

## AGENDA PAPER

**Item Number:** 4

**Date of Meeting:** 17 February 2016

**Subject:** APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* (APES 350) Briefing Paper

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**Action Required**       **For Discussion**       **For Noting**       **For Information**

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### Purpose

To provide the Board with the key issues associated with low doc offerings in the Due Diligence Committee environment, and to obtain the Board's views on:

- the development of a separate guidance note or amendments to the existing standard;
- to defer the consideration of the issue of low doc offerings to the next annual review of APES 350;
- the development of a Technical Staff Q & A style document in respect of the application of APES 350; and
- the development of illustrative examples (as an appendix to APES 350) on the application of the standard to various circumstances (i.e. in a similar manner to APES 225 and APES 215).

### Background

During the 2015 annual review of APES 350, an issue was noted in respect of the application of APES 350 for low doc offerings and the circumstances in which it is appropriate to provide an APES 350 Due Diligence Sign-Off.

Subsequently the issue was brought to the Board Members' attention at the August 2015 Board Meeting and the Board requested Technical Staff prepare a briefing paper which considers the issues associated with low doc offerings and whether the development of additional guidance is warranted.

Technical Staff have prepared the briefing paper, in conjunction with feedback received from taskforce members who are subject matter experts in this area of professional practice.

Refer to Agenda Item 4 (a) Technical Staff Briefing Paper.

## **Consideration of Issues**

The Briefing Paper considers the keys issues faced by Members in Public Practice in a low doc environment. These issues include:

- The variety of the nature and extent of disclosures of Financial Information in market announcements;
- Wide expectation gap on a Member's expected role and deliverables on capital raising transactions of this nature;
- Separate Engagement Teams (either from the same Firm or a different Firm) involved in different due diligence stages;
- DDC Observer role;
- Diverse range of transactions and circumstances, leading to a variety of risk profiles of the issuers and their underwriters;
- Tight time frame requirements to complete these types of engagements;
- Availability of recently audited financial information and ability to verify the limited financial information provided by management; and
- The varying levels of senior management and other professional advisers' involvement; and the rigour of due diligence practices, documentation and processes in the low doc environment in comparison to the extensive process associated with Public Documents.

## **Analysis of issues associated with the development of guidance**

Technical Staff have considered a number of factors to ascertain whether additional guidance is required in relation to low doc offerings. A summary of these factors are set out below:

### Rationale for the development of guidance

- A practice aid to assist Members in Public Practice (particularly small and medium sized Firms that may have less experience in low doc offerings) in applying the principles in APES 350;
- Basis for Members in Public Practice to perform preliminary assessments and matters to consider when providing a Due Diligence Sign-Off in connection with low doc offerings;
- Promote some form of comparability and uniformity in practice; and
- May assist Members in Public Practice in exercising professional judgement when providing a Due Diligence Sign-Off in connection with low doc offerings.

### Arguments against the development of guidance

- Difficulty to meet the common information needs of a broad range of primary users who have dissimilar information needs and expectations;
- Difficulty to specify uniform guidance for Members in Public Practice due to the wide variety of low doc engagements;
- Difficulty to provide meaningful guidance other than general principles-based guidance that may cover the diverse scope and scale of low doc offerings (which may be ambiguous in practice);
- Due to the existence of guidance, Members in Public Practice may attempt to apply the guidance in circumstances where it is not suitable; and

- Guidance on application of APES 350 is unnecessary as the current requirements and guidance in APES 350 is sufficient.

### **Evaluation of key issues**

Technical Staff acknowledge that there may be potential benefits in developing additional guidance for Members in Public Practice in respect of when to provide a Due Diligence Sign-Off in connection with low doc offerings. However, it may be best if it is not incorporated within the existing requirements in APES 350 which is focussed on Public Documents.

It is also difficult to envisage that amendments to APES 350 or the development of further principles-based guidance could satisfactorily address all possible circumstances of low doc engagements, due to the varied issues faced by Members in Public Practice and that low doc offerings are unregulated.

Additionally Members should use their professional judgement to the extent practicable in accordance with paragraph 1.10 of APES 350, when providing Professional Services and participating in an Engagement that is not in connection with a Public Document.

One of the driving forces in establishing 'unregulated offerings' was to provide the market with additional flexibility in secondary capital raisings where the offer is a rights issue or placement. Accordingly, paragraph 1.10 of APES 350 currently provides the Member with the flexibility and may be better suited to the low doc environment rather than developing more prescriptive requirements or guidance.

Therefore the development of further principle-based guidance may not provide significant benefits at this stage due to:

- the existence of guidance and requirements in the current APES 350 that provides Members with the flexibility to exercise their professional judgement when considering whether to provide a Due-Diligence Sign-Off and the circumstances in which an APES 350 Due Diligence Sign-off can be provided;
- the vast and varied issues faced by Members in Public Practice in respect of low doc engagements; and
- that low doc offerings are unregulated offerings.

Whilst Technical Staff is of the view that further authoritative guidance is not required at this juncture, a stakeholder believes that it would be useful to have further guidance in respect of this issue. The risk in developing this guidance is that other stakeholders who are involved in the low doc engagement process may interpret it as prescriptive guidance when it is not intended in that manner.

As this relates to the application of the standard in a particular circumstance (i.e. low doc engagements), the potential options for the Board to consider are:

- take no further action at this stage and continue to monitor the issue during the Annual Review process; or
- develop a Technical Staff Q & A (in a similar manner as to how IESBA staff develops Q & A documents) to clarify the circumstances in which an APES 350 Due Diligence Sign-off can be issued; or
- provide some examples (as an appendix to APES 350) that illustrate the application of APES 350 to a range of scenarios including low doc engagements and providing guidance on how to apply APES 350 in these circumstances (i.e. refer to examples developed in APES 225 *Valuation Services* and APES 215 *Forensic Accounting Services*).

## **Recommendations**

It is recommended that the Board:

- note the APES 350 Briefing Paper on low doc offerings; and
- agree that the development of a separate guidance note or amendments to the existing standard is currently not required in relation to low doc offerings.

Technical Staff request that the Board provide the Board's views on:

- to reconsider the issue of low doc offerings in the next annual review of APES 350; or
- the development of a Technical Staff Q & A style document in respect of the application of APES 350; or
- the inclusion of illustrative examples (as an appendix to APES 350) on the application of the standard to various circumstances (i.e. in a similar manner to APES 225 and APES 215).

Once the Board views on the way forward are known, Technical Staff will re-engage with the APES 350 taskforce to discuss the way forward.

## **Material Presented**

Agenda Item 4 (a) APES 350 Technical Staff Briefing Paper on low doc offerings.

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