APESB

Accounting Professional & Ethical Standards Board

Annual Review of APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document*

Prepared by APESB Technical Staff

16 January 2014

1. Executive Summary

1.1 Background

Accounting Professional and Ethical Standards Board (APESB) issued APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* (the Standard) in December 2009, and the revised Standard in March 2011 with an effective date of 1 May 2011.

1.2 Reason for this report

In accordance with APESB's constitution, a review needs to be performed on an annual basis after a new standard is effective to identify any issues reported by stakeholders. This report presents a review of the issues reported to the APESB or identified by an internal technical review and the proposed recommendations to address the identified issues.

1.3 Issues identified

Carry forward issues from prior years

Concerns regarding the application of APES 350 to specific circumstances

An external stakeholder continues to raise concerns regarding the application of APES 350 to following specific circumstances;

a) the circumstances in which a Firm can provide an APES 350 sign-off in respect of a low doc offer;

b) the position taken by Members in Public Practice/Firms to act as a DDC Observer when the Client is subject to US SEC auditor independence requirements or in low doc offers; and

c) Members' obligations with regards to expressing opinions whether the disclosures made by the Client complies with the Corporations Act.

New issues

Editorial matters related to the use of specific terms in APES 350

A stakeholder has reported concerns regarding the different use of specific terms in APES 350 in practice as follows:

d) 'Independent Assurance Report' versus 'Investigating Accountant's Report'; and

e) 'Limited Assurance Engagement' versus 'Review Engagement'.

Editorial matters arising from updates to AASB/AUASB Standards

Two issues have been identified as a result of updates to AASB/AUASB Standards:

f) APES 350 refers to materiality a number of times in the body of the Standard and has explicit detailed references and extracts from AASB 1031 *Materiality* in the Materiality Letter that is included as Appendix 2. AASB is proposing to withdraw AASB 1031.

g) APES 350 refers to AGS 1062 *Reporting in Connection with Proposed Fundraisings* which has been superseded by ASAE 3420 *Assurance Engagements to Report on the Compilation of Pro Forma Historical Financial Information included in a Prospectus or other Document* and ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information.*

Defined terms

The Technical staff review identified that the definitions section in APES 350 needs to be revised as a result of the IESBA's revision of the International Code and APESB's subsequent amendments to APES 110 *Code of Ethics for Professional Accountants* (the Code).

1.4 Summary of Recommendations

Carry forward issues from prior years

Concerns regarding the application of APES 350 to specific circumstances

The three issues that continue to be raised by the stakeholder have been addressed by the APESB in the Basis for Conclusions for APES 350 in 2009 and the prior Annual Reviews performed during 2010 - 2012. These issues were also raised and discussed at the APESB/AUASB Roundtables held in Melbourne and Sydney in November 2013.

Technical Staff recommend that the Board consider developing a joint publication or document with the AUASB (Subject to AUASB's consent) which is designed to assist Clients and other users of APES 350 and ASAE 3420/3450 understand the requirements for Members in Public Practice in respect of Public Documents. This publication or document should be targeted at Company Directors, senior management and legal community who are involved in corporate fundraisings.

Editorial matters related to the use of specific terms in APES 350

Editorial amendments required to APES 350 to be considered at the next revision of APES 350.

Editorial matters arising from updates to AASB/AUASB Standards

Editorial amendments required to APES 350 due to the changes to the AASB/AUASB Standards to be processed at the next revision of APES 350.

Defined terms

It is recommended that the defined terms *"Assurance Engagement",* "*Client*", *"Contingent Fee", "Engagement Team", "Independence", "Member", "Member in Public Practice",* "*Professional Services*" and "*Those Charged with Governance*" be revised and the defined terms "*Professional Activity"* and "*Professional Bodies*" be added to the Standard for consistency with the Code and other APESB pronouncements. This is to be done at the next revision of APES 350.

Update from the 29 January 2014 Board meeting

The Board noted that the issues raised in (a) – (c) have been previously considered by the Board, either when APES 350 was originally developed in 2009 or in subsequent annual reviews, and that stakeholders have not provided new information to change the Board's views in respect of these matters. Accordingly, the Board determined not to take any further action.

The Board considered the issues raised in (d) – (e) and determined that these terms are generally understood to be similar in the accounting profession. Accordingly, the Board determined not to make any editorial amendments to APES 350 in respect of these issues.

The Board considered editorial matters arising from the updates to AASB/AUASB Standards in (f) – (g) and determined to make consequential amendments to APES 350 at the next revision of the standard.

2. Review of Issues

a) the circumstances in which a Firm can provide an APES 350 sign-off in respect of a low doc offer

An external stakeholder continues to raise concerns that not all accounting firms engaged in low doc offers are prepared to provide an APES 350 sign-off. The stakeholder suggested that only two of the firms which are active in the low doc market were providing such sign-offs and requested APESB to develop further guidance on "the timing, scope of work and circumstances that would generally be appropriate for an APES 350 sign-off in a low doc context".

Taskforce Comments

The fact that there are different conclusions reached by Members in Public Practice when determining whether an APES 350 sign-off can be provided in a low doc scenario is entirely appropriate and reflects the fact that the decision must, by necessity, be made on a case-by-case basis following a consideration

of both the specific circumstances of each low doc scenario and the risk appetite of the Member in Public Practice. Paragraphs 7.1 and 7.2 of APES 350 already provide appropriate guidance to Members in Public Practice to make an assessment in this regard.

It should be emphasised that an APES 350 sign-off has two limbs: one dealing with the financial information in question not being misleading or deceptive; and one dealing with whether the due diligence enquiries in relation to that financial information constitute all enquiries which are reasonable in the circumstances. There are only limited circumstances in which a Member in Public Practice may be able to perform sufficient procedures necessary to enable them to provide the first limb, but it will only be in very rare circumstances that a Member in Public Practice would be comfortable to provide the second limb. This is due to the fact that low-doc fundraisings are generally being undertaken by a sizable listed company in a timeframe that does not permit the performance of due diligence procedures consistent with other capital raising scenarios and there is no guidance available as to what would constitute a reasonable level of due diligence enquiries in a low-doc scenario.

The taskforce was of the view that the decision to provide an APES 350 sign-off in a low doc scenario must be made on a case-by-case basis following a consideration of both the specific circumstances of each low doc scenario and the risk appetite of the Member in Public Practice. APES 350 does not specifically prohibit the provision of an APES 350 sign-off for low doc offers and actually permits it as long as the Member is able to show that they have performed sufficient work to arrive at the conclusion.

The taskforce was of the view that no amendments are required to APES 350 and that it may be advisable to monitor the situation until a more substantial market need for guidance on low-doc transactions is identified.

Update from APESB/AUASB Round Table for APES 350 & ASAE 3450 – Melbourne 22nd November 2013, Sydney 25th November 2013

The low doc issue was discussed with stakeholders and the following matters were noted:

- Specifically with low doc placements, Members are often brought in late in the process, increasing the risk that the Member will be unable to provide an appropriate sign-off due to restrictions on the work that can be performed in a limited time frame;
- Circumstances in low doc placements vary considerably from Engagement to Engagement and therefore it is challenging to provide any definitive guidance on the matter;
- The application of APES 350 in the low doc context can be restricted by timeframe, and access to and availability of information. This is often exacerbated as the number of parties involved increases;
- Issues arise when Engagements occur in a “stop, start” manner where the Member’s work is concentrated into short pockets of time;

- Risks arise during an Engagement that were not present or identified during the planning stage that may impact on the ability of the Member to provide a sign-off within the planned timeframe as additional procedures may be required to be performed; and
- Considering sufficient access to information, time and with the appropriate expertise, Firms have been providing APES 350 sign-offs in respect of low doc offers.

Way forward

The Board note the views expressed by the stakeholders at the APESB/AUASB roundtables. The majority of the Firms were of the view that there is sufficient guidance in APES 350 to assist Members to make a determination as well as the Firms noted that they have their own risk management processes to comply with in this regard. The preference of the legal community appears to be to have some guidance. However, due to the wide ranging circumstances in which low doc placements occur, it may be difficult and challenging to draft these guidelines.

b) the position taken by Members in Public Practice/Firms to act as a DDC Observer when the Client is subject to US Auditor Independence requirements or in low doc offers

An external stakeholder continues to raise concerns that there is uncertainty in the market regarding whether accountants acting as observers on a Due Diligence Committee (DDC) were able to provide a report in conjunction with other DDC participants. The stakeholder suggested that the Standard could be enhanced through the addition of a defined term 'Observer's Report' and relevant amendments to refer to the 'Observer's Report' in the Standard as a deliverable.

Taskforce Comments

The taskforce considered the stakeholder's concerns in relation to the capability of DDC Observers to issue a DDC report. The taskforce is of the view that it is important to acknowledge the Member's capacity to issue a DDC report only when they are acting as a DDC Member. A non-member (observer) should therefore not sign such a report, and to do so would contravene paragraphs 5.7 and 5.8 of APES 350. The issuance of a stand-alone report in the same form would also be inappropriate and would result in the same contravention of APES 350.

The taskforce further agreed that observer status tends only to apply in low-doc scenarios, or in scenarios in which the Client is a US SEC registrant (or an affiliate thereof) and the Member is also the external auditor. The taskforce agreed that the current definition of DDC Observer is accurate and sufficient. A DDC Observer is allowed to provide APES 350 Due Diligence Sign-Off but they are not able to sign the DDC's report. As such, no amendments are required to

define ‘Observer’s Report’ or to introduce ‘Observer’s Report’ as a delivered work product in paragraph 5.1 of APES 350.

Update from APESB/AUASB Round Table for APES 350 & ASAE 3450 – Melbourne 22nd November 2013, Sydney 25th November 2013

The DDC Observer issue was discussed with stakeholders and the following matters were noted:

- US SEC Auditor Independence rules prohibit Firms from providing a collective DDC sign-off when they are the auditor. Therefore these Firms are only able to provide a standalone APES 350 DDC Observer sign-off alongside an Investigating Accountant report. Some Australian legal firms perceive not having the accountant’s sign-off as a DDC Member as a gap which leaves the DDC’s sign-off without sufficient overall accounting expertise;
- The Firms are of the view that there is no gap since the standalone DDC Observer sign-off and Investigating Accountant’s report provide sufficient comfort in respect of the financial information; and
- Information asymmetry between the Client and the Member can result in a limitation of the degree of assurance that can be provided on the financial disclosures.

Way forward

The Board note the views expressed by the stakeholders at the APESB/AUASB roundtables.

c) Members’ obligations with regards to expressing opinions whether the disclosures made by the Client complies with the Corporations Act

An external stakeholder continues to raise concerns that Members must have regard to the relevant provisions of the Corporations Act when discharging their responsibilities to their clients in a fundraising context and they must be capable of explaining their views about whether the compiled and selected financial information meets the required disclosure requirements of the Act. The stakeholder refers specifically to ASAE 3450 (which is operative from 1 July 2013) and its requirement for practitioners to obtain an understanding of any applicable law or regulation that may impact the financial information.

Meeting with AUASB Technical Staff

The following analysis is based on discussions with the AUASB Technical Staff:

- There are no inconsistencies between APES 350 and ASAE 3420/3450 since the latter were developed in consideration of the former and there were common taskforce members involved in the development of all three pronouncements;

- ASAEs do not carry a legal obligation since only ASAs are legislative instruments (refer to s. 307A of Corporations Act 2001). As per ASAE 3450 the Member only has to have an understanding of the applicable law and regulation that may impact on the financial information rather than providing an opinion on it (refer paragraph 38(e) & 39 of ASAE 3450);
- The Corporations Act is silent on presentation and disclosure requirements in this matter and similarly ASAE 3450 does not specify requirements over presentation and disclosure;
- ASAE 3450 excludes from scope anything that is non-assurance and specifically excludes APES 350 and matters related to Due Diligence Committees (refer paragraph 4, A1 & A2 of ASAE 3450); and
- ASAE 3450 does not mandate presentation and disclosure rather the basis of preparation which is restricted to include only recognition and measurement matters (refer paragraph 15(dd) of ASAE 3450).

Taskforce Comments

The taskforce considered the stakeholder's comments with regards to whether an obligation exists for Members to express an opinion whether the document satisfies the relevant disclosure requirements of the Corporations Act. The taskforce agreed that paragraph 5.5 of APES 350 does not preclude Members from 'obtaining an understanding' of the relevant law and regulation rather it precludes Members from 'providing an opinion' as to whether the financial information is in compliance with the law. The taskforce also noted that the requirements of the ASAEs do not enforce legal obligations to the Members as only ASAs are legislative instruments. ASAE 3450 has a different scope and context than APES 350 as such ASAE excludes non-assurance engagements and specifically excludes APES 350 and matters related to Due Diligence Committees.

Update from APESB/AUASB Round Table for APES 350 & ASAE 3450 – Melbourne 22nd November 2013, Sydney 25th November 2013

The accountant's expertise and obligations issue was discussed with stakeholders and the following matters were noted:

- The Member can only provide a collective sign-off when this is conducted concurrently with the other DDC members who have the necessary expertise and knowledge whether all the appropriate disclosures have been made. The Member is precluded from providing a sign-off on their own in respect of matters for which they do not have the requisite expertise;
- ASAE 3450 does not mandate that a Member provides a statement as to whether disclosures are in compliance with the requirements of the Corporations Act.

Way forward

The Board note the views expressed by the stakeholders at the APESB/AUASB roundtables.

d) 'Independent Assurance Report' versus 'Investigating Accountant's Report'

e) 'Limited Assurance Engagement' versus 'Review Engagement'

A taskforce member raised these two proposed editorial amendments suggesting that replacing the existing terms 'Investigating Accountant's Report' and 'Review Engagement' with 'Independent Assurance Report' and 'Limited Assurance Engagement' would better reflect current practice. The taskforce member further suggested that the use of the existing terms potentially creates inconsistencies between those used in APES 350 and ASAE 3450 with respect to whether a Member is regarded as an independent or investigating accountant. The taskforce member suggested streamlining the terminologies used in APES 350 and ASAE 3450 to enhance readability and the ability to understand the report and thereby minimise users' confusion.

The taskforce agreed that this can be considered with the next revision of APES 350.

f) APES 350 references to materiality and extracts from AASB 1031 *Materiality* in the Materiality Letter

g) APES 350 refers to AGS 1062 which has been superseded by ASAE 3420 and ASAE 3450

The Standard will require revisions to reflect changes to AASB/AUASB Standards. There are a significant number of references and matters directly quoted from AASB 1031 which will require assessment for their continued relevance in relation to APES 350.

The taskforce agreed that this can be considered with the next revision of APES 350.

Way forward

Editorial amendments required to APES 350 due to the changes to the AASB/AUASB Standards to be processed at the next revision of APES 350.

Impacted Stakeholders

Members in Public Practice, Firms and Professional Bodies.

Recommendation

In respect of the three key issues Technical Staff recommend that the Board consider developing a joint publication or document with the AUASB (Subject to AUASB's consent) which is designed to assist Clients and other users of APES 350 and ASAE 3420/3450 understand the requirements for Members in conjunction with a Public Document and the factors that impact on the various sign-offs that can be provided by Members. This publication or document should be targeted at Company Directors, senior management and legal community who are involved in fundraising. The guidance should communicate the accountant's role, responsibilities and signoffs that can be provided depending on the circumstances of the Engagement.

The editorial matters in respect of the terminology and references to the AASB/AUASB standards can be addressed in the next revision of APES 350.

Update from the 29 January 2014 Board meeting

The Board noted that the issues raised in (a) – (c) have been previously considered by the Board, either when APES 350 was originally developed in 2009 or in subsequent annual reviews, and that stakeholders have not provided new information to change the Board's views in respect of these matters. Accordingly, the Board determined not to take any further action.

The Board considered the issues raised in (d) – (e) and determined that these terms are generally understood to be similar in the accounting profession. Accordingly, the Board determined not to make any editorial amendments to APES 350 in respect of these issues.

The Board considered editorial matters arising from the updates to AASB/AUASB Standards in (f) – (g) and determined to make consequential amendments to APES 350 at the next revision of the standard.

Defined terms

Issue

The technical review identified that the definitions section of APES 350 needs to be revised.

Definitions to be revised

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.

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

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~~ services performed by the Firm. A fee that is established by a court or other public authority is not a Contingent Fee.

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

Independence ~~*means*~~ is:

(a) Independence of mind – the state of mind that permits the ~~provision~~ expression of ~~an~~ a ~~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~~ Audit or Assurance Team's, integrity, objectivity or professional scepticism ~~had~~ has been compromised.

Member means a member of a professional 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 professional body.

Professional Services means ~~services requiring accountancy or related skills performed by a Member including accounting, auditing, taxation, management consulting and financial management services.~~ Professional Activities performed for Clients.

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.
Definitions to be added

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.

Subsequent to the revision of the definitions section, consequential editorial amendments may also be required to APES 350.

Impacted Stakeholders

Members in Public Practice, Firms and Professional Bodies

Recommendation

The defined terms in APES 350 should be revised in a manner consistent with the Code and other APESB standards. It is recommended that these changes and any other consequential amendments be processed at the next revision of APES 350.

Update from the 29 January 2014 Board meeting

The Board considered editorial matters and determined to make consequential amendments to APES 350 at the next revision of the standard.