



AUASB Board Meeting Summary Paper

AGENDA ITEM NO. **8**

Meeting Date: 29 April 2013

Subject: Agreed-upon Procedures Engagements - Restriction on distribution and use of Reports of Factual Findings

Date Prepared: 8 April 2013

Action Required

For Information Purposes Only

Agenda Item Objectives

To determine whether the restriction on distribution and use for reports of factual findings issued under ASRS 4400 *Agreed-upon Procedures Engagements to Report Factual Findings* is too restrictive or requires further clarification and what action, if any, is required to be taken.

Background

At the February Board meeting, the AUASB noted one firm's concerns regarding the restriction on distribution and use included in the requirements in ASRS 4400 for Agreed-upon Procedures (AUP) reports. The firm is finding that clients do want to distribute AUP reports to third parties from time to time, for which they seek the assurance practitioner's permission, however the requirements of ASRS 4400 do not allow distribution of the AUP report to parties who are not contemplated in the report. Distribution to these third parties, not identified in the report, is sought on a "hold harmless" basis, that is, where an agreement is made by which the third party agrees to hold the assurance practitioner free from the responsibility for any liability arising from use of the report.

The relevant requirements of ASRS 4400 are:

- “42. Use of the report shall be restricted to those parties that have either agreed to the procedures to be performed or have been specifically included as intended users in the engagement letter since others, unaware of the reasons for the procedures, may misinterpret the results.
43. The report of factual findings for an agreed-upon procedures engagement shall contain: (Ref: Para. A18-A19)
- ...(n) a statement that use and distribution of the report is restricted to those parties identified in the report, who have agreed to the procedures to be performed or were identified in the terms of the engagement;”

The example report in ASRS 4400 Appendix 4 (Example of a Report of Factual Findings in Connection with Accounts Payable) includes the following wording:

This document contains preliminary views and/or AUASB Technical Group recommendations to be considered at a meeting of the AUASB, and does not necessarily reflect the final decisions of the AUASB. No responsibility is taken for the results of actions or omissions to act on the basis of reliance on any information contained in this document (including any attachments), or for any errors or omissions in it.

“Restriction on Distribution and Use of Report

This report is intended solely for the use of [entity] and [intended users identified in the terms of the engagement] for the purpose set out above. As the intended user of our report, it is for you and other intended users to assess both the procedures and our factual findings to determine whether they provide, in combination with any other information you have obtained, a reasonable basis for any conclusions which you wish to draw on the subject matter. As required by ASRS 4400, distribution of this report is restricted to those parties that have agreed the procedures to be performed with us and other intended users identified in the terms of the engagement (since others, unaware of the reasons for the procedures, may misinterpret the results). Accordingly, we expressly disclaim and do not accept any responsibility or liability to any party other than [company full name, name of intended users and name of class of users] for any consequences of reliance on this report for any purpose.”

The appendix is just an example of how the requirements might be met but is not intended to be prescriptive.

It is important to note that classes of users can be anticipated in the engagement letter and report, rather than necessarily identified individually at the time of issuing the report. This is explained in ASRS 4400 paragraph A12, and is appropriate where “the assurance practitioner is satisfied that those users will understand the purpose for which the report of factual findings is intended to be used”.

The restriction on use and distribution of AUP reports is an important feature of ASRS 4400 and was very deliberately included in the requirements by the AUASB. The reason was that ASRS 4400 was seeking to ensure that AUP reports were used appropriately and their limitations fully understood by users. An expectation gap may arise between the information contained in an AUP report and extent of the reliance which the user places on that report. As an AUP report does not provide a conclusion, no assurance can be taken from the report and the factual findings reported need to be considered in combination with other information in order for users to draw their own conclusions with respect to the subject matter. Wider distribution of these reports increases the risk of users misunderstanding the purpose of AUP reports or assuming that assurance has been provided over the subject matter.

Matters to Consider

There are a number of ways in which this matter may be resolved:

1. **Include classes of user in the report:** Assurance practitioners can better anticipate potential users of the report of factual findings by discussion with their clients and ensure that they allow appropriate classes of users in the engagement letter and the report. Users would need to be identifiable and the assurance practitioner would need to be confident that that group of users would understand the limitations of the report. It would be inappropriate, however, for the user group to be so widely defined that the report becomes effectively available for public distribution.
2. **Reissue the report including the new user:** The report may be reissued with the third party identified as a user, where the assurance practitioner is satisfied that the third party understands the limitations of the report. There may be some costs implications of reissuing the report and in these circumstances the assurance practitioner would not be held harmless as they would become an identified user.
3. **The entity shares the report without seeking practitioner agreement:** As the report already states that “we expressly disclaim and do not accept any responsibility or liability to any party other than [company full name, name of intended users and name of class of users] for any consequences of reliance on this report for any purpose”, then if the report is shared with other users by the entity the assurance practitioner is already held harmless by virtue of this restriction on use. Arguably there is no need for a further “hold harmless” agreement or need for the assurance practitioner to agree to sharing the report with third parties as these circumstances are addressed in the report wording.

The AUASB is asked to consider whether the three options above are appropriate and provide the assurance practitioner with adequate means of resolving requests for distribution to third parties. In addition the AUASB are asked to advise whether any action is needed by the AUASB to communicate this approach. Alternatively the Board may identify a different resolution not contemplated in this paper.

Questions which the AUASB may wish to consider in reaching this decision are:

1. If a third party is not intending to rely on the AUP report, why are they seeking to obtain it?
2. Should assurance practitioners be able to agree to the distribution of AUP reports to third parties who are not contemplated in the report of factual findings or is that counter to the premise on which ASRS 4400 was written?
3. Will it really be effective for the third party to acknowledge that the report of factual findings was not prepared for their purposes and that they cannot rely on the report for other purposes or will they rely on it anyway?
4. Is it possible for assurance practitioners to allow distribution of AUP reports and still meet the requirements of ASRS 4400?
5. Is it possible for entities to release the report to third parties without consultation with the assurance practitioner on the basis that the assurance practitioner is held harmless anyway?
6. Is further clarification, by way of a bulletin, article or further application material in ASRS 4400, required regarding how assurance practitioners can allow the report to be provided to third parties and what precautions need to be in place?

AUASB Technical Group Recommendations

The Technical Group recommends that assurance practitioners seek to anticipate future uses of AUP reports at the outset and include those users in the engagement letter and report (option 1 above). Where users are not anticipated, then the report can be reissued with those users included, if the assurance practitioner is satisfied that the report can meet the needs of those users and will be used appropriately (option 2 above). In the event that the report is distributed without the assurance practitioner's permission being sought, then the disclaimer will protect the assurance practitioner from misuse of that report (option 3 above). We do not consider it appropriate for the assurance practitioner to agree to distribution of the AUP report to parties not contemplated in the report, even on a hold harmless basis, as this circumvents the restrictions on distribution imposed by the standard.

The Technical Group does not consider it warranted to consider any amendments to ASRS 4400 as this will undermine one of the problems which ASRS 4400 was seeking to address, that is misuse of and over-reliance on AUP reports. Misuse and over-reliance is more likely when third parties use the report without understanding the purpose for which it was prepared and its limitations. Third parties are also less likely to have access to further information which may be necessary to draw their own conclusions on the subject matter. Amendments to ASRS 4400 may actually encourage wider distribution of AUP reports, which are prepared to meet specific users' needs.

Material Presented

Agenda Item 8	AUASB Board Meeting Summary Paper
Agenda Item 8.1	ASRS 4400 <i>Agreed-upon Procedures Engagements to Report Factual Findings</i> (electronic only)

Action Required

No.	Action Item	Deliverable	Responsibility	Due Date	Status
1.	Determine if requests for distribution of AUP reports to third parties is adequately addressed in ASRS 4400.	Agree approach for distribution of AUP reports to third parties.	AUASB	29 April 2013	Pending

This document contains preliminary views and/or AUASB Technical Group recommendations to be considered at a meeting of the AUASB, and does not necessarily reflect the final decisions of the AUASB. No responsibility is taken for the results of actions or omissions to act on the basis of reliance on any information contained in this document (including any attachments), or for any errors or omissions in it.