

Review of Submissions – Specific Comments
Exposure Draft 02/17: APES GN 31 Professional and Ethical Considerations relating to Low Doc Offering Sign-offs

Note: General comments relating to ED 02/17 are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1	Title	CPAA	CPA Australia is of the view that the title of the proposed guidance note should be reconsidered, as 'low doc' is not a formal, nor a well understood, term. We suggest: Offerings without Regulated Disclosures as a more appropriate title for the guidance note. We also think that 'Professional and Ethical Considerations relating to' is unnecessary as all APESB Standards and Guidance Notes are about Professional and Ethical Considerations.
2	1.3	Deloitte	<p>Scope and application</p> <ul style="list-style-type: none"> 1.3 Suggested edit: "whether or not <u>it is appropriate to provide</u> a Low Doc Offering Sign-Off is appropriate"
3	2	Deloitte	<p>Para 2 Definitions</p> <ul style="list-style-type: none"> The definition of Cleansing Notice should be consistent with the relevant sections of the Corporations Act and the terminology used by ASIC and the ASX. For example, in relation to a Rights Issue for which a Prospectus or Product Disclosure Statement is not required, this is the notice provided by the issuer to the relevant market operator containing prescribed information within the 24-hour period before the first offer or any earlier time required by the market operator, in accordance with s708AA(2)(f) or s1012DAA(2)(f) of the <i>Corporations Act 2001</i>. Definition of Low Doc Offering – We consider it is not factually correct to define this as a security offering without any regulated disclosure. A Listed Entity must meet certain requirements (in terms of the Corporations Act as well as ASX Listing Rules) before it can undertake a Low Doc Offering and make certain disclosures, including the issuance of a Cleansing Notice. Consider revising the definition to be consistent with the Corporations Act: <ul style="list-style-type: none"> "Low Doc Offering means a security offering by a Listed Entity where the securities can be offered for sale or issue without a Prospectus or Product Disclosure Statement, in accordance with section 708AA or section 1012DAA of the Corporations Act 2001. The capital raising may be a stand-alone transaction, in conjunction with an acquisition or for the purpose of a refinancing". Definition of 'Low Doc Offering Sign-off': means a due diligence sign-off issued by a Member in Public Practice a DDC Member or in certain cases. We are concerned that the current wording implies that it is more common for the Member in Public Practice to be a Member of the DDC in a Low Doc Offering. It is our experience that, in practice, we are never invited nor required to be a DDC Member because the due diligence defence is not available under the Corporations Act to the directors of the Listed Entity in subsequent capital raisings. An alternative would be to simply refer to Member in Public Practice and not identify whether in the capacity as Member or Observer.

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4	4.1	Deloitte	<p>Para 4 Low Doc Offerings</p> <ul style="list-style-type: none"> 4.1 Suggest deleting the words “and a Cleansing Notice is issued at the time the Low Doc Offering is announced”.
5	4.2	Deloitte	<ul style="list-style-type: none"> The wording in this paragraph implies that the due diligence process is typically established by legislation or regulation when in fact the process has come about and evolved through market practice. It is only the ‘due diligence defence’ that is established by legislation. Suggest amending the wording accordingly.
6	4.4	CPAA	<p><i>Professional Judgement</i></p> <p>The way professional judgement is presented in the proposed Guidance Note may not be perceived as aligned with the manner professional judgement is addressed in the Code and other standards.</p> <p>Paragraph 4.4 of the proposed guidance note states: <i>Members in Public Practice are cautioned that the determination of whether to issue a Low Doc Offering Sign-off is a matter of professional judgement, based on the particular facts and circumstances of a Low Doc Offering Engagement.</i></p> <p>Given that the Code requires the use of professional judgement for the application of its conceptual framework, we are of the view that members should be reminded that as is the case in all other circumstances, the application of professional judgement is a requirement rather than present it as a caution.</p>
7	5.2, 5.4, 6.1, 7.1	CPAA	<p><i>Guidance and requirements</i></p> <p>The proposed guidance note presents many requirements as guidance. For example, paragraph 5.2 states that a member in Public Practice should consider the requirements of APES 350. We are of the view that the use of the term ‘should’ ought to be reviewed, as members have an obligation to comply with the requirements of APES 350 and all other standards. We urge the APESB to review all uses of the term ‘should’ in the proposed guidance note and particularly in paragraphs 5.4, 6.1 and 7.1.</p>
8	5.2	Deloitte	<p>Para 5 Roles and responsibilities of a Member in Public Practice in relation to Low Doc Offerings</p> <ul style="list-style-type: none"> 5.2 Consistent with our above comments, consider whether the guidance should be explicit that a Member in Public Practice would typically undertake this role in the capacity of an Observer.
9	5.6(a)	Deloitte	<ul style="list-style-type: none"> 5.6 (a) In practice, we ordinarily perform an Agreed Upon Procedures engagement on the “other specific information” (for instance, EPS accretion statements) rather than undertake review procedures and provide a review conclusion on them in accordance with ASAE3450. Therefore, suggest deleting the reference to “other specific information”.

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10	5.6(b)	Deloitte	<ul style="list-style-type: none"> 5.6 (b) Suggested edit: “there is a due diligence process being undertaken by the Client or its through a due diligence committee ...” to reflect that the due diligence committee is a committee established by the Client and is not a separate body. <hr/> <ul style="list-style-type: none"> 5.6 (b) The wording in this paragraph indicates that there should be both Management and Board representation on the DDC. This suggests that in the event that the due diligence committee did not have Board representation the Member in Public Practice would not be able to provide a Low Doc Offering Sign-off in that circumstance. It is our experience that in some cases there will not be Board representation in the due diligence committee (although the Board would certainly be aware of the process and may choose to attend meetings from time to time). We suggest that if it is the intention of the guidance to preclude the provision of a Low Doc Offering Sign-off in this instance, it should be clear in the wording.
11	5.6(d)	Deloitte	<ul style="list-style-type: none"> 5.6(d) Suggested edit: “the Member in Public Practice or Firm <u>has assessed</u> is confident”.
12	5.7	Deloitte	<ul style="list-style-type: none"> 5.7 Suggested edit to first bullet: “<u>the Historical Financial Information underlying the Financial Information on which the Low Doc Offering Sign-Off is provided</u> underlying historical Financial Information”-has been recently ...”
13	5.6 - 5.7	PwC	<p>In our view:</p> <p>1. Engagement circumstances that may enable the issue of a Low Doc Offering Sign-off (paragraphs 5.6 -5.7)</p> <p>(a) The facts and circumstances which lead to a Low Doc Offering vary widely. They can be as simple as an equity raise to repay debt which is undertaken in a short time frame to an equity raise to fund a major acquisition which has taken months to come to fruition and involved a high level of due diligence. A Member In Public Practice’s involvement will also vary widely because issuers have a choice as to what involvement they request from a Member in Public Practice in a Low Doc Offering and also because the nature of the transaction will influence what is possible and/or reasonable in the circumstances.</p> <p>(b) Having noted the above we agree that the circumstances set out in paragraph 5.6 would generally need to be present for a Member in Public Practice to be in a position to provide of Low Doc Offering Sign-off. What constitutes a sufficient due diligence process (paragraph 5.6 (b)) and sufficient time, resources and expertise (paragraph 5.6 (c)) will be dictated by the facts and circumstances of the Low Doc Offering and would therefore require the professional judgement of the Member in Public Practice in forming a view.</p> <p>(c) It also requires professional judgement to decide whether a review opinion on Financial Information in accordance with ASAE 3450 can be provided, however, we note that it is possible that the client may not request this review opinion even though it might be possible. In this case, notwithstanding whatever other circumstances exist, including the Member in Public Practice being engaged in other aspects of the transaction, in our opinion it would not be possible for a Low Doc Offering Sign-off to be provided. This is illustrated in example 5 of Appendix A to the ED.</p>

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14	5.8	Deloitte	<ul style="list-style-type: none"> 5.8 The second bullet should be redrafted. <p>The use of the word “needs” implies that the Issuer is desperate to raise equity. Whilst raising equity through a Low Doc Offering may be the preferred course of action for a Listed Entity, the Listed Entity may have other options for funding available to it, for example through a private placement or through debt funding in order to achieve its objectives.</p> <p>Secondly, the wording suggests that involvement and participation in the due diligence process is restricted by the time frame. We consider that it is the due diligence process itself that is restricted by the time frame.</p>
15	5.8	IPA	<p>Comfort letter engagements often provide sign-off to underwriters and brokers for offerings of equities or debt securities to “qualified”, “sophisticated” or “professional” investors. As such they are not a public offer issued in relation to a public offer document. The IPA believes such offerings would fall into the definition of “Low Doc Offering Document” in the proposed GN 31. However, comfort letter engagements often require both assurance opinions and agreed-upon procedures to be reported upon. GN 31 paragraph 5.8 would appear to preclude the application of the proposed guidance note to such comfort letter engagements.</p> <p>We recommend that the taskforce clarify whether the comfort letter engagements that report as both assurance and agreed-upon procedures engagements are intended to be covered by the proposed GN 31 and if not, the IPA seeks clarification as to what APES standards or guidance notes should apply to such engagements.</p>
16	5.8 – 5.9	PwC	<p>2. Engagement circumstances that may preclude the issue of a Low Doc Offering Sign-off (paragraphs 5.8-5.9)</p> <p>(a) Consideration of the facts and circumstances of the particular Low Doc Offering will also be a factor when assessing whether the Member in Public Practice is precluded from issuing a Low Doc Offering Sign-off. Having noted this we agree with the particular circumstances outlined in paragraph 5.8. In particular we note that an engagement under <i>ASRS 4400 Agreed-Upon Procedures Engagements to Report Factual Findings</i> is not an assurance engagement. Therefore, in our opinion, it would never place a Member in Public practice in a position to express a view equivalent to the Due Diligence Sign-off included in APES 350.</p> <p>(b) We agree with the inclusion of Paragraph 5.9 in the ED as it is more than possible that there will be further circumstances for the Member in Public Practice to consider. We further note and agree with the overarching principle outlined in Paragraph 5.4 that a Member in Public Practice should exercise professional judgement in any assessment in this area.</p>
17	7.1	Deloitte	<p>Documentation</p> <ul style="list-style-type: none"> 7.1 Suggested edit: “A Member in Public Practice should <u>ensure that</u> consider whether documentation ...”
18	Example 1	PwC	<p>Example 1</p> <p>We agree with the analysis and conclusion in this example.</p>

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19	Appendix 1: Example 2	Deloitte	<p>Illustrative Examples</p> <p>Example 2 Suggested edits:</p> <p><i>Analysis</i></p> <p>“In this circumstance, although the Firm has recently audited the Financial Information of the Audit Client, it has been engaged to only perform agreed-upon procedures in respect of the pro forma Financial Information. While a due diligence process has been established, and there is sufficient time and resources to complete required procedures, and review procedures are therefore not being performed in this instance.”</p> <p>The focus of this example should be that the review procedures have not been performed. The facts as outlined in the example have provided no evidence regarding the sufficiency of the time and resources to complete the due diligence and hence it is not possible to make this element of the analysis. We consider that should be excluded from the analysis section as it may detract from the reader’s understanding of the example.</p> <p><i>Conclusion</i></p> <p>“As the Member in Public Practice has <u>only</u> been engaged to perform only agreed-upon procedures ...”</p>
20	Example 2	PwC	<p>Example 2</p> <p>We agree with the analysis and conclusion in this example.</p>
21	Example 3	PwC	<p>Example 3</p> <p>We agree with the conclusion in the example however we note the following in terms of the facts and analysis:</p> <ul style="list-style-type: none"> • If the acquisition was only an immaterial aspect of a broader capital raising and the Member in Public Practice had access to the acquisition Due Diligence and could, if deemed necessary access additional information and answers from the Target the conclusion could be different. In these circumstances the Member in Public Practice could be in a position to accept that there is a reasonable basis for a pro-forma adjustment and hence, if requested, provide an ASAE 3450 review opinion on the pro-forma financial information and thus be in a position, given the other facts outlined in Example 3, to provide a Low Doc Offering Sign-off. • If the acquisition was material to the merged group’s pro forma financial information access to an acquisition Due Diligence report would generally be of assistance to the Member in Public Practice if they were requested to provide an ASAE 3450 review opinion on the pro-forma financial information

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			<ul style="list-style-type: none"> We further note that, to the extent that the generally accepted accounting principles of the Target's jurisdiction were not aligned to those of the client, if the client is able via due diligence to obtain sufficient information to restate and align the target financial information then this may not prevent an unmodified ASAE 3450 review opinion being provided.
22	Example 3	Deloitte	<p>Example 3</p> <p>The Conclusion states that the Member has not been engaged to perform review procedures whereas the facts and analysis are that the Member does not have access to the books and records of the Target Entity (and hence could not be engaged to perform the review procedures on the Target Entity). To link the two, the facts and analysis should state that because the Member does not have access to the Target's books and records, it is not possible for them to perform a review of the Target Entity's Financial Information.</p> <p>Also, nowhere in the proposed standard does it say that the Member can only issue a Low Doc Offering Sign-off if they have issued an <u>unqualified</u> review <u>conclusion</u> opinion. All the references are simply to providing a review <u>conclusion</u> opinion. If it is intended that a Member's ability to provide a Low Doc Offering Sign-off is dependent upon the ability to issue an unqualified conclusion, this should be made clearer in the guidance note.</p>
23	Example 4	Deloitte	<p>Example 4</p> <p>Conclusion</p> <p>Suggest removing the words "unqualified" and "pro forma" (the facts and analysis do not specify that the Financial Information was pro forma). Also this conclusion implies that the only factor for a Member in Public Practice to consider in whether to give a Low Doc Sign-off is whether the Member has issued a review conclusion. The conclusion does not consider whether the other factors to be considered per para 5.6 have been met.</p>
24	Example 4	PwC	<p>Example 4</p> <p>We agree with the analysis and conclusion in this example.</p>
25	Example 5	Deloitte	<p>Example 5</p> <p>Conclusion – Suggested edits:</p> <p>"As the Member in Public Practice has not been engaged to, and therefore is unable to, perform a review in accordance with ASAE 3450, in this instance the Member is not able to provide a Low Doc Offering Sign-off in relation to the Financial Information of the Target <u>or merged</u> entity."</p>
26	Example 5	PwC	<p>Example 5</p> <p>We agree with the analysis and conclusion in this example.</p>

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27	N/A	Deloitte	<p>Other considerations and comments</p> <p>The spirit of the guidance should reflect an approach similar to that taken by ASIC in Regulatory Guide RG 189 <i>Disclosure relief for rights issues</i>, particularly in relation to compliance with continuous disclosure obligations.</p> <p>In issuing its Low Doc Offering Sign Off, a Member in Public Practice (together with the Due Diligence Committee) should give consideration to whether the Issuer has historically and in recent periods continued to meet these obligations, any significant share price movements, questions raised by the ASX or alternate market operator, or by the Regulator in relation to the timeliness of disclosures etc.</p>

RESPONDENTS

1	CPAA	CPA Australia
2	Deloitte	Deloitte Touche Tohmatsu
3	EY	Ernst & Young
4	IPA	Institute of Public Accountants
5	PwC	PricewaterhouseCoopers