicable to members in public practice only)</b>	Clause 18.1	Do you discount fees for initial engagements?

	Clause 18.1 and 18.3	Have these discounts been recovered through subsequent higher charges or the provision of additional services?
	Clauses 18.5	In setting and charging fees, have you considered the matters outlined in Clause18.5?
<b>Receipt of Fees (applicable to members in public practice only)</b>	Clause 19	Have you documented the method used to collect fees and how that applies to the client on their file?
<b>Disclosure &amp; Reporting of Fees (applicable to members in public practice only)</b>	Clause 20.1	Have you fully disclosed all interests, both financial and non financial, relating to the provision of advice, to the client in writing?
	Clause 20.2	In the case of disclosure of remuneration and benefits, is the disclosure in clear dollar denominated terms?
	Clause 20.3	Is there evidence that a Client Fee Schedule has been provided to the client?
	Clause 20.6	Have you provided a new Client Fee Schedule to the client if there has been a material change to the basis on which fees will be calculated?
	Clause 20.7	Where a percentage calculation of a portfolio value is used for fee payment, is your estimate based on the annual ongoing balance of the client's account?
<b>Non Cash &amp; Alternative Remuneration (applicable to members in public practice only)</b>	Clause 21.2.	Does the file document the management of any real or potential conflicts of interest relating to alternative remuneration benefits, including the avoidance of those which cause significant conflict with the client's interests?
	Clause 21.3	Is there evidence that you do not accept benefits, gifts or other incentives that are banned under APS 12 Clause 21.3?
	Clauses 21.5 – 21.7	Have you or the AFS Licensee retained an Alternative Remuneration Schedule that meets the requirements of APS 12 and in particular Clauses 21.5 – 21.7 and Appendix Three?
	Clause 21.8.	Have you disclosed any Buyer of Last Resort Agreements which contain a bias for certain brands?

	Clause 21.10.	Do you use the term “Commission Payment” to describe an amount or payment retained by a product provider or an AFS Licensee, instead of “Rebate”?
<b>Other Matters</b>		
<b>(a) Planning</b>		<p>Do you plan your work to ensure that the:</p> <ul style="list-style-type: none"> <li>• Client’s details are obtained, client’s objectives understood, written advice received, services delivered in a timely way, implementation handled effectively; and</li> <li>• The client is given appropriate time and opportunity to review work prior to implementation/sign off/consent.</li> </ul>
<b>(b) Documentation</b>		Is there evidence on the file that you have obtained a thorough understanding of the client’s needs and objectives before providing the financial advice?
		Have you documented matters that support your advice and rationale?
		Are Checklists used and retained on the working file which ensure completeness of the advice prepared and that all matters have been attended to?
		Have copies of relevant file notes and correspondence been retained?
<b>(c) Document Content</b>		<p>Do documents sent to the client and retained on the file contain:</p> <ul style="list-style-type: none"> <li>• A Title</li> <li>• An addressee</li> <li>• A statement that the engagement was performed in accordance with APS 12</li> <li>• Identification of the financial advice noting that it is based on the financial information provided by the client</li> <li>• An appropriate disclaimer of responsibility</li> <li>• The member or firm’s signature</li> <li>• The member or firm’s name</li> <li>• The member or firm’s address</li> <li>• The date</li> </ul>
<b>(d) Notification of change in circumstances</b>		Have you notified ICAA of any relevant change in status as an AFS Licensee, Representative or Authorised Representative, within the time limits prescribed by Clause 22.1?

## APPENDIX B – STATEMENT OF ADVICE CHECKLIST

### 1. STATEMENT OF ADVICE CHECKLIST

Client Name: \_\_\_\_\_ Date: \_\_\_\_\_

Financial planning SOA checklist		
1.	<b>Standard Cover Sheet &amp; Table of Contents (TOC only required for full advice)</b>	Yes/No
2.	<b>Subject Headings</b>	Yes/No
3.	<b>Basic Information</b> <ul style="list-style-type: none"> <li>• The fact the document is called an SOA</li> <li>• The name of the providing entity and their contact details</li> <li>• The name of the authorising Licensee and their contact details</li> <li>• What the SOA is about and why the client should read it</li> </ul>	Yes/No
4.	<b>Summary of the Advice - highlight</b> <ul style="list-style-type: none"> <li>• The advice</li> <li>• Why the advice is appropriate</li> <li>• The risks of the advice</li> <li>• Next steps</li> </ul>	Yes/No
5.	<b>Scope of Advice (what the advice doesn't cover)</b>	Yes/No
6.	<b>Warnings (if client fails to provide sufficient personal details)</b>	Yes/No
7.	<b>Personal Details – name, address, date of birth</b>	Yes/No
8.	Goals and Objectives	Yes/No
9.	Background, Issues & Problems	Yes/No
10.	Assumptions	Yes/No
11.	Assets & Liabilities – net worth	Yes/No
12.	How much the client has to invest	Yes/No
13.	Cash flow & Tax – income, expenses, surplus	Yes/No
	The client's attitude to risk	Yes/No
14.	Asset Allocation	Yes/No
15.	Risk Management – life, health, general – Deal with risk at; <ul style="list-style-type: none"> <li>• Generic</li> <li>• Specific and</li> <li>• Asset class levels</li> </ul>	Yes/No Yes/No Yes/No
16.	Investments (existing)	Yes/No
17.	Retirement Planning	Yes/No
18.	Estate planning	Yes/No
19.	<b>Recommendations ( including why the advice is appropriate)</b> <ul style="list-style-type: none"> <li>• Strategy</li> <li>• Vehicle or Platform</li> <li>• Investments (including reasons – marry client info and product features &amp; make comparisons)</li> </ul>	Yes/No Yes/No Yes/No

	<ul style="list-style-type: none"> <li>• Consider tabular comparison of product, benefit and cost</li> <li>• If recommendation involved switching – identify any loss of benefits and/or taxation consequences</li> <li>• Disadvantages of the advice</li> <li>• Risks of the advice</li> </ul>	Yes/No Yes/No Yes/No Yes/No
20.	Disclose the conflicts of interest of the adviser and the Licensee	Yes/No
21.	Disclosure & Disclaimer – include when costs are payable and to whom. Articulate if there is any fee discretion	Yes/No
22.	Cooling-Off Period for Retail Product and client notified	Yes/No
23.	Time limits on the advice ( if applicable)	Yes/No
24.	What the client should do next	Yes/No
.25.	<b>Implementation</b> - Authority to Proceed - Sign & Return	Yes/No
.26.	Reviews – state anticipated frequency i.e. quarterly, half yearly, annually etc and costs associated	Yes/No

ADDITIONAL

Market Update/outlook
  Product Sheets
  Fact Sheets
  PDS

INVESTMENT VEHICLE

Retail
  SMSF
  Other

DELIVERY INSTRUCTION

Post
  Deliver
  Hold for presentation

FEES

Non-Standard Fee Arrangement  
 Details:

BILLING INSTRUCTIONS

Invoice
  Plan Fee \$ \_\_\_\_\_
  Fee for Service \$ \_\_\_\_\_

Send Invoice to

\_\_\_\_\_

SoA Author

\_\_\_\_\_

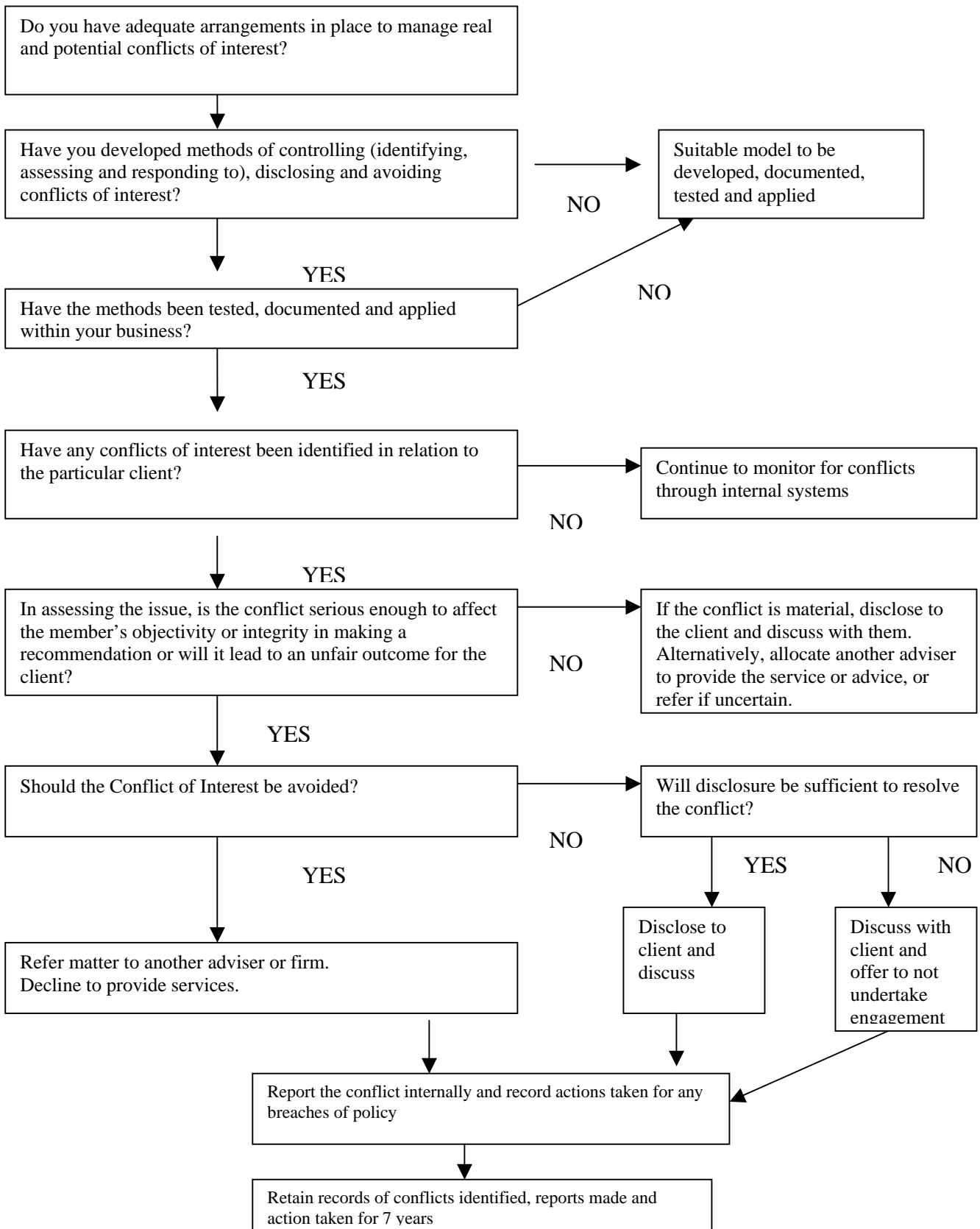
Peer Checker:

\_\_\_\_\_

Team Leader:

\_\_\_\_\_

**APPENDIX C – FLOWCHART ON CONFLICTS OF INTEREST**



### **Questions to Consider in Managing Conflict of Interest?**

- Will you, your business, a business associate or other person or entity obtain an advantage (financial or otherwise) by giving certain advice or acting in a certain way?
- Would such an advantage be available regardless of how you acted?
- Are there any particular benefits or remuneration practices which place the interests of the adviser in direct and significant conflict with those of the client?
- Is the client likely to be disadvantaged or receive a lower quality of service than they should expect if you take a certain course of action?
- How would the client perceive the situation?
- In providing services, am I advancing one client's interests unfairly ahead of another client's interests?

## APPENDIX D - REFERENCE MATERIAL

It is important to note that this Guide only provides limited information on the licensing and legal obligations under the Corporations Act 2001 and other industry standards of which you should be aware.

For more detailed information, you should refer to the source material as follows. Other materials which may be of use are also listed for your reference and benefit:

### Legislation

1. The Corporations Act (Cth) 2001

This is the key legislation for financial product advice. The main clauses for members in relation to licensing are Parts 7.1, 7.6, 7.7 and 7.8.

2. Corporations Regulations

The Regulations are enforceable and form an important part of the Financial Services Reform regime.

3. Explanatory Memorandum/Statements.

These provide additional guidance and insight to the Corporations Act and Regulations and how particular sections of the Corporations Act are intended to operate. These documents, whilst important, are not legally enforceable. They are the Government's interpretation of the regime and how it should operate in practice.

Members are also referred to the Paper released by Federal Treasury on 2 May 2005 on Refinements to the Financial Services Regulations.

### ASIC Policy Statements

ASIC has issued a range of policy statements and Guides to assist in understanding how it is going to regulate Financial Services. Some, like Policy Statements 175 and 181, have been referred to in this Guide.

A list of relevant Policy Statements follows:

- ASIC Policy Statement 146 – Licensing: Training of Financial Product Providers.
- ASIC Policy Statement 164 – Licensing: Organisational Capacities.
- ASIC Policy Statement 165 – Licensing: Internal and External Dispute Resolution.
- ASIC Policy Statement 166 – Licensing: Financial Requirements.
- ASIC Policy Statement 168 – Disclosure: Product Disclosure Statements (and other disclosure obligations).
- ASIC Policy Statement 175 – Licensing: Financial Product Advisers – Conduct and Disclosure.
- ASIC Policy Statement 179 – Managed Discretionary Accounts.
- ASIC Policy Statement 181 – Licensing: Managing Conflicts of Interest.
- ASIC Policy Statement 182 – Dollar Disclosure.

### ASIC Class Orders.

- ASIC Class Order 04/1430 – Dollar disclosure: Unknown facts or circumstances;
- ASIC Class Order 04/1431 – Dollar disclosure: Costs of Derivatives, foreign exchange contracts, general insurance products and life risk insurance products;

- ASIC Class Order 04/1432 – Dollar disclosure: Interest payable on deposit products;
- ASIC Class Order 04/1433 – Dollar disclosure: Non monetary benefits and interests;
- ASIC Class Order 04/1435 – Dollar disclosure: Amounts denominated in a foreign currency.
- ASIC Class Order 05/21 – Clarification of requirement for the appointment of auditors by Financial Services Licensees;
- ASIC Class Order 05/27 - Financial Service Guide: tailoring relief.

A list of relevant ASIC Guides:

- Our Fee Disclosure Model.
- Small Business and your AFS License: Compliance with Policy Statements 164 and 181.
- Guide to Organisational Competency obligations and Responsible Officers.
- A Model for fee disclosure in Product Disclosure Statements for investment products.
- Managing Conflicts of Interest: An ASIC guide for research report providers.
- Breach reporting for AFS Licensees.
- Meeting the financial requirements for your AFS License: Compliance with Policy Statement 166.
- ASIC Example Statement of Advice for a limited financial advice scenario for a new client.
- Super switching advice Questions and Answers.

### ASIC Reports

From time to time ASIC release research reports on industry practice. This Guide has been particularly influenced by the findings in the following reports:

- **Preferential Remuneration Project**, an ASIC Report of April 2004;
- **Disclosure of Soft Dollar Benefits**, an ASIC Research report of June 2004

### Industry References

Standards Australia International, 2004, *Proposed Australian Standard on Personal Financial Planning*, SAI GLOBAL, Miscellaneous Publication.

### CPA Australia/Institute Resources

The following material has been referred to in this guide and is available for your assistance from the websites of both CPA Australia and the Institute:

- **Joint Code of Professional Conduct;**
- **CPC Code of Conduct: Section F Professional Statements;**
- **Section F3 of the Professional Statements** - Changes in Professional Appointments;
- **Section F4 of the Professional Statements** – Referrals;
- **Members Handbook;**
- Joint Guidance Notes: **Guidance Note 1: Members in Business** Guidance Statement;
- **APS 6** – Statement of Taxation Standards;
- **FSR: Accounting Industry Guide**, a joint publication of CPA Australia, the Institute of Chartered Accountants in Australia and the National Institute of Accountants.