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RG 16 Consultation Feedback
Companies and Small Business
Australian Securities and Investments Commission
GPO Box 9827
MELBOURNE VIC 3001

By email: RG16.Feedback@asic.gov.au

Dear Sir/Madam,

Consultation Paper 377: Guidance for reporting by external administrators and controllers – Updates to RG 16

CPA Australia represents the diverse interests of more than 173,000 members working in over 100 countries and regions around the world, including members working as insolvency practitioners. This submission is our response to the ASIC (Australian Securities and Investment Commission) consultation paper proposing updates to Regulatory Guide (RG) 16 *External Administrators – Reporting and lodging.*

We support the objectives of the proposed changes to RG 16. In particular, we support ASIC clarifying that an external administrator or controller is *not* required to undertake extensive investigations or incur significant costs in completing the initial statutory report. As the consultation paper highlights, administrators and controllers find the investigation process needed to complete such reports expensive and often unnecessary, as ASIC does not often act on such reports.

We also support ASIC clarifying the circumstances when it may be necessary for administrators and controllers to lodge a supplementary statutory report with it.

If these changes to RG 16 are adopted, ASIC will need to educate stakeholders of such changes - not only administrators and controllers, but also creditors and the broader community. ASIC has a key role explaining to creditors and the broader community that an administrator does not have to undertake an extensive investigation to identify possible offences and misconduct by the directors and officers of a company. To improve community understanding of an administrator's role, ASIC should consider giving specific examples of the investigative tasks that administrators may or won't undertake.

As part of this educative process, ASIC should review its website material explaining the insolvency process. That material must align with the changes made to RG 16.

We note that the government has yet to respond to the Parliamentary Joint Committee on Corporations and Financial Services (PJC) report into *Corporate Insolvency in Australia.* The PJC's recommendation that Australia's insolvency laws should be subject to a comprehensive and independent review should be kept in mind when making updates to RG 16.

[redacted]

We provide responses to the following questions raised in the consultation paper:

B2Q2 – Is any further guidance required to assist the preparation of the initial statutory report? If so, what further guidance should we provide?

We support the observations made by the Association of Independent Insolvency Practitioners (AIIP) in its [redacted] in it is submission. We believe that ASIC should consider publishing a best practice statement or something similar setting out what it considers an investigation should involve and suggested times to conduct these. Such benchmarking will be useful for administrators and other stakeholders.

B5Q1 – Is the proposed guidance in Section D of the draft updated RG 16 helpful? If not, explain how we could improve the guidance.

We support the concerns raised by the AIIP in its submission on the guidance not following the statutory period in section 533(1)(d), which is six months.

Given this, if ASIC would like shorter turnaround times, RG 16 should say 'ASIC **encourages** …', rather than the proposed 'ASIC **expects** …'.

B5Q2 – Do you think the four-month timeframe for lodgment of the initial statutory report is appropriate? If not, what alternative timeframe do you think should be adopted and why?

We support AIIPs position that the four-month timeframe is *not* appropriate and their reasoning.

B5Q3 – Do you think the three-month timeframe for lodgment of the supplementary statutory report is appropriate? If not, what alternative timeframe do you think should be adopted and why?

Consistent with our response to B5Q1 and B5Q2, we do *not* support the guidance recommending a shorter timeframe than what is in the legislation.

If you have any questions about this submission, please contact Gavan Ord, Senior Manager - Business and Investment Policy at [redacted].

Yours sincerely

[redacted]
Interim Head of Policy and Advocacy
CPA Australia

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