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Merran Kelsall
The Chairman
Auditing and Assurance Standards Board
PO Box 204
Collins Street West
Melbourne VIC 8007

15 November 2011

Dear Ms Kelsall

**Comments on Exposure Draft 03/11 – Related Services ASRS 4450 Comfort Letter Engagements**

We appreciate the opportunity to comment on the above mentioned Exposure Draft. We believe that there is a need for an Australian standard dealing with auditors providing comfort letters to requesting parties. Overall, we are supportive of the proposed new standard and the use of an auditor's statement when reporting the results of procedures performed in comfort letter engagements, subject to our comments, specifically comments 1 and 2 in Appendix 2.

We have responded to the specific questions included in the Request for Comment in Appendix 1 of this letter. We also have a number of additional comments and suggestions on the Exposure Draft, which we set out in Appendix 2, for your consideration.

We would be pleased to discuss our comments with you. Please contact Avril Trent on (02) 8266 8097 or me on (03) 8603 3649 should you require any further information.

Yours sincerely

Bill Edge
OneFirm Risk & Quality Leader

**Merran Kelsall**

**15 November 2011**

**Appendix 1**

**Response to the Request for Comments questions**

1) **Have applicable laws and regulations been appropriately addressed in the proposed standards?**

We believe that there are two fundamental aspects of the proposed standard that will create conflicts with applicable laws and regulations. Firstly, by including domestic offerings within the scope of the proposed standards, we believe the proposed standard may conflict with and cause confusion in domestic offerings in the application of the existing framework under Australian Professional and Ethical Standard (APES) 350 and that proposed in Exposure Draft 02/11 (the proposed ASAE 3450).Please see comment 1 of Appendix 2 for our further comments on this.

Secondly, we believe the requirement for an auditor to undertake a comfort letter engagement in accordance with both this proposed ASRS and any equivalent standard issued by a national auditing standards setting body in another jurisdiction may be practically impossible if there are conflicting requirements between the two standards. Please refer to comment 2 in Appendix 2 for our further discussion.

2) **Are there any references to relevant laws or regulations that have been omitted?**

N/A

3) **Are there any laws or regulations that may, or do, prevent or impede the application of the proposed standard, or may conflict with the proposed standard?**

Other than in relation to the matters described above at question 1, we are not aware that this proposed ASRS is in direct opposition to any laws or regulations.

4) **What, if any, are the additional significant costs to/benefits for auditors and the business community arising from compliance with the requirements of this proposed standard? If there are significant costs, do these outweigh the benefits to the users of audit-related services?**

We do not believe there will be significant additional costs associated with compliance with this proposed ASRS. We consider that there should be additional benefit from a consistent approach applied by auditors as a result of the more detailed and clarified requirements and guidance in relation to these types of engagements.

5) **Are there any other significant public interest matters that constituents which to raise?**

N/A

**Merran Kelsall**

**15 November 2011**

**Appendix 2**

**Additional comments and suggestions on the Exposure Draft**

**1) Application of the proposed standard to domestic offerings:**

Paragraphs 6 and A2 refers to the application of this ASRS to domestic debt or equity offerings if the auditor is requested to provide a comfort letter. We believe the existing and established framework in Australia, including the Corporations Act and APES 350, already govern the role of accountants and auditors in domestic offerings. We believe extending this proposed standard to domestic offerings will cause confusion and may lead to either duplication or a conflict in the work to be undertaken by accountants and auditors.

Further, inclusion of domestic offerings within the scope of this standard could lead to conflicts under APES 350 and the auditor's participation in due diligence processes (including those for 'low doc' offerings) when auditors are requested to issue investigating accountant reports, participate in the due diligence process as well as a provide comfort letter relating to the offering document.

We would suggest that domestic offerings be expressly excluded from the scope of this standard.

**2) Relationship with applicable standards of other jurisdictions:**

We strongly recommend the removal of the requirement for an auditor to refer to this ASRS and another standard issued by national auditing standards body (as anticipated in paragraph 8). Our view is that there is a potential for conflict between the obligations under the proposed standard and standards of other jurisdictions. By way of example, this proposed standard includes the following:

- The requirement for an engagement letter with underwriters,
- The definition of an auditors' statement as less than reasonable assurance, and
- The definition of change period,

which are in conflict with the requirements and framework set out in SAS 72. Further, the proposed procedures of this standard would not necessarily be acceptable for offerings in another jurisdiction, which must meet the requirements of the standards in that jurisdiction. We do not consider that this potential for conflict could be overcome by addressing specific conflicts, as other standards may change over time and it would not be possible to anticipate all of the potentials for conflict.

We believe it preferable for auditors to undertake a comfort letter engagement under this proposed standard when the Standard setting body in the target jurisdiction does not have an equivalent standard and it is agreed with the requesting parties to use the proposed standard. Currently there are well established national standards for comfort letters in the United States (SAS 72 - PCAOB 634 and AU 634), Canada (CICA 7200) and Hong Kong (HKSIR 400).

We would suggest that paragraph 8 of the proposed Standard be clear that the auditor may undertake a comfort letter engagement where when the Standard setting body in the target jurisdiction does not have an equivalent standard and it is agreed with the requesting parties to use the proposed standard and removing the requirement for the auditor to include reference to both standards.



### 3) Due diligence defence of requesting parties

Paragraphs 7 and 16(d) refer to the comfort letter being issued to requesting parties outside Australia as one of a number of procedures that may be used by the requesting party solely to establish, or use in, a due diligence defence. Our view is that requesting parties, who receive an auditor's comfort letter, are entitled to use the letter only where they are seeking to establish a due diligence defence in a claim or proceeding in connection with the offering.

As the applicable due diligence laws and regulations will vary by jurisdiction, we believe it would be preferable to amend paragraph 7 to read as "one of a number of procedures that may be used by requesting parties in seeking to establish a due diligence defence" and paragraph 16(d) to read as "the agreed purpose of the engagement is to provide a comfort letter solely for use by the issuer and requesting parties in seeking to establish a due diligence defence".

### 4) Definition of change period and cut-off date

The terms "change period" and "cut-off date" are used throughout the proposed standard. We believe the current definitions and guidance are not easy to understand and, absent examples in application of the definitions, may cause confusion and/or inconsistent use by auditors. We suggest that:

- the definition should be simpler and should cover the whole period since the last audited or reviewed financial statements to the cut-off date. We suggest amending the definition to read as follows 'The period ending on the cut-off date and ordinarily beginning, for balance sheet items, immediately after the date of the latest balance sheet in the securities offering and, for income statement items, immediately after the latest period for which such items are presented in the securities offering'; and
- examples of a change period and cut-off date are included within the application guidance.

### 5) Communication of changes in the application of the financial reporting framework

Paragraphs 48 and A33 require the auditor to comment if there has been any changes in the application of the applicable financial reporting framework to the change period information. Our view is that an auditor would only acquire sufficient knowledge to make such a comment on financial information when the auditor has conducted a reasonable or limited assurance engagement of the change period financial information.

While the auditor may be requested to perform certain limited procedures as part of a comfort letter engagement, such as inquiries of management that may identify a change in application, it would only be on the basis of those procedures that the auditor could make such a statement.

The paragraph should be amended to read as "The auditor shall comment in the comfort letter, if as a result of the procedures performed, the auditor identifies that there has been ..."

### 6) Situations where the auditor does not receive a due diligence defence representation

We believe there are inconsistencies between paragraphs 15 and 64 as regards situations where an auditor does not receive a due diligence representation from a requesting party. In particular, paragraph 64 seems to contemplate that in the case where a representation is not received, the auditor could overcome the limitation by inserting additional language in the comfort letter and it would still be issued under the proposed standard. This is inconsistent with paragraph 15 which would suggest that the auditor would not be able to issue a comfort letter under this circumstance.

We recommend that paragraph 64 should be deleted from the proposed standard on the basis that it is a fundamental premise of the proposed standard that the auditor enter into the engagement letter with appropriate representations from requesting parties seeking to receive a comfort letter.

Further, we believe a comfort letter issued under the proposed standard should already contain statements similar to those outlined in paragraph 64(a)-(e). Our view is that these statements should be included in a comfort letter regardless of whether or not an auditor receives the requested due diligence representation from requesting parties.

### 7) Providing copies of a comfort letter to auditors of the group

We believe paragraph A45 would allow for a comfort letter to be provided to the auditor of the group financial statements. Our view is that a decision to provide third parties with access to the auditor's comfort letter when the third parties have not accepted the terms of engagement letter is a risk management decision that would be contemplated by the auditor in each instance and should not form part of the guidance or requirements of this standard.

We suggest removing this authoritative guidance.

### 8) Subsequently discovered matters

We believe that paragraphs 59 and A44 may suggest that the auditor has additional obligations, outside of those procedures agreed in the engagement letter, to review and comment on the information contained the offering document. We believe the inclusion of such statements may be interpreted as a de facto sign off by the auditor on the content requirements of the offering document.

We suggest that paragraph 59 be amended to include the words "as a result of the procedures performed by the auditor" after the words "auditor has discovered matters". Further, we suggest a statement at the conclusion of the paragraph to clarify that "In bringing these matters to the entity's attention, the auditor is not providing any assurance or other sign-off on the content of the offering document." We suggest paragraph A44 be amended to include the words "identified as a result of the procedures performed" after the words "that are the subject of the comfort letter".

Further, we consider that the content of the offering document is a matter for the entity. Therefore, we suggest deleting the sentence "and shall recommend that the requesting parties by promptly informed".



## 9) Other comments

We suggest the following definitions be amended for clarity:

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| Paragraph 10(g) "*Comfort Letter*" | Amend to refer to the comfort letter issued *under the terms of the engagement letter to the Issuer* and the requesting parties. |
| Paragraph 10(m) "*Financial Information*" | Amend to delete the word "ordinarily", as it is inconsistent with the principle that comfort letters will only be issued in respect of historical information or pro-forma information. |
| Paragraph 10(n) "*Issuer*" | Amend to "Issuer means the issuer of the securities offering" as the consolidated subsidiaries and/or joint venture entities do not issue the securities. Further, where the entity and the issuer are not the same person, we suggest that the standard may be clearer about the entity and the issuer's respective obligations. |
| Paragraph 10(p) "*Private Placement*" | We think this definition should refer to the "sale or issue" of securities, rather than the sale or exchange. Further, there appears to be a typographical error (by way of missing text) as it is not clear what the private placement is exempt from. We suggest and we assume this definition should be a reference to the exemption from certain prospectus content, distribution or registration requirements in the relevant overseas jurisdiction. |
| Paragraph 10(t)"*Requesting Party*" | The definition of a Requesting Party does not take into account those instances where third party underwriters and/or other parties validly authorise another Requesting Party to sign the engagement letter on their behalf as is contemplated in the example engagement letter paragraph 2 and 3. We believe the definition should be consistent with the example engagement letter and suggest the language ("including by authorising the lead manager to sign on their behalf") after the words "agreed to be bound by the engagement letter". We do not consider that the language proposed at paragraph A45 is sufficient. We would also suggest that the final sentence in paragraph A7 be deleted, as some requesting parties may become a party to the engagement letter subsequent to the initial addressees to the letter (and it would not be practical to comply with the requirement that the co-signing requesting parties be addressees). |
| Paragraph 10(v) "*Underwriter*" | The reference to "and are commonly referred to as requesting parties" may confuse as requesting parties has a specific definition under the standard and may suggest that all underwriters may obtain the benefit of the comfort letter even where they have not signed the engagement letter. We suggest this may be amended to "and are commonly the requesting parties". |

We suggest the following amendments be considered for clarity:

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| Paragraph 14(d)(iii) | We suggest the representation also include the representation that the financial information or other information included in the offering document does not *omit* information that should be included. |

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| Paragraph 14(d) and paragraphs 56, 57 and 58 | As a matter of practice, it may be usual for the auditor to receive a copy of the signed underwriting agreement. However, we do not think that the auditor should be obligated to obtain a copy of this agreement as the auditor is required only to issue the comfort letter to the requesting parties (being those who have signed the engagement letter) in relation to those procedures agreed in the engagement letter. This is reflected, for example, in paragraph A9. |
| Paragraph 14(f) | It appears that, as a result of a typographical error, paragraph 14(f) should be paragraph 14(e)(v) as a precondition of the Requesting Parties responsibilities. |
| Paragraph 65 | Paragraph 65 appears to require the requesting party to specify updated management representations. We suggest rewording as: "If the agreed terms of engagement require the auditor to issue a letter subsequent to the comfort letter in order to report procedures performed for a new change period, the auditor shall perform the new change period procedures specified by the requesting parties, including reviewing appropriate updated management representations." |