

Proposed Standard: APES 350 Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document

[Supersedes APES 350 Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document issued in December 2009 and subsequently amended in March 2011]

Prepared and issued by
Accounting Professional & Ethical Standards Board Limited

EXPOSURE DRAFT **01/15**
ISSUED: XX 2015

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Commenting on this Exposure Draft

This Exposure Draft, APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* 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 XX XXXX 2015.**

Comments should be addressed to:

The Chairman
Accounting Professional & Ethical Standards Board Limited
Level 7, 600 Bourke Street
MELBOURNE VIC 3000
AUSTRALIA

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.

Respondents are asked to submit their comments electronically through the APESB website, using the link 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 **XX XXXX 2015** by contacting:

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TO BE UPDATED

Reasons for issuing Exposure Draft 01/15

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to revise APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* (APES 350).

Key requirements and guidance in ED 01/15

Overview of the proposed changes

The following summary provides an overview of the proposed revisions to the existing professional standard APES 350. Respondents should not rely on this summary of differences to determine what changes, if any, are required to their current practices, policies or methodologies. Respondents should read the entire Exposure Draft to determine the significance of its proposals.

Significant revisions to the existing APES 350 in this exposure draft are:

- The following definitions have been revised or added: Assurance Engagement, Auditing and Assurance Standards, AuASB, Client, Contingent Fee, Engagement Team, Independence, Member, Member in Public Practice, Professional Activity, Professional Bodies, Professional Services, Professional Standards and Those Charged with Governance; and
- Revision of the example Materiality letter.

Proposed operative date

It is intended that this Standard will be operative for Engagements commencing from **XX XXXX 2015**. Earlier adoption is permitted.

APES 350 Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document

[Supersedes APES 350 Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document issued in December 2009 and subsequently amended in March 2011]

Revised: March-xx-2015+

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1. Scope and application

Comment [CW1]: Need to include the objectives of APES 350?

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) has revised professional standard APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document (the Standard)*, which is effective for Engagements commencing on or after 1 ~~XXXX~~May 2015⁴. 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 DDC Member, DDC 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 provide 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 a Public Document issued in Australia. Where the transaction to which the Public Document relates is to be undertaken in whole or in part in a jurisdiction other than Australia or where the laws and/or regulations of a jurisdiction other than Australia apply to the Public Document, Members shall follow this Standard, except to the extent that this would cause a Member to breach the laws and/or regulations of such other jurisdiction.**
- 1.4 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.**
- 1.5 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.**
- 1.6 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.7 All references to Professional Standards are references to those provisions as amended from time to time.
- 1.8 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.
- 1.9 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.
- 1.10 A Member in Public Practice may provide Professional Services to a Client in connection with a Due Diligence Committee in the role of a:
- DDC Member;
 - DDC Member and Reporting Person;
 - DDC Observer;
 - DDC Observer and Reporting Person;
 - Reporting Person.

These roles are defined in paragraph 2 and discussed in paragraph 5.1.

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 Client means the responsible party that is the person (or persons) who:

- (a) In a direct reporting Engagement, is responsible for the subject matter; or
- (b) In an assertion-based Engagement, is responsible for the subject matter information and may be responsible for the subject matter.

Assurance Engagement means an Engagement in which a Member in Public Practice expresses a conclusion 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 the *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 Client is a Listed Entity, Audit Client will always include its related entities. When the Audit Client is not a Listed Entity, Audit Client includes those related entities over which the Client has direct or indirect control.

Audit Engagement means a reasonable assurance Engagement in which a Member in Public Practice expresses an opinion whether financial statements are prepared, in all material respects (or give a true and fair view or are presented fairly, in all material respects), in accordance with an applicable financial reporting framework, such as an Engagement conducted in accordance with Auditing and Assurance Standards. This includes a statutory audit, which is an audit required by legislation or other regulation such as the *Corporations Act 2001*.

Auditing and Assurance Standards means:

- ~~• In relation to reports for reporting periods commencing on or after 1 July 2006:~~
 - (a) the AUASB Standards, as defined in *ASA 100 Preamble to AUASB Standards, ASA 101 Preamble to Australian Auditing Standards and the Foreword to AUASB Pronouncements*, issued by the AUASB, and operative from the date specified in each standard; and
 - (b) 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 ~~A~~ auditing and ~~A~~ assurance ~~S~~ 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 *Corporations Act 2001*.

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Client means an individual, firm, entity or organisation to whom or to which Professional ~~Activities~~ 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 ~~services work~~ performed by the Firm. A fee that is established by a court or other public authority is not a Contingent Fee.

DDC Member means a Member in Public Practice who is engaged by a Client to provide Professional Services as a member of a Due Diligence Committee and who will participate in the Due Diligence Committee's decisions, sign all the collective reports and other documents issued by the Due Diligence Committee and in most instances will prepare a Due Diligence Sign-Off.

DDC Observer means a Member in Public Practice who is engaged by a Client to provide Professional Services as an observer to a Due Diligence Committee but who will not participate as a DDC Member and will not sign or be a party to any collective reports or documents issued by the Due Diligence Committee. As an observer a Member will:

- attend one or more meetings of the Due Diligence Committee but not undertake any due diligence enquiries or have reporting obligations to the Client or to the Due Diligence Committee; or
- attend one or more meetings of the Due Diligence Committee and undertake due diligence enquiries in relation to Financial Information and/or Other Specific Information and provide a report to the Client and/or the Due Diligence Committee. In certain circumstances, depending on factors such as timing and the scope of the Engagement, the Member may prepare a Due Diligence Sign-Off.

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 prepared on behalf of a Client and signed by members of its Due Diligence Committee which sets out the due diligence process and reporting responsibilities. 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 or other appropriate written communication issued by a DDC Member or in certain cases a DDC Observer in connection with a Public Document when reporting to a Client and its Due Diligence Committee on the conclusions arising from the procedures conducted by a DDC Member or DDC Observer on Financial Information and/or Other Specific Information. (A form of Due Diligence Sign-Off which complies with the requirements of this Standard is set out in Appendix 1).

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 Team means all ~~personnel~~ Partners and staff performing ~~the~~ Engagement, ~~including any experts contracted and any individuals engaged~~ by the Firm or a Network Firm who perform procedures on the Engagement. This excludes external experts engaged by the Firm or a Network Firm ~~in connection with that Engagement~~.

Financial Information means historical, pro forma or prospective financial information or some combination of these as specified in the Engagement Document.

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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-expression~~ of an ~~opinion conclusion~~ without being affected by influences that compromise professional judgement, ~~thereby~~ 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 ~~that~~ a reasonable and informed third party, ~~having knowledge of all relevant information, including any safeguards applied,~~ would ~~reasonably be likely to~~ conclude, ~~weighing all the specific facts and circumstances, that~~ a Firm's, or a member of the Engagement Team's, integrity, objectivity or professional scepticism ~~has~~ been compromised.

Listed Entity means an entity whose shares, stock or debt are quoted or listed on a recognised stock exchange, or are marketed under the regulations of a recognised stock exchange or other equivalent body.

Managerial Employee means an employee who acts in a managerial capacity within the structure of the Firm, including providing oversight, in the provision of services to Clients.

Materiality Letter means the letter or other appropriate written communication issued by a Member in Public Practice to a Client and its Due Diligence Committee that provides materiality guidance prepared with reference to applicable Auditing and Assurance Standards.

Member means a member of a ~~P~~professional ~~B~~body that has adopted this Standard as applicable to their membership as defined by that ~~p~~professional ~~b~~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. ~~This~~ term is also used to refer to a Firm of Members in Public Practice and means a practice entity and a participant in that practice entity as defined by the applicable ~~P~~professional ~~b~~body.

Network means a larger structure:

- (a) That is aimed at co-operation, and
- (b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common branch-name, or a significant part of professional resources.

Network Firm means a Firm or entity that belongs to a Network.

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, environmental matters, and information technology matters.

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 Activity means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, taxation, management consulting, and financial management.

Professional Bodies means the Institute of Chartered Accountants Australia, CPA Australia and the Institute of Public Accountants.

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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 Activities performed for Clients.

Professional Standards means all standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable ~~p~~Professional ~~b~~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 Member in Public Practice who is engaged by a Client to provide Professional Services and report to the 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. A Reporting Person may also be a DDC Member or DDC Observer.

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 means the person(s) 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, or organisation(s) (for example, a corporate trustee) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process. For some entities in some jurisdictions, Those Charged with Governance includes management only when it performs such functions, may include management personnel, for example, executive members of a governance board of a private or public sector entity, or an owner-manager.~~

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 as a DDC Member, DDC Observer or Reporting Person 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 providing 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 a Public Document 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 a Due Diligence Committee as a DDC Member, DDC Observer or Reporting Person in connection with a Public Document.

Professional appointments

- 3.4 A Member in Public Practice who is invited by a Client or potential Client to provide Professional Services which comprise participating in and/or reporting to a Due Diligence Committee as a DDC Member, DDC Observer or Reporting Person in connection with a Public

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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 a Client or potential Client to provide Professional Services which comprise participating in and/or reporting to a Due Diligence Committee as a DDC Member, DDC Observer or Reporting Person in connection with a Public Document shall determine whether there are threats to the Member's ability to comply with the fundamental principles of the Code prior to accepting the Engagement. Where the Member determines that there is a threat to the Member's ability to comply with the fundamental principles of the Code, the Member shall apply appropriate safeguards to eliminate the threat or reduce it to an Acceptable Level. Where appropriate safeguards are not available to reduce the threat to an Acceptable Level, the Member shall decline the Engagement or the relevant part thereof.
- 3.6 A Member in Public Practice who is invited by an Assurance Client to provide Professional Services which comprise participating in and/or reporting to a Due Diligence Committee as a DDC Member, DDC Observer or Reporting Person in connection with a Public Document shall consider Section 290 *Independence – Audit and Review Assurance Engagements* or Section 291 *Independence – Other Assurance Engagements* of the Code, as applicable, to determine whether the proposed Professional Services create threats to the Member's Independence. Where the Member determines that there is a threat to the Member's Independence, the Member shall apply appropriate safeguards to eliminate the threat or reduce it to an Acceptable Level. Where appropriate safeguards are not available to reduce the threat to an Acceptable Level, the Member shall decline the Engagement or the relevant part thereof.
- 3.7 A Member in Public Practice who is invited by an Audit Client to provide Professional Services which comprise participating in and/or reporting to a Due Diligence Committee as a DDC Member, DDC Observer or Reporting Person in connection with a Public Document shall comply with the applicable independence requirements of the *Corporations Act 2001*.
- 3.8 When considering the appropriateness of accepting a role as a DDC Member, DDC Observer or Reporting Person, a Member in Public Practice should consider matters such as:
- a) the responsibilities of the role;
 - b) the circumstances and context of the role, including the proposed transaction to which the Public Document relates, the proposed timetable for the due diligence process, the availability of information and any limitations on the scope of the Professional Services to be provided. (This would usually be outlined in the Due Diligence Planning Memorandum);
 - c) 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;
 - d) whether providing the Professional Services would require the Member to hold an Australian Financial Services Licence; and
 - e) where the Member's Firm or a Network Firm is the statutory auditor of a Listed Entity or disclosing entity in Australia or a foreign jurisdiction, whether independence obligations, in addition to the requirements of the Code, preclude the Member from accepting a role as a DDC Member, DDC Observer or Reporting Person, or limit the scope of the role the Member may perform.
- 3.9 If a Member in Public Practice is not certain about the legal implications of performing the role of a DDC Member, DDC Observer or Reporting Person, 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 an 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 – Audit and Review Assurance Engagements* or Section 291 *Independence – Other Assurance Engagements* of the Code, as applicable.

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 a Member in Public Practice has agreed to provide a Due Diligence Sign-Off in respect of Financial Information and/or Other Specific Information that requires the consideration of matters that are outside the professional expertise of the Member, 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 in connection with a Due Diligence Sign-Off or other reports, the Member shall disclose in the Member's Due Diligence Sign-Off or other reports 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 A Due Diligence Committee will usually include or be assisted by advisers to the Client, including the Client's legal adviser. A Member in Public Practice who reports to a Due Diligence Committee is generally entitled to rely on the advice and opinions of those advisers. Accordingly, paragraphs 3.14 and 3.15 are not intended to require a Member to obtain separate advice on matters for which another adviser to or member of the Due Diligence Committee is responsible.
- 3.17 In performing a Professional Service, a Member in Public Practice should consider any guidance in respect of such services issued by the professional accounting bodies and appropriate regulatory authorities.

Confidentiality

- 3.18 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.
- 3.19 Where a Member in Public Practice provides Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee, the proper performance of the work will generally require the Member to disclose confidential information of the Client to the Due Diligence Committee, subject to any overriding restrictions on disclosure of information (including those commonly referred to as ethical wall arrangements). Unless the Member has a legal obligation of disclosure, the Member should not disclose any information relating to the Client's affairs to a party,

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other than to a DDC Member, DDC Observer or Reporting Person, without the Client's prior written permission.

4. Professional Engagement and other matters

4.1 A Member in Public Practice shall document and communicate the Terms of Engagement to a Client in accordance with APES 305 *Terms of Engagement* and this Standard.

4.2 The Terms of Engagement prepared by a Member in Public Practice should specify:

- a) whether an investigating accountant's report or other report will be provided for inclusion in the Public Document and if so the Financial Information and/or Other Specific Information that will be the subject of the report and the nature and extent of assurance (if any) to be provided;
- b) where the Member will have a role in relation to the Due Diligence Committee, the nature of the role including whether the Member will be a DDC Member, a DDC Observer or a Reporting Person;
- c) the tasks to be undertaken by the Member in connection with the Public Document including the scope of work on the Financial Information and/or Other Specific Information upon which any Due Diligence Sign-Off is to be provided; and
- d) whether the Member will prepare a Due Diligence Sign-off and the proposed form of such sign off.

4.3 Where a Due Diligence Planning Memorandum assigns responsibilities to a Member in Public Practice that extend beyond those agreed in the Engagement Document, the Member shall:

- a) **advise the Client, and if acceptable to both the Member and the Client, either amend and re-issue the Engagement Document or issue an addendum to the Engagement Document to reflect the additional responsibilities; or**
- b) **where those additional responsibilities conflict with, or are prohibited by, this Standard, or are not acceptable to the Member:**
 - **advise the Client and its Due Diligence Committee of the Member's responsibilities outlined in the Engagement Document and/or this Standard; and**
 - **take all reasonable steps to have the Due Diligence Planning Memorandum amended so that it does not assign responsibilities to the Member that conflict with, or are prohibited by, this Standard or are beyond those agreed in the Engagement Document or addendum thereto.**

4.4 Where, after taking the steps outlined in paragraph 4.3, 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.

4.5 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 the disclosure of, or reported upon matters or information in the Public Document or other associated documents beyond what was agreed in the Engagement Document.

Materiality guidance

4.6 Where a Member in Public Practice agrees to provide materiality guidance, 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.

4.7 The materiality guidance provided by the Member in Public Practice should only set out the quantitative matters to be considered by the Client and the Due Diligence Committee and indicate that decisions as to quantitative and qualitative considerations concerning materiality in relation to a specific potential or proposed disclosure are the responsibility of the Client after consideration by its Due Diligence Committee.

4.8 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.

A form of the Materiality Letter is given in Appendix 2.

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 as:

- a) a DDC Member which typically includes:
 - i) attending meetings of the Due Diligence Committee;
 - ii) considering information presented to the Due Diligence Committee;
 - iii) participating in decisions of the Due Diligence Committee;
 - iv) reading and commenting on drafts of the Public Document;
 - v) performing procedures specified in an Engagement Document and preparing a Due Diligence Sign-Off; and
 - vi) signing the Due Diligence Committee's report to Those Charged with Governance of the Client;
- b) a DDC Observer which typically includes attending some or all meetings of the Due Diligence Committee at the request of the Client and may include performing procedures specified in an Engagement Document and preparing a Due Diligence Sign-Off; or
- c) a Reporting Person reporting to the Client and its Due Diligence Committee on the results of procedures specified in an Engagement Document.

A Member in Public Practice may also be asked to undertake Professional Services for, and provide a report to, a Client on Financial Information and/or Other Specific Information relevant to a Public Document, without being a DDC Member, DDC Observer or Reporting Person.

Examples of such reports (which could alternatively be prepared as a Reporting Person) are:

- an assurance report applying relevant Auditing and Assurance Standards on specific Financial Information (usually known as an investigating accountant's report); and
- a tax report on the taxation implications for shareholders of a transaction contemplated in the Public Document;

either of which may or may not be prepared for inclusion in the Public Document.

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- 5.2 A Member in Public Practice who accepts an Engagement to provide a Due Diligence Sign-Off or other reports to a Due Diligence Committee, whether as a DDC Member, DDC Observer, or Reporting Person shall specify in the Due Diligence Sign-Off or other reports the Financial Information and/or Other Specific Information in or relevant to the Public Document that the Member has performed procedures on, and the nature of those procedures.**
- 5.3 Based on the work performed a Member in Public Practice may report in a Due Diligence Sign-Off that the Member is not aware of:
- a) the specified Financial Information and/or Other Specific Information being misleading or deceptive (including by omission) in the form and context in which they appear in the Public Document; and
 - b) 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/or Other Specific Information not constituting all enquiries which are reasonable in the circumstances so far as the Financial Information and/or Other Specific Information are concerned.
- 5.4 A Member in Public Practice who accepts an Engagement to report to a Due Diligence Committee, whether as a DDC Member, DDC Observer or a Reporting Person shall not report or advise on matters outside the Member's area of expertise.**
- 5.5 Paragraph 5.4 precludes a Member in Public Practice from providing an opinion on:
- a) whether the Financial Information and/or Other Specific Information disclosed in a Public Document is sufficient and appropriate to satisfy the relevant disclosure requirements of the *Corporations Act 2001*, for example those set out in Division 4 of Part 6D.2. These are matters requiring the collective consideration of all of the members of the Due Diligence Committee, and are reported on in the Due Diligence Committee's report; or
 - b) whether the Client has complied with other legal obligations such as continuous disclosure obligations.
- 5.6 Paragraph 5.4 does not preclude a Firm from providing legal advice and reporting in relation to a Public Document if the Firm has Partners and Managerial Employees who are suitably qualified lawyers.
- 5.7 A Member in Public Practice shall sign a report to Those Charged with Governance on:**
- a) **information in a Public Document of a general nature relating to financial, accounting, tax or any other matters; or**
 - b) **the content of the Public Document as a whole; or**
 - c) **the due diligence process in relation to (a) and (b),**
- only as a DDC Member and where that report is a report of the Due Diligence Committee which is approved and signed concurrently by the other members of the Due Diligence Committee.**
- 5.8 The matters set out in paragraph 5.7 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 Due Diligence Committee members. Paragraph 5.7 (a) does not preclude a Member acting as a Reporting Person from providing Professional Services in respect of the range of potential tax implications for shareholders/unit holders that may need to be described in the Public Document.
- 5.9 A Member in Public Practice providing Professional Services to a Client which comprise participation in and/or reporting to a Due Diligence Committee as a DDC Member, DDC Observer or Reporting Person shall bring to the attention of the Client and/or its Due Diligence Committee any significant concerns relating to the matters set out in paragraph 5.7 which come**

Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document

to the attention of the Member in performing the work set out in the Member's Terms of Engagement.

- 5.10 A Member in Public Practice who accepts an Engagement to provide a Due Diligence Sign-Off in relation to Financial Information shall not prepare the Financial Information which is the subject of the Due Diligence Sign-Off or any extracts, summaries or analysis thereof provided elsewhere in the Public Document.**
- 5.11 Paragraph 5.10 does not preclude a Member in Public Practice from reviewing or commenting on drafts of the Public Document for the purpose of alerting the Client and the Due Diligence Committee to matters that may affect the Member's ability to provide the Due Diligence Sign-Off, and, if the Member is a DDC Member for the purposes of fulfilling the Member's duties as a DDC Member.
- 5.12 Where a Member in Public Practice accepts an Engagement to assist a Client or its Due Diligence Committee in any verification process in relation to information in the Public Document (other than disclosures and information relating to taxation law), the Member shall agree the specific procedures to be undertaken with the Client to provide such assistance.**
- 5.13 A Member in Public Practice should only provide verification assistance in relation to information in the Public Document (other than disclosures and information relating to taxation law) by performing an agreed upon procedures Engagement. A Member should not accept responsibility for the verification of information in a Public Document (other than disclosures and information relating to taxation law). Those Charged with Governance of the Client are responsible for the inclusion of the Financial Information and Other Specific Information in the Public Document and are best placed to know whether there is new or additional information that might affect its proper verification.
- 5.14 Where a Member in Public Practice accepts an Engagement to verify or assist a Client or its Due Diligence Committee with the verification of disclosures and information relating to taxation law, the Member shall exercise professional judgement in determining the nature, timing and scope of the procedures taking into consideration the Terms of Engagement.**
- 5.15 Where a Member in Public Practice is a DDC Observer and has been requested to provide a Due Diligence Sign-Off, the Member shall consider the scope of any procedures the Member has agreed to perform in relation to the due diligence process in connection with the Public Document, and assess whether the scope of the procedures will enable the Member to provide a Due Diligence Sign-Off.**
- 5.16 The scope of the role and responsibilities of a Member in Public Practice as a DDC Observer should be specified in the Engagement Document. The role should also be described in the Due Diligence Planning Memorandum and should be consistent with that specified in the Engagement Document. As a DDC Observer, the Member is not a party to the Due Diligence Planning Memorandum or the Due Diligence Committee's report to the Client.
- 5.17 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*.**
- 5.18 A Member in Public Practice who performs a valuation service in connection with a Public Document shall comply with APES 225 *Valuation Services*.**
- 5.19 A Member in Public Practice who performs a taxation service in connection with a Public Document shall comply with APES 220 *Taxation Services*.**
- 5.20 A Member in Public Practice who performs Professional Services 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** Before a Member in Public Practice provides a Due Diligence Sign Off to a Client and its Due Diligence Committee, the Member shall:
- a) assess whether the scope of procedures undertaken in relation to the Financial Information and/or Other Specific Information is sufficient and appropriate for that purpose;
 - b) consider the impact of any limitations on the scope of work; and
 - c) ascertain that all material matters in relation to the Financial Information and/or Other Specific Information which arose during the course of the Member's work have been addressed by the Client or its Due Diligence Committee.
- 7.2** Where the procedures undertaken in relation to the Financial Information and/or Other Specific Information only comprise a limited level of enquiry and/or the procedures were undertaken pursuant to another Engagement completed in the past, a Member in Public Practice shall not issue a Due Diligence Sign Off containing the conclusions referred to in paragraph 7.3(k).
- 7.3** Where the requirements of paragraph 7.1 have been met and a Member in Public Practice provides a Due Diligence Sign-Off, it shall contain the following:
- a) the name of the party or parties engaging the Member;
 - b) any other addressees of the Due Diligence Sign-Off (typically being the other members of the Due Diligence Committee);
 - 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) whether the Member has prepared the Due Diligence Sign-Off in the capacity of a DDC Member or DDC Observer;
 - f) a statement that the Professional Services were conducted and the Due Diligence Sign-Off was prepared in accordance with this Standard;
 - g) the Financial Information and/or 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;

- h) the scope of work performed in relation to the Financial Information and/or Other Specific information to which the Due Diligence Sign-Off relates;
- i) any limitations on the scope of work performed;
- j) 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;
- k) the conclusions of the Member in the form of negative statements as to whether having performed the scope of work, the Member has become aware of anything to cause the Member to believe that:
 - the Financial Information and/or 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/or Other Specific Information do not constitute all inquiries which are reasonable in the circumstances so far as the Financial Information and/or Other Specific Information is concerned;
- l) the significant assumptions upon which the conclusions of the Member are based;
- m) all qualifications to the conclusions of the Member; and
- n) any restrictions on the use and distribution of the Due Diligence Sign-Off.

A form of Due Diligence Sign-Off which complies with the requirements of this Standard is set out in Appendix 1. Members should note that this form of Due Diligence Sign-Off may require amendment if the Due Diligence Sign-Off is prepared by a Member as a DDC Observer.

- 7.4 Where a Member in Public Practice is asked to provide a Due Diligence Sign-Off in respect of a Public Document which has not been finalised, the Member shall consider:**
- a) any amendments to the Due Diligence Sign-Off which may be required to reflect that the Public Document has not been finalised; and
 - b) the information which has not been finalised in the draft Public Document,
- to ensure that any sign off provided at that time is appropriate.**
- 7.5** A substantially complete draft of a Public Document is often used as a confidential and restricted briefing document to seek the support of potential investors for the proposed transaction. In this situation, a Member in Public Practice may be requested to provide a Due Diligence Sign-Off in relation to the draft Public Document or to advise whether the Member would be able to provide a Due Diligence Sign-Off in relation to the draft Public Document if the Member was requested to do so at that time. In providing any such Due Diligence Sign-Off or providing any such advice, the Member should clearly state:
- any assumptions or qualifications relevant to the provision of the Due Diligence Sign-Off or the advice;
 - the specific draft or version number of the Public Document to which the Due Diligence Sign-Off or the advice relates; and
 - that the Due Diligence Sign-Off or the advice is subject to change as a result of events which occur or information which comes to the Member's attention between the date of the provision of the Due Diligence Sign-Off or the advice in relation to the draft Public Document and the

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date of the provision of any subsequent or final Due Diligence Sign-Offs in relation to the Public Document.

- 7.6 Where a Member in Public Practice is requested to provide to a Client and/or its Due Diligence Committee written status reports or interim reports in respect of specific work discussed in the Engagement Document (for example by way of a draft report, an oral presentation and/or by way of contributions to issues registers) or requested to provide on an interim basis detailed findings, the Member should include an appropriate disclaimer stating 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.
- 7.7 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 or not 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;
 - d) the level of testing done on source information relied on by the Member in preparing the report; and
 - e) whether Client consent has been obtained.
- 7.8 **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, 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.**
- 7.9 **In accordance with the terms of a Due Diligence Planning Memorandum and/or relevant legislation, a Member in Public Practice shall bring to the attention of a Client and/or its Due Diligence Committee any material new circumstances relevant to a Public Document of which the Member becomes aware subsequent to the issue of the Public Document.**
- 7.10 The period to which any obligation referred to in paragraph 7.9 applies will usually be set out in the Due Diligence Planning Memorandum or relevant legislation.

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 as a DDC Member, DDC Observer or Reporting Person in connection with a Public Document, 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 which requires Independence or which purports to be independent.**

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Conformity with International Pronouncements

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

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APPENDIX 1

Due Diligence Sign-Off

[insert date]

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

Board of Directors
[insert name of the Client]
[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 Client] on [insert date] in connection with [insert details of proposed transaction] (**Offer/Transaction**), and the work undertaken by us as a [DDC Member/DDC Observer] pursuant to our Engagement Document with [Client] dated [insert date] (the **Engagement Document**).

Our services have been conducted and this Due Diligence Sign-Off has been prepared in accordance with APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document*.

1. Introduction

We refer to the following financial information relating to the Client that is disclosed in the [describe Public Document]:

- (a) [specify relevant historical financial information on which the Member has performed a review] for [insert period] as disclosed in Section [insert];
- (b) [specify relevant pro forma historical information on which the Member has performed a review] for [insert period] as disclosed in Section [insert];
- (c) [specify relevant forecast financial information, if any on which the Member has performed a review] for [insert period] as disclosed in Section [insert],

(collectively **Financial Information**). [Note –the definition of Financial Information should, where appropriate, be consistent with that used in any investigating accountant's report being provided by the Member in Public Practice]

[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) [insert as required]

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

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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 and been a Reporting Person to] [attended as an observer meetings of] the Due Diligence Committee (**DDC**) that has been established by the [*Client*] for the purposes of coordinating 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*] and the DDC;
- (c) conducted a review, in accordance with [ASRE 2405 or ASAE 3000 or other standards as appropriate], of the Financial Information furnished to us by the [*Client*];
- (d) [assisted the Client in its verification of certain statements in the [*describe Public Document*] by performing the procedures set out in [*insert – eg “Appendix 2” or “the Engagement Document”*] as agreed by the Client (**Agreed Upon Procedures**)];
- (e) [prepared an investigating accountant’s report (if applicable) on the Financial Information for inclusion in the [*describe Public Document*]]; and
- (f) [prepared a letter on the tax implications of the proposed Offer/Transaction 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 being information which was not subject to the procedures in (d) above.*]

[*Note: this is an example scope only, and should be tailored to reflect the agreed scope of the professional services*]

Scope limitations

[*insert scope limitations as relevant. For example, any limitations in access to financial records, key management personnel or information relating to a particular issue or particular accounting standard. See example limitation below for Agreed Upon Procedures work. Particular scope limitations may need to be inserted in relation to paragraph (c) in order to comply with Auditing Standards applying to review engagements*]

The work referred to in paragraph (d) above was undertaken in accordance with Australian Auditing Standards applicable to Agreed Upon Procedures Engagements. The responsibility for determining the adequacy or otherwise of the Agreed Upon Procedures is that of the directors of the Client. That work did not constitute an audit or review in accordance with Australian Auditing Standards and consequently no assurance or audit opinion or review statement is expressed. Had we performed additional procedures or had we performed an audit in accordance with Australian Auditing Standards or a review in accordance with Australian Auditing Standards applicable to review engagements, other matters might have come to our attention that would have been reported to you.

3. Findings – Agreed Upon Procedures

[*insert factual findings arising from Agreed Upon Procedures, including any exceptions noted*]

4. Basis for Review Statement

The statement in section 5 (**Review Statement**) is made on the basis of:

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

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In making the Review Statement we only hold ourselves out as having expertise as [designation of applicable professional body] [in advising on Australian taxation matters (if applicable)]. We disclaim any skills or expertise in any other capacity.

5. Review Statement

Based on our review of the Financial Information, which is not an audit, and applying the materiality criteria adopted by the DDC, nothing has come to our attention that causes us to believe that:

- (a) 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 they relate 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 addressed by management of the [Client] 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] and the DDC.

6. Other Specific Information

[Insert appropriate statements and the basis for those statements, in relation to the Other Specific Information referred to in 2(g), if applicable.]

7. Assumptions

In making the Review Statement 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 Client, 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, or provided by or on behalf of the Client to us which are relevant to the Financial Information;
- (d) the report of [insert name of third party expert] dated [insert date] concerning [insert] [note: qualifications of third party expert to be described] is accurate and complete;
- (e) 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 Client 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);
- (f) all factual matters stated in any document provided to us are true and accurate; and
- (g) the [describe Public Document] [insert date and final document version number] will be lodged with the Australian Securities and Investment Commission.

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

8. Qualifications

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

- (a) we 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 other mandatory professional reporting requirements [and Australian tax laws] impact or formed part of our scope of work, in making the Statement in section 5 we have had regard to such Australian requirements 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] [and/or] [Australian taxation] nature;
- (d) the Statement in section 5 of this Due Diligence Sign-Off relates only to the Financial Information and does 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 Statement in section 5 of this Due Diligence Sign-Off is 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
- (f) [We have relied on the accuracy and completeness of the report of [*insert name of third party expert*] dated [*insert date*] concerning [*insert*]. [*note: qualifications of third party expert to be described*].

9. Recipients of this Due Diligence Sign-Off

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

- (a) the Client and its representatives on the DDC;
- (b) the directors of the Client; and
- (c) each other member of the DDC and their representatives in their respective capacities as such,

(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 and are not entitled to rely on it for any purpose;
- (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, regulation or the rules of any Stock Exchange or government body or in connection with any enquiry conducted by a regulatory body or in the enforcement of the rights of, or in defence of any actual or potential claim against, a Recipient.

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We do not accept any responsibility for any losses whatsoever occasioned by any Recipient or by 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

Member or Firm

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APPENDIX 2

Materiality Letter

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

Board of Directors
[Insert name of issuer]
[Insert address of issuer]

[Date]

Dear []

Materiality guidance in relation to due diligence process of [Issuer]'s [Public Document]

We refer to our Engagement letter with [] dated [].

The purpose of this letter is to set out guidance with respect to the quantitative materiality thresholds for consideration by [Client and/or Issuer] and the Due Diligence Committee ("DDC") for the [Prospectus /Product Disclosure Statement/Bidder Statement/Target Statement/Explanatory Memorandum /Cleansing Notice or other Public Document] proposed to be issued in connection with [describe proposed transaction] (the "Public Document") by [Issuer].

Decisions on materiality in relation to specific, potential or proposed disclosures are the responsibility of [Client] after consideration by the DDC. This letter contains specific guidance in relation to the quantitative factors of materiality. However, it does not contain any specific guidance in relation to the qualitative factors of materiality which by definition will be unique to the matter being considered.

Relevance of materiality guidelines

The guidance contained within this letter is based on requirements and guidance available in Australian Accounting Standards, AUASB Standards and AUASB Guidance Statements, and may not necessarily be directly applicable to all circumstances which may arise in relation to the Public Document.

Also, in the event of an alleged deficiency in the Public Document due to an alleged misleading or deceptive statement or omission or otherwise, the relevance or application of the concept of materiality may depend on the law that is alleged to have been breached, the available defences and the nature of the legal proceedings (i.e., criminal or civil). We recommend [Client and/or Issuer] seek legal advice on the extent to which materiality may or may not be relevant to the Public Document due diligence process in this instance.

Requirements and Application and Other Explanatory Material ("guidance") on applying the concept of materiality in the planning and performing of an audit of historical financial information is contained in [The Framework for the Preparation and Presentation of Financial Statements \(as identified in AASB 1048 Interpretation of Standards issued by the Australian Accounting Standards Board\) \("the Framework"\)](#), [Accounting Standard AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors as amended \("AASB 108"\)](#) and [Auditing Standard ASA 320 Materiality in Planning and Performing an Audit \("ASA 320"\)](#), and [Accounting Standard AASB 1031 Materiality \("AASB 1031"\)](#). The AUASB Glossary contains the following definition for 'Materiality':

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~~“In relation to information, that if information is omitted, misstated or not disclosed, that information has the potential to affect the economic decisions of users of the financial report or the discharge of accountability by management or those charged with governance.”~~

The Framework states that:

~~“Information is material if its omission or misstatement could influence the economic decisions of users taken on the basis of the financial statements. Materiality depends on the size of the item or error judged in the particular circumstances of its omission or misstatement. Thus, materiality provides a threshold or cut-off point rather than being a primary qualitative characteristic which information must have if it is to be useful.”~~

Similarly AASB 1083~~4~~ defines ‘~~m~~Materiality’ as~~states that~~:

~~“Omissions or misstatements of items are material if they could, individually or collectively, influence the economic decisions ~~that~~of users ~~make~~taken on the basis of the financial statements. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor.”~~

In relation to applying materiality to pro forma adjustments to historical financial information, the following pronouncements have been considered:

- [ASAE 3420 Assurance Engagements to Report on the Compilation of Pro Forma Historical Financial Information included in a Prospectus or other Document](#)¹;
- [ASAE 3450 Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information](#)~~AGS 1062 Reporting in Connection with Proposed Fundraisings~~²; and
- Section 728 of the Corporations Act 2001 (“the Act”) which determines that an offence has occurred if a misleading or deceptive statement, omission or new circumstance is materially adverse from the point of view of an investor³,

with the provisions of the Act overriding the requirements of applicable AUASB Standards and AUASB Guidance Statements should they conflict or yield a different result⁴.

The requirements and guidance contained in ASA 320 applies to historical financial information. A Due Diligence Committee dealing with prospective financial information may refer to ASA 320 for guidance when establishing materiality thresholds.

There is a relationship between materiality and risk. That is, the higher the risk of a statement being misleading or deceptive, or of an omission, the lower the materiality level. The DDC should take this relationship into account when determining the nature, timing and extent of due diligence procedures. The DDC should make a preliminary assessment of materiality to establish an appropriate quantitative materiality level to plan due diligence procedures.

¹ [ASAE 3420 became effective on 1 July 2013.](#)

² [ASAE 3450 became effective on 1 July 2013, replacing AGS 1062 Reporting in Connection with Proposed Fundraisings and AUS 804 The Audit of Prospective Financial Information](#)As of March 2011 AUASB is revising this Standard.

³ There is no definition of “materiality” or “materially adverse” in the Corporations Act 2001 (Cwlth). Given the absence of a legislative definition of materiality, it is ~~widely generally~~ accepted practice in Australia to consider the accounting definition of materiality in ~~“Accounting Standard AASB 10834: Accounting Policies, Changes in Accounting Estimates and Errors~~Materiality~~”.~~

⁴ [If the Public Document is a Cleansing Notice, it may be desirable to include the following wording since S728 applies only to Disclosure Documents.]

[Section [708AA/1012DAA] of the Act refers to the notion of “material” under subsection 11, which states that the Cleansing Notice to be lodged with the Australian Securities Exchange is defective if the Cleansing Notice is false or misleading in a material particular; or if the notice has omitted from it a matter or thing, the omission of which renders the notice misleading in a material respect. Given the similarities in references to the concept of materiality being applied to a misleading statement/particular or omission in both sections [708AA/1012DAA] and 728, ~~AGS 1062~~[ASAE 3450](#) is considered a useful source of guidance with regard to materiality where an offer is made under section [708AA/1012DAA].]

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Quantitative factors

Quantitative thresholds used as guidance for determining the materiality of the amount of an item or an aggregate of items are, of necessity, drawn at arbitrary levels. When establishing a preliminary quantitative materiality level, consideration needs to be given to:

- the reliability of management information;
- any factors which may indicate deviations from normal activities; and
- qualitative factors.

A percentage is ordinarily applied to a chosen benchmark as a starting point in determining materiality. When identifying an appropriate benchmark, regard is normally given to factors such as the elements of the financial information, items users are likely to focus on, the nature of the entity, its life cycle, industry and economic environment, the size of the entity, ownership and financing and the relative volatility of the benchmark. For uncorrected misstatements that are below the materiality level, an assessment is required of whether the cumulative result of these misstatements could have a material effect.

ASA 320 does not contain requirements that specify how to determine quantitative materiality thresholds, as their determination is a matter of professional judgement. [Australian Accounting Standard AASB 1034 "Materiality" \("AASB 1034"\)](#) The Framework adopts a similar approach to ASA 320 and explains the role of materiality in making judgements in the preparation and presentation of financial reports/statements.

~~AASB 1031 states that in~~ determining materiality both qualitative and quantitative factors need to be considered together and in particular circumstances, "either the nature or the amount of an item or aggregate of items could be the determining factor".

~~AASB 1031 provides a quantitative methodology as guidance for the determination of~~ When determining materiality in relation to financial statements ~~that states it is generally accepted~~ that:

- an amount which is equal to or greater than 10% of the appropriate base amount may be presumed to be material unless there is evidence, or convincing argument, to the contrary; and
- an amount which is equal to or less than 5% of the appropriate base amount may be presumed not to be material unless there is evidence, or convincing argument, to the contrary.

As the above represents an aggregate materiality threshold the due diligence process should seek to identify individual matters or items that could have a material effect in aggregate. To facilitate this, the DDC should consider adopting an appropriate threshold for individual items to be identified and collected to assess whether in aggregate they may be material. General practice is to identify and collect individual items in a range of X% to Y% of the aggregate materiality threshold.

This quantitative methodology is in addition to, but not a substitute for, any qualitative assessment. [When considering financial statements as a whole materiality is typically considered as a percentage of an](#) The appropriate base amount will depend on the particular circumstances ~~and AASB 1031 provides the following guidance in this respect~~ of the business and the potential users of its financial statements. This may be:

- (a) the amount of an item or an aggregate of items relating to the statement of financial position ~~is compared with the more appropriate of:~~
 - (i) the recorded amount of equity; and
 - (ii) the appropriate asset or liability class total; or
- (b) the amount of an item or an aggregate of items relating to the statement of comprehensive income ~~is compared with the more appropriate of the:~~
 - (i) profit or loss and the appropriate income or expense amount for the current reporting period; and

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(ii) average profit or loss and the average of the appropriate income or expense amounts for a number of reporting periods (including the current reporting period); or

(c) the amount of an item or an aggregate of items relating to the statement of cash flows ~~is~~ compared with the more appropriate of the:

(i) net cash provided by or used in the operating, investing, financing or other activities as appropriate, for the current reporting period; and

(ii) average net cash provided by or used in the operating, investing, financing or other activities as appropriate, for a number of reporting periods (including the current reporting period).

Clearly trends in key operating performance measures are as important as the absolute numbers.

AASB 1031 states that materiality "is a matter of professional judgement influenced by the characteristics of the entity and the perceptions as to who are, or are likely to be, the users of the financial report and their information needs. Materiality judgements can only be properly made by those who have the facts". It is within this context that the quantitative threshold guidelines noted above should be used.

Recommendations on quantitative materiality thresholds

Our recommendations on quantitative materiality thresholds to be adopted by the Due Diligence Committee are as follows:

Financial performance and cash flows

The process of due diligence should seek to identify, in respect of the financial performance and operating cash flows, misstatements in excess of \$[] on the [net profit/profit before tax/EBITDA] of [Issuer]. This level represents approximately []% of the [average] [net profit/profit before tax/EBITDA] of [Issuer] for the year[s] [ended/ending] [] 20XX.

To ensure due consideration is given to individual items affecting the income statement and cash flow statement, which may aggregate to \$[], all individual items greater than \$[] should be identified for consideration.

Balance Sheet

The process of due diligence in respect of the balance sheet should seek to identify a misstatement or reclassification of [Issuer]'s balance sheet or net assets of more than \$[]. This level represents approximately X% of [the appropriate base] as at [] 20XX.

To ensure due consideration is given to individual items affecting the balance sheet, which may aggregate to \$[], all individual items greater than \$[] should be identified for consideration. These are items which are expected to affect the balance sheet only.

The quantitative materiality recommendations in this letter are provided as a guide only as recommendations covering every possible scenario, event or matter cannot be made. The overriding consideration in relation to each matter should be whether:

- the omission of the matter from the Public Document; or
- a misleading disclosure in relation to the matter,

would be likely to be considered to render the Public Document deficient in light of the legal disclosure requirements relevant to the Public Document.

Yours faithfully

Member or Firm

APPENDIX 3 (TO BE UPDATED WITH FINAL ED)

Summary of revisions to the previous APES 350 (Issued March 2011)

APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* originally issued in December 2009 and revised in March 2011 has been revised by APESB in January 2015~~March 2014~~. A summary of the revisions is given in the table below.

Table of revisions*

Paragraph affected	How affected
1.1	Added
1.2 – Paragraph 1.1 in existing APES 350 relocated	Amended
2 – Definition of Assurance Engagement	Amended
2 – Definition of Auditing and Assurance Standards	Amended
2 – Definition of AuASB	Amended
2 – Definition of Client	Amended
2 – Definition of Contingent Fee	Amended
2 – Definition of Engagement Team	Amended
2 – Definition of Independence	Amended
2 – Definition of Member	Amended
2 – Definition of Member in Public Practice	Amended
2 – Definition of Professional Activity	Added
2 – Definition of Professional Bodies	Added
2 – Definition of Professional Services	Amended
2 – Definition of Professional Standards	Amended
2 – Definition of Those Charged with Governance	Amended
3.6	Amended
3.12	Amended
Appendix 1	Amended
Appendix 2	Amended

* Refer Technical Update 20XX/X