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Dear Fiona

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CONSULTATION PAPER 155: PROSPECTUSES DISCLOSURE: IMPROVING DISCLOSURE FOR RETAIL INVESTORS

Grant Thornton Australia Limited (Grant Thornton) is pleased to provide the Australian Securities and Investments Commission (ASIC) with its comments on Consultation Paper 155:Prospectuses Disclosure: Improving disclosure for retail investors.

Grant Thornton's response reflects our position as auditors and business advisers to publicly listed and privately held companies. In addition Grant Thornton has assisted many clients list on various public markets globally including the Australian Securities Exchange Limited (ASX) and this submission has taken into account input from our clients, as well as discussions with our key stakeholders.

Whilst Grant Thornton broadly supports the proposals in the Consultation Paper we do note that there does need to be commercial balance to enable companies to attract investors and be able to access competitive and volatile capital markets.

Our comments on the specific feedback requested by ASIC is contained in the attached Appendix.

If you require any further information or comment at this time, please contact Keith Reilly at keith.reilly@au.gt.com.

Yours faithfully
GRANT THORNTON AUSTRALIA LIMITED



Keith Reilly
National Head of Professional Standards



Scott Griffin
National Head of Corporate Finance

Appendix : Comments on CP 155

‘Clear, concise and effective’ disclosure

Proposal

B1 We propose to give guidance that a prospectus will generally be ‘clear, concise and effective’ if it helps retail investors assess the offer and make informed decisions because it:

- (a) highlights key information (e.g. through an investment overview);
- (b) uses plain language;
- (c) is as short as possible;
- (d) explains complex information, including any technical terms; and
- (e) is logically organised and easy to navigate.

See the attached draft regulatory guide at RG 000.21.

Your feedback

B1Q1 Do you agree with our explanation of the term ‘clear, concise and effective’ and our guidance on when a prospectus will generally be ‘clear, concise and effective’? If not, please explain why?

Grant Thornton response: The guidance in relation to clear concise and effective is appropriate.

B2 We propose to give guidance on communication tools that can help issuers to word and present the information in a prospectus so that it is ‘clear, concise and effective’. The tools we have suggested are not mandatory and we encourage issuers to analyse how best to word and present their information. See Table 3 and Table 4 in the attached draft regulatory guide.

Your feedback

B2Q1 Do you agree with our suggested tools in Table 3 for how to word a prospectus so that it is ‘clear, concise and effective’? Are these tools, the explanations and examples given useful? Are there other tools that should be included?

Grant Thornton response: The tools set out in the draft regulatory guide are useful to provide consistency within prospectuses generally.

B2Q2 Do you agree with our suggested tools in Table 4 for how to present a prospectus so that it is ‘clear, concise and effective’? Are these tools and the explanations given useful? Are there other tools that should be included?

Grant Thornton response: The tools are useful whilst allowing sufficient flexibility to include information which is useful to potential investors.

B3 We propose to give guidance that photographs (other than on the front cover) should only be included after the investment overview. We propose to give guidance that photographs should only be included if they are relevant to the issuer’s business and should not be used if they are likely to misrepresent the nature, stage or scale of the issuer’s business. See Table 4 in the attached draft regulatory guide.

Your feedback

B3Q1 Do you agree with our proposed guidance that photographs (other than on the front cover) should only be included after the investment overview? Please explain your answer.

Grant Thornton response: In the context of competitive and volatile capital markets a Prospectus is first and foremost a sales document that contains appropriate information that enables a user to make a rational economic decision. A prospectus needs to recognise the differing needs of investors – by nature some people are more “visual” orientated rather than focussed on just the “words” and photos that capture images of products, processes and operating facilities etc are central to understanding the nature of the investment.

To implement a regime where a Prospectus is merely a disclosure document simply ignores the purpose of a Prospectus and the reason why it is issued. Sales and marketing statements which include the use of promotional photography are essential in enabling potential investors to understand what the Prospectus is offering. This does not detract from the need to also have key financial and other information and it is a question of balance which gives investors a full picture of the ‘sales’ offer. Having a strict regime of only including photographs after the investment overview although providing consistency may result in not an entirely complete assessment of the issuers business being presented.

B3Q2 What other suggestions do you have to ensure that retail investors are given clear information about the issuer and the offer at the front of the prospectus and are not distracted by marketing images?

Grant Thornton response: We support ASIC’s intention of ‘ensuring the focus of prospectuses is high-quality information that investors can understand, and which gives investors a full picture of the offer.’, however an appropriate balance between marketing and promotional material is needed and banning such information (i.e. photographs) from the section of the Prospectus that most retail investors will most probably focus on, effectively makes it much less likely that potential investors will read and therefore be aware of the key information of the offer.

B3Q3 Do you agree with our proposed guidance that photographs should only be included where they are relevant to the issuer’s business and should not be included where they are likely to misrepresent the nature, stage or scale of the issuer’s business? If not, please explain why.

Grant Thornton response: The use of photographs must have a reasonable basis for inclusion and be relevant to the issuers business and prospects. As a general rule photographs should only relate to assets owned or operated by the issuer, if this is not the case the context and reason for inclusion should be clearly stated. For example where such issuers make forward looking verified statements about certain sectors, industries or geographies which would make such photographs relevant. [Note: We do support the notion that very junior explorers could mislead readers of a prospectus by the inclusion of a photograph of an operating mine].

B3Q4 Should there be a restriction on the use of photographs of celebrities in prospectuses?

Grant Thornton response: The use of celebrities in a prospectus should be subject to the same relevance and basis for inclusion test as with photographs.

B3Q5 If photographs of celebrities are included in a prospectus, should the prospectus also be required to include any interests or benefits paid to those celebrities (in money, equity or other value) in connection with the offer or as a consequence of their image being included in the prospectus?

Grant Thornton response: All benefits and interests of promoters including celebrities endorsing an offer should be disclosed.

B3Q6 Does our proposed guidance strike the appropriate balance between disclosure and marketing in prospectuses?

Grant Thornton response: Please see our previous comments

Prospectuses should be as short as possible

Proposal

B4 We propose to give guidance that prospectuses should be as short as possible while still satisfying the disclosure requirements. Our guidance suggests ways for reducing length (e.g. omitting extraneous information such as repetitive summary sections). See the attached draft regulatory guide at RG 000.29–RG 000.30.

Your feedback

Grant Thornton response: There is a requirement that prospectuses do generally need to be shorter.

B4Q1 Do you agree with our suggestions for making prospectuses as short as possible? If not, please explain why. Do you have any other suggestions for how prospectuses can be as short as possible?

Grant Thornton response: Prospectuses do need to be as short as possible whilst not omitting any important or key information.

B5 We propose to give guidance that issuers should consider incorporating by reference information that is not key to a retail investor's assessment of the offer (e.g. contracts, trust deeds, detailed corporate governance policies and secondary specialist expert reports). For an international offering, the foreign offer document could be incorporated by reference. See the attached draft regulatory guide at RG 000.32

Your feedback

Grant Thornton response: Incorporating documents by reference and including only an executive summary of Expert Reports is appropriate in particular competent persons and geological reports and should not be limited to secondary expert reports.

B5Q1 Do you agree with our proposed guidance that issuers should consider incorporating by reference contracts, trust deeds, detailed corporate governance policies, secondary specialist expert reports and foreign offer documents? If not, please explain why. Are there practical difficulties in incorporating by reference the suggested documents?

Grant Thornton response: Agree with the proposed guidance.

B5Q2 Are there other documents that can be usefully incorporated by reference?

Grant Thornton response: Consideration should be given on a case by case basis in the context of the offer and issuers business as to what documents should be given prominence in the prospectus or should be incorporated by reference.

B5Q3 If reliance on s712 is problematic, do you think information that would otherwise be incorporated should be set out in an appendix to the prospectus with a cross-reference at the front of the prospectus? This would help to ensure the first sections of the prospectus are more concise, but there should be no concern that the information is not formally included in the prospectus.

Grant Thornton response: This does seem a practical solution but will still require a lengthy document to be prepared albeit in an appendix format.

B5Q4 Do you think we should encourage issuers to include on their website any documents incorporated by reference (as well as lodging that information with ASIC)?

Grant Thornton response: The inclusion of documents incorporated by reference on the issuers website should be mandatory and sufficient prominence give to the location of those documents.

B6 We propose to give guidance that if issuers are uncertain about whether the information is relevant to professional investors or whether the test in s712(2)(b) is more appropriate, the prudent course of action is to comply with the test in s712(2)(b) and provide more information in the prospectus. See the attached draft regulatory guide at RG 000.36.

Your feedback

Grant Thornton response: This is appropriate guidance and will be a matter for the issuer and their professional advisers to conclude on.

B6Q1 Do you agree with our proposed guidance on the prudent course of action in these circumstances? Is this guidance useful? Are there any concerns or practical difficulties with this guidance?

Grant Thornton response: This is appropriate guidance.

B7 We propose to give general guidance on what constitutes ‘sufficient information’ for the purposes of the test in s712(2)(b). We also give guidance on what would comply with s712(2)(b) when incorporating trust deeds and secondary specialist expert reports by reference. See the attached draft regulatory guide at RG 000.37–RG 000.39.

Your feedback

Grant Thornton response: This is appropriate guidance.

B7Q1 Do you agree with our proposed guidance on what constitutes ‘sufficient information’ for the purposes of s712(2)(b)?

Grant Thornton response: This is appropriate guidance.

B7Q2 Do you agree with our proposed guidance on what constitutes ‘sufficient information’ when incorporating trust deeds and secondary specialist expert reports by reference? Is this guidance helpful? Are there practical difficulties with following this guidance? Do you have other suggestions for what constitutes ‘sufficient information’?

Grant Thornton response: This is appropriate guidance and is useful for issuers and their professional advisors.

B8 We propose to give guidance that incorporated documents must comply with other provisions of the Corporations Act, including the prohibitions in Ch 6D on misleading and deceptive provisions and the consent requirement in s716(2). We propose to give guidance that documents that are prepared for the purposes of incorporating information into the prospectus should be ‘clear, concise and effective’: s715A. See the attached draft regulatory guide at RG 000.40.

Your feedback

Grant Thornton response: This is appropriate guidance and will ensure consistency between documents or reports included in a prospectus and those included by reference.

B8Q1 Do you agree that documents incorporated by reference should comply with these other requirements of the Corporations Act? If not, please explain why. Are there practical difficulties with following this guidance?

Grant Thornton response: All documents whether included in a prospectus or included by reference should comply with the provisions of the corporations act as potential investors will make their own determination on which documents to review.

B8Q2 Do you agree the documents incorporated by reference should comply with s715A? If not, please explain why? Are there any practical difficulties with following this guidance?

Grant Thornton response: All documents used by an issuer for the purposes of an offer should comply with s715A.

Need for an investment overview

Proposal

C1 We propose to give guidance that a prospectus should include an investment overview at the front that highlights information that is key to a retail investor's investment decision. See the attached draft regulatory guide at RG 000.42–RG 000.44.

Your feedback

C1Q1 Is an investment overview an effective way to help retail investors to identify and understand the information that is key to their investment decision? If not, what would you suggest as an alternative?

Grant Thornton response: An investment overview is appropriate guidance on the basis that minimum information requirements are clearly defined.

C1Q2 Is an investment overview a meaningful replacement for the multiple levels of summaries currently included in many prospectuses (e.g. 'Investment highlights' and 'Frequently asked questions' sections)?

Grant Thornton response: Incorporating the multiple summaries is appropriate guidance.

C1Q3 As an alternative to an investment overview, should ASIC encourage a two-part prospectus with one part aimed at retail investors and the other aimed at professional and sophisticated investors? What practical difficulties may arise with this approach?

Grant Thornton response: There should be one document which caters for both investor groups as often their needs will be similar and having two parts may be even more confusing to retail investors. In addition a key consideration is to not overly increase the financial costs to the issuer by a requirement to prepare multiple documents.

Content of the investment overview

Proposal

C2 We propose to set out some categories of key information that should generally be explained in the investment overview. These are:

- (a) the key features of the issuer's business model (i.e. how the issuer proposes to make money and generate income or capital growth for investors or otherwise meet its objectives);
- (b) the key risks to the issuer's business model, as well as the key risks associated with the security or the offer;
- (c) the key financial information and key financial ratios (see proposal C3);

- (d) if the issuer's securities have not traded previously or the issuer is an investment company or has a limited operating history—key information on the experience and background of directors and key managers;
- (e) any significant interests and benefits payable to directors and other persons connected with the offer and any significant related party arrangements; and
- (f) the proposed use of funds and the key terms and conditions of the offer.

See Table 5 in the attached draft regulatory guide.

Your feedback

C2Q1 Do you agree with the key categories of information we have suggested should generally be included in the investment overview? If not, please explain why. What other categories of information do you think should usually be included in an overview?

Grant Thornton response: The categories are appropriate however a balance is required in relation to the extent of the disclosure in the Investment Overview versus the remainder of the prospectus.

C3 We propose to give guidance that issuers should include key financial information and key financial ratios in the investment overview. This would generally include net profit after tax (NPAT), an earnings per share (EPS) ratio, a gearing ratio and a discussion of the issuer's financial position and any commitments, events or uncertainties that may materially affect the issuer's liquidity. An issuer should also consider whether it is appropriate to include an interest cover ratio and working capital ratio. We propose to give guidance on how the gearing ratio, interest cover ratio and working capital ratio should be calculated. See Table 5 in the attached draft regulatory guide and the appendix.

Your feedback

C3Q1 Do you agree that key financial information and key financial ratios should be included in the investment overview? Are there any practical difficulties or concerns with an issuer doing this?

Grant Thornton response: Key financial information and ratios should be included but these should be limited to the most relevant to a potential investor noting that a significant number of issuers may have a limited financial history. Any financial statistics included should be negative information as well as positive information.

C3Q2 Are the proposed key financial information and financial ratios appropriate? If not, what would you suggest?

Grant Thornton response: Sufficient flexibility should be allowed to provide additional financial information which is relevant to an issuers business without specifying any limits.

C3Q3 Do you agree with our proposed methods for calculating these financial ratios?

Grant Thornton response: The calculations are appropriate.

C4 Our proposed guidance encourages issuers to consider whether any other information should be included in the investment overview given their individual circumstances. See the attached draft regulatory guide at RG 000.46.

Your feedback

C4Q1 Do you agree that ASIC should give guidance but that the onus is on the issuer to identify key information that needs to be included in the investment overview? Or do you think that ASIC should be prescriptive about the contents of an investment overview. Please give reasons.

Grant Thornton response: The onus should be on the issuer to include any additional financial information specifically relevant to potential investors. However the inclusion of additional information over and above any guidance will need to meet the same reasonable basis for inclusion test.

C5 We propose to give guidance that the discussion of key benefits and risks in the investment overview should be balanced, with a balanced level of detail about both. See the attached draft regulatory guide at RG 000.47.

Your feedback

C5Q1 Is our proposed guidance on the concept of balanced disclosure useful and easy to apply in practice? Please explain your answer.

Grant Thornton response: The proposed guidance is appropriate however from a practical view point may be difficult to implement as the onus is on the issuer to determine what is balanced whilst trying to inform potential investors of the merits of the offer.

C6 If the investment is speculative or the achievement of objectives is high risk, we propose that this should be highlighted in the investment overview. See the attached draft regulatory guide at RG 000.48.

Your feedback

C6Q1 Do you agree that the investment overview should indicate if the investment is speculative or if the achievement of objectives is high risk?

Grant Thornton response: This should be given significant prominence in the investment overview.

Presentation of the investment overview

Proposal

C7 We encourage issuers to ensure their investment overview is ‘clear, concise and effective’. In particular, we propose to give guidance that:

- (a) issuers use clear communication tools—in particular, clear cross-references, questions as headings and a table format; and
- (b) the presentation of the overview should be balanced with benefits and risks being given similar prominence (e.g. by using similar layout and fonts).

See the attached draft regulatory guide at RG 000.50–RG 000.51.

Your feedback

C7Q1 Do you have any further suggestions for how an investment overview should be worded and presented?

Grant Thornton response: The guidance proposed is appropriate.

C7Q2 Is our guidance on presenting benefits and risks in a balanced way useful and easy to apply in practice? Please explain your answer.

Grant Thornton response: The guidance may be difficult to implement as the onus is on the issuer to determine what is balanced whilst trying to inform potential investors of the merits of the offer.

C8 We propose to give guidance that the investment overview should be a summary of issues that are key to assessing the offer, rather than a summary of the prospectus as a whole. We do not propose to give prescriptive guidance on the word limit or length of the overview. See the attached draft regulatory guide at RG 000.52.

Your feedback

C8Q1 Do you agree that ASIC should not be prescriptive about the length of the investment overview? Alternatively, is there an ideal length for an investment overview?

Grant Thornton response: The length of the investment overview will by necessity need to vary depending upon the stage and prospects of an issuers business and therefore prescriptive guidance may lead to omissions of important information.

Specific content issues

Proposal

D1 We propose to give detailed guidance on some specific content issues. These are:

- (a) the issuer's business model;
- (b) risks;
- (c) financial information;
- (d) directors and key managers, interests, benefits and related party transactions; and
- (e) the effect of the offer and the terms and conditions of the offer.

This is information that we consider issuers should include in their prospectus to meet the disclosure tests in s710 and 711. See Sections D–H of the attached draft regulatory guide.

Your feedback

D1Q1 Is it useful for ASIC to give detailed guidance on some specific content issues?

Grant Thornton response: Detailed guidance is required in relation to minimum disclosures to ensure important information is not omitted.

D1Q2 Do you agree that s710 generally requires disclosure of the issues we have given guidance on? Are there any other key matters that should also generally be disclosed in a s710 prospectus?

Grant Thornton response: s710 and ASIC guidance is appropriate.

Business models

Proposal

D2 We propose to give guidance that a prospectus should explain an issuer's business model to retail investors (i.e. how the issuer proposes to make money and generate income or capital growth for investors). If an issuer does not intend to make money and generate income or capital growth for investors in the short term, the issuer should explain its short-term objectives and how it proposes to meet those objectives. See the attached draft regulatory guide at RG 000.53–RG 000.54.

Your feedback

D2Q1 Do you agree that a prospectus should explain the issuer's business model—that is:

- (a) how the issuer plans to make money and generate income or capital growth for investors; or
- (b) if the issuer does not intend to make money in the short term, their short term objectives and how they propose to meet those objectives?

Grant Thornton response: A full description of the above is essential for a retail investor to make an informed decision based on their own specific needs and investment risk profile.

D2Q2 Are there any practical difficulties involved with an issuer explaining its business model?

Grant Thornton response: There should not be any practical difficulties in explaining a business model and the ability to do so is fundamental to investors.

D2Q3 Are there any other potential consequences of requiring an issuer to disclose this information? For example, might some issuers exit the market, change their business model or exclude retail investors from offers?

Grant Thornton response: If there any other potential consequences or reasons why an issuers business model and prospects could not be adequately explained this should be fully disclosed in the prospectus and reasons why.

D3 We propose to give guidance that explaining an issuer's business model will involve explaining the key components of the business model, how the components relate to each other and any assumptions underlying the model (such as 'interest rates remain steady'). See the attached draft regulatory guide at RG 000.55–RG 000.57. We have given some common examples of the components of a business model, including finance arrangements, competition, strategy, dividend policy and significant dependencies like key suppliers, essential assets, important contracts and intellectual property. See Table 6 in the attached draft regulatory guide.

Your feedback

D3Q1 Do you agree that we have identified the components that will be relevant to most business models? Should any be removed from or added to our proposed guidance?

Grant Thornton response: The guidance is reasonable.

D3Q2 Is the guidance that we have given on each component adequate and useful? If not, please explain why, giving examples.

Grant Thornton response: The guidance is adequate and useful noting that a balance is required in relation to a sufficient description whilst retaining an issuers competitive advantage by not fully disclosing commercially sensitive information.

D3Q3 For the dividend policy, if an issuer intends to pay dividends other than out of profits, do you agree that this should be stated in the prospectus together with any associated risks? Are there any practical difficulties in doing this?

Grant Thornton response: If dividends are proposed to paid and disclosed by an issuer in a prospectus the sources and risks should also be disclosed.

D3Q4 Do you agree that a prospectus should include an explanation of how the components of a business model relate to each other and to the business model as a whole, rather than simply describing the components?

Grant Thornton response: A full description of the business model and inter related components should be included noting the previous comments regarding competitive advantage and commercially sensitive information.

Risks

Proposal

D4 We propose to give guidance that a prospectus should explain the risks to the issuer's business model, as well as the risks associated with the security and the offer. The prospectus should help retail investors work out which of the relevant risks are the key risks. We have said the key risks will usually be the type of events that have a reasonable likelihood of occurring and would have a very significant effect on the issuer's financial position and the value of shareholders' investment. See the attached draft regulatory guide at RG 000.74–RG 000.78.

Your feedback

D4Q1 Do you agree with our proposed guidance that a prospectus should help retail investors work out which risks are the key risks associated with the issuer's business model, the security and the offer?

Grant Thornton response: The guidance will be useful but should be more prescriptive that key risks are clearly identified as such.

D4Q2 Do you agree with our explanation of what the key risks are likely to be?

Grant Thornton response: The explanation and guidance is reasonable.

D4Q3 Are there any practical difficulties with following our guidance on key risks?

Grant Thornton response: We do not foresee any practical difficulties.

D5 We propose to give some examples of risks that may need to be included in a prospectus. See Table 7 in the attached draft regulatory guide.

Your feedback

D5Q1 Do you agree with the proposed examples of risks?

Grant Thornton response: The examples of risks are appropriate.

D5Q2 Do you think that it is useful for ASIC to include examples in our guidance? If not, please explain why.

Grant Thornton response: Examples should be included but clearly state they are not definitive and not complete and that risks relevant to specific issuers businesses will by necessity vary.

D5Q3 Are there other common risks that you think should be included?

Grant Thornton response: The example risks noted should provide adequate guidance.

D6 We propose to give guidance that risk disclosure should be more specific by:

- (a) explaining how a risk might affect the issuer's business model, the security or the offer; and
- (b) giving some indication about the likelihood of the risk occurring.

See the attached draft regulatory guide at RG 000.79–RG 000.80.

Your feedback

D6Q1 Do you agree that a prospectus should explain the likelihood of a risk occurring and the consequences if it did occur? If not, please explain why.

Grant Thornton response: This is appropriate guidance.

D6Q2 Do you think that a sensitivity analysis is sometimes appropriate? Are there any practical difficulties in doing this?

Grant Thornton response: Sensitivity analysis is appropriate but not in all circumstances and will need to be clearly explained as to the potential impact.

D7 We propose to give guidance on how to provide risk disclosure that is ‘clear, concise and effective’. We consider this includes:

- (a) organising risks logically—for example, in categories such as risks specific to the issuer (including its business model), risks specific to the industry, risks specific to the offer, risks specific to the security, and any relevant general risks;
- (b) giving more prominence to key risks;
- (c) disclosing risks that relate to a potential benefit with disclosure on the benefit; and
- (d) ensuring risk disclosure is consistent throughout the prospectus.

See the attached draft regulatory guide at RG 000.81–RG 000.84.

Your feedback

D7Q1 Does our proposed guidance help issuers to make their risk disclosure more ‘clear, concise and effective’?

Grant Thornton response: The proposed guidance is appropriate.

D7Q2 Are there any practical difficulties with following this guidance on ‘clear, concise and effective’ risk disclosure?

Grant Thornton response: We do not foresee any practical difficulties for issuers.

D7Q3 Do you have any other suggestions for how to make risk disclosure ‘clear, concise and effective’?

Grant Thornton response: The proposed guidance is appropriate so no other suggestions.

Financial information

Proposal

D8 We propose to give guidance that issuers with an operating history should consider including, for the three most recent financial years, a summary of the historical audited annual financial statements and most recent audited or reviewed half-year financial statement (if applicable). See the attached draft regulatory guide at RG 000.86–RG 000.88.

Your feedback

D8Q1 Do you agree with our proposed guidance for issuers with an operating history? If not, please explain why.

Grant Thornton response: The guidance is appropriate to the extent that the operating history is consistent with the business model forming the basis of the offer.

D9 We propose to give guidance that issuers with no operating history should include a current balance sheet in their prospectus. See the attached draft regulatory guide at RG 000.89.

Grant Thornton response: The guidance is appropriate.

Your feedback

D9Q1 Do you agree with our proposed guidance for issuers with no operating history? If not, please explain why.

Grant Thornton response: The guidance is appropriate.

D9Q2 Is there other financial information that these issuers should include in their prospectus?

Grant Thornton response: Additional financial information which should be included relate to any pro forma adjustments or financial information specifically in relation to assets and liabilities to be acquired or divested which is relevant to potential investors. The proposed guidance in RG89 and ISAE3420 in relation to pro forma financial information included in an offer document will assist.

Directors and key managers, interests, benefits and related party transactions

Proposal

D10 We propose to give guidance that a prospectus should include details of the issuer's directors and key managers. This includes:

- (a) details of the role they will perform and their expertise relevant to that role;
- (b) information about their independence or otherwise (e.g. if they are a nominee director for a substantial shareholder);
- (c) details of any criminal convictions, declarations under s1317E of the Corporations Act, personal bankruptcies, disqualifications or disciplinary action within Australia or other jurisdictions that are less than 10 years old and are relevant to the role to be undertaken and the investment decision; and
- (d) if the person has been an officer of a company that entered into a form of external administration because of insolvency and this occurred during the time the person was an officer or within a 12 month period afterwards.

See Table 8 in the attached draft regulatory guide.

Your feedback

D10Q1 Do you agree with our proposed guidance on the information about directors and key managers that should be included in a prospectus? If not, please explain why.

Grant Thornton response: The guidance is appropriate.

D10Q2 Do you agree that details of any convictions, declarations under s1317E of the Corporations Act, personal bankruptcies, disqualifications or disciplinary action within Australia or other jurisdictions as described in proposal D10(c) should be included in the prospectus? If not, please explain why. Are there any practical difficulties with including this information?

Grant Thornton response: The guidance is appropriate.

D10Q3 Do you agree that a prospectus should disclose if a director or key manager has previously been an officer of a company that has gone into external administration because of insolvency? If not, please explain why. Are there any practical difficulties with including this information?

Grant Thornton response: The guidance is appropriate.

D10Q4 Do you think that a prospectus should only have to disclose relatively recent insolvencies that a director or key manager has been involved with? For example, should the disclosure only be required for insolvencies that have occurred over the previous seven years?

Grant Thornton response: The guidance is appropriate.

D11 We propose to give guidance that if an issuer is seeking listing on a market that requires disclosure against a corporate governance framework, certain information should be included in the prospectus (e.g. a brief description of the framework and departures from the framework). We propose that issuers should consider incorporating detailed corporate governance policies by reference. See the attached draft regulatory guide at RG 000.100.

Your feedback

D11Q1 Do you agree with our proposed guidance on the information about corporate governance that should be included in a prospectus? Are there practical difficulties with including this information?

Grant Thornton response: The guidance is appropriate.

D11Q2 Do you agree that issuers should consider incorporating detailed policies by reference?

D12 We propose to give guidance on the requirement that a prospectus must disclose the interests of, and benefits paid to, persons involved in the offer. See the attached draft regulatory guide at RG 000.103–RG 000.110 and Table 9.

Grant Thornton response: The guidance is appropriate.

Your feedback

D12Q1 Do you agree with this proposed guidance? Do you agree with our examples of indirect interests or benefits that should be disclosed?

Grant Thornton response: The guidance is appropriate.

D12Q2 Do you agree with our broad approach to the meaning of a ‘promoter’?

Grant Thornton response: The guidance is appropriate.

Effect and terms and conditions of the offer**Proposal**

D13 We propose to give guidance on disclosure of the effect of the offer. The following information should generally be included:

- (a) proposed use of the funds (see: RG 000.121);
- (b) current balance sheet position and an adjusted pro forma statement of financial position;
- (c) capital structure (including the number of securities on issue and any substantial shareholders before and after the issue);
- (d) any control implications of the offer (if there are existing substantial shareholders or underwriters); and
- (e) the potential effect of the fundraising on the future of the company.

See the attached draft regulatory guide at RG 000.119–RG 000.121.

Your feedback

D13Q1 Do you agree with our proposed guidance on the effect of the offer, including use of funds? Are there any practical difficulties in following our proposed guidance? Are there any other matters that you would like guidance on?

Grant Thornton response: The guidance is appropriate.

D14 We propose to give guidance on disclosure of the terms and conditions of the offer including the type of security being offered, the rights and liabilities attached to the security being offered, the consideration payable, the offer period, whether the offer is for the issue of new securities or the sale of existing securities, any minimum or maximum subscription amounts, the allocation policy, any indication of listing, any underwriting arrangements, any escrow arrangements, whether ASIC relief or ASX waivers have been obtained and any taxation implications. See the attached draft regulatory guide at RG 000.123–RG 000.143.

Your feedback

D14Q1 Do you agree with our proposed guidance on the terms and conditions of the offer? Are there any practical difficulties in following our proposed guidance? Are there any other matters that you would like guidance on?

Grant Thornton response: The guidance is appropriate.

D14Q2 Our proposed guidance requires disclosure about any process to set the final offer price for the securities (e.g. a book build process). Do you agree there should be disclosure about such a process and if so, what information is relevant for retail investors about the process?

Grant Thornton response: The process involved in the price setting should be disclosed together with an explanation of any adverse implications to retail investors.

D14Q3 If the offer price will not be finalised until after the deadline for acceptances, do you agree that the prospectus should warn that the final price may not accurately reflect the market value of the securities and may differ significantly from the market price when the securities are quoted (especially where retail investors are involved in the price-setting process)?

Grant Thornton response: The guidance is appropriate.

Transaction-specific prospectuses

Proposal

E1 Our policy on transaction-specific prospectuses that comply with the disclosure requirements in s713 and guidance on the content of these prospectuses is set out in Regulatory Guide 66 *Transaction-specific disclosure* (RG 66). RG 66.46 makes clear that in some circumstances, the disclosure in a s713 prospectus may need to be similar to that prescribed by s710 (e.g. where the aim of the fundraising is to finance the purchase of a new asset that involves a major change in the issuer's business or finances). In these circumstances, we consider that the guidance in our draft regulatory guide is relevant: see Table 2 of the attached draft regulatory guide.

E2 Parts of our draft regulatory guide are also relevant to a s713 prospectus (even if there is no major change to the issuer's business)—for example, Section B ('Clear, concise and effective'), Section E (Risks), Section G (Interests and benefits) and Section H (Effect and terms and conditions of the offer). See Table 2 in the attached draft regulatory guide.

Your feedback

E2Q1 Do you agree that our proposed guidance is relevant to s713 prospectuses as described in proposals E1 and E2?

Grant Thornton response: The guidance is appropriate.

E2Q2 Do you think that RG 66 together with our draft regulatory guide give adequate guidance on these prospectuses (including content)? If not, please explain why. What further guidance would you like from ASIC on s713 prospectuses?

Grant Thornton response: The guidance is appropriate.

‘Low doc’ rights issues

Proposal

E3 Our policy on rights issues conducted without Ch 6D disclosure under s708AA and guidance on cleansing statements under s708AA(2)(f) is set out in Regulatory Guide 189 *Disclosure relief for rights issues* (RG 189). RG 189 does not include guidance on the content of ‘offer documents’. We consider that our proposed guidance in Section B of the attached draft regulatory guide is relevant to ‘offer documents’. We do not currently propose to give more detailed guidance on the content of ‘offer documents’. See Table 2 in the attached draft regulatory guide.

Your feedback

E3Q1 Do you agree that our proposed guidance is relevant to ‘offer documents’ in the way described above?

Grant Thornton response: The guidance is appropriate.

E3Q2 Do you think that ASIC should give guidance on the content of ‘offer documents’? If so, please explain in detail what you would like that guidance to cover.

Grant Thornton response: No further detailed guidance is required in relation to offer documents.

E3Q3 Would it be useful for ASIC to give guidance that an ‘offer document’ should contain an investment overview as described in Section C of the attached draft regulatory guide with cross-references to where more detailed information can be found (either in the offer document or in continuous disclosure announcements)?

Grant Thornton response: The proposed guidance is appropriate and logical.

Electronic prospectuses and other technological developments

Proposal

E4 We have given relief on the preparation and use of electronic prospectuses: see Class Order [CO 00/44] *Electronic disclosure documents, electronic application forms and dealer personalised applications*. We have also issued guidance on the preparation and use of electronic prospectuses: see Regulatory Guide 107 *Electronic prospectuses* (RG 107). We do not currently propose to give further guidance on electronic prospectuses.

Your feedback

E4Q1 Are there barriers to issuers using electronic prospectuses in the way they would like to? Do you consider any ASIC relief is required (either similar to [CO 00/44] or otherwise)?

Grant Thornton response: None that we are aware of.

E4Q2 Is there a need for ASIC guidance on electronic prospectuses? If so, please explain in detail what this guidance should cover.

Grant Thornton response: No further guidance is required.

E4Q3 Are there any other prospectus issues that have arisen as a result of other technological developments? Is ASIC relief or guidance required? If yes, please explain the nature of the relief or guidance required and why it is appropriate.

Grant Thornton response: No further guidance or relief is currently required.

Other prospectus or disclosure issues

Proposal

E5 The guidance we propose to give on prospectus disclosure is set out in the draft regulatory guide.

Your feedback

E5Q1 Are there any other prospectus and/or disclosure issues that you would like guidance on? If so, please give a detailed explanation of the nature of the guidance sought and why it is necessary.

Grant Thornton response: We would submit that there is a significant amount of important information which goes into prospectus's, some of which is only ever reported or disclosed at the prospectus stage and then not revisited such as important disclosures relating to commercial risks and other specific risks. There needs to be a better linkage to ongoing reporting eg via the annual report providing an update on the key areas that are required and included in prospectuses and the circumstances which eventuated and are subsequently reported. We would liken reporting of such matters as equally as important as reporting against all prospective or forward looking information and should be mandatory for the two years following issue or admission where relevant.

E5Q2 Other than the matters covered in the draft regulatory guide, what are the issues that issuers encounter when preparing a prospectus?

Grant Thornton response: No other issues identified.

E5Q3 Other than the matters covered in the draft regulatory guide, what are the issues that retail investors encounter when reading a prospectus?

Grant Thornton response: No other issues identified.

E5Q4 Other than the matters covered in the draft regulatory guide, what information do you think retail investors focus on in a prospectus or otherwise look for when making an investment decision?

Grant Thornton response: No other issues identified.