



Revised Outline of Proposed Standard on Comfort Letters [revised 10/5/10]

Proposed ASAE XXX *Comfort Letters for Requesting Parties in Connection with International Offerings*

1. Application

- (a) Applicable to assurance engagements where the auditor issues comfort letters to named underwriters and certain other requesting parties in respect of:
- (i) international and cross-border offerings;
 - (ii) other similar international transactions;
 - (iii) Domestic offerings.

2. Operative Date

3. Introduction

- (a) *Scope*
- (i) Responsibilities of the auditor when performing and reporting on comfort letter engagements for primary and secondary international and cross-border offerings, and other similar international transactions (collectively called “overseas offerings transactions”)
 - (ii) If the auditor is requested to comply with an applicable overseas standard (as required in the jurisdiction where the overseas fundraising transaction is based), the auditor has to:
 - determine whether this is possible under the circumstances; and
 - consider the need to modify their procedures in accordance with the requirements of the applicable overseas standards.
 - (iii) Types of international fundraisings and other similar international transactions covered
 - (iv) The principles and requirements of this ASAE will apply if auditors are requested to issue comfort letters for offerings and similar transactions undertaken in Australia. *[Currently, comfort letter engagements of this nature are not performed in Australia.]*
 - (v) Other work performed by the auditor. Need to be clear that this standard doesn't apply to letters of comfort/financial support by companies, hold harmless letters, or third party access to auditor working papers.

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4. Objectives

Objectives of the auditor when performing and reporting on international comfort letter engagements

5. Definitions

Auditor, assurance engagement, reasonable assurance, limited assurance, entity, comfort letter, bring down letter, prospectus (e.g. offering document, investment circular, listing document) offerings, mergers and acquisitions, issuer, named underwriter (in U.S this is called primary receipt ant/primary requesting party), other than named underwriter (in U.S this is called other requesting party), selling agent, requesting parties, securities, due diligence, due diligence defence, cross-border and international offerings, other international transactions, financial information disclosed in the prospectus (e.g. historical financial information, unaudited interim financial information, other financial information)

Need to identify terminology specific to certain jurisdictions.

Need to incorporate U.S SAS 72, paragraphs 11 & 12 definitions

6. Requirements

(a) *Engagement Acceptance*

(i) Preconditions

- Comfort letter is prepared in a due diligence environment
- Assurance practitioner is the auditor of the entity, and therefore has sufficient knowledge of the entity's internal controls over financial reporting.
- The recipients of the comfort letter:
 - are legally entitled to receive the letter; and
 - have performed their own due diligence work and take responsibility for their own due diligence work.
- Auditor to have access to all necessary information and persons who can provide necessary information.
- Auditor will be provided a copy of the document in which the auditor's name is proposed to be included, to enable the auditor the opportunity to review the document and ensure context of name inclusion acceptable.
- Acceptance by the requesting parties (including the entity) of comfort letter's reporting format, content and type of auditor's conclusion
- Acceptance by the requesting parties (including the entity) that the auditor will not be able to express their conclusion in compliance with an

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overseas standard, but rather in compliance with an equivalent Australian Assurance Standard

Requirements for the Requesting Party [see ICMA para 7]

- Understanding and acknowledgement by the primary and other requesting parties (including those charged with governance of the entity) of:
 - the responsibility of those charged with governance of the entity for the:
 - preparation of the prospectus/offering document
 - preparation and presentation of financial information in the prospectus/offering document
 - the underwriter's responsibility for determining the nature and extent of the procedures to be performed by the auditor (the ASAE should explicitly state that the auditor is not responsible for the determining whether the procedures performed by the auditor are sufficient for the purpose of the underwriter)
 - the fact that the auditor is not responsible to the comfort letter recipients and to anyone else for any reliance that may be placed on the results of the procedures that the auditor performed
 - the limited nature of statements that auditors can make in respect of financial information included in the prospectus
 - acknowledge who is entitled to receive the comfort letter.

(b) Agreeing the Terms of Engagement

(i) Nature and scope of the engagement

- Type(s) of financial information and time period covered by it (including audited and unaudited) that will be the subject of the comfort letter
- If applicable and allowable by law, type of non-financial information and time period covered by it that will be included in the comfort letter (note: in U.S not allowed)
- Basis of the financial information (generally accepted accounting principles)
- Responsibilities of the entity's management/those charged with governance, including requirement to provide a representation letter
- Responsibilities of the auditor
 - Nature and extent of procedures to be performed on each type of financial information
 - Considerations for an engagement where there are 2 or more auditors involved
 - Considerations for an engagement where the auditor is an "incoming auditor" (e.g. the auditor was not the auditor who audited/reviewed

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the most recent financial report, the company is a start-up and this was the first year of audit)

- The engagement will include the fact that the auditor is an “incoming auditor”
 - Specify procedures that the auditor will perform as an “incoming auditor” (e.g. obtaining a detailed understanding of the entity, including its internal controls over financial report, its business and operations)
 - Clearly differentiate the types of assurance (and time period that will be covered) that the auditor will provide, which may be:
 - Reasonable assurance (e.g. related to audit work)
 - Negative (limited) assurance (e.g. relating to subsequent changes to audited financial statements – Bring down letter); or
 - No assurance at all but a report of results of agreed-upon procedures (e.g. on selected unaudited financial statement items)
 - Note: Bring Down letter time limit in U.S is 135 days unless additional work performed subsequent to the auditor’s report date.
 - Nature of information that the auditor will be commenting on (will include financial and non-financial information, depending on the circumstances of the engagement)
 - Distribution of the comfort letter (e.g. to client entity, underwriter(s) and other requesting parties)
 - Restriction on distribution of the comfort letter to its addressee(s)
 - Legislative and regulatory considerations (e.g. overseas laws and regulations)
 - Auditor’s responsibilities re fraud.
 - Use of assurance and reporting standards of the jurisdiction where the overseas fundraising/international transaction is based, if required
 - Considerations and process for dealing with changes in the agreed terms of engagement
 - That the auditor will provide their consent to the inclusion of their name in the report and, will be named as an expert provided a copy of the auditor’s report is attached.
- Responsibilities of underwriters and other requesting parties
 - Fees, terms and conditions for the auditor’s services
 - Form and content of the engagement letter (if required)
 - Confidentiality
 - Independence
 - Timelines (including cut-off date)

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(c) *Planning the Engagement*

(i) Split section according to whether the auditor is incoming or pre-existing.

- Incoming auditor – need to obtain an understanding of the entity – including internal controls relevant to both annual and/or half-year financial report.
- Pre-existing auditor re-assess risk assessment from audit process.

(ii) Risk assessment and materiality considerations

- Materiality concept is not relevant for agreed-upon procedures work
- If Bring down letter included in scope – use financial year end materiality thresholds and reassess

(iii) Timing and extent of procedures

- Agreed-upon procedures have no time limit restrictions
- If Bring down letter included in scope – requesting party specifies timing and procedures for the auditor to perform
 - Note different jurisdictions have time limits re this letter – e.g. in the U.S there is a 135 day timing limit before further procedures over and above audit results are required. ICMA – no time limits. Consider time limits for this ASAE.

(iv) Engagement resources

- Skills and experience needed for the engagement
- Managing a multi-disciplinary team
- Use of experts, if necessary

(iv) Related ethical requirements (including Quality Control and Independence)

(d) *Performing the Engagement*

(i) Split section according to whether the auditor is incoming or pre-existing

(ii) Review of interim financial statements

(iii) Specified procedures to be performed on unaudited financial statements/financial information

- Includes specified procedures on selected financial statement items subsequent to the date of the most recent audited financial statements

(iii) Documentation

(iv) Quality Control process over the assurance engagement

(v) Other considerations

- Fraud
- Will prior period auditor report be re-issued?
- Consider obtaining legal representation letter if required by law, or deemed applicable in the circumstances of the engagement

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- May also consider inquiring of the client and/or legal counsel if formal legal representation letter not requested.
- (e) *Performing the Engagement - Subsequent events procedures (bring down comfort letter procedures), if applicable*
- (i) Consider any applicable laws/regulations in performing work
 - (ii) Procedures should cover financial report and internal controls over financial reporting
 - (iii) Review document and determine if any adjustments are required. Consider implications if adjustments are made by client.
- (f) *Concluding on the Work Performed*
- (i) Concluding on all aspects of work
 - Assessing adequacy of evidence obtained
 - Conclusion relates to level of assurance obtained
 - (ii) Obtain client representation letter (if required)
 - RE ICMA jurisdiction – underwriter does not give an acknowledgement of audit already performed
 - Re U.S - underwriter must give an acknowledgement of audit already performed [see para 4, SAS 72 and para 6, example P]]
 - (iii) Assessment of the auditor’s consent to the inclusion of their name in the report
 - Is the financial information prepared in accordance with generally accepted accounting principles? If not, withdraw consent.
- (g) *Reporting*
- (i) Issue of Comfort Letter
 - Form and content – May vary depending on the client entity’s jurisdiction and the requirements of its applicable standards, but the following are considered uniform minimum across the majority of jurisdictions:
 - Addressee(s) – name(s) and address(es)
 - Date of the comfort letter
 - Introductory paragraphs
 - Financial statements included in the prospectus, and the related auditor’s reports, if any
 - Applicable financial reporting framework used by the issuer in preparing such financial statements
 - Australian Assurance/reporting standards used in the audit/review of financial statements, including the specified procedures performed

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- Reference to prior year audit(s)
- Results of work performed are in accordance with this ASAE - statements relating to the results of:
 - the review of interim financial statements
 - the specified procedures performed on selected unaudited financial statement items, including subsequent changes to latest audited financial statements (if applicable)
- Closing paragraphs
 - (i) Confidentiality of information in the comfort letter
 - (ii) Limitation on distribution of the comfort letter to addressee(s)
 - (iii) Disclaimers
 - (iv) Cut-off date
- (ii) Bring down comfort letter
 - Purpose and scope
 - Results of work performed

7. Application and Other Explanatory Material

Expansion of requirements

8. Appendices

Sample Letters *(to be divided according to major jurisdictions - US, Europe, Other)*

- (i) Comfort letters
- (ii) Engagement letters (if required)
- (iii) Representation letters (if required)
- (iv) Bring down comfort letters

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