



APES 350

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**PARTICIPATION BY MEMBERS IN PUBLIC PRACTICE IN
DUE DILIGENCE COMMITTEES IN CONNECTION WITH
A PUBLIC DOCUMENT²**

(Issued XXXXX 2009)

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1. Scope and application

1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional standard APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document*² (the Standard), which is effective for Engagements commencing on or after 1 January 2010. Earlier adoption of this Standard is permitted.

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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^{9,10,18,52} or Reporting Person in connection with a Public Document. The mandatory requirements of this Standard are in **bold type (black lettering)**, preceded or followed by discussion or explanations in normal type (grey lettering). APES 350 should be read in conjunction with other professional duties of Members, and any legal obligations that may apply.

1.3 **Members in Public Practice in Australia shall follow the mandatory requirements of APES 350 when they undertake Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee as a DDC Member, DDC Observer^{9,10,18,52} or Reporting Person in connection with a Public Document.**

1.4 **Members in Public Practice in Australia who provide Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee as a DDC Member, DDC Observer^{9,10,18,52} or Reporting Person in connection with a Public Document, where the transaction to which it relates may be undertaken in whole or in part in another jurisdiction or where the laws and/or regulations of another jurisdiction apply to the Public Document, shall follow this Standard, except to the extent that this would cause a Member to breach the laws and/or regulations of such other jurisdiction.**

1.5 **Members in Public Practice practising outside of Australia shall follow the mandatory requirements of this Standard to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**

1.6 **Members in Public Practice shall be familiar with relevant Professional Standards and guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.**

1.7 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.

1.8 All references to Professional Standards are references to those provisions as amended from time to time.

1.9 In applying the requirements outlined in APES 350, Members in Public Practice should be guided not merely by the words but also by the spirit of this Standard and the Code.

1.10 The Standard should be applied to the extent practicable for 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

1.11 The typical roles of a DDC Member, DDC Observer and Reporting Person are outlined more fully in paragraph 5.1, but to assist readers of APES 350, a summary of each role and how they differ has been provided below.^{9,10,18,52}

- A DDC Member is a member of the Due Diligence Committee and will sign the Due Diligence Committee's Report and will typically prepare a Due Diligence Sign-Off. A DDC member will also typically be a Reporting Person.

- A DDC Observer is not a DDC member. A DDC Observer typically attends one or more Due Diligence Committee meetings by invitation but will not necessarily undertake any due diligence enquiries or have any reporting obligations. In certain circumstances (limited?) where a DDC Observer agrees to undertake due diligence enquiries in relation to Financial Information and/or Other Specific Information the DDC Observer may agree to prepare a Due Diligence Sign-Off, but does not sign the Due Diligence Committee's Report. A DDC Observer who agrees to report to a Due Diligence Committee on their due diligence procedures may also be a Reporting Person.
- A Reporting Person undertakes specific procedures and reports the findings from those procedures in relation to a specific issue or area of enquiry identified by the Client or the Due Diligence Committee as warranting investigation. A Reporting Person may also be a DDC Member or DDC Observer and may agree to prepare a Due Diligence Sign-Off, but does not sign the Due Diligence Committee's Report unless they are a DDC member.

[Technical Note – Options to consider (a) incorporate the detail above to the definition of DDC Member, DDC Observer and Reporting Person or (b) amend paragraphs 5.1(b) and 5.1 (c)]

2. Definitions

For the purpose of this Standard:

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

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

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

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

Audit Engagement means an Assurance Engagement to provide a reasonable⁴ level of assurance that a financial report is free of material misstatement, such as an Engagement in accordance with Auditing and Assurance Standards. This includes a statutory audit which is an audit required by legislation or other regulation, and other audits conducted for the purposes of the *Corporations Act 2001*.

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Auditing and Assurance Guidance means:

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

Auditing and Assurance Standards means:

- In relation to reports for reporting periods commencing on or after 1 July 2006:
 - the AUASB Standards, as defined in the *Foreword to AUASB Pronouncements*, issued by the AUASB, and operative from the date specified in each standard; and

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- o those standards issued by the AuASB which have not yet been revised and reissued (whether as standards or as guidance) by the AUASB, to the extent that they are not inconsistent with the AUASB standards.
- In relation to reports for reporting periods commencing prior to 1 July 2006, the Auditing and Assurance Standards issued by the AuASB on behalf of CPA Australia and the Institute of Chartered Accountants in Australia.

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

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

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

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

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

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

DDC Member means a Member in Public Practice who has agreed to be a member of a Due Diligence Committee.^{9,10,18,52}

DDC Observer means a Member in Public Practice who has been invited and has agreed to attend one or more meetings of the Due Diligence Committee as an observer.^{9,10,18,52}

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 the Client and signed by members of the Due Diligence Committee which sets out the due diligence process and reporting responsibilities.⁶ 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 means in written form⁵ 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 results of procedures on Financial Information or Other Specific Information.^{1F}

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.

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

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

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

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

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

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

Independence means:

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

Materiality Letter means the letter or other appropriate means in written form⁵ 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.

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

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

Other Specific Information means specifically identified information, other than Financial Information, in a Public Document which has been the subject of procedures performed by a Member in Public Practice as specified in the Engagement Document. Examples include specific tax-related information, environmental matters, information technology matters and³ specific metrics or ratios calculated using elements of the Financial Information.

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

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

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

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

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

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

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

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

Under review

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

3. Fundamental responsibilities of Members in Public Practice

3.1 A Member in Public Practice providing Professional Services to a Client which comprise participating in and/or reporting to a Due Diligence Committee 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 its 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 undertake 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 requirements of Section 210 *Professional Appointment* of the Code.

3.5 A Member in Public Practice who is invited by a Client to undertake Professional Services which comprise participating in and/or reporting to its 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 a role on a Due Diligence Committee. Where the Member determines that there is a threat to the Member's ability to comply with the fundamental principles of the Code and/or the circumstances of the proposed Engagement create an unacceptable level of risk for which appropriate safeguards are not available, the Member shall decline the Engagement or the relevant part thereof.¹³

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3.6 A Member in Public Practice who is invited by an Assurance Client to undertake Professional Services which comprise participating in and/or reporting to its Due Diligence Committee as a DDC Member, DDC Observer or Reporting Person in connection with a Public Document shall consider Section 290 Independence – Assurance Engagements of the Code to determine whether the proposed Professional Services create threats to the Member's Independence. Where the Member determines that a reasonable and informed third party having knowledge of all the relevant information, including safeguards applied, would regard the proposed Professional Service as impairing the Member's Independence, the Member shall decline the Engagement or the relevant part thereof.

3.7 In assessing threats to the Independence of a Member in Public Practice, the Member shall take all reasonable steps to ensure that the Member's responsibilities to the Due Diligence Committee do not require the Member to perform management functions, or be seen to be making management decisions.^{11,1}

[Technical Note – Can have Paragraph 3.7 in APES 350 or have an AUST insertion in the new version of APES 110]

3.8¹³ 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) the¹⁴ responsibilities of the role including the circumstances of the proposed transaction to which the Public Document relates, the proposed timetable for the due diligence process and the availability of information (this would usually be outlined in the Due Diligence Planning Memorandum);
- b) 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;¹⁷
- c) whether the Professional Services would require the Member to hold an Australian Financial Services Licence; and
- d) whether the Member is able to comply with any other independence¹⁵ obligations, in addition to the requirements of the Code, applicable to Professional Services provided by the Member.

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.

^{9,10,18,52}

Professional Independence

3.10 When engaged to provide a Professional Service to a Client which requires Independence, a Member in Public Practice shall comply with Independence as defined in this Standard.

3.11 A Member in Public Practice shall consider whether an Engagement, or a specific element of the Engagement, is an Assurance Engagement under the Framework for Assurance Engagements issued by the AUASB.

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3.12 Where the Engagement is an Assurance Engagement, the Member in Public Practice shall comply with Section 290 Independence – Assurance Engagements of the Code.

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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.

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3.14 Where a Member in Public Practice has agreed to provide a Due Diligence Sign-Off in respect of Financial Information or Other Specific Information that ²¹ requires the consideration of matters that are outside the professional expertise of a 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, ²¹ 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.

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Deleted: 3.19. Where a Client has given a Member in Public Practice permission to disclose confidential information to a third party, it is preferable that this permission is in writing. Where oral permission is obtained, a contemporaneous note should be made and kept on file by the Member recording the relevant details of the Client’s approval.

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3.20 Where a Member in Public Practice provides confidential information to a third party in accordance with a legal obligation of disclosure, the Member shall notify the Client and/or the relevant third party as soon as practicable, provided that there is no legal prohibition against such notification.

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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.

[Paragraph 3.16 under review]

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 will typically rely on the advice and opinions of those advisers and paragraphs 3.14 and 3.15 are not intended to require a Member to obtain separate advice on matters for which another adviser is responsible. ²¹]

3.17 In performing a Professional Service, a Member in Public Practice should consider the contents of any guidance in respect of such services issued by the professional accounting bodies and appropriate regulatory authorities.

Confidentiality

3.18 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 that a Member freely disclose confidential information to the Due Diligence Committee. Unless the Member has a legal obligation of disclosure, the Member should not disclose any information relating to a Client’s affairs to a party other than to a DDC Member, DDC Observer or Reporting Person, without the Client’s permission ²³.

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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 Standard²⁵.

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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 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 specific tasks to be undertaken by the Member in connection with the Public Document including the scope of work and identification of the Financial Information and Other Specific Information upon which any Due Diligence Sign-Off is to be provided; and
- d) whether the Member will prepare a Due Diligence Sign-off and the proposed form of such sign off.

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4.3 Where a Due Diligence Planning Memorandum ascribes responsibilities to a Member in Public Practice that extend beyond those agreed in the Engagement Document (either the original Engagement Document, a re-issued amended Engagement Document or an addendum to the original Engagement Document)^{29,30} or which conflict with, or are prohibited by, this Standard, the Member shall:

Deleted: 4.3 A Member in Public Practice shall take all reasonable steps to ensure that any references to the Member's role and scope of work, as referred to in a Public Document and other documents associated with the due diligence process (such as the Due Diligence Planning Memorandum), are not inconsistent with the Engagement Document.

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- a) advise the Client and its Due Diligence Committee of the Member's responsibilities outlined in the Engagement Document and/or this Standard; and
- b) take all reasonable steps to have the Due Diligence Planning Memorandum amended so that it does not ascribe responsibilities to the Member that conflict with, or are prohibited by, this Standard or are beyond those agreed in the Engagement Document.

4.4 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.

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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 where the Member has not agreed to do so in the Engagement Document.²⁷

Materiality guidance

4.6 Where a Member in Public Practice agrees to provide guidance on materiality, which a Client and its Due Diligence Committee will consider for application to the due diligence process in relation to a Public Document, the Member shall comply with applicable Auditing and Assurance Standards.

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4.7 The materiality guidance provided by the Member in Public Practice should indicate that qualitative factors in relation to whether a specific potential or proposed disclosure is material, is a decision of the Client after consideration by its³¹ Due Diligence Committee.

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~~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.~~

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

5.1 A Member in Public Practice may be asked to undertake a variety of roles in relation to a due diligence process in connection with a Public Document, including:

a) being a ~~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) ~~preparing a Due Diligence Sign-Off; and~~
- vi) ~~signing the Due Diligence Committee's report to Those Charged with Governance of the Client;~~

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Deleted: For example, a Member in Public Practice should not advise or report on whether certain proposed disclosures or non-disclosures may be considered misleading or deceptive, by inclusion or omission, or clear concise and effective within the meaning of the relevant sections of the *Corporations Act 2001*. These are matters requiring the consideration of all of the members of the Due Diligence Committee, and are reported on in the Due Diligence Committee's report.

[Under review]

b) ~~being 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.~~^{9,10,18,35,52}

c) ~~being a Reporting Person, reporting to a Client and its Due Diligence Committee on the results of procedures specified in an Engagement Document;~~⁹

d) ~~preparing an assurance report or other form of report, applying relevant Auditing and Assurance Standards or other applicable Professional Standards on specific Financial Information (usually known as an investigating accountant's report) or Other Specific Information for inclusion in the Public Document; or~~

e) ~~undertaking work for, and providing a report to, the Client on Financial Information or Other Specific Information relevant to the Public Document other than as a DDC Member, DDC Observer or~~⁹ Reporting Person.

[Paragraph 5.2 and 5.3 under review]

5.2 A Member in Public Practice who prepares a Due Diligence Sign-Off or other reports, whether as a DDC Member or DDC Observer shall only report on, and in relation to, specific information (that is, Financial Information and/or Other Specific Information) in or relevant to the Public Document that has been the subject of procedures by the Member as agreed in an Engagement Document.^{36,11}

5.3 [A Member in Public Practice who prepares a Due Diligence Sign-Off or other reports, whether as a DDC Member, DDC Observer or a Reporting Person shall not report or advise on matters of a legal nature.]^{37,38}

5.4 ~~While a Member in Public Practice may confirm in a Due Diligence Sign-Off that, based on the work the Member has performed, the Member is not aware of the particular Financial Information or Other Specific Information being misleading or deceptive in the form and context in which they appear in the Public Document. It is not within a Member's expertise to provide an opinion on whether disclosures in the Public Document or the due diligence process followed in relation to the preparation and~~

Verification of the Public Document meet a particular legal standard. 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. Similarly, the Member is not qualified to report on whether the Client has complied with other legal obligations such as continuous disclosure obligations.^{37,41}

5.5 A Member in Public Practice who is a DDC Member shall only sign a report to Those Charged with Governance on:

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- a) information in a Public Document of a financial, accounting or tax nature generally; or
- b) the content of the Public Document as a whole; or
- c) the due diligence process in relation to either of the above,

if the Member in Public Practice is a DDC Member and that report is a report of the Due Diligence Committee which is approved and signed by the other members of the Due Diligence Committee.

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5.6 The matters set out in paragraph 5.5 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.

5.7 A Member in Public Practice shall raise any significant concerns, which come to the attention of the Member with the Client and its Due Diligence Committee, on:

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- a) information in a Public Document of a financial, accounting or tax nature generally; or
- b) the content of the Public Document as a whole; or
- c) the due diligence process in relation to either of the above,⁴²

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5.8 A Member in Public Practice who accepts an Engagement to provide a Due Diligence Sign-Off in relation to Financial Information and/or Other Specific⁴³ shall not prepare the Financial Information and/or Other Specific Information⁴³ or disclosures relating to it with the exception of reports issued by the Member and included in the Public Document.

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5.9 Paragraph 5.8 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 a DDC Member for the purposes of fulfilling the Member's duties as a DDC Member.

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5.10 A Member in Public Practice who agrees to assist a Client or its Due Diligence Committee with its Verification of information in a Public Document (except for reports issued by the Member and included in the Public Document) shall agree with the Client the specific procedures to be undertaken by the Member.^{46,47}

Deleted: A Member in Public Practice may perform certain procedures to assist a Client with its Verification of certain information included in a Public Document, but as the role of the Member is not to prepare information for inclusion in a Public Document (other than reports prepared by the Member such as an investigating accountant's report) it is not appropriate for the Member alone to accept responsibility for the Verification of any information in the Public Document other than reports prepared by the Member.¶

5.11 A Member in Public Practice should not accept primary responsibility for the Verification of information in a Public Document (except for reports issued by the Member as referred to in paragraph 5.10). 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 will be best placed to know whether there is new or additional information that might affect its proper Verification. The Member may provide an agreed upon procedures Engagement to provide Verification assistance to the Client.^{46,47}

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5.12 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 the Member's role as a DDC Observer and the scope of any procedures the Member has agreed to perform in relation to the

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due diligence process in connection with the Public Document, and assess whether the scope of the procedures would enable the Member to provide a Due Diligence Sign-Off.³⁵

5.13 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.

5.14 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*.

5.15 A Member in Public Practice who performs a valuation service in connection with a Public Document shall comply with APES 225 *Valuation Services*.

5.16 A Member in Public Practice who performs a taxation service in connection with a Public Document shall comply with APES 220 *Taxation Services*.

5.17 A Member in Public Practice who performs a Professional Service in connection with a Public Document that includes prospective financial information shall comply with APES 345 *Reporting on Prospective Financial Information Prepared in connection with a Disclosure Document*.

6. Documentation

6.1 A Member in Public Practice shall prepare working papers in accordance with this Standard that appropriately document the work performed, including aspects of the Engagement that have been provided in writing. The documentation prepared by the Member shall:

- a) provide a sufficient and appropriate record of the procedures performed for the Engagement;
- b) identify the source of significant information the Member has used in the conduct of the Engagement; and
- c) demonstrate that the Engagement was carried out in accordance with this Standard and all other Professional Standards applicable to the Engagement, including policies and procedures established in accordance with APES 320 *Quality Control for Firms*, and any applicable ethical, legal and regulatory requirements.

7. Reporting

7.1 Where a Member in Public Practice prepares a Due Diligence Sign-Off, the Due Diligence Sign-Off shall clearly communicate:

- a) the name of the party or parties engaging the Member;
- b) the addressees of the Due Diligence Sign-Off (being the other members of the Due Diligence Committee)⁵³;
- 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^{9,10,18,32}.

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Deleted: 5.12. In certain circumstances due to existing professional relationships, a Member in Public Practice will be precluded from being a member of a Due Diligence Committee. In these circumstances the Client may invite the Member to participate in the due diligence process as an observer. ¶

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5.13 Where the circumstances described in paragraph 5.12 apply and the Member in Public Practice's role evolves to being the same or substantially the same as that of a member of the Due Diligence Committee, the Member shall comply with paragraph 5.10. ¶

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f) 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;

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g) the scope of work performed in relation to the Financial Information and any Other Specific information to which the Due Diligence Sign-Off relates;

h) any limitations on the scope of work performed;

i) 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;

j) the conclusions of the Member in the form of negative statements as to whether having performed the scope of work, it has become aware of anything to cause the Member to believe that^{56,57}:

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- 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 constitute all inquiries which are reasonable in the circumstances so far as the Financial Information and/or Other Specific Information is concerned;

k) the significant assumptions upon which the conclusions of the Member are based;

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l) all qualifications to the conclusions of the Member;

m) any restrictions on the use and distribution of the Due Diligence Sign-Off; and

n) a statement that the Professional Services were conducted and the Due Diligence Sign-Off was prepared in accordance with this Standard and other applicable standards.

A form of Due Diligence Sign-Off which complies with the requirements of this Standard is included in Appendix 1 to this Standard. Members should note that not all aspects of this example form would be relevant to a DDC Observer.

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[Paragraph 7.2 and 7.3 under review]

7.2 [A Member in Public Practice shall only provide a Due Diligence Sign-Off in relation to a Public Document that the Member understands to be in final form for approval by the Client and lodgement with relevant regulatory bodies.]^{58,60}

7.3 [For example, a⁵⁹ Member in Public Practice should not provide a Due Diligence Sign-Off in relation to a draft of a Public Document, including a draft which is to be utilised as a briefing document to seek the support of potential investors for the proposed transaction.]

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7.4 Where a Member in Public Practice is requested to provide written status reports or interim reports in respect of specific work discussed in the Engagement Document⁶¹ (for example by way of a draft report, an oral presentation and/or by way of contributions to issues registers) to a Client and/or its Due Diligence Committee, or requested to provide on an interim basis detailed findings,⁶¹ the Member should include an appropriate disclaimer that states that such reports are provided for “information only” and are not suitable for reliance by the Client, the Due Diligence Committee or any other person.

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7.5 Where a Client or its Due Diligence Committee requests a Member in Public Practice to make available to the Due Diligence Committee a previous report provided by the Member to the Client, or a report on work that is being undertaken by the Member for the Client for a purpose other than the transaction to which a Public Document relates (for example, a report on internal controls of the Client, or on acquisition due diligence procedures undertaken in relation to a business to be acquired by the Client), the Member should consider whether or not⁶² and on what basis such report(s) may be made available to the Due Diligence Committee, having regard to relevant factors, including:

- a) whether the information in the report (or on which it is based) remains current;
- b) whether the Member's approach to materiality in preparing the report was consistent with the materiality guidelines adopted by the Due Diligence Committee;
- c) the relevance of the report to the due diligence enquiries being undertaken by the Due Diligence Committee; and
- d) the level of testing done on source information relied on by the Member in preparing the report;
- e) Whether Client consent has been obtained⁶³

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7.6 Where a Member in Public Practice is requested to provide consent to being named in a Public Document, or to the inclusion of the Member's report in the Public Document,⁶⁴ 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.

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7.7 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 circumstances⁶⁵ relevant to a Public Document of which the Member becomes aware subsequent to the issue of the Public Document.

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7.8 The period to which any obligation referred to in paragraph 7.7 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 requiring Independence or which purports to be independent.

Conformity with International Pronouncements

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

APPENDIX 1

Due Diligence Sign-Off

[insert date]

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

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

Dear Sirs,

[insert subject]

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

This Due Diligence Sign-Off has been prepared in accordance with APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document*.²

1. Introduction

~~We refer to the following financial information relating to the issuer that is disclosed⁶⁹ in the [describe Public Document]:~~

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- (a) ~~[specify relevant historical financial information on which the Member has performed procedures] for [insert period];~~
- (b) ~~[specify relevant pro forma historical information on which the Member has performed procedures];~~
- (c) ~~[specify relevant forecast financial information, if any on which the Member has performed procedures].~~

(collectively **Financial Information**).

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

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

(collectively **Other Specific Information**).

2. Scope of Work

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

- (a) participated as a member of ~~and been a Reporting Person to [attended meetings in an observer capacity of ^{9,10,18,52}~~ the Due Diligence Committee (DDC) that has been established by the [Client/Issuer] 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/Issuer] and the DDC;
- (c) conducted a review, in accordance with [ASRE 2405 or ASAE 3000 as appropriate], of the Financial Information furnished to us by the [Client/Issuer];
- (d) ⁷²[assisted the Issuer in its verification of certain statements in the [describe Public Document] as requested by the Issuer;
- (e) ⁷²[prepared an investigating accountant's report (if applicable) on the Financial Information for inclusion in the [describe Public Document]];
- (f) [prepared a letter on the tax implications of the proposed ~~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].

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[Scope limitations]⁵⁵

[*Note: this is an example scope only, and should be adjusted to reflect the agreed scope of the Professional Services*]

3. Basis for Statements

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

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

In making the Statements we only hold ourselves out as having expertise ~~[as accountants]~~⁷⁵ [in advising on Australian taxation matters (if applicable)]. We disclaim any skills or expertise in any other capacity.

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4. Statements

⁷⁷~~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 presented in [section of the Public Document containing the Financial Information] is misleading or deceptive (including by omission) in the form and context in which it appears; or
- (b) the due diligence enquiries set out in the DDPM adopted by the DDC as it relates to the Financial Information do not constitute all enquiries which are reasonable in the circumstances so far as the Financial Information is concerned.

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

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

5. Assumptions

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

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

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

6. Qualifications

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

- (a) we will have no responsibility to update this Due Diligence Sign-Off for events and circumstances occurring after the date of this Due Diligence Sign-Off, other than as required under the terms of the Engagement Document;
- (b) insofar as consideration of Australian accounting standards [and Australian tax laws] formed part of our scope of work, in making the Statements in section 4 we have had regard to such Australian accounting standards [and Australian tax laws] as are in place as at 9am on the date of this letter;
- (c) we make no statement, and express no opinion, on any matter such as legal matters requiring skills or expertise other than of an [accounting] [and/or] [Australian^{75,76} taxation] nature;
- (d) the Statements in section 4 of this Due Diligence Sign-Off relate only to the Financial Information and do not relate to any additional statements in or concerning the [describe Public Document] that may be made by any person or any other conduct that any person may engage in concerning the [describe Public Document];
- (e) the Statements in section 4 of this Due Diligence Sign-Off are limited to the knowledge of those partners, directors and employees of [insert Firm] who have provided the services to Client referred to in this letter, and we have made no enquiries of any [other] partner, director or employee of [insert Firm], or any of its related entities, who may have knowledge of matters relevant to the [describe Public Document] [through the provision of services to other Clients of [insert Firm], or whose knowledge may not be applied because of any ethical walls arrangements implemented in relation to our Engagement by [Client] on this matter; and
- (f) [We have relied on, and assumed 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].⁸⁶

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7. Recipients of this Due Diligence Sign-Off

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

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

(together referred to as the Recipients).

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

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

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

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

Yours faithfully

Member or Firm

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The Member should also ensure that self-review threats are not created, for which appropriate safeguards cannot be applied, by undertaking Professional Services which are subsequently the subject matter of an Assurance Engagement by the Member. In this context, particular regard should be had to the scope of work involved in the Professional Services which comprise participating in and/or reporting to the Due Diligence Committee.

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obtain and consider the Due Diligence Planning Memorandum or similar document outlining the due diligence process to be implemented;

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whether accepting such a role creates threats to the Member's ability to comply with the fundamental principles of the Code and whether there are appropriate safeguards to address any identified threats; and

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

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of a Due Diligence Committee

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3.8 Where a Member in Public Practice is invited to provide a Professional Service which involves the Member being an observer to a Due Diligence Committee, the Member shall consider whether it is appropriate to accept such a role. Where the Member determines that a reasonable and informed third party having knowledge of all the relevant information, including safeguards applied, would regard the objectives of the proposed Professional Service as an observer to the Due Diligence Committee as being inconsistent with other professional relationships or the Member's ability to comply with the fundamental principles of the Code, the Member shall decline the Engagement.

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3.9 Where a Member in Public Practice is requested to be an observer to a Due Diligence Committee, the Member should carefully consider the Member's obligations and responsibilities and if in any doubt the Member should seek legal advice.

