

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

[Supersedes APES 350 Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document revised in August 2015]

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1. Scope and application

1.1 The objectives of APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* are to specify a **Member in Public Practice's** professional and ethical responsibilities when providing **Professional Services** to a **Client** which consist of 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**, in respect of:

- fundamental responsibilities;
- the requirements to take reasonable steps to ensure that the **Members'** responsibilities specified in the **Due Diligence Planning Memorandum** are consistent with those set out in the **Engagement Document**; and
- the circumstances in which a **Due Diligence Sign-off**, a **Materiality Letter** or a **New Circumstances Statement** can be issued, the matters to be included therein and to provide guidance on the form of the reports.

A **Member in Public Practice** may provide **Professional Services** to a **Client** in connection with a **Due Diligence Committee** in the role of a:

- **DDC Member** and **Reporting Person**;
- **DDC Observer**;
- **DDC Observer** and **Reporting Person**; or
- **Reporting Person**.

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

1.2 Accounting Professional & Ethical Standards Board Limited (APESB) has revised professional standard APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document (the Standard)*, which is effective for **Engagements** commencing on or after 1 January 2020 and supersedes APES 350 issued in August 2015. Earlier adoption of this Standard is permitted.

1.3 APES 350 sets the standards for **Members in Public Practice** in the provision of quality and ethical **Professional Services** to a **Client** which comprise participating in and/or reporting to a **Due Diligence Committee**, as a **DDC Member**, **DDC Observer** or **Reporting Person** in connection with a **Public Document**. The mandatory requirements of this Standard are in **bold-type**, preceded or followed by discussion or explanations in normal type. APES 350 should be read in conjunction with other professional duties of **Members**, and any legal obligations that may apply.

1.4 **Members in Public Practice in Australia shall follow the mandatory requirements of APES 350 when they provide Professional Services to a Client, which comprise participating in and/or reporting to a Due Diligence Committee as a DDC Member, DDC Observer or Reporting Person in connection with a Public Document issued in Australia. Where the transaction to which the Public Document relates is to be undertaken in whole or in part in a jurisdiction other than Australia or where the laws and/or regulations of a jurisdiction other than Australia apply to the Public Document, Members shall follow this Standard, except to the extent that this would cause a Member to breach the laws and/or regulations of such other jurisdiction.**

1.5 **Members in Public Practice practising outside of Australia shall follow the mandatory requirements of APES 350 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**

1.6 The Standard should be applied to the extent practicable where a **Member in Public Practice** provides **Professional Services** to a **Client** which comprise participating in and/or reporting to a **Due Diligence Committee** as a **DDC Member**, **DDC Observer** or **Reporting Person** in connection with an **Engagement** which is not in connection with a **Public Document**.

- 1.7 A **Low Doc Offering** may be one such circumstance as described in paragraph 1.6. **Members in Public Practice** should refer to APES GN 31 *Professional and Ethical Considerations relating to Low Doc Offering Sign-offs* for guidance in relation to **Low Doc Offering Engagements**.
- 1.8 **Members in Public Practice shall comply with other applicable Professional Standards and be familiar with relevant guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.9 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.10 All references to **Professional Standards**, guidance notes and legislation are references to those provisions as amended from time to time.
- 1.11 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**.
- 1.12 In this Standard, unless otherwise specified, words in the singular include the plural and vice versa, words of one gender include another gender, and words referring to persons include corporations or organisations, whether incorporated or not.

2. Definitions

Defined terms are shown in the body of the Standard in title case.

For the purpose of this Standard:

Acceptable Level means a level at which a **Member in Public Practice** using the reasonable and informed third party test would likely conclude that the **Member** complies with the fundamental principles.

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

- (a) In a direct reporting **Engagement**, is responsible for the subject matter; or
- (b) In an assertion-based **Engagement**, is responsible for the **Subject Matter Information** and might be responsible for the subject matter.

Assurance Engagement means an **Engagement** in which a **Member in Public Practice** aims to obtain sufficient appropriate evidence in order to express a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the **Subject Matter Information** (that is, the outcome of the measurement or evaluation of an underlying subject matter against criteria).

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

(For guidance on Assurance Engagements, see the *Framework for Assurance Engagements* issued by the **AUASB**. The *Framework for Assurance Engagements* describes the elements and objectives of an Assurance Engagement and identifies **Engagements** to which *Australian Auditing Standards* (ASAs), *Standards on Review Engagements* (ASREs) and *Standards on Assurance Engagements* (ASAEs) apply.)

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*.

Audit Client means an entity in respect of which a **Firm** conducts an **Audit Engagement**. When the **Client** is a **Listed Entity**, Audit Client will always include its related entities. When the Audit Client is not a **Listed Entity**, Audit Client includes those related entities over which the **Client** has direct or indirect control.

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

Auditing and Assurance Standards means the **AUASB** standards, as described in *ASA 100 Preamble to AUASB Standards*, *ASA 101 Preamble to Australian Auditing Standards* and the *Foreword to AUASB Pronouncements*, issued by the **AUASB**, and operative from the date specified in each standard.

Australian Financial Services Licence (AFSL) 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 Activities** 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 (including Independence Standards)*.

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

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

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

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

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 coordinate and assist with the due diligence process to be undertaken by the **Client** in relation to a **Public Document**.

Due Diligence Planning Memorandum means the document prepared on behalf of a **Client** and signed by members of its **Due Diligence Committee** which sets out the due diligence process and reporting responsibilities. This document also specifies the respective individual and collective responsibilities of the participants in the due diligence process, including those of the members of the **Due Diligence Committee**.

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

Engagement means an agreement, whether written or otherwise, between a **Member in Public Practice** and a **Client** relating to the provision of **Professional Services** by a **Member in Public Practice**. However, consultations with a prospective **Client** prior to such agreement are not part of an Engagement.

Engagement Document means the document (i.e. letter, agreement or any other appropriate means) in which the **Terms of Engagement** are specified in **Writing**.

Engagement Team means all **Partners** and staff performing the **Engagement**, and any individuals engaged by the **Firm** or a **Network Firm** who perform procedures on the **Engagement**. This excludes **External Experts** engaged by the **Firm** or by a **Network Firm**.

External Expert means an individual (who is not a **Partner** or a member of the professional staff, including temporary staff, of the **Firm** or a **Network Firm**) or organisation possessing skills, knowledge and experience in a field other than accounting or auditing, whose work in that field is used to assist the **Member** in obtaining sufficient appropriate evidence.

Financial Information means historical, pro forma or prospective financial information or some combination of these as 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 comprises:

- (a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional scepticism.
- (b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude that a **Firm's**, or an **Engagement Team** member's integrity, objectivity or professional scepticism has been compromised.

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

Low Doc Offering means a security offering by a **Listed Entity** where the securities can be offered for sale or issue without a **Public Document**.¹ The capital raising may be a stand-alone transaction, in conjunction with an acquisition or for refinancing.

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

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

Member means a member of a **Professional Body** that has adopted this Standard as applicable to their membership, as defined by that **Professional Body**.

¹ As per sections 708AA and 1012DAA of the *Corporations Act 2001*.

Member in Public Practice means a [Member](#), irrespective of functional classification (for example, 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](#).

Network means a larger structure:

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

Network Firm means a [Firm](#) or entity that belongs to a [Network](#).

New Circumstances Statement means the letter or other document issued by a [Member in Public Practice](#) who is a [DDC Observer](#), subsequent to the issue of a [Due Diligence Sign-off](#), which states whether, based on procedures conducted by the [DDC Observer](#), anything has come to the [DDC Observer's](#) attention that causes the [DDC Observer](#) to believe that the [Due Diligence Sign-off](#) requires amendment.

Other Specific Information means specifically identified information, other than [Financial Information](#), in a [Public Document](#) which has been the subject of procedures performed by a [Member in Public Practice](#) as specified in the [Engagement Document](#). Examples include specific tax-related information, environmental matters and information technology matters.

Partner means any individual with authority to bind the [Firm](#) with respect to the performance of an [Engagement](#).

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

Professional Activity means an activity requiring accountancy or related skills undertaken by a [Member](#), including accounting, auditing, tax, management consulting, and financial management.

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

Professional Services means [Professional Activities](#) performed for [Clients](#).

Professional Standards means all standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable [Professional Body](#).

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

Reporting Person means a [Member in Public Practice](#) who is engaged by a [Client](#) to provide [Professional Services](#) and report to the [Client](#) and its [Due Diligence Committee](#) on a specific issue or area of enquiry, which has been identified by the [Client](#) or the [Due Diligence Committee](#). A Reporting Person may also be a [DDC Member](#) or [DDC Observer](#).

Subject Matter Information means the outcome of the evaluation or measurement of a subject matter. It is the Subject Matter Information about which the [Member in Public Practice](#) gathers sufficient appropriate evidence to provide a reasonable basis for expressing a conclusion in the [Member's](#) report.

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 means the person(s) 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 might include management personnel, for example, executive members of a governance board of a private or public sector entity, or an owner-manager.

Writing means a mode of representing or reproducing words in a visible form and includes words in an electronic format capable of being converted to printed text.

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 Part 1 *Complying with the Code, Fundamental Principles and Conceptual Framework* of the **Code** and relevant laws and regulations.

3.2 A **Member in Public Practice** shall comply with Section 310 *Conflicts of Interest* of the **Code**.

Public interest

3.3 In accordance with Section 100 *Complying with the Code* of the **Code**, a **Member in Public Practice** shall observe and comply with the **Member's** public interest obligations when the **Member** provides **Professional Services** to a **Client** which comprise participating in and/or reporting to a **Due Diligence Committee** as a **DDC Member**, **DDC Observer** or **Reporting Person** in connection with a **Public Document**.

Professional appointments

3.4 A **Member in Public Practice** who is invited by a **Client** or potential **Client** to provide **Professional Services** which comprise participating in and/or reporting to a **Due Diligence Committee** as a **DDC Member**, **DDC Observer** or **Reporting Person** in connection with a **Public Document** shall comply with the requirements of Section 320 *Professional Appointments* of the **Code**.

3.5 A **Member in Public Practice** who is invited by a **Client** or potential **Client** to provide **Professional Services** which comprise participating in and/or reporting to a **Due Diligence Committee** as a **DDC Member**, **DDC Observer** or **Reporting Person** in connection with a **Public Document** shall determine whether there are threats to the **Member's** ability to comply with the fundamental principles of the **Code** prior to accepting the **Engagement**. Where the **Member** determines that there is a threat to the **Member's** ability to comply with the fundamental principles of the **Code**, the **Member** shall address the threat by eliminating the threat or reducing it to an **Acceptable Level** by:

- (a) eliminating the circumstances, including interests or relationships, that are creating the threats;
- (b) applying safeguards, where available and capable of being applied, to reduce the threats to an **Acceptable Level**; or
- (c) declining or ending the specific **Professional Activity**.

- 3.6 A **Member in Public Practice** who is invited by an **Assurance Client** to provide **Professional Services** which comprise participating in and/or reporting to a **Due Diligence Committee** as a **DDC Member**, **DDC Observer** or **Reporting Person** in connection with a **Public Document** shall consider Part 4A *Independence for Audit and Review Engagements* or Part 4B *Independence for Assurance Engagements Other than Audit or Review Engagements* of the **Code**, as applicable, to determine whether the proposed **Professional Services** create threats to the **Member's Independence**. Where the **Member** determines that there is a threat to the **Member's Independence**, the **Member** shall address the threat by eliminating the threat or reducing it to an **Acceptable Level**. The **Member** shall do so by:
- (a) eliminating the circumstances, including interests or relationships, that are creating the threats;
 - (b) applying safeguards, where available and capable of being applied, to reduce the threats to an **Acceptable Level**; or
 - (c) declining or ending the specific **Professional Activity**.
- 3.7 A **Member in Public Practice** who is invited by an **Audit Client** to provide **Professional Services** which comprise participating in and/or reporting to a **Due Diligence Committee** as a **DDC Member**, **DDC Observer** or **Reporting Person** in connection with a **Public Document** shall comply with the applicable independence requirements of the *Corporations Act 2001*.
- 3.8 When considering the appropriateness of accepting a role as a **DDC Member**, **DDC Observer** or **Reporting Person**, a **Member in Public Practice** should consider matters such as:
- (a) the responsibilities of the role;
 - (b) the circumstances and context of the role, including the proposed transaction to which the **Public Document** relates, the proposed timetable for the due diligence process, the availability of information and any limitations on the scope of the **Professional Services** to be provided. (This would usually be outlined in the **Due Diligence Planning Memorandum**);
 - (c) relevant experience and expertise of the other members of the **Due Diligence Committee** and other participants in the due diligence process, as membership of the **Due Diligence Committee** will generally create a relationship of cross reliance;
 - (d) whether providing the **Professional Services** would require the **Member** to hold an **Australian Financial Services Licence**²; and
 - (e) where the **Member's Firm** or a **Network Firm** is the statutory auditor of a **Listed Entity** or disclosing entity in Australia or a foreign jurisdiction, whether independence obligations, in addition to the requirements of the **Code**, preclude the **Member** from accepting a role as a **DDC Member**, **DDC Observer** or **Reporting Person**, or limit the scope of the role the **Member** may perform.
- 3.9 If a **Member in Public Practice** is not certain about the legal implications of performing the role of a **DDC Member**, **DDC Observer** or **Reporting Person**, the **Member** should consider seeking legal advice.

2 Guidance in relation to the circumstances when a **Member in Public Practice** is required to hold an **Australian Financial Services Licence** is set out in ASIC Regulatory Guide 36 *Licensing: Financial product advice and dealing*.

Professional Independence

- 3.10 When a **Member in Public Practice** is engaged to provide a **Professional Service** to a **Client** which requires **Independence**, the **Member** shall comply with **Independence** as defined in this Standard.
- 3.11 A **Member in Public Practice** shall consider whether an **Engagement**, or a specific element of an **Engagement**, is an **Assurance Engagement** under the *Framework for Assurance Engagements* issued by the **AUASB**.
- 3.12 When an **Engagement** or a specific element of an **Engagement** is an **Assurance Engagement**, the **Member in Public Practice** shall comply with Part 4A *Independence for Audit and Review Engagements* or Part 4B *Independence for Assurance Engagements Other than Audit or Review Engagements* of the **Code**, as applicable.

Professional competence and due care

- 3.13 A **Member in Public Practice** performing **Professional Services** shall maintain professional competence and take due care in the performance of the **Member's** work in accordance with Subsection 113 *Professional Competence and Due Care* of the **Code**.
- 3.14 Where a **Member in Public Practice** has agreed to provide a **Due Diligence Sign-off** in respect of **Financial Information** and/or **Other Specific Information** that requires the consideration of matters that are outside the professional expertise of the **Member**, the **Member** shall seek expert assistance or advice from a suitably qualified third party or decline the **Engagement**. Where the **Member** relies upon the advice of a third party in connection with a **Due Diligence Sign-off** or other reports, the **Member** shall disclose in the **Member's Due Diligence Sign-off** or other reports the name and qualifications of the third party and the subject matter on which the third party advice has been obtained.
- 3.15 When planning to use the work of a suitably qualified third party, a **Member in Public Practice** shall assess the professional competence and objectivity of that third party and the appropriateness and adequacy of the work performed.
- 3.16 A **Due Diligence Committee** will usually include or be assisted by advisers to the **Client**, including the **Client's** legal adviser. A **Member in Public Practice** who reports to a **Due Diligence Committee** is generally entitled to rely on the advice and opinions of those advisers. Accordingly, paragraphs 3.14 and 3.15 are not intended to require a **Member** to obtain separate advice on matters for which another adviser to or member of the **Due Diligence Committee** is responsible.
- 3.17 In performing a **Professional Service**, a **Member in Public Practice** should consider any guidance in respect of such services issued by the **Professional Bodies** and appropriate regulatory authorities.

Confidentiality

- 3.18 A **Member in Public Practice** who acquires confidential information in the course of performing a **Professional Service** for a **Client** shall comply with Subsection 114 *Confidentiality* of the **Code**.
- 3.19 Where a **Member in Public Practice** provides **Professional Services** to a **Client** which comprise participating in and/or reporting to a **Due Diligence Committee**, the proper performance of the work will generally require the **Member** to disclose confidential information of the **Client** to the **Due Diligence Committee**, subject to any overriding restrictions on disclosure of information (including those commonly referred to as ethical wall arrangements). Unless the **Member** has a legal, regulatory or professional obligation of disclosure, the **Member** should not disclose any information relating to the **Client's** affairs to a party, other than to a **DDC Member**, **DDC Observer** or **Reporting Person**, without obtaining the **Client's** prior permission in **Writing**.

4. Professional Engagement and other matters

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

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

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

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

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

4.4 Where, after taking the steps outlined in paragraph 4.3, the **Due Diligence Planning Memorandum** still includes responsibilities that conflict with, or are prohibited by this Standard, the **Member in Public Practice** shall decline the **Engagement** to participate in, and/or report to, the **Due Diligence Committee**.

4.5 A **Member in Public Practice** should take all reasonable steps to ensure that the **Public Document** and other documents associated with the due diligence process (such as the **Due Diligence Planning Memorandum**) do not describe the role of the **Member** in a manner that may imply that the **Member** has:

- (a) undertaken procedures with respect to;
- (b) accepted responsibility for;
- (c) approved the disclosure of; or
- (d) reported upon;

matters or information in the **Public Document** or other associated documents beyond what was agreed in the **Engagement Document**.

Materiality guidance

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

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

4.8 **A Member in Public Practice who is engaged to provide materiality guidance to a Client and its Due Diligence Committee shall issue a Materiality Letter to the Client and the Due Diligence Committee.**

A form of Materiality Letter is set out in Appendix 2.

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

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

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

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

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

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

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

- 5.2 **A Member in Public Practice** who accepts an **Engagement** to provide a **Due Diligence Sign-off** or other reports to a **Due Diligence Committee**, whether as a **DDC Member**, **DDC Observer**, or **Reporting Person**, shall specify in the **Due Diligence Sign-off** or other reports the **Financial Information** and/or **Other Specific Information** in or relevant to the **Public Document** that the **Member** has performed procedures on, and the nature of those procedures.
- 5.3 Based on the work performed, a **Member in Public Practice** may report in a **Due Diligence Sign-off** that the **Member** is not aware of:
- (a) the specified **Financial Information** and/or **Other Specific Information** being misleading or deceptive (including by omission) in the form and context in which they appear in the **Public Document**; and
 - (b) the due diligence enquiries set out in the **Due Diligence Planning Memorandum** adopted by the **Due Diligence Committee** as they relate to the **Financial Information** and/or **Other Specific Information** not constituting all enquiries which are reasonable in the circumstances so far as the **Financial Information** and/or **Other Specific Information** are concerned.
- 5.4 **A Member in Public Practice** who becomes aware of instances of non-compliance with laws and regulations when providing **Professional Services** shall comply with **Section 360 Responding to Non-Compliance with Laws and Regulations** of the **Code**.
- 5.5 **A Member in Public Practice** who accepts an **Engagement** to report to a **Due Diligence Committee**, whether as a **DDC Member**, **DDC Observer** or a **Reporting Person** shall not report or advise on matters outside the **Member's** area of expertise.
- 5.6 Paragraph 5.5 precludes a **Member in Public Practice** from providing an opinion on:
- (a) whether the **Financial Information** and/or **Other Specific Information** disclosed in a **Public Document** is sufficient and appropriate to satisfy the relevant disclosure requirements of the *Corporations Act 2001*, for example those set out in Division 4 of Part 6D.2. These are matters requiring the collective consideration of all of the members of the **Due Diligence Committee**, and are reported on in the **Due Diligence Committee's** report; or
 - (b) whether the **Client** has complied with other legal obligations such as continuous disclosure obligations.
- 5.7 Paragraph 5.5 does not preclude a **Firm** from providing legal advice and reporting in relation to a **Public Document** if the **Firm** has **Partners** and **Managerial Employees** who are suitably qualified lawyers.
- 5.8 **A Member in Public Practice** shall sign a report to **Those Charged with Governance** on:
- (a) information in a **Public Document** of a general nature relating to financial, accounting, tax or any other matters; or
 - (b) the content of the **Public Document** as a whole; or
 - (c) the due diligence process in relation to (a) and (b),
- only as a **DDC Member** and where that report is a report of the **Due Diligence Committee** which is approved and signed concurrently by the other members of the **Due Diligence Committee**.
- 5.9 The matters set out in paragraph 5.8 should be considered by the **Due Diligence Committee** using the collective knowledge and expertise of the committee as a whole. A **Member in Public Practice** will not have the requisite knowledge or expertise to make determinations in relation to, or report on, those matters independently of other **Due Diligence Committee** members. Paragraph 5.8(a) does not preclude a **Member** acting as a **Reporting Person** from providing **Professional Services** in respect of the range of potential tax implications for shareholders/unit holders that may need to be described in the **Public Document**.

- 5.10 A **Member in Public Practice** providing **Professional Services** to a **Client** which comprise participation in and/or reporting to a **Due Diligence Committee** as a **DDC Member**, **DDC Observer** or **Reporting Person** shall bring to the attention of the **Client** and/or its **Due Diligence Committee** any significant concerns relating to the matters set out in paragraph 5.8 which come to the attention of the **Member** in performing the work set out in the **Member's Terms of Engagement**. However, a **Member** shall not report otherwise on the matters set out in paragraph 5.8 as to do so would contravene the requirements in that paragraph.
- 5.11 A **Member in Public Practice** who accepts an **Engagement** to provide a **Due Diligence Sign-off** in relation to **Financial Information** shall not prepare the **Financial Information** which is the subject of the **Due Diligence Sign-off** or any extracts, summaries or analysis thereof provided elsewhere in the **Public Document**.
- 5.12 Paragraph 5.11 does not preclude a **Member in Public Practice** from reviewing or commenting on drafts of the **Public Document** for the purpose of alerting the **Client** and the **Due Diligence Committee** to matters that may affect the **Member's** ability to provide the **Due Diligence Sign-off**, and, if the **Member** is a **DDC Member**, for the purposes of fulfilling the **Member's** duties as a **DDC Member**.
- 5.13 Where a **Member in Public Practice** accepts an **Engagement** to assist a **Client** or its **Due Diligence Committee** in any verification process in relation to information in the **Public Document** (other than disclosures and information relating to taxation law), the **Member** shall agree the specific procedures to be undertaken with the **Client** to provide such assistance.
- 5.14 A **Member in Public Practice** should only provide verification assistance in relation to information in the **Public Document** (other than disclosures and information relating to taxation law) by performing an agreed-upon procedures **Engagement**. A **Member** should not accept responsibility for the verification of information in a **Public Document** (other than disclosures and information relating to taxation law). **Those Charged with Governance** of the **Client** are responsible for the inclusion of the **Financial Information** and **Other Specific Information** in the **Public Document** and are best placed to know whether there is new or additional information that might affect its proper verification.
- 5.15 Where a **Member in Public Practice** accepts an **Engagement** to verify or assist a **Client** or its **Due Diligence Committee** with the verification of disclosures and information relating to taxation law, the **Member** shall exercise professional judgement in determining the nature, timing and scope of the procedures taking into consideration the **Terms of Engagement**.
- 5.16 Where a **Member in Public Practice** is a **DDC Observer** and has been requested to provide a **Due Diligence Sign-off**, the **Member** shall consider the scope of any procedures the **Member** has agreed to perform in relation to the due diligence process in connection with the **Public Document**, and assess whether the scope of the procedures will enable the **Member** to provide a **Due Diligence Sign-off**.
- 5.17 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**.

- 5.18 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*.
- 5.19 A **Member in Public Practice** who performs a valuation service in connection with a **Public Document** shall comply with APES 225 *Valuation Services*.
- 5.20 A **Member in Public Practice** who performs a taxation service in connection with a **Public Document** shall comply with APES 220 *Taxation Services*.
- 5.21 A **Member in Public Practice** who performs **Professional Services** in connection with a **Public Document** that includes prospective financial information shall comply with APES 345 *Reporting on Prospective Financial Information prepared in connection with a Public Document*.

6. Documentation

- 6.1 A **Member in Public Practice** shall prepare working papers in accordance with this Standard that appropriately document the work performed, including aspects of the **Engagement** that have been provided in **Writing**. The documentation prepared by the **Member** shall:
- (a) provide a sufficient and appropriate record of the procedures performed for the **Engagement**;
 - (b) identify the source of significant information the **Member** has used in the conduct of the **Engagement**; and
 - (c) demonstrate that the **Engagement** was carried out in accordance with this Standard and all other **Professional Standards** applicable to the **Engagement**, including policies and procedures established in accordance with APES 320 *Quality Control for Firms*, and any applicable ethical, legal and regulatory requirements.

7. Reporting

- 7.1 Before a **Member in Public Practice** provides a **Due Diligence Sign-off** to a **Client** and its **Due Diligence Committee**, the **Member** shall:
- (a) assess whether the scope of procedures undertaken in relation to the **Financial Information** and/or **Other Specific Information** is sufficient and appropriate for that purpose;
 - (b) consider the impact of any limitations on the scope of work; and
 - (c) ascertain that all material matters in relation to the **Financial Information** and/or **Other Specific Information** which arose during the course of the **Member's** work have been addressed by the **Client** or its **Due Diligence Committee**.
- 7.2 Where the procedures undertaken in relation to the **Financial Information** and/or **Other Specific Information** only comprise a limited level of enquiry and/or the procedures were undertaken pursuant to another **Engagement** completed in the past, a **Member in Public Practice** shall not issue a **Due Diligence Sign-off** containing the conclusions referred to in paragraph 7.3(k).
- 7.3 Where the requirements of paragraph 7.1 have been met and a **Member in Public Practice** provides a **Due Diligence Sign-off**, it shall contain the following:
- (a) the name of the party or parties engaging the **Member**;
 - (b) any other addressees of the **Due Diligence Sign-off** (typically being the other members of the **Due Diligence Committee**);

- (c) the date on which the **Due Diligence Sign-off** has been issued;
- (d) the purpose for which the **Due Diligence Sign-off** has been prepared, including the **Public Document** and proposed transaction to which it relates;
- (e) whether the **Member** has prepared the **Due Diligence Sign-off** in the capacity of a **DDC Member** or **DDC Observer**;
- (f) a statement that the **Professional Services** were conducted and the **Due Diligence Sign-off** was prepared in accordance with this Standard;
- (g) the **Financial Information** and/or **Other Specific Information** disclosed in the **Public Document** in relation to which the **Member** has undertaken procedures to which the **Due Diligence Sign-off** relates;
- (h) the scope of work performed in relation to the **Financial Information** and/or **Other Specific Information** to which the **Due Diligence Sign-off** relates;
- (i) any limitations on the scope of work performed;
- (j) the basis on which the statements in the **Due Diligence Sign-off** are made, including specific reference to:
 - (i) the scope of work performed;
 - (ii) the materiality guidelines adopted by the **Due Diligence Committee**; and
 - (iii) the extent, if any, of reliance by the **Member** on the work of others;
- (k) the conclusions of the **Member** in the form of negative statements as to whether having performed the scope of work, the **Member** has become aware of anything to cause the **Member** to believe that:
 - (i) 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
 - (ii) the due diligence enquiries set out in the **Due Diligence Planning Memorandum** adopted by the **Due Diligence Committee** as they relate to the **Financial Information** and/or **Other Specific Information** do not constitute all enquiries which are reasonable in the circumstances so far as the **Financial Information** and/or **Other Specific Information** is concerned;
- (l) the significant assumptions upon which the conclusions of the **Member** are based;
- (m) all qualifications to the conclusions of the **Member**; and
- (n) any restrictions on the use and distribution of the **Due Diligence Sign-off**.

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

- 7.4 Where a **Member in Public Practice** is asked to provide a **Due Diligence Sign-off** in respect of a **Public Document** which has not been finalised, the **Member** shall consider:
- (a) any amendments to the **Due Diligence Sign-off** which may be required to reflect that the **Public Document** has not been finalised; and
 - (b) the information which has not been finalised in the draft **Public Document**, to ensure that any sign-off provided at that time is appropriate.

- 7.5 A substantially complete draft of a **Public Document** is often used as a confidential and restricted briefing document to seek the support of potential investors for the proposed transaction. In this situation, a **Member in Public Practice** may be requested to provide a **Due Diligence Sign-off** in relation to the draft **Public Document** or to advise whether the **Member** would be able to provide a **Due Diligence Sign-off** in relation to the draft **Public Document** if the **Member** was requested to do so at that time. In providing any such **Due Diligence Sign-off** or providing any such advice, the **Member** should clearly state:
- (a) any assumptions or qualifications relevant to the provision of the **Due Diligence Sign-off** or the advice;
 - (b) the specific draft or version number of the **Public Document** to which the **Due Diligence Sign-off** or the advice relates; and
 - (c) that the **Due Diligence Sign-off** or the advice is subject to change as a result of events which occur or information which comes to the **Member's** attention between the date of the provision of the **Due Diligence Sign-off** or the advice in relation to the draft **Public Document** and the date of the provision of any subsequent or final **Due Diligence Sign-offs** in relation to the **Public Document**.
- 7.6 Where a **Member in Public Practice** is requested to provide to a **Client** and/or its **Due Diligence Committee** written status reports or interim reports in respect of specific work discussed in the **Engagement Document** (for example, by way of a draft report, an oral presentation and/or by way of contributions to issues registers) or requested to provide on an interim basis detailed findings, the **Member** should include an appropriate disclaimer stating that such reports are provided for 'information only' and are not suitable for reliance by the **Client**, the **Due Diligence Committee** or any other person.
- 7.7 Where a **Client** or its **Due Diligence Committee** requests a **Member in Public Practice** to make available to the **Due Diligence Committee** a previous report provided by the **Member** to the **Client**, or a report on work that is being undertaken by the **Member** for the **Client** for a purpose other than the transaction to which a **Public Document** relates (for example, a report on internal controls of the **Client**, or on acquisition due diligence procedures undertaken in relation to a business to be acquired by the **Client**), the **Member** should consider whether or not and on what basis such report(s) may be made available to the **Due Diligence Committee**, having regard to relevant factors, including:
- (a) whether the information in the report (or on which it is based) remains current;
 - (b) whether the **Member's** approach to materiality in preparing the report was consistent with the materiality guidelines adopted by the **Due Diligence Committee**;
 - (c) the relevance of the report to the due diligence enquiries being undertaken by the **Due Diligence Committee**;
 - (d) the level of testing done on source information relied on by the **Member** in preparing the report; and
 - (e) whether **Client** consent has been obtained.
- 7.8 **Where a **Member in Public Practice** is requested to provide consent to being named in a **Public Document**, or to the inclusion of the **Member's** report in the **Public Document**, the **Member** shall, prior to providing the consent, obtain the final draft of the **Public Document** to ensure that the form and context in which the **Member's** name and/or report appears is appropriate.**
- 7.9 **If requested, a **Member in Public Practice** shall only provide a **New Circumstances Statement** where the **Member** is a **DDC Observer** and has already provided a **Due Diligence Sign-off** in relation to the **Public Document**.**
- 7.10 **A **Member in Public Practice** who is a **DDC Member** shall not provide a **New Circumstances Statement**.**

7.11 A **Member in Public Practice** who is a **DDC Member** does not issue a **New Circumstances Statement** as the **Member** has the ability to sign the **Due Diligence Committee's** new circumstances sign-off to **Those Charged with Governance** of the **Client** where the sign-off is approved and signed concurrently by the other members of the **Due Diligence Committee**.

7.12 A **Member in Public Practice** shall ensure that a **New Circumstances Statement** does not:

- (a) result in any extension of the scope or subject matter of the **Due Diligence Sign-off** and only relates to the **Financial Information** and/or the **Other Specific Information** specified in the **Due Diligence Sign-off**; or
- (b) contravene the requirements of paragraph 5.8.

*A form of **New Circumstances Statement** which complies with the requirements of this Standard is set out in Appendix 3.*

7.13 In accordance with the terms of a **Due Diligence Planning Memorandum** and/or relevant legislation, a **Member in Public Practice** shall bring to the attention of a **Client** and/or its **Due Diligence Committee** any material new circumstances relevant to a **Public Document** of which the **Member** becomes aware subsequent to the issue of the **Public Document**.

7.14 The period to which any obligation referred to in paragraph 7.13 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 330 Fees and Other Types of Remuneration** of the **Code**.

8.2 A **Member in Public Practice** shall not enter into a **Contingent Fee** arrangement or receive a **Contingent Fee** for a **Professional Service** which requires **Independence** or which purports to be independent.

Conformity with International Pronouncements

The International Ethics Standards 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 Client]
[insert address]

Dear [],

[insert subject]

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

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

1. Introduction

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

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

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

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

- (d) [specify information which has been the subject of procedures specified in the Engagement Document] disclosed in section [insert section number/name] 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 as an observer meetings of] the *Due Diligence Committee (DDC)* that has been established by the [*Client*] for the purposes of coordinating due diligence investigations as set out in the *Due Diligence Planning Memorandum (DDPM)* in connection with the [*describe Public Document*];
- (b) prepared materiality guidance in a letter dated [*insert date*] for consideration by the [*Client*] and the DDC;
- (c) conducted a review, in accordance with [ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* or ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information* or other standards as appropriate], of the *Financial Information* furnished to us by the [*Client*];
- (d) [assisted the *Client* in its verification of certain statements in the [*describe Public Document*] by performing the procedures set out in [*insert – for example, “Appendix 2” or “the Engagement Document”*] as agreed by the *Client (Agreed-Upon Procedures)* in accordance with ASRS 4400 *Agreed-Upon Procedures Engagements to Report Factual Findings*];
- (e) [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 being information which was not subject to the procedures in (d) above.*]

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

Scope limitations

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

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

3. Findings – Agreed-Upon Procedures

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

4. Basis for Review Statement

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

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

In making the Review Statement we only hold ourselves out as having expertise as [*designation of applicable Professional Body*]. We disclaim any skills or expertise in any other capacity.

5. Review Statement

Based on our review of the **Financial Information**, which is not an **Audit Engagement** in accordance with Australian **Auditing and Assurance Standards**, and applying the materiality criteria adopted by the DDC, nothing has come to our attention that causes us to believe that:

- (a) the **Financial Information** is misleading or deceptive (including by omission) in the form and context in which it appears; or
- (b) the due diligence enquiries set out in the DDPM adopted by the DDC as they relate to the **Financial Information** do not constitute all enquiries which are reasonable in the circumstances so far as the **Financial Information** is concerned.

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

6. Other Specific Information

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

7. Assumptions

In making the Review Statement in this **Due Diligence Sign-off**, we have assumed that:

- (a) the representations made and the information (including responses to questions and questionnaires) provided by directors, officers, personnel and agents of the **Client**, other members of the DDC, and other persons reporting to the DDC, have been complete, true and accurate in all respects and were not misleading or deceptive;
- (b) all persons who were interviewed, questioned or sent questionnaires were competent to answer all questions put to them, made complete and accurate disclosures in all matters and that there were no other persons who should have been interviewed, questioned or sent questionnaires in relation to the matters the subject of those questions;
- (c) there were no relevant documents or information other than those which were disclosed, or provided by or on behalf of the **Client** to us which are relevant to the **Financial Information**;
- (d) the report of [*insert name of third party expert*] dated [*insert date*] concerning [*insert*] [*note: qualifications of third party expert to be described*] is accurate and complete;
- (e) all corporate records and other documents examined by us are genuine, complete, up-to-date and accurate and, without limitation, any minutes of the meetings of the **Client** examined by us correctly record the business of, and resolutions passed at, any such meeting and no relevant corporate records have been withheld from us (whether deliberately or inadvertently);
- (f) all factual matters stated in any document provided to us are true and accurate; and

- (g) the [describe *Public Document*] [insert date and final document version number] will be lodged with the Australian Securities and Investment Commission.

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

8. Qualifications

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

- (a) we have no responsibility to update this *Due Diligence Sign-off* for events and circumstances occurring after the date of this *Due Diligence Sign-off*, other than as required under the terms of the *Engagement Document*;
- (b) insofar as consideration of Australian accounting standards and other mandatory professional reporting requirements [and Australian tax laws] impact or formed part of our scope of work, in making the Statement in section 5 we have had regard to such Australian requirements as are in place as at 9am on the date of this letter;
- (c) we make no statement, and express no opinion, on any matter such as legal matters requiring skills or expertise other than of an [accounting] [and/or] [Australian taxation] nature;
- (d) the Statement in section 5 of this *Due Diligence Sign-off* relates only to the *Financial Information* and does not relate to any additional statements in or concerning the [describe *Public Document*] that may be made by any person or any other conduct that any person may engage in concerning the [describe *Public Document*];
- (e) the Statement in section 5 of this *Due Diligence Sign-off* is limited to the knowledge of those partners, directors and employees of [insert *Firm*] who have provided the services [to *Client*] referred to in this letter, and we have made no enquiries of any [other] partner, director or employee of [insert *Firm*], or any of its related entities, who may have knowledge of matters relevant to the [describe *Public Document*] [through the provision of services to other *Clients* of [insert *Firm*], or whose knowledge may not be applied because of any ethical walls arrangements implemented in relation to our *Engagement* by [*Client*] on this matter; and
- (f) [We have relied on the accuracy and completeness of the report of [insert name of third party expert] dated [insert date] concerning [insert]. [note: qualifications of third party expert to be described].

9. Recipients of this Due Diligence Sign-off

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

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

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

- (a) be disclosed except to persons who, in the ordinary course of a Recipient's business have access to their papers and records and on the basis that such person will make no further disclosure of it and are not entitled to rely on it for any purpose;
- (b) be filed with a government or other agency, or be quoted or referred to in any public document or domain; or
- (c) be reproduced or used for any other purpose,

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

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

Yours faithfully

[\[Member or Firm\]](#)

Appendix 2

Materiality Letter

The [Due Diligence Committee](#), each of its members and their representatives

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

[Date]

Dear []

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

We refer to our [Engagement](#) letter with [] dated [].

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

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

Relevance of materiality guidelines

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

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

Requirements and Application and Other Explanatory Material (“guidance”) on applying the concept of materiality in the planning and performing of an audit of historical financial information is contained in the *Framework for the Preparation and Presentation of Financial Statements* (as identified in AASB 1048 *Interpretation of Standards* issued by the Australian Accounting Standards Board³) (“the Framework”), Accounting Standard AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors* as amended (“AASB 108”) and Auditing Standard ASA 320 *Materiality in Planning and Performing an Audit* (“ASA 320”).

3 The AASB has released AASB Practice Statement 2 *Making Materiality Judgements* which provides guidance on materiality in relation to general purpose financial reports. This resource may be useful for [Members in Public Practice](#) in considering how to make materiality judgements in relation to [Engagements](#) that are within the scope of this Standard.

The Framework states that:

“Information is material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general purpose financial reports make on the basis of those reports, which provide financial information about a specific reporting entity. In other words, materiality is an entity-specific aspect of relevance based on the nature or magnitude, or both, of the items to which the information relates in the context of an individual entity’s financial report. Consequently, the Board cannot specify a uniform quantitative threshold for materiality or predetermine what could be material in a particular situation.”

Similarly AASB 101 states that:

“Information is material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity.”

In relation to applying materiality to pro forma adjustments to historical [Financial Information](#), the following pronouncements have been considered:

- ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*;
- ASAE 3420 *Assurance Engagements to Report on the Compilation of Pro Forma Historical Financial Information included in a Prospectus or other Document*⁴;
- ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information*⁵; and
- Section 728 of the *Corporations Act 2001* (“the Act”) which determines that an offence has occurred if a misleading or deceptive statement, omission or new circumstance is materially adverse from the point of view of an investor⁶,

with the provisions of the Act overriding the requirements of applicable [AUASB Standards](#) and [AUASB Guidance Statements](#) should they conflict or yield a different result⁷.

The requirements and guidance contained in ASA 320 applies to historical [Financial Information](#). A [Due Diligence Committee](#) dealing with prospective [Financial Information](#) may refer to ASA 320 for guidance when establishing materiality thresholds.

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

4 ASAE 3420 became effective on 1 July 2013.

5 ASAE 3450 became effective on 1 July 2013, replacing AGS 1062 *Reporting in Connection with Proposed Fundraisings* and AUS 804 *The Audit of Prospective Financial Information*.

6 There is no definition of “materiality” or “materially adverse” in the *Corporations Act 2001 (Cth)*. Given the absence of a legislative definition of materiality, it is generally accepted practice in Australia to consider the accounting definition of materiality in Accounting Standard AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors*.

7 *[If the [Public Document](#) is a Cleansing Notice, it may be desirable to include the following wording since s728 applies only to [Disclosure Documents](#).]*

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

Quantitative factors

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

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

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

ASA 320 does not contain requirements that specify how to determine quantitative materiality thresholds, as their determination is a matter of professional judgement. The Framework adopts a similar approach to ASA 320 and explains the role of materiality in making judgements in the preparation and presentation of financial statements.

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

The following guidance may be considered when determining materiality in relation to financial statements:

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

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

This quantitative methodology is in addition to, but not a substitute for, any qualitative assessment. When considering financial statements as a whole materiality is typically considered as a percentage of an appropriate base amount depending on the particular circumstances of the business and the potential users of its financial statements. This may be:

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

- (c) *the amount of an item or an aggregate of items relating to the statement of cash flows compared with the more appropriate of the:*
- (i) *net cash provided by or used in the operating, investing, financing or other activities as appropriate, for the current reporting period; and*
 - (ii) *average net cash provided by or used in the operating, investing, financing or other activities as appropriate, for a number of reporting periods (including the current reporting period).*

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

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

Recommendations on quantitative materiality thresholds

Our recommendations on quantitative materiality thresholds to be adopted by the [Due Diligence Committee](#) are as follows:

Financial performance and cash flows

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

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

Balance Sheet

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

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

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

- the omission of the matter from the [Public Document](#); or
- a misleading disclosure in relation to the matter,

would be likely to be considered to render the [Public Document](#) deficient in light of the legal disclosure requirements relevant to the [Public Document](#).

Yours faithfully

[\[Member or Firm\]](#)

Appendix 3

New Circumstances Statement

[insert date]

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

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

Dear [],

[insert subject]

This New Circumstances Statement is provided to you in relation to the [describe Public Document] issued by [insert Client] on [insert date] in connection with [insert details of proposed transaction] (**Offer/Transaction**), and pursuant to our Engagement Document with [Client] dated [insert date] (the **Engagement Document**).

The procedures set out below have been conducted and this New Circumstances Statement has been prepared in accordance with APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document*.

This New Circumstances Statement should be read together with, and in the context of, our Due Diligence Sign-off dated [insert date] (the Due Diligence Sign-off).

1. Scope of Work

In connection with the [describe Public Document] we have performed the following procedures subsequent to the issue of our Due Diligence Sign-off:

[set out procedures undertaken]

2. Basis for Statement

The statement in section 3 is made on the basis of:

- (a) the procedures performed by us as described in section 1;
- (b) the materiality criteria adopted by the Client and the Due Diligence Committee (DDC); and
- (c) the assumptions and qualifications set out in our Due Diligence Sign-off which are equally applicable to and incorporated by reference in this New Circumstances Statement.

In making the Statement in section 3, we only hold ourselves out as having expertise as [designation of applicable Professional Body]. We disclaim any skills or expertise in any other capacity.

3. Statement

Based on our performance of the procedures set out in section 1, which does not constitute either an audit or a review in accordance with Australian Auditing and Assurance Standards, and applying the materiality criteria adopted by the DDC, no material new information or circumstance in relation to the **Financial Information** as defined in our **Due Diligence Sign-off** has come to our attention that causes us to believe that, had we known of such matters as at the date of our **Due Diligence Sign-off**, we would have amended that **Due Diligence Sign-off**.

4. Recipients of this New Circumstances Statement

This **New Circumstances Statement** is given solely for the benefit of:

- (a) the **Client** and its representatives on the DDC;
- (b) the directors of the **Client**; and
- (c) each member of the DDC and their representatives in their respective capacities as such, (together referred to as the **Recipients**).

This **New Circumstances Statement** is not intended for general circulation or publication and may not, without our prior written consent in each specific instance:

- (a) be disclosed except to persons who, in the ordinary course of a Recipient's business have access to their papers and records and on the basis that such person will make no further disclosure of it and are not entitled to rely on it for any purpose;
- (b) be filed with a government or other agency, or be quoted or referred to in any public document or domain; or
- (c) be reproduced or used for any other purpose,

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

We do not accept any responsibility for any losses whatsoever occasioned by any Recipient or by any other party as a result of the circulation, reproduction or use of this **New Circumstances Statement** contrary to the above paragraph.

Yours faithfully

[*Member or Firm*]

Appendix 4

Summary of revisions to the previous APES 350 (Issued in August 2015)

APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* originally issued in December 2009, and revised in March 2011 and August 2015 (extant APES 350), has been revised by APESB in November 2019. A summary of the revisions is given in the table below.

Table of revisions*

Paragraph affected	How affected
1.1	Amended
1.2	Amended
1.3	Amended
1.5	Amended
1.6 – Paragraph 1.10 in extant APES 350	Relocated
1.7	Added
1.8 – Paragraph 1.6 in extant APES 350 relocated	Amended
1.9 – Paragraph 1.7 in extant APES 350	Relocated
1.10 – Paragraph 1.8 in extant APES 350 relocated	Amended
1.11 – Paragraph 1.9 in extant APES 350	Relocated
1.11 – in extant standard (now incorporated in paragraph 1.1)	Deleted
2 – Introduction paragraph	Amended
2 – Definition of Acceptable Level	Amended
2 – Definition of Assurance Client	Amended
2 – Definition of Assurance Engagement	Amended
2 – Definition of AuASB	Deleted
2 – Definition of Audit Engagement	Amended
2 – Definition of Auditing and Assurance Standards	Amended
2 – Definition of Australian Financial Services Licence (AFSL)	Amended
2 – Definition of Code	Amended
2 – Definition of DDC Member	Amended
2 – Definition of DDC Observer	Amended
2 – Definition of Due Diligence Committee	Amended
2 – Definition of Due Diligence Sign-off	Amended
2 – Definition of Engagement Document	Amended
2 – Definition of Engagement Team	Amended
2 – Definition of Firm	Amended
2 – Definition of Independence	Amended
2 – Definition of Low Doc Offering	Added
2 – Definition of Managerial Employee	Amended
2 – Definition of Member	Amended
2 – Definition of Member in Public Practice	Amended
2 – Definition of Network	Amended
2 – Definition of New Circumstances Statement	Amended
2 – Definition of Other Specific Information	Amended
2 – Definition of Professional Activity	Amended

Paragraph affected	How affected
2 – Definition of Those Charged with Governance	Amended
2 – Definition of Writing	Added
3.1	Amended
3.2	Amended
3.3	Amended
3.4	Amended
3.5	Amended
3.6	Amended
3.8	Amended
3.9	Amended
3.10	Amended
3.12	Amended
3.13	Amended
3.14	Amended
3.18	Amended
3.19	Amended
4.2	Amended
4.3	Amended
4.5	Amended
5.1	Amended
5.2	Amended
5.3	Amended
5.4	Added
5.5 – Paragraph 5.4 in existing APES 350	Relocated
5.6 – Paragraph 5.5 in existing APES 350 relocated	Amended
5.7 – Paragraph 5.6 in existing APES 350 relocated	Amended
5.8 – Paragraph 5.7 in existing APES 350 relocated	Amended
5.9 – Paragraph 5.8 in existing APES 350 relocated	Amended
5.10 – Paragraph 5.9 in existing APES 350 relocated	Amended
5.11 – Paragraph 5.10 in existing APES 350 relocated	Amended
5.12 – Paragraph 5.11 in existing APES 350 relocated	Amended
5.13 – Paragraph 5.12 in existing APES 350	Relocated
5.14 – Paragraph 5.13 in existing APES 350	Relocated
5.15 – Paragraph 5.14 in existing APES 350	Relocated
5.16 – Paragraph 5.15 in existing APES 350 relocated	Amended
5.17 – Paragraph 5.16 in existing APES 350	Relocated
5.18 – Paragraph 5.17 in existing APES 350	Relocated
5.19 – Paragraph 5.18 in existing APES 350	Relocated
5.20 – Paragraph 5.19 in existing APES 350	Relocated
5.21 – Paragraph 5.20 in existing APES 350 relocated	Amended
6.1	Amended
7.1	Amended
7.2	Amended
7.3	Amended
7.4	Amended

Paragraph affected	How affected
7.5	Amended
7.6	Amended
7.7	Amended
7.9	Amended
7.11	Amended
7.12	Amended
8.1	Amended
Appendix 1	Amended
Appendix 2	Amended
Appendix 3	Amended

* Refer Technical Update 2019/9