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Dear Directors

Exposure Draft APES GN 31 Professional and Ethical Considerations relating to Low Doc Offering Sign-Offs

As outlined in the Exposure Draft on Guidance Note GN 31 *Professional and Ethical Considerations relating to Low Doc Offering Sign-Offs* (the Exposure Draft), the Accounting Professional & Ethical Standards Board Limited (the APESB) is intending to provide guidance on the professional and ethical obligations of Members in Public Practice on Low Doc Offering Engagements.

Given the relevance of this to the work undertaken by Deloitte on Low Doc engagements from time to time, we are pleased to provide the APESB with our comments on the Exposure Draft. Further, we raise some overarching matters at the end of this letter which we believe would be pertinent for the APESB to consider and provide some guidance on.

Para 1 Scope and application

- 1.3 Suggested edit: “whether or not it is appropriate to provide a Low Doc Offering Sign-Off ~~is appropriate~~”

Para 2 Definitions

- 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 *Corporations Act 2001*.
- 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:
 - “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

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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~~². 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.

Para 4 Low Doc Offerings

- 4.1 Suggest deleting the words “~~and a Cleansing Notice is issued at the time the Low Doc Offering is announced~~”.
- 4.2 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.

Para 5 Roles and responsibilities of a Member in Public Practice in relation to Low Doc Offerings

- 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.
- 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”.
- 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.
- 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.
- 5.6(d) Suggested edit: “the Member in Public Practice or Firm has assessed ~~is confident~~”.
- 5.7 Suggested edit to first bullet: “the Historical Financial Information underlying the Financial Information on which the Low Doc Offering Sign-Off is provided ~~underlying historical Financial Information~~”-has been recently ...”
- 5.8 The second bullet should be redrafted.
 - 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.

- 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.

Para 7 Documentation

- 7.1 Suggested edit: “A Member in Public Practice should ensure that ~~consider whether~~ documentation ...”

Appendix 1: Illustrative Examples

Example 2 - Suggested edits:

Analysis

“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.”

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.

Conclusion

“As the Member in Public Practice has only been engaged to perform ~~only~~ agreed-upon procedures ...”

Example 3

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.

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 unqualified review conclusion ~~opinion~~. All the references are simply to providing a review conclusion ~~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.

Example 4

Conclusion

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.

Example 5

Conclusion – Suggested edits:

“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 or merged entity.”

Other considerations and comments

- The spirit of the guidance should reflect an approach similar to that taken by ASIC in Regulatory Guide RG 189 *Disclosure relief for rights issues*, particularly in relation to compliance with continuous disclosure obligations.
- 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.

We thank you for this opportunity to comment on this Exposure Draft. Please do not hesitate to contact us if you would like to discuss any of our comments raised in this letter further.

Yours sincerely



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