

**EXPOSURE DRAFT**

**ED 02/09**  
(May 2009)



**Proposed Standard: APES 350 Participation by Members in  
Public Practice in Due Diligence Committees**

Prepared and issued by **Accounting Professional & Ethical Standards Board Limited**

---

## **Commenting on this Exposure Draft**

Comments on this Exposure Draft should be forwarded so as to arrive by **30 June 2009**.

Comments should be addressed to:

The Chairperson  
Accounting Professional & Ethical Standards Board Limited  
Level 7, 600 Bourke Street  
MELBOURNE VIC 3000  
AUSTRALIA  
E-mail: [sub@apesb.org.au](mailto:sub@apesb.org.au)

A copy of all submissions will be placed on public record on the APESB website: [www.apesb.org.au](http://www.apesb.org.au).

## **Obtaining a copy of this Exposure Draft**

This Exposure Draft is available on the APESB website: [www.apesb.org.au](http://www.apesb.org.au). Alternatively, any individual or organisation may obtain one printed copy of this Exposure Draft without charge until **30 June 2009** by contacting:

Accounting Professional & Ethical Standards Board Limited  
Level 7  
600 Bourke Street  
Melbourne Victoria 3000  
Australia  
E-mail: [enquiries@apesb.org.au](mailto:enquiries@apesb.org.au)  
Phone: (03) 9670 8911  
Fax: (03) 9670 5611

## Reasons for issuing Exposure Draft 02/09

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to issue the Standard APES 350 *Participation by Members in Public Practice in Due Diligence Committees* setting out mandatory requirements and guidance for Members in Public Practice who provide Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee, as a member, observer or Reporting Person, in connection with a Public Document.

## Key requirements and guidance in ED 02/09

The proposed APES 350 includes mandatory requirements and guidance in respect of:

- Fundamental responsibilities of Members in Public Practice;
- Professional Engagement and other matters;
- Roles and obligations of a Member in Public Practice in a due diligence process in connection with a Public Document;
- Documentation;
- Reporting; and
- Professional fees.

## *Proposed operative date*

It is intended that this Standard will be operative for Engagements commencing on or after 1 October 2009.

## *Request for comments*

Comments are invited on this Exposure Draft of APES 350 *Participation by Members in Public Practice in Due Diligence Committees* by **30 June 2009**. APESB would prefer that respondents express a clear overall opinion on whether the proposed Standard, as a whole, is supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed Standard.

# APES 350

## PARTICIPATION BY MEMBERS IN PUBLIC PRACTICE IN DUE DILIGENCE COMMITTEES

(Issued XXXXX 2009)

### CONTENTS

	<b>Section</b>
Scope and application.....	1
Definitions .....	2
Fundamental responsibilities of Members in Public Practice.....	3
- Public interest	
- Professional appointments	
- Professional Independence	
- Professional competence and due care	
- Confidentiality	
Professional Engagement and other matters.....	4
- Materiality guidance	
Roles and obligations of a Member in Public Practice in a due diligence process in connection with a Public Document.....	5
Documentation .....	6
Reporting .....	7
Professional fees .....	8

#### *Appendix 1 Example of a Due Diligence Sign-Off*

Copyright © 2009 Accounting Professional & Ethical Standards Board Limited (“APESB”). All rights reserved. Apart from fair dealing for the purpose of study, research, criticism and review as permitted by the *Copyright Act 1968*, no part of these materials may be reproduced, modified, or reused or redistributed for any commercial purpose, or distributed to a third party for any such purpose, without the prior written permission of APESB.

Any permitted reproduction including fair dealing must acknowledge APESB as the source of any such material reproduced and any reproduction made of the material must include a copy of this original notice.

## 1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional standard APES 350 *Participation by Members in Public Practice in Due Diligence Committees (the Standard)*, which is effective for Engagements commencing on or after 01 October 2009. Earlier adoption of this Standard is permitted.
- 1.2 APES 350 sets the standards for Members in Public Practice in the provision of quality and ethical Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee, as a member, observer or Reporting Person, in connection with a Public Document. The mandatory requirements of this Standard are in **bold type (black lettering)**, preceded or followed by discussion or explanations in normal type (grey lettering). APES 350 should be read in conjunction with other professional duties of Members, and any legal obligations that may apply.
- 1.3 **Members in Public Practice in Australia shall follow the mandatory requirements of APES 350 when they undertake Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee in connection with a Public Document.**
- 1.4 **Members in Public Practice in Australia who undertake Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee in connection with a Public Document where the transaction to which it relates may be undertaken in whole or in part in another jurisdiction, or where the laws and/or regulations of another jurisdiction apply to the Public Document, shall follow this Standard, except to the extent that this would cause the Member to breach the laws and/or regulations of such other jurisdiction.**
- 1.5 **Members in Public Practice practising outside of Australia shall follow the mandatory requirements of this Standard to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**
- 1.6 **Members in Public Practice shall be familiar with relevant Professional Standards and guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.7 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.8 All references to Professional Standards are references to those provisions as amended from time to time.
- 1.9 In applying the requirements outlined in APES 350, Members in Public Practice should be guided not merely by the words but also by the spirit of this Standard and the Code.

## 2. Definitions

For the purpose of this Standard:

**Acceptable Level** means a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the Member in Public Practice at that time, that compliance with the fundamental principles of the Code is not compromised.

**Assurance Engagement** means an Engagement in which a conclusion is expressed by a Member in Public Practice designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.

This includes an Engagement in accordance with *Framework for Assurance Engagements* issued by the Auditing and Assurance Standards Board (AUASB) or in accordance with specific relevant standards, such as International Standards on Auditing for Assurance Engagements.

**Audit Client** means an entity in respect of which a Firm conducts an Audit Engagement. When the Audit Client is a listed entity, disclosing entity or registered scheme, Audit Client will always include its related entities.

**Audit Engagement** means an Assurance Engagement to provide a high level of assurance that a financial report is free of material misstatement, such as an Engagement in accordance with Auditing and Assurance Standards. This includes a statutory audit which is an audit required by legislation or other regulation, and other audits conducted for the purposes of the *Corporations Act 2001*.

**Auditing and Assurance Guidance** means:

- The guidance statements and other guidance publications, as defined in the *Foreword to AUASB Pronouncements*, issued by the AUASB; and
- The auditing and assurance guidance statements and other guidance publications issued by the AuASB on behalf of CPA Australia and the Institute of Chartered Accountants in Australia.

**Auditing and Assurance Standards** means:

- In relation to reports for reporting periods commencing on or after 1 July 2006:
  - the AUASB Standards, as defined in the *Foreword to AUASB Pronouncements*, issued by the AUASB, and operative from the date specified in each standard; and
  - those standards issued by the AuASB which have not yet been revised and reissued (whether as standards or as guidance) by the AUASB, to the extent that they are not inconsistent with the AUASB standards.
- In relation to reports for reporting periods commencing prior to 1 July 2006, the Auditing and Assurance Standards issued by the AuASB on behalf of CPA Australia and the Institute of Chartered Accountants in Australia.

**AuASB** means the Auditing and Assurance Standards Board which issued Australian Auditing and Assurance Standards up to 30 June 2004, under the auspices of the Australian Accounting Research Foundation, a joint venture of CPA Australia and the Institute of Chartered Accountants in Australia.

**AUASB** means the Australian statutory body called the Auditing and Assurance Standards Board established under section 227A of the *Australian Securities and Investments Commission Act 2001*.

**Australian Financial Services Licence** means a licence to provide financial services under Chapter 7 of the *Corporation Act 2001*

**Client** means an individual, firm, entity or organisation to whom or to which Professional Services are provided by a Member in Public Practice in respect of Engagements of either a recurring or demand nature.

**Code** means APES 110 *Code of Ethics for Professional Accountants*.

**Contingent Fee** means a fee calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. A fee that is established by a court or other public authority is not a Contingent Fee.

**Disclosure Document** means a disclosure document as defined in the *Corporations Act 2001*.

**Due Diligence Committee** means a committee established by Those Charged with Governance of a Client to co-ordinate and assist with the due diligence process to be undertaken by the Client in relation to a Public Document.

**Due Diligence Planning Memorandum** means the document agreed and signed by members of a Due Diligence Committee detailing the due diligence activities and reporting to be undertaken by the Due Diligence Committee and others such as management of the Client and Reporting Persons. This document also specifies the respective individual and collective responsibilities of the participants in the due diligence process, including those of the members of the Due Diligence Committee.

**Due Diligence Sign-Off** means the letter issued by a Member in Public Practice to a Client and its Due Diligence Committee in connection with a Public Document when the Member participates in the Due Diligence Committee as a member.

**Engagement** means an agreement, whether written or otherwise, between a Member in Public Practice and a Client relating to the provision of Professional Services by a Member in Public Practice. However, consultations with a prospective Client prior to such agreement are not part of an Engagement.

**Engagement Document** means the document (i.e. letter, agreement or any other appropriate means) in which the Terms of Engagement are specified in a written form.

**Engagement Partner** means the Partner or other person in the Firm who is responsible for the Engagement and its performance, and for any Due Diligence Sign-Off that is issued on behalf of the Firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body.

**Engagement Period** starts when the Firm accepts the appointment to provide Professional Services and ends on the completion of the Professional Services in accordance with the Engagement Document.

**Engagement Team** means all personnel performing an Engagement, including any experts contracted by the Firm in connection with that Engagement.

**Financial Information** means historical, pro forma or prospective financial information or some combination thereof specified in the Engagement Document.

**Firm** means (a) A sole practitioner, partnership, corporation or other entity of professional accountants;  
(b) An entity that controls such parties through ownership, management or other means;  
(c) An entity controlled by such parties through ownership, management or other means; or  
(d) An Auditor-General's office or department.

**Independence** means:

- (a) Independence of mind – the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgement, allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and
- (b) Independence in appearance – the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a Firm's, or a member of the Engagement Team's integrity, objectivity or professional scepticism had been compromised.

**Materiality Letter** means the letter issued by a Member in Public Practice to a Client and its Due Diligence Committee that provides materiality guidance prepared in accordance with applicable Auditing and Assurance Standards.

**Member** means a member of a professional body that has adopted this Standard as applicable to their membership as defined by that professional body.

**Member in Public Practice** means a Member, irrespective of functional classification (e.g. audit, tax, or consulting) in a Firm that provides Professional Services. The term is also used to refer to a Firm of Members in Public Practice and means a practice entity as defined by the applicable professional body.

**Other Specific Information** means specifically identified information, other than Financial Information, in a Public Document which has been the subject of procedures performed by a Member in Public Practice as specified in the Engagement Document. Examples include specific tax-related information or specific metrics or ratios calculated using elements of the Financial Information.

**Partner** means any individual with authority to bind the Firm with respect to the performance of an Engagement.

**Product Disclosure Statement** means a statement as defined in Chapter 7 of the *Corporations Act 2001*.

**Professional Services** means services requiring accountancy or related skills performed by a Member in Public Practice including accounting, auditing, taxation, management consulting and financial management services.

**Professional Standards** mean all standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable professional body.

**Public Document** means a Disclosure Document, Product Disclosure Statement or other documentation provided to shareholders, unit holders or holders of a relevant interest in an entity (or which is provided to management of an entity) in relation to a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* or a takeover or compulsory acquisition under Chapter 6 of the *Corporations Act 2001*.

**Reporting Person** means a person who or firm which has agreed to undertake procedures and report to a Client and its Due Diligence Committee, on a specific issue or area of enquiry which has been identified by the Client or the Due Diligence Committee as warranting investigation.

**Terms of Engagement** means the terms and conditions that are agreed between the Client and the Member in Public Practice for the Engagement.

**Those Charged with Governance** includes those persons accountable for ensuring that the entity achieves its objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, compliance with applicable laws, and reporting to interested parties. Those charged with governance include management only when it performs such functions.

**Verification** means a process undertaken by a specified member or members of a Due Diligence Committee, or other specified persons at the request of the Due Diligence Committee, to minimise the possibility that statements, information and data in a Public Document are misleading or deceptive or that the Public Document does not comply with relevant legal requirements.

### **3. Fundamental responsibilities of Members in Public Practice**

- 3.1 A Member in Public Practice providing Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee in connection with a Public Document shall comply with Section 100 *Introduction and Fundamental Principles* of the Code and relevant law.**
- 3.2 A Member in Public Practice shall comply with Section 220 *Conflict of Interest* and Section 280 *Objectivity – All Services* of the Code.**

## **Public interest**

- 3.3** In accordance with Section 100 *Introduction and Fundamental Principles* of the Code, a Member in Public Practice shall observe and comply with the Member's public interest obligations when the Member provides Professional Services to a Client which comprise participating in and/or reporting to its Due Diligence Committee in connection with a Public Document.

## **Professional appointments**

- 3.4** A Member in Public Practice who is approached by a Client or potential Client to undertake Professional Services which comprise participating in and/or reporting to a Due Diligence Committee in connection with a Public Document shall comply with the requirements of Section 210 *Professional Appointment* of the Code.
- 3.5** A Member in Public Practice who is invited by an Audit Client to undertake Professional Services which comprise participating in and/or reporting to its Due Diligence Committee in connection with a Public Document shall consider Section 290 *Independence – Assurance Engagements* of the Code to determine whether the proposed Professional Services create threats to the Member's Independence. Where the Member determines that a reasonable and informed third party having knowledge of all the relevant information, including safeguards applied, would regard the objectives of the proposed Professional Services as being inconsistent with the objectives of the audit, then the Member shall decline the Engagement or the relevant part thereof.
- 3.6** When considering the appropriateness of accepting a role as a member of a Due Diligence Committee, a Member in Public Practice shall:
- a) consider all the risks and responsibilities of the role including the circumstances of the proposed transaction to which the Public Document relates, the associated due diligence process, the proposed timetable and the availability of information;
  - b) consider the relevant experience and expertise of the other members of the Due Diligence Committee and other participants in the due diligence process, as membership of the Due Diligence Committee will generally create a relationship of cross reliance;
  - c) consider whether the Professional Services would require the Member in Public Practice to hold an Australian Financial Services Licence;
  - d) determine whether accepting such a role creates threats to the Member's ability to comply with the fundamental principles of the Code and whether there are appropriate safeguards to address any identified threats; and
  - e) determine the Member's ability to comply with any other Independence obligations, in addition to the requirements of the Code, applicable to Professional Services provided by the Member.

Where the Member determines that there is a threat to the Member's ability to comply with the fundamental principles of the Code and/or the circumstances of the proposed Engagement create an unacceptable level of risk for which appropriate safeguards are not available, then the Member shall decline the Engagement or the relevant part thereof.

- 3.7** If a Member in Public Practice is not certain about the legal implications of performing the role of a member of a Due Diligence Committee, the Member should seek legal advice.

- 3.8 Where a Member in Public Practice is invited to provide a Professional Service which involves the Member being an observer to a Due Diligence Committee, the Member shall consider whether it is appropriate to accept such a role. Where the Member determines that a reasonable and informed third party having knowledge of all the relevant information, including safeguards applied, would regard the objectives of the proposed Professional Service as an observer to the Due Diligence Committee as being inconsistent with other professional relationships or the Member's ability to comply with the fundamental principles of the Code, then the Member shall decline the Engagement.**
- 3.9 A Member in Public Practice who is requested to act as an observer to a Due Diligence Committee should carefully consider the Member's obligations and responsibilities as an observer and if in any doubt the Member should seek legal advice.

### **Professional Independence**

- 3.10 When engaged to provide a Professional Service to a Client which requires Independence, a Member in Public Practice shall comply with Independence as defined in this Standard.**
- 3.11 A Member in Public Practice shall consider whether an Engagement, or a specific element of the Engagement, is an Assurance Engagement under the *Framework for Assurance Engagements* issued by the AUASB.**
- 3.12 Where the Engagement is an Assurance Engagement, the Member in Public Practice shall comply with Section 290 *Independence – Assurance Engagements* of the Code.**

### **Professional competence and due care**

- 3.13 A Member in Public Practice performing Professional Services shall maintain professional competence and take due care in the performance of the Member's work in accordance with Section 130 *Professional Competence and Due Care* of the Code.**
- 3.14 Where Professional Services require the consideration of matters that are outside the professional expertise of the Member in Public Practice, the Member shall seek expert assistance or advice from a suitably qualified third party or decline the Engagement. Where the Member relies upon the advice of a third party, the Member shall disclose in the Member's Due Diligence Sign-Off the name and qualifications of the third party and the subject matter on which the third party advice has been obtained.**
- 3.15 When planning to use the work of a suitably qualified third party, a Member in Public Practice shall assess the professional competence and objectivity of that third party and the appropriateness and adequacy of the work performed.**
- 3.16 In performing a Professional Service, a Member in Public Practice should consider the contents of any guidance in respect of such services issued by the professional accounting bodies and appropriate regulatory authorities.

## Confidentiality

- 3.17 In accordance with Section 140 *Confidentiality* of the Code, a Member in Public Practice who acquires confidential information in the course of professional work for a Client shall not use that information for any purpose other than the proper performance of the professional work for that Client.**
- 3.18 Unless a Member in Public Practice has a legal obligation of disclosure, the Member shall not disclose any information relating to a Client's affairs to a third party without the Client's permission.**
- 3.19 Where a Client has given a Member in Public Practice permission to disclose confidential information to a third party, it is preferable that this permission is in writing. Where oral permission is obtained, a contemporaneous note should be made and kept on file by the Member recording the relevant details of the Client's approval.
- 3.20 Where a Member in Public Practice provides confidential information to a third party in accordance with a legal obligation of disclosure, the Member shall notify the Client and/or the relevant third party as soon as practicable, provided that there is no legal prohibition against such notification.**

## 4. Professional Engagement and other matters

- 4.1 A Member in Public Practice shall document and communicate the Terms of Engagement to a Client, and report to the Client and its Due Diligence Committee in accordance with APES 305 *Terms of Engagement*.**
- 4.2 The Terms of Engagement should specify:
- a) whether an investigating accountant's report will be provided for inclusion in the Public Document and if so the Financial Information that will be the subject of the investigating accountant's report and the nature and extent of assurance to be provided;
  - b) if the Member in Public Practice will participate in the Due Diligence Committee, the nature of the participation; and
  - c) the specific tasks to be undertaken by the Member in Public Practice in connection with the Public Document including the scope of work and identification of the Financial Information and Other Specific Information upon which any Due Diligence Sign-Off is to be provided.
- 4.3 A Member in Public Practice shall take all reasonable steps to ensure that the Member's role and scope of work, as referred to in a Public Document and other documents associated with the due diligence process (such as the Due Diligence Planning Memorandum), is consistent with the Engagement Document.**
- 4.4 A Member in Public Practice should take all reasonable steps to ensure that the Public Document and other documents associated with the due diligence process (such as the Due Diligence Planning Memorandum) do not describe the role of the Member in a manner that may imply that the Member has undertaken procedures with respect to, accepted responsibility for, approved of the disclosure of, or reported upon, matters or information in the Public Document where the Member has not agreed to do so in the Engagement Document.

- 4.5 Where a Due Diligence Planning Memorandum ascribes responsibilities to a Member in Public Practice that extend beyond those agreed in the Engagement Document or which conflict with, or are prohibited by, this Standard, the Member shall:**
- a) advise the Client and its Due Diligence Committee of the Member's responsibilities outlined in the Engagement Document and/or this Standard; and**
  - b) take all reasonable steps to have the Due Diligence Planning Memorandum amended so that it does not ascribe responsibilities to the Member that conflict with, or are prohibited by, this Standard or are beyond those agreed in the Engagement Document.**
- 4.6 Where, after taking the steps outlined in paragraph 4.5, the Due Diligence Planning Memorandum still includes responsibilities that conflict with, or are prohibited by this Standard, the Member in Public Practice shall decline the Engagement to participate in, and/or report to, the Due Diligence Committee.**

### **Materiality guidance**

- 4.7 Where a Member in Public Practice agrees to provide guidance on materiality, which a Client and its Due Diligence Committee will consider for application to the due diligence process in relation to a Public Document, the Member shall comply with applicable Auditing and Assurance Standards.**
- 4.8 The materiality guidance provided by the Member in Public Practice should indicate that qualitative factors in relation to whether a specific potential or proposed disclosure is material are for decision by the Client and its Due Diligence Committee.
- 4.9 A Member in Public Practice who is engaged to provide materiality guidance to a Client and its Due Diligence Committee shall issue a Materiality Letter to the Client and the Due Diligence Committee.**

## **5. Roles and obligations of a Member in Public Practice in a due diligence process in connection with a Public Document**

- 5.1 A Member in Public Practice may be asked to undertake a variety of roles in relation to a due diligence process in connection with a Public Document, including:
- a) being a member of a Due Diligence Committee which typically includes:
    - i) attending meetings of the Due Diligence Committee;
    - ii) considering information presented to the Due Diligence Committee;
    - iii) reading and commenting on drafts of the Public Document; and
    - iv) signing the Due Diligence Committee's report to Those Charged with Governance of the Client;
  - b) preparing an assurance report or other form of report, applying relevant Auditing and Assurance Standards, on specific Financial Information (usually known as an investigating accountant's report) for inclusion in the Public Document;
  - c) being a Reporting Person, reporting to a Client and its Due Diligence Committee on the results of procedures specified in an Engagement Document;

- d) undertaking work for, and providing a report to, the Client on Financial Information or Other Specific Information relevant to the Public Document other than as a Reporting Person; or
  - e) attending Due Diligence Committee meetings as an observer only.
- 5.2 Where a Member is a member of the Due Diligence Committee, the Member will typically be requested to prepare a Due Diligence Sign-Off.
- 5.3 When preparing a Due Diligence Sign-Off a Member in Public Practice shall only report on, and in relation to, Financial Information and Other Specific Information.**
- 5.4 When preparing a Due Diligence Sign-Off a Member in Public Practice shall not report on, or make any statements in relation to, matters of a legal nature, including compliance of the Public Document, or any information contained within it, with legislative or regulatory requirements where those requirements are subject to legal interpretation other than in relation to taxation or where Auditing and Assurance Standards, Auditing and Assurance Guidance, or other professional pronouncements permits the Member to undertake such work.**
- 5.5 A Member in Public Practice should not advise or report on whether certain proposed disclosures or non-disclosures may be considered misleading or deceptive, by inclusion or omission, or clear concise and effective within the meaning of the relevant sections of the *Corporations Act 2001*. These are matters requiring the consideration of all of the members of the Due Diligence Committee, and are reported on in the Due Diligence Committee's report.
- 5.6 A Member in Public Practice shall only sign a report to Those Charged with Governance on:**
- a) information in a Public Document of a financial, accounting or tax nature generally; or
  - b) the content of the Public Document as a whole; or
  - c) the due diligence process in relation to either of the above,
- if that report is also approved and signed by the other members of the Due Diligence Committee.**
- 5.7 The matters set out in paragraph 5.6 should be considered by the Due Diligence Committee using the collective knowledge and expertise of the committee as a whole. A Member in Public Practice will not have the requisite knowledge or expertise to make determinations in relation to, or report on, those matters independently of other committee members.
- 5.8 A Member in Public Practice shall apply an independent and enquiring mind in relation to the matters set out in paragraph 5.6, and raise any concerns which come to the attention of the Member with the Client and its Due Diligence Committee.**
- 5.9 A Member in Public Practice shall not draft or verify all or part of the Public Document, with the exception of reports issued by the Member and included in the Public Document.**
- 5.10 A Member in Public Practice may perform certain procedures to assist a Client with its Verification of certain information included in a Public Document, but as the role of the Member is not to prepare information for inclusion in a Public Document (other than reports prepared by the Member such as an investigating accountant's report) it is not appropriate for the Member alone to accept responsibility for the Verification of any information in the Public Document other than reports prepared by the Member.
- 5.11 Where the role of observer includes responsibilities which are the same or substantially the same as those of a member of the Due Diligence Committee, a Member in Public Practice shall comply with the applicable sections of this Standard.**
- 5.12 The scope of the role and responsibilities of a Member in Public Practice as an observer or invitee to a Due Diligence Committee should be agreed between the Client and the Member through an

Engagement Document. In these circumstances, although the Member will not be a member of the Due Diligence Committee, the role of the Member as an observer will generally be detailed in the Due Diligence Planning Memorandum.

- 5.13 A Member in Public Practice who performs an Assurance Engagement in connection with a Public Document shall comply with Auditing and Assurance Standards in accordance with APES 210 *Conformity with Auditing and Assurance Standards***
- 5.14 A Member in Public Practice who performs a valuation service in connection with a Public Document shall comply with APES 225 *Valuation Services*.**
- 5.15 A Member in Public Practice who performs a taxation service in connection with a Public Document shall comply with APES 220 *Taxation Services*.**
- 5.16 A Member in Public Practice who performs a Professional Service in connection with a Public Document that includes prospective financial information shall comply with APES 345 *Reporting on Prospective Financial Information Prepared in connection with a Disclosure Document*.**

## **6. Documentation**

- 6.1 A Member in Public Practice shall prepare working papers in accordance with this Standard that appropriately document the work performed, including aspects of the Engagement that have been provided in writing. The documentation prepared by the Member shall:**
  - a) provide a sufficient and appropriate record of the procedures performed for the Engagement;**
  - b) identify the source of significant information the Member has used in the conduct of the Engagement; and**
  - c) demonstrate that the Engagement was carried out in accordance with this Standard and all other Professional Standards applicable to the Engagement, including policies and procedures established in accordance with APES 320 *Quality Control for Firms*, and any applicable ethical, legal and regulatory requirements.**

## **7. Reporting**

- 7.1 Where a Member in Public Practice prepares a Due Diligence Sign-Off in respect of Professional Services provided to a Client which comprise participating in and/or reporting to a Due Diligence Committee in connection with a Public Document, the Due Diligence Sign-Off shall clearly communicate:**
  - a) The name of the party or parties engaging the Member;**
  - b) The addressees of the Due Diligence Sign-Off;**
  - c) The date on which the Due Diligence Sign-Off has been issued;**
  - d) The purpose for which the Due Diligence Sign-Off has been prepared, including the Public Document and proposed transaction to which it relates;**
  - e) The Financial Information and Other Specific Information disclosed in the Public Document in relation to which the Member has undertaken procedures to which the Due Diligence Sign-Off relates;**
  - f) The scope of work performed in relation to the Financial Information and Other Specific information to which the Due Diligence Sign-Off relates;**

- g) **Any limitations on the scope of work performed;**
- h) **The basis on which the statements in the Due Diligence Sign-Off are made, including specific reference to:**
  - **The scope of work performed;**
  - **The materiality guidelines adopted by the Due Diligence Committee; and**
  - **The extent, if any, of reliance by the Member on the work of others;**
- i) **The conclusions of the Member in the form of statements as to whether:**
  - **the Financial Information and Other Specific Information as presented in identified sections of the Public Document is misleading or deceptive (including by omission) in the form and context in which it appears; and**
  - **the due diligence enquiries set out in the Due Diligence Planning Memorandum adopted by the Due Diligence Committee as they relate to the Financial Information and Other Specific Information constitute all inquiries which are reasonable in the circumstances so far as the Financial Information and Other Specific Information is concerned;**
- j) **The significant assumptions upon which the conclusions of the Member are based;**
- k) **All qualifications to the conclusions of the Member;**
- l) **Any restrictions on the use and distribution of the Due Diligence Sign-Off; and**
- m) **A statement that the Professional Services were conducted and the Due Diligence Sign-Off was prepared in accordance with this Standard and other applicable standards.**

*An example of a Due Diligence Sign-Off has been included in Appendix 1 to this Standard.*

- 7.2 **A Member in Public Practice shall only provide a Due Diligence Sign-Off in relation to a Public Document that is in final form for imminent approval by the Client and immediate lodgement with relevant regulatory bodies.**
- 7.3 A Member in Public Practice should not provide a Due Diligence Sign-Off in relation to a draft of the Public Document, including a draft which is to be utilised as a briefing document to seek the support of potential investors for the proposed transaction.
- 7.4 Where a Member in Public Practice is requested to provide status reports or interim reports (for example by way of a draft report, an oral presentation and/or by way of contributions to issues registers) to a Client and/or its Due Diligence Committee, or requested to provide on an interim basis detailed findings on work as set out in the Engagement Document, the Member should include an appropriate disclaimer that states that such reports are provided for “information only” and are not suitable for reliance by the Client, the Due Diligence Committee or any other person.
- 7.5 Where a Client or its Due Diligence Committee requests a Member in Public Practice to make available to the Due Diligence Committee a previous report provided by the Member to the Client, or a report on work that is being undertaken by the Member for the Client for a purpose other than the transaction to which a Public Document relates (for example, a report on internal controls of the Client, or on acquisition due diligence procedures undertaken in relation to a business to be acquired by the Client), the Member should consider whether and on what basis such report(s) may be made available to the Due Diligence Committee, having regard to relevant factors, including:
  - a) whether the information in the report (or on which it is based) remains current;
  - b) whether the Member’s approach to materiality in preparing the report was consistent with the materiality guidelines adopted by the Due Diligence Committee;

- c) the relevance of the report to the due diligence enquiries being undertaken by the Due Diligence Committee; and
- d) the level of testing done on source information relied on by the Member in preparing the report.

**7.6 Where a Member in Public Practice is requested to provide consent to being named in a Public Document, or to the inclusion of the Member's report in the Public Document, and the Member is satisfied that such a consent is required, the Member shall, prior to providing the consent, obtain the final draft of the Public Document to ensure that the form and context in which the Member's name and/or report appears is appropriate.**

## **8. Professional fees**

**8.1 A Member in Public Practice who performs Professional Services comprising participating in and/or reporting to a Due Diligence Committee, shall be remunerated for such services by way of professional fees computed in accordance with Section 240 *Fees and other Types of Remuneration* of the Code.**

**8.2 A Member in Public Practice shall not enter into a Contingent Fee arrangement or receive a Contingent Fee for a Professional Service requiring Independence or which purports to be independent.**

### ***Conformity with International Pronouncements***

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 350.

## APPENDIX 1

### Example of a Due Diligence Sign-Off

[insert date]

The Due Diligence Committee,  
each of its members and their representatives

Board of Directors  
[insert name of the issuer]  
[insert address]

Dear Sirs,

**[insert subject]**

This Due Diligence Sign-Off is provided to you in relation to the [describe Public Document] to be issued by [insert Issuer] (**Issuer**) on [insert date] in connection with [insert details of proposed transaction] (**Offer/Transaction**), and the work undertaken by us pursuant to our engagement document with [Client] dated [insert date] (the Engagement Document).

This Due Diligence Sign-Off has been prepared in accordance with APES 350 *Participation by Members in Public Practice in Due Diligence Committees*.

#### 1. Introduction

The financial information relating to the Issuer that is disclosed in the [describe Public Document] comprises the following:

- (a) [specify relevant historical financial information] for [insert period];
- (b) [specify relevant pro forma historical information];
- (c) [specify relevant forecast financial information, if any],

(collectively **Financial Information**).

[The other information that is disclosed in the [describe Public Document], and to which this Due Diligence Sign-Off relates comprises the following:

- (d) [specify information which has been the subject of procedures specified in the Engagement Document] disclosed in section [ ] of the [describe Public Document];
- (e)

(collectively **Other Specific Information**).]

## 2. Scope of Work

As agreed with [Client] in the Engagement Document, in connection with the [describe Public Document] we have:

- (a) participated as a member of the Due Diligence Committee (DDC) established by the [Client/Issuer] for the purposes of conducting due diligence investigations as set out in the Due Diligence Planning Memorandum (DDPM) in connection with the [describe Public Document];
- (b) prepared materiality guidance in a letter dated [insert date] for consideration by the [Client/Issuer] and the DDC;
- (c) conducted a review, in accordance with [ASRE 2405 or ASAE 3000 as appropriate], of the Financial Information furnished to us by the [Client/Issuer];
- (d) assisted the Issuer in its verification of certain statements in the [describe Public Document] as requested by the Issuer;
- (e) prepared an investigating accountant's report (if applicable) on the Financial Information for inclusion in the [describe Public Document];
- (f) [prepared a letter on the tax implications of the proposed transaction/Offer for Australian tax residents (if applicable) for inclusion in the [describe Public Document]]; and
- (g) [insert scope of work in relation to Other Specific Information].

## 3. Basis for Statements

The statements in section 4 (**Statements**) are made on the basis of:

- (a) the procedures and other activities performed by us as described in section 2;
- (b) the materiality guidelines adopted by the Issuer and the DDC; and
- (c) the assumptions and qualifications set out in this letter.

In making the Statements we only hold ourselves out as having expertise [in the review of financial statements] [and in advising on Australian taxation matters (if applicable)]. We disclaim any skills or expertise in any other capacity.

## 4. Statements

Having regard to our area of expertise and accepted area of responsibility and relying, in the case of matters falling outside our area of expertise and accepted area of responsibility, on those members of the DDC and other reporting persons with the appropriate expertise, and also relying on those persons to whom a particular investigation was assigned, and applying the materiality criteria adopted by the DDC, based on our review of the Financial Information, which is not an audit, nothing has come to our attention that causes us to believe that:

- (a) the Financial Information presented in [section of the Public Document containing the Financial Information] is misleading or deceptive (including by omission) in the form and context in which it appears; or
- (b) the due diligence enquiries set out in the DDPM adopted by the DDC as it relates to the Financial Information do not constitute all enquiries which are reasonable in the circumstances so far as the Financial Information is concerned.

All matters in relation to the Financial Information which arose during the course of our work have been dealt with by management of the [Client/Issuer] or the DDC and, accordingly, there are no outstanding issues in relation to the Financial Information identified as part of our work which require the attention of the [Client/Issuer] and the DDC.

[Insert similar statements in relation to the Other Specific Information if applicable].

## 5. Assumptions

In making the Statements in this Due Diligence Sign-Off, we have assumed that:

- (a) the representations made and the information (including responses to questions and questionnaires) provided by directors, officers, personnel and agents of the Issuer, other members of the DDC, and other persons reporting to the DDC, have been complete, true and accurate in all respects and were not misleading or deceptive;
- (b) all persons who were interviewed, questioned or sent questionnaires were competent to answer all questions put to them, made complete and accurate disclosures in all matters and that there were no other persons who should have been interviewed, questioned or sent questionnaires in relation to the matters the subject of those questions;
- (c) there were no relevant documents or information other than those which were disclosed to us which are relevant to the Financial Information;
- (d) all corporate records and other documents examined by us are genuine, complete, up-to-date and accurate and, without limitation, any minutes of the meetings of the Issuer examined by us correctly record the business of, and resolutions passed at, any such meeting and no relevant corporate records have been withheld from us (whether deliberately or inadvertently);
- (e) all factual matters stated in any document to us are true and accurate; and
- (f) the [describe Public Document] is in the form of the draft [describe Public Document] provided to us on [insert date].

Nothing has come to our attention that causes us to believe that these assumptions are not correct. We have not taken any steps to verify these assumptions other than as may be specified in our scope of work in section 2.

## 6. Qualifications

Our Statements in this Due Diligence Sign-Off are subject to the following qualifications:

- (a) we will have no responsibility to update this Due Diligence Sign-Off for events and circumstances occurring after the date of this Due Diligence Sign-Off, other than as required under the terms of the Engagement Document;
- (b) insofar as consideration of Australian accounting standards [and Australian tax laws] formed part of our scope of work, in making the Statements in section 4 we have had regard to such Australian accounting standards [and Australian tax laws] as are in place as at 9am on the date of this letter;
- (c) we make no statement, and express no opinion, on any matter such as legal matters requiring skills or expertise other than of an accounting, financial [or taxation] nature;
- (d) the Statements in section 4 of this Due Diligence Sign-Off relate only to the Financial Information and do not relate to any additional statements in or concerning the [describe Public Document] that may be made by any person or any other conduct that any person may engage in concerning the [describe Public Document];
- (e) the Statements in section 4 of this Due Diligence Sign-Off are limited to the knowledge of those partners, directors and employees of [insert Firm] who have provided the services to Client referred to in this letter, and we have made no enquiries of any [other] partner, director or employee of [insert Firm], or any of its related entities, who may have knowledge of matters relevant to the [describe Public Document] [through the provision of services to other Clients of [insert Firm], or whose knowledge may not be applied because of any ethical walls arrangements implemented in relation to our Engagement by [Client] on this matter; and

**7. Recipients of this Due Diligence Sign-Off**

This Due Diligence Sign-Off is given solely for the benefit of:

- (a) Client [and Issuer] and its/their representatives on the DDC;
- (b) the Directors of the Client [and Issuer]; and
- (c) each other member of the DDC and their representatives,

(together referred to as the Recipients).

This Due Diligence Sign-Off is not intended for general circulation or publication and may not, without our prior written consent in each specific instance:

- (a) be disclosed except to persons who, in the ordinary course of a Recipient's business have access to their papers and records and on the basis that such person will make no further disclosure of it;
- (b) be filed with a government or other agency, or be quoted or referred to in any public document or domain; or
- (c) be reproduced or used for any other purpose,

except as required by law or the rules of the relevant Stock Exchange or in connection with any enquiry conducted by a regulatory body or in the enforcement of the rights of, or in defence of any claim against, a Recipient.

We do not accept any responsibility for any losses whatsoever occasioned to any Recipient or to any other party as a result of the circulation, reproduction or use of this Due Diligence Sign-Off contrary to the above paragraph.

Yours faithfully

[insert name]