

Proposed Guidance Note: APES GN 31 Professional and Ethical Considerations relating to Low Doc Offering Sign-offs

Prepared and issued by
Accounting Professional & Ethical Standards Board Limited

EXPOSURE DRAFT 02/17
ISSUED: June 2017

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Commenting on this Exposure Draft

This Exposure Draft, APES GN 31 *Professional and Ethical Considerations relating to Low Doc Offering Sign-offs* was developed and approved by the Accounting Professional & Ethical Standards Board Limited (APESB).

The proposals in this Exposure Draft may be modified in light of comments received before being issued in final form. **Comments are requested by 25 July 2017.**

Comments should be addressed to:

The Chairman
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APESB would prefer that respondents express a clear overall opinion on whether the proposed Guidance Note, 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 Guidance Note.

Respondents are asked to submit their comments electronically through the APESB website, using the link <http://www.apesb.org.au/apesb-exposure-drafts-open-for-comment>.

Please submit comments in both a PDF and Word file. All comments will be considered a matter of public record and will ultimately be posted on the website www.apesb.org.au.

APESB prefers that comments are submitted via its website. However, if there are practical difficulties, comments can also be sent to sub@apesb.org.au or mailed to the address noted above.

Obtaining a copy of this Exposure Draft

This Exposure Draft is available on the APESB website: www.apesb.org.au. Alternatively, any individual or organisation may obtain one printed copy of this Exposure Draft without charge until **25 July 2017** by contacting:

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Reasons for issuing Exposure Draft 02/17

APESB proposes to issue APES GN 31 *Professional and Ethical Considerations relating to Low Doc Offering Sign-offs* (APES GN 31) to provide guidance on the application of paragraph 1.10 of APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* to Low Doc Offerings, including when it is considered appropriate to provide a Low Doc Offering Sign-off.

Key requirements and guidance in ED 02/17

The proposed APES GN 31 provides guidance to Members in Public Practice in respect of their professional and ethical obligations relating to a Low Doc Offering Engagement and when it is appropriate to provide Low Doc Offering Sign-offs.

The proposed Guidance Note includes guidance in respect of:

- Fundamental responsibilities of Members in Public Practice;
- Context for Low Doc Offerings and Low Doc Offering Engagements;
- Roles and responsibilities of Members in Public Practice in relation to Low Doc Offerings;
- Engagement circumstances that may enable or preclude issue of a Low Doc Offering Sign-Off; and
- Reporting and documentation considerations.

Proposed operative date

It is intended that this Guidance Note will be effective when issued.

APES GN 31 Professional and Ethical Considerations relating to Low Doc Offering Sign-offs

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1. Scope and application

- 1.1 The objective of APES GN 31 *Professional and Ethical Considerations relating to Low Doc Offering Sign-offs* is to provide guidance on the professional and ethical obligations of a Member in Public Practice in relation to Low Doc Offering Engagements and Low Doc Offering Sign-offs.
- 1.2 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional Guidance Note APES GN 31 *Professional and Ethical Considerations relating to Low Doc Offering Sign-offs* (the Guidance Note) which is effective from the date of issue.
- 1.3 APES GN 31 provides guidance to assist Members in Public Practice to determine whether or not a Low Doc Offering Sign-off is appropriate in relation to a Low Doc Offering Engagement, taking into consideration the applicable requirements of APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* (APES 350)¹. This Guidance Note does not prescribe or create any mandatory requirements.
- 1.4 Members in Public Practice using this Guidance Note should refer to APESB's *Due process and working procedures for the development and review of APESB pronouncements* (APESB's Due Process document). The APESB's Due Process document provides the meaning of the term 'should' used in this Guidance Note.
- 1.5 In applying the guidance outlined in APES GN 31, Members in Public Practice should be guided not merely by the words but also by the spirit of this Guidance Note and the Member's professional obligation to comply with the requirements of the Code.
- 1.6 In this Guidance Note, unless otherwise specified, words in the singular include the plural and vice versa, words of one gender include another gender, and words referring to persons include corporations or organisations, whether incorporated or not.

2. Definitions

In addition to the definitions contained in APES 350, for the purpose of this Guidance Note:

Cleansing Notice means a notice issued by a Listed Entity in conjunction with the announcement of a Rights Issue or Placement. The Cleansing Notice confirms that the market has all the information the Listed Entity would be obliged to release under the continuous disclosure requirements, including information on incomplete proposals or negotiations.

Low Doc Offering means a security offering by a Listed Entity where the securities can be offered for sale or issue without regulated disclosure. The capital raising may be a standalone transaction, in conjunction with an acquisition or for refinancing.

Low Doc Offering Document means a document, that is not a Public Document, prepared and issued in relation to a Low Doc Offering. A Low Doc Offering Document generally contains limited financial and other information and may take the form of an investor presentation-style document.

Low Doc Offering Sign-off means a due diligence sign-off issued by a DDC Member or in certain cases a DDC Observer, as defined in APES 350, in connection with a Low Doc Offering Document. A Low Doc Offering Sign-off is issued by a Member in Public Practice in connection with a Low Doc Offering Engagement, when reporting to a Client on the conclusions arising from the procedures conducted on the Financial Information and/or other specific information included in the Low Doc Offering Document.

Placement means an allotment of securities made directly from an entity to investors in respect of capital raising.²

¹ APES 350, paragraph 1.10, specifies that the "Standard should be applied to the extent practicable where a Member in Public Practice provides Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee as a DDC Member, DDC Observer or Reporting Person in connection with an Engagement which is not in connection with a Public Document."

² This definition is consistent with the equivalent definition in the Australian Securities Exchange (ASX) Glossary.

Rights Issue means a privilege granted to shareholders to buy new shares in the same company.³

3. Fundamental responsibilities of Members in Public Practice

- 3.1 The Code is the conceptual framework and foundation upon which all APESB pronouncements are based. Compliance with and application of the Code is fundamental to the ethical behaviour of Members in Public Practice. Non-compliance with the Code can lead to disciplinary procedures being initiated by the Professional Body to which the Member in Public Practice belongs.
- 3.2 Professional obligations and ethical requirements that Members in Public Practice are required to comply with are based on the five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour in the Code.
- 3.3 A Member in Public Practice who performs a Professional Activity, including providing a Low Doc Offering Sign-off, is required to comply with *Part A – General Application of the Code* and *Part B – Members in Public Practice* of the Code, and applicable laws or regulations.

4. Low Doc Offerings

- 4.1 Low Doc Offerings are generally undertaken by Listed Entities in connection with a Rights Issue or Placement⁴ and a Cleansing Notice is issued at the time the Low Doc Offering is announced.
- 4.2 Low Doc Offerings are typically undertaken in a limited time frame and compared to a Public Document, do not have specific requirements established by legislation or regulation in relation to the relevant disclosure documents or the due diligence process to be followed in respect of the issue of shares.
- 4.3 For the purpose of this Guidance Note, a Low Doc Offering Engagement is considered to be an Engagement to which paragraph 1.10 of APES 350 applies and where many of the elements of an APES 350 Engagement are present.
- 4.4 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.

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

- 5.1 The roles and responsibilities of a Member in Public Practice in connection with a Low Doc Offering can vary depending on the specific circumstances of the Engagement.
- 5.2 A Member in Public Practice may be asked to provide Professional Services as a due diligence committee member, observer or reporting person for a Low Doc Offering Engagement. Requirements and guidance on these roles in connection with a Public Document are set out in APES 350. A Member in Public Practice should consider these requirements and guidance when undertaking similar roles in relation to a Low Doc Offering Engagement.
- 5.3 A Member in Public Practice or Firm may be asked to provide a Low Doc Offering Sign-off to a Client and its due diligence committee.
- 5.4 A Member in Public Practice should exercise professional judgement and assess whether it is appropriate, based on the specific circumstances of the Engagement, to provide a Low Doc Offering Sign-off.

³ This definition is consistent with the equivalent definition in the Australian Securities Exchange (ASX) Glossary.

⁴ Refer to *Corporations Act 2001* sections 708,708AA and 1012DAA.

- 5.5 When a Low Doc Offering Engagement has similarities with an Engagement in connection with a Public Document conducted in accordance with APES 350, particularly in respect of the processes and the Member in Public Practice's role in the Engagement, it is more likely that the Member will have a reasonable basis to provide a Low Doc Offering Sign-off.

Engagement circumstances that may enable the issue of a Low Doc Offering Sign-off

- 5.6 A Member in Public Practice or Firm should only issue a Low Doc Offering Sign-off if the following Engagement circumstances are present in relation to a Low Doc Offering Engagement:
- a) review procedures can be performed and a review conclusion can be provided on the Financial Information or other specific information in the Low Doc Offering Document in accordance with ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information* (ASAE 3450) or similar standards on Assurance Engagements;
 - b) there is a due diligence process being undertaken by the Client or its due diligence committee comprising experienced management and Board representation and receiving input from advisers with the appropriate expertise (either as members/observers and/or reporting persons);
 - c) sufficient time, resources and expertise have been allocated to the due diligence process by the Client, the Client's other advisers, and the Member in Public Practice or Firm; and
 - d) the Member in Public Practice or Firm is confident that the financial systems and processes at the Client and target entity are able to provide accurate and reliable Financial Information.
- 5.7 The circumstance referred to in paragraph 5.6(a) may generally include:
- the underlying historical Financial Information has been recently (or concurrently) subject to audit or review by the same Firm or another Firm.
 - the Client allowing for sufficient time, budget and resources for the Firm to perform the required review procedures in accordance with ASAE 3450.

Engagement circumstances that may preclude the issue of a Low Doc Offering Sign-off

- 5.8 Engagement circumstances that either individually or in combination may preclude a Member in Public Practice from issuing a Low Doc Offering Sign-off include:
- The Financial Information to be included in the Low Doc Offering Document is not prepared in accordance with an applicable financial reporting framework and/or the Member in Public Practice is not in a position to provide a conclusion in accordance with ASAE 3450 or other similar standards on Assurance Engagements.
 - The urgency with which the Client needs to raise additional equity through a Low Doc Offering is such that the offer is made in an unduly short time frame (for example, a matter of days rather than weeks) and the involvement of and participation by the Client's management, directors, any other advisers, and/or the Member in Public Practice in a due diligence process is restricted by that time frame.
 - The time frame dictates and/or the Client specifies that the Member in Public Practice is to only perform a limited scope of work, such as limited specific due diligence enquiries or agreed-upon procedures undertaken in accordance with ASRS 4400 *Agreed-Upon Procedures Engagements to Report Factual Findings*.
 - Financial disclosures in the Low Doc Offering Document are limited in form (for example a small number of non-GAAP measures or ratios) and a Member in Public Practice is unable to provide a review conclusion in accordance with ASAE 3450.

- 5.9 The list of Engagement circumstances in paragraphs 5.6 and 5.8 are not exhaustive and there may be other Engagement circumstances a Member in Public Practice should consider when deciding whether or not it is appropriate to issue a Low Doc Offering Sign-off.

6. Reporting

- 6.1 A Member in Public Practice should consider the requirements and guidance on due diligence sign-offs set out in APES 350 when preparing a Low Doc Offering Sign-off to the extent practicable.

7. Documentation

- 7.1 A Member in Public Practice should consider whether documentation is maintained that appropriately supports the work performed and conclusions reached in the provision of a Low Doc Offering Engagement. The documentation prepared by the Member should demonstrate that the Professional Services provided were carried out in accordance with applicable Professional Standards, including policies and procedures established in accordance with APES 320 *Quality Control for Firms*, and any applicable ethical, legal and regulatory requirements.

Conformity with International Pronouncements

The International Ethics Standards Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES GN 31.

Appendix 1: Illustrative Examples

This Appendix contains some examples that set out various scenarios of Low Doc Offerings and considers Engagement circumstances that are appropriate for, as well as circumstances that would preclude, the issue of a Low Doc Offering Sign-off.

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. These examples are provided for illustrative purposes only and are not intended to be, and cannot be, all inclusive. In all of the examples presented below, it is assumed that there are no unmentioned facts that are relevant to the consideration as to whether a Low Doc Offering Sign-off can be issued.

Example 1

Facts

An Audit Client is undertaking a Rights Issue shortly after the issuance of the audit report in relation to its financial statements. The Audit Client has established a due diligence process. The Audit Client also has appropriate financial systems and processes in place to provide accurate and reliable Financial Information. The Member in Public Practice is engaged to perform review procedures in accordance with ASAE 3450 in respect of the pro forma Financial Information. The Member believes they will be able to complete the required procedures within the time frame required by the Audit Client.

Analysis

In this circumstance, the Firm has recently audited the Financial Information and has been engaged to perform review procedures in accordance with ASAE 3450. There is a due diligence process in place and the Member in Public Practice has been allocated sufficient time and resources to complete the required procedures.

Conclusion

As the Member in Public Practice is able to issue an unqualified review conclusion in accordance with ASAE 3450, and there is an adequate due diligence process, in this instance, the Member is able to provide a Low Doc Offering Sign-off in relation to the pro forma Financial Information.

Example 2

Facts

An Audit Client is undertaking a Rights Issue shortly after the issuance of the audit report in relation to its financial statements. The Audit Client has established a due diligence process. The Audit Client also has appropriate financial systems and processes in place to provide accurate and reliable Financial Information. The Audit Client has determined that it does not require the Member in Public Practice to perform a review of its pro forma Financial Information in accordance with assurance standards, and instead engages the Member to perform certain limited agreed-upon procedures. The Member believes they will be able to complete the required procedures within the time frame specified by the Audit Client.

Analysis

In this circumstance, although the Firm has recently audited the Financial Information of the Audit Client, it has been engaged to 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, review procedures are not being performed in this instance.

Conclusion

As the Member in Public Practice has been engaged to perform only agreed-upon procedures, and has not been requested to issue a review conclusion 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 pro forma Financial Information.

Example 3

Facts

An Audit Client is proposing to raise capital through a Low Doc Offering to finance the proposed acquisition of a target entity based in another jurisdiction. The Audit Client has established a due diligence process and engaged a Member in Public Practice based in Australia. A different Firm based in the other jurisdiction has been engaged to undertake an acquisition due diligence Engagement in relation to the target entity, which applies the generally accepted accounting principles of the other jurisdiction in preparing its Financial Information. The Audit Client applies Australian accounting standards in preparing its Financial Information.

The target entity's Financial Information is to be incorporated into the merged group's pro forma Financial Information. However, the Member in Public Practice does not have access to the books and records of the target entity. The Member has been allocated sufficient time to complete the required procedures within the period specified by the Audit Client.

Analysis

There is a due diligence process in place and the Member in Public Practice has been allocated sufficient time and resources to complete the required procedures. However, the Member does not have access to the books and records of the target entity. The target entity's Financial Information will form part of the merged entity's pro forma merged Financial Information. While the Member may be in a position to perform review procedures over the Audit Client, it is unable to do so in respect of the target entity.

Conclusion

As the Member in Public Practice has not been engaged to perform review procedures in respect of the target entity, it is unable to issue an unqualified review conclusion 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 merged group's pro forma Financial Information.

Example 4

Facts

A Client is undertaking a Rights Issue and Placement to fund an acquisition. The Member in Public Practice is requested to perform a review of certain forecast Financial Information in accordance with ASAE 3450 and prepare a Low Doc Offering Sign-off. While the capital raising will occur through a low doc process, the Client is implementing a rigorous due diligence process in connection with the proposed disclosures. The Client has appropriate financial systems and processes in place to provide accurate and reliable Financial Information. The timetable for the low doc process is sufficient to enable the performance of the necessary review procedures and the gathering of sufficient evidence. The nature of the Client's business is based on long-term contracts which facilitate the efficient gathering of supporting evidence for the majority of key forecast assumptions.

Analysis

The Member in Public Practice has been engaged to perform a review Engagement in respect of the forecast Financial Information in accordance with ASAE 3450. The Client has implemented a due diligence process which includes providing adequate time and resources to enable the Member to perform the necessary review procedures.

Conclusion

As the Member in Public Practice has been engaged to, and is able to, issue an unqualified review conclusion in accordance with ASAE 3450, in this instance the Member is able to provide a Low Doc Offering Sign-off in relation to the pro forma forecast Financial Information.

Example 5

Facts

The Client is undertaking a Rights Issue and Placement to fund an acquisition. The Client has established a due diligence process. The Client has engaged the Member in Public Practice to undertake acquisition due diligence procedures in relation to the target entity. The Member believes they will be able to complete the required procedures within the time frame specified by the Client. However, the Client subsequently decided to raise additional capital to finance the acquisition, and did not engage the Member to perform additional review procedures in relation to the target entity's Financial Information.

Analysis

The Client has implemented a due diligence process and has allocated adequate time and resources to the Member in Public Practice. While the Member may be in a position to perform review procedures over its Client, it has not been engaged to do so in respect of the target entity's Financial Information.

Conclusion

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 entity.