



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 170

Prospective financial information

April 2011

About this guide

This guide is for issuers of financial products. It gives guidance on ASIC's approach to the use of prospective financial information (including financial forecasts and projections) in a disclosure document or Product Disclosure Statement (PDS). It also applies to conduct under s1041H of the *Corporations Act 2001* (Corporations Act).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued on 1 April 2011 and is based on legislation and regulations as at 1 April 2011.

Previous versions:

- Superseded Policy Statement 170, issued 6 September 2002, rebadged as a regulatory guide 5 July 2007
- Superseded Practice Note 67 *Financial forecasts in prospectuses*, issued 17 October 1996, updated 4 August 1997

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

A	Overview	4
	Obligations under the Corporations Act.....	4
	Our regulatory experience	4
	The purpose of this guide	5
B	When should prospective financial information be disclosed?	6
	Issuer to assess whether to disclose information	6
	What to disclose in the absence of prospective financial information	9
C	What are reasonable grounds for stating prospective financial information?	11
	Demonstrating reasonable grounds	11
	Factors that may indicate reasonable grounds.....	12
	Factors that do not, by themselves, indicate reasonable grounds	15
	Reasonableness of assumptions.....	16
	Statements based on contingencies.....	16
	Start-up ventures	17
	Advertising and other disclosures.....	17
	ASIC's powers	18
D	How should prospective financial information be disclosed?	19
	Provision of supporting information	19
	Presentation of prospective financial information.....	23
	Disclosure of confidential information.....	25
	Warning about reliability of prospective financial information.....	25
	Key terms	26
	Related information	28

A Overview

Key points

As part of its disclosure obligations, an issuer of financial products may be required to include prospective financial information in a disclosure document or PDS. This may include information about expectations or predictions of future performance, benefits or costs.

This guide is intended to help issuers of financial products understand whether and how to include prospective financial information in a disclosure document or PDS. It outlines:

- when prospective financial information can or should be disclosed;
- what are reasonable grounds for stating prospective financial information; and
- how prospective financial information should be disclosed.

Obligations under the Corporations Act

RG 170.1 Under the *Corporations Act 2001* (Corporations Act), issuers of financial products who are required to provide a disclosure document or PDS must comply with the obligation to provide information a person would reasonably require to decide whether to acquire the product or make an informed decision about the product: see s710, 714, 715 or 1013D.

RG 170.2 Information in a disclosure document or PDS may include information that is prospective or forward-looking in nature. Prospective financial information may include, for example, forecasts and projections of future performance, benefits or costs. It may also be presented in different ways, such as numerically or using charts or graphs.

Our regulatory experience

RG 170.3 Our regulatory experience has identified inherent dangers in disclosing prospective financial information. Some examples include:

- (a) issuers discounting, or not taking into account, the variable nature of matters that may influence, or be influenced by, future events. Our experience suggests that prospective financial information is, at best, only a crude indicator of likely achievable results; and

- (b) the inherent potential to mislead by disclosing prospective financial information based on hypothetical circumstances or unrealistic assumptions.

RG 170.4 In addition, research has shown that:

- (a) the release of prospective financial information by management has a significant effect on share prices (indicating that buy/sell decisions are influenced by prospective financial information);
- (b) perceptions of the likely long-term rate of return are the dominant criteria for investors in selecting a managed investment scheme. For other investment products, the rate of return is seen as a determining factor in making a purchasing decision; and
- (c) longer time horizons reduce the accuracy of prospective financial information.

The purpose of this guide

RG 170.5 This guide is intended to help issuers of financial products understand how to comply with the disclosure obligations in relation to prospective financial information. It outlines:

- (a) when prospective financial information can or should be disclosed (see Section B);
- (b) what are reasonable grounds for stating prospective financial information (see Section C); and
- (c) how prospective financial information should be disclosed (see Section D).

RG 170.6 For further guidance on the use of prospective financial information and other material in a PDS, see Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

B When should prospective financial information be disclosed?

Key points

This section sets out our guidance to help issuers determine when particular prospective financial information should be included in a disclosure document or PDS.

In making that assessment, an issuer should consider the nature and extent of the obligation to make disclosure under the Corporations Act, as well as the information value of the disclosure and the risk that the disclosure might be misleading: see RG 170.7–RG 170.19.

Even if there are no reasonable grounds for including prospective financial information, there must still be adequate disclosure about the benefits and risks of investing in the financial product: see RG 170.20–RG 170.22.

Issuer to assess whether to disclose information

- RG 170.7 An issuer of a financial product must meet its disclosure obligations. In particular, an issuer must decide whether prospective financial information needs to be disclosed because a person would reasonably require that information to decide whether to acquire the product or to make an informed assessment about the product.
- RG 170.8 An issuer must assess on a case-by-case basis if prospective financial information needs to be disclosed in a disclosure document or PDS. In making that assessment, the issuer should consider:
- (a) the nature and extent of the obligation to make disclosure required under the Corporations Act (see RG 170.10–RG 170.15);
 - (b) the information value of what is being disclosed by ensuring there are ‘reasonable grounds’ for the inclusion of the information (see RG 170.16); and
 - (c) the risk that the disclosure might be misleading (see RG 170.17–RG 170.19).
- RG 170.9 A decision whether or not to include prospective financial information in a disclosure document or PDS requires balancing the information value (relevance) of what is disclosed against the likelihood that the information may be misleading (reliability). The two elements are interrelated. The less reliable information is, the less relevant it becomes to investors, and the less likely it is that it should be included in the disclosure document or PDS.

The nature and extent of the obligation

RG 170.10 A number of provisions in the Corporations Act require issuers to make disclosure. Section 710 requires a prospectus to contain all information that would enable investors and their professional advisers to make an informed assessment of the issuer's prospects. Section 714 (profile statements) and s715 (offer information statements) allow the inclusion of information provided it is not misleading or deceptive. In regard to PDSs, s1013D states in part:

... a Product Disclosure Statement must include the following statements, and such of the following information as a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the financial product: ...

- (b) information about any significant benefits to which a holder of the product will or may become entitled, the circumstances in which and times at which those benefits will or may be provided, and the way in which those benefits will or may be provided.

Note: Section 1013D does not apply to margin loans, superannuation or simple managed investment schemes: see Sch 10A, Pt 5A, Pt 5B and Pt 5C of the Corporations Regulations 2001 (Corporations Regulations) respectively, and RG 170.12–RG 170.15.

RG 170.11 We believe the general test of whether prospective financial information must be disclosed is whether it is:

- (a) relevant to its audience; and
- (b) reliable (i.e. there must be a reasonable basis for it: see *GIO Australia Holdings Ltd v. AMP Insurance Investment Holdings Pty Ltd* (1998) 29 ACSR 584).

Information is not material to investors if it is 'speculative or based on mere matters of opinion or judgment': see *AAPT v. Cable & Wireless Optus Ltd* (1999) 32 ACSR 63. While these cases relate to takeovers, we consider that they state principles that apply equally to disclosure made in a disclosure document or PDS.

Shorter, simpler PDS disclosure for specified products

RG 170.12 Issuers of margin loans, superannuation products and simple managed investment schemes must comply with shorter, simpler PDS disclosure (shorter PDS regime): see Sch 10A, Pt 5A, Pt 5B and Pt 5C of the Corporations Regulations. The shorter PDS regime prescribes the content and length of the PDS for these products.

Note: The shorter PDS regime is not the same as Short-Form PDSs, which were introduced by the Corporations Amendment Regulations 2005 (No. 5). Under the Short-Form PDS provisions, issuers who are required to provide a PDS have the option of giving retail clients a 'Short-Form PDS' (unless excluded) as long as a full PDS is available on request: see s1017H as inserted by Sch 10BA of the Corporations Regulations.

RG 170.13 For issuers of superannuation products and simple managed investment schemes, the shorter PDS must include prescribed headings and content. The prescribed content covers key information such as significant product features and benefits, significant risks, how the investment is managed, fees and costs, taxation and how to apply for the product. For issuers of margin loans, the shorter PDS must also include prescribed headings and content. The prescribed content covers key information such as margin loan features and benefits, what a margin call is, risks, costs and how to apply for a margin loan: see Schs 10C–10E of the Corporations Regulations.

Note: Commencement dates for the shorter PDS regime are: 1 January 2011 for margin loans; 22 June 2011 for superannuation and simple managed investment schemes for all new products, as well as for existing products if a supplementary PDS is required; and 22 June 2012 for all other PDSs. For more information, see Information Sheet 133 *Shorter and simpler PDSs: Superannuation, managed investment schemes and margin lending* (INFO 133) and the Explanatory Memorandum to the Corporations Amendment Regulations 2010 (No. 5).

RG 170.14 The shorter PDS may include information in addition to the prescribed content; however, unless the disclosure pertains to the key benefits (for margin loans) or significant features or benefits (for superannuation and simple managed investment schemes) of the product, any prospective financial information should be incorporated by reference: see Sch 10A, item 5A.2, 5B.2 and 5C.2 of the Corporations Regulations.

RG 170.15 If prospective financial information is included within the shorter PDS, we expect the key assumptions and methodologies to also be disclosed. Prospective financial information presented in isolation from the assumptions and a description of the methodologies used to develop the information may be misleading: see Section D.

Information must have reasonable grounds

RG 170.16 A disclosure document or PDS should only include prospective financial information if there are reasonable grounds for its inclusion. This applies even if the information has been used to estimate future performance for internal planning purposes. For a detailed discussion of ‘reasonable grounds’, see Section C.

Information must not be misleading

RG 170.17 The making of a statement that contains prospective financial information (i.e. a forward-looking statement) must have reasonable grounds or it will be taken to be misleading under s728(2) or 769C of the Corporations Act. What are ‘reasonable grounds’ should be determined objectively in light of all of the circumstances at the time of the statement, so that a reasonable person would view as reasonable the grounds for the statement: see Section C.

- RG 170.18 We consider that prospective financial information based on hypothetical assumptions (rather than reasonable grounds) is likely to be misleading and provide little information value to investors. In our view, prospective financial information without reasonable grounds is not material to investors, nor would an investor reasonably require it or reasonably expect to find it in a disclosure document or PDS.
- RG 170.19 We consider that when there are no reasonable grounds for prospective financial information, it should not be disclosed because it will not be:
- (a) information that investors and their professional advisers would reasonably require in order to make an informed assessment of the issuer's prospects;
 - (b) information that a person as a retail client would reasonably require to make an informed decision about whether to acquire the product to which the information relates; or
 - (c) information reasonably required or expected by an investor to be disclosed in a disclosure document or PDS.

What to disclose in the absence of prospective financial information

- RG 170.20 If prospective financial information is not included in a disclosure document or PDS, there must still be adequate disclosure about the benefits and risks of the financial product. If prospective financial information has not been included because there are no reasonable grounds for it, an issuer should consider inserting a statement to that effect.
- RG 170.21 If there are no reasonable grounds to set out prospective financial information, disclosure may still be needed on certain matters to meet the requirements of the Corporations Act. The Corporations Act and Corporations Regulations require disclosure about:
- (a) the issuer's prospects (s710);
 - (b) the significant benefits of a product and the way in which the benefits will or may be provided (for products other than margin loans, superannuation and simple managed investment schemes) (s1013D(1)(b));
 - (c) the significant features and significant benefits of a superannuation product or simple managed investment scheme (Schs 10D and 10E, respectively, of the Corporations Regulations); and
 - (d) the key or other benefits available to the borrower or potential borrower of a margin loan (Sch 10C of the Corporations Regulations).

- RG 170.22 What is sufficient to meet these disclosure requirements must be judged in the context of each case. However, some examples include:
- (a) historical information about the product, such as yield or price (making sure that investors will not think it is a guarantee of future performance);
 - (b) risks (e.g. historically, the factors that have an impact on the key areas of yield and price, and the experience of the directors);
 - (c) anticipated acquisitions;
 - (d) product development and market share; and
 - (e) the kinds of matters discussed in *Regulatory Guide 70 Prospectuses for cash box and investment companies* (RG 70).

C What are reasonable grounds for stating prospective financial information?

Key points

Reasonable grounds means that there must be a sufficient objective foundation for the statement.

There are several factors that may amount to reasonable grounds, such as when the information relates to forward-sales contracts or leases, or when the information is underpinned by independent industry experts' reports or independent accountants' reports: see RG 170.25–RG 170.41.

Other factors (such as information supported only by hypothetical assumptions) do not, by themselves, indicate reasonable grounds: see RG 170.42–RG 170.43.

Statements based on a contingency that is unlikely to occur are not prohibited. However, in many cases they will have a predictive faculty and will therefore need to have reasonable grounds: see RG 170.46–RG 170.48.

Advertising will also be misleading if it contains prospective financial information without reasonable grounds: see RG 170.50–RG 170.52.

If we suspect that a disclosure document or PDS contains prospective financial information without reasonable grounds, we may exercise our administrative, investigative or consumer protection powers: see RG 170.53–RG 170.57.

Demonstrating reasonable grounds

- RG 170.23 Our regulatory experience has identified inherent dangers in disclosing prospective financial information. Some examples include:
- (a) issuers discounting, or not taking into account, the variable nature of matters that may influence, or be influenced by, future events; and
 - (b) the inherent potential to mislead by disclosing prospective financial information based on hypothetical circumstances or unrealistic assumptions.
- RG 170.24 The making of a statement that contains prospective financial information must have reasonable grounds or it will be taken to be misleading: see RG 170.17–RG 170.19. To demonstrate reasonable grounds, an issuer must be able to point to:
- (a) some facts or circumstances;

- (b) existing at the time of publication of the information in the disclosure document or PDS;
- (c) on which the issuer in fact relied;
- (d) which are objectively reasonable; and
- (e) which support the information: see *Sykes v. Reserve Bank of Australia* (1999) ATPR 41–699, Heerey J at 42–902.

Factors that may indicate reasonable grounds

- RG 170.25 What constitutes ‘reasonable grounds’ must be judged according to the facts and circumstances of each case and the requirements of the Corporations Act.
- RG 170.26 Whether or not there are reasonable grounds for including prospective financial information depends on various factors. Indicative factors that may amount to reasonable grounds for stating prospective financial information include when:
- (a) the information relates to options on forward-sales contracts or leases that lock in future expenses and revenue (see RG 170.28–RG 170.29);
 - (b) the information is underpinned by independent industry experts’ reports and/or independent accountants’ reports (see RG 170.30–RG 170.38); and
 - (c) the information includes reasonable short-term estimates (see RG 170.39–RG 170.41).
- RG 170.27 These factors may indicate that reasonable grounds exist for stating prospective financial information, but they are not necessarily conclusive. There may be other methods of establishing reasonable grounds and, importantly, these factors may not be sufficient to establish reasonable grounds in some cases.

Forward-sales contracts or leases

- RG 170.28 Forward-sales contracts, leases or other contracts that lock in future expenses and revenue of a product/service and the amount of supply may suggest reasonable grounds for prospective financial information because the future revenue and expenses can be reasonably assured for the period of that contract or lease.
- RG 170.29 However, the mere existence of an option in a contract or lease does not create an assumption that it will be exercised. Some further basis is needed. For sales contracts or leases that have a renewal option at the end of the initial term, prospective financial information should only extend to the end

of the initial term unless there are reasonable grounds to believe that the option will be exercised. An example is where there is an option to renew a lease, and the lessor has had a long track record of exercising this option to renew the lease and there is nothing to indicate that this will change in the next period.

Independent industry experts' reports

- RG 170.30 Reasonable grounds for disclosing prospective financial information may exist when there is reliance upon an independent industry expert's report, which:
- (a) is included in or incorporated by reference into the document containing the prospective financial information;
 - (b) sets out the assumptions underlying that information; and
 - (c) makes a positive statement that both the prospective financial information and its assumptions are reasonable and the expert does not disclaim liability for the statement.
- RG 170.31 An expert could even adopt management's assumptions if that expert states that those assumptions are reasonable. For example, if a lease is ending, an independent industry expert may provide reasonable assurance that the property can be re-leased for the relevant amount given certain assumptions about such factors as economic circumstances and local vacancy rates, and state that all those assumptions are reasonable.
- RG 170.32 However, we will not generally regard an expert's report that accepts management's assumptions without testing whether they are reasonable as meeting the test in s728(2) or 769C. In preparing an expert's report, the independent expert should have regard to Regulatory Guide 111 *Content of expert reports* (RG 111). For the requirements to establish an expert's independence, see Regulatory Guide 112 *Independence of experts* (RG 112).
- RG 170.33 An independent industry expert must have the credentials to give an opinion on the issue of whether reasonable grounds exist for the prospective financial information. These credentials might be shown by the expert's specialised training, study or experience. The subject matter of the report must not be outside the scope of the expert's relevant field of expertise: see *Makita v. Sprowles* [2001] NSWCA 305.
- RG 170.34 An expert's report is unlikely to be of assistance in establishing the existence of reasonable grounds for prospective financial information if the facts that the expert has relied upon are unverified or unverifiable. If an expert relies on information provided by third parties, they should indicate if they have any reservations about accepting that information as accurate because they will often be in the best position to decide if the information warrants further inquiry.

RG 170.35 We will monitor experts' reports that seek to provide reasonable grounds for disclosing prospective financial information to ensure the reports themselves are reasonable and have not been prepared or presented in a misleading manner. If such a report does not enable an objective evaluation of the expert's conclusion, it may be given no weight in determining whether there are reasonable grounds for the prospective financial information: see *Makita v. Sprowles* [2001] NSWCA 305.

Independent accountants' reports

RG 170.36 A review of the prospective financial information and underlying assumptions contained in an independent accountant's report, and prepared in accordance with relevant accounting and audit standards and this guide, may establish reasonable grounds for disclosing prospective financial information in a disclosure document or PDS. The independent accountant's report should:

- (a) be based on an investigation of the reasonableness of the assumptions giving rise to the prospective financial information;
- (b) state that there is no reason to believe that the assumptions do not provide reasonable grounds for the preparation of the prospective financial information;
- (c) in addition to meeting professional standards for reporting requirements, also state that there is no reason to believe that the information itself is unreasonable; and
- (d) clearly identify any hypothetical assumptions and state that they have no significant impact upon the projected outcome.

RG 170.37 We expect accountants who review and report on prospective financial information contained in a disclosure document or PDS to disclose in their report the scope of their engagement and the extent and nature of their enquiries.

RG 170.38 The Auditing and Assurance Standards Board (AUASB) has provided guidance on the presentation of prospective financial information in Auditing and Assurance Guidance Statement 1062 *Reporting in connection with proposed fundraisings* (AGS 1062). In addition to complying with AGS 1062, the independent accountant's report should clearly identify any hypothetical assumptions used in the prospective financial information and state that they have no significant impact upon the projected outcome.

Note 1: Guidance may also be taken from Auditing Standard 804 *The audit of prospective financial information* (AUS 804), which establishes standards and guidance on engagements to audit and report on prospective financial information.

Note 2: The AUASB has stated that it intends to issue a new assurance standard to replace AUS 804 and AGS 1062 in June 2011: see www.auasb.gov.au/admin/file/content2/c7/Annual_Regulatory_Plan_2010-2011_Updated_Sep_2010_FINAL.pdf.

Reasonable short-term estimates

- RG 170.39 Short-term estimates (not exceeding two years) relating to an existing business and based on events that management reasonably expects to take place or actions management reasonably expects to occur may establish reasonable grounds for disclosing prospective financial information in a disclosure document or PDS.
- RG 170.40 Our regulatory experience has shown that the longer the period the prospective financial information relates to, the less likely it is that there are reasonable grounds for disclosing it because the grounds for longer term prospective financial information become less verifiable.
- RG 170.41 We generally consider that prospective financial information for a period of more than two years may require independent or objectively verifiable sources of information to establish that there are reasonable grounds to provide it. However, for an existing business preparing a statement on estimates for up to two years, we will generally not regard as necessary independent verification if there otherwise appear to be reasonable grounds to make the statement. Directors should state why they believe the information is objectively reasonable. We may still take action on a statement on estimates for up to two years if we believe there are no reasonable grounds to provide it.

Factors that do not, by themselves, indicate reasonable grounds

- RG 170.42 The reasonable grounds requirement means that there should be a relevant factual foundation for the prospective financial information and that the information is not contrived: see *George v. Rockett* (1990) 170 CLR 104 and *Re Aldred & Dept of the Treasury* (1994) 35 ALD 685.
- RG 170.43 The following is a non-exhaustive list of factors that do not, by themselves, establish reasonable grounds for prospective financial information in a disclosure document or PDS:
- (a) prospective financial information supported only by hypothetical assumptions (rather than reasonable grounds);
 - (b) statements by issuers asserting reasonable grounds for the inclusion of information, with no verifiable reasons to support such statements; and
 - (c) statements along the lines of ‘this is the best estimate of the directors’. The test in s728(2) requires that the grounds for prospective financial information be objectively reasonable. The Explanatory Memorandum to the CLERP Bill at paragraph 8.13 explained that s728(2) of the Corporations Act was designed to:
 - ... encourage the inclusion of material of potential use to investors without exposing issuers to liability for legitimate forecasting. [Section

728(2)] also ensures that forecasts are made where there is a reasonable basis for them and not made on the basis of genuine but unreasonable beliefs of issuers.

Reasonableness of assumptions

RG 170.44 Issuers of prospective financial information need to ensure that all material assumptions, including implied assumptions, are reasonable. For example, a disclosure document or PDS might say that ‘on the basis of today’s price and the yield confirmed by the expert, we expect for every share you hold, you will earn \$100 per year by year 14’. Future market conditions have not been disclosed here, so an implied assumption has been made of no change in market conditions over the period of the prospective financial information. This may have an increasingly material impact on the figures the further into the future the prediction extends. If there were no reasonable grounds for that assumption, the statement would be misleading.

RG 170.45 Other examples of implied assumptions that should have reasonable grounds include material assumptions:

- (a) relating to foreign currency exchange rates; or
- (b) that performance will track or outperform a certain benchmark. Both the performance of the benchmark in future and the fact that the forecast returns will track or outperform that figure require reasonable grounds.

Statements based on contingencies

RG 170.46 Section 728(2) and equivalent provisions do not necessarily prevent statements about what may happen as a result of a contingency that is unlikely to occur. The test is whether a reasonable class of consumers would regard the statement as having a predictive faculty: see *ASC v. McLeod* (2000) 18 ACLC 424. Statements about risks that may occur in the future and the consequences of the risks occurring will not be forward-looking statements unless a reasonable class of consumers would regard them as having a predictive faculty. Even if a specific risk has a low probability of occurring, disclosure of it should be made if it would have a material effect on an investment, were it to occur.

RG 170.47 Deciding whether a reasonable class of consumers would believe that disclosure in a disclosure document or PDS has a predictive faculty requires consideration of:

- (a) the overall impression created by the disclosure document or PDS; and
- (b) the wider circumstances and context in which the disclosure is made.

A reasonable class of consumers may include the astute and the gullible, the intelligent and the not so intelligent, and the well educated and poorly educated: see *Fraser v. NRMA Holdings Ltd* (1995) 13 ACLC 132.

- RG 170.48 Because of the marketing role of prospective financial information and its use by investors, we consider it difficult to argue that prospective financial information in a disclosure document, PDS or advertisement will not have a predictive faculty.

Start-up ventures

- RG 170.49 In the case of start-up ventures and when there are reasonable grounds for establishing future costs, we would also expect some disclosure of:
- (a) the likely rate of expenditure for the venture;
 - (b) if and when further funds will be required to continue business operations; and
 - (c) how those funds might be raised.

Advertising and other disclosures

- RG 170.50 The general principles in this regulatory guide also apply to advertising because of the interaction of s769C and 1041H. Section 769C states:
- For the purposes of this Chapter, or of a proceeding under this Chapter, if:
- (a) a person makes a representation with respect to any future matter (including the doing of, or refusing to do, any act); and
 - (b) the person does not have reasonable grounds for making the representation;
- the representation is taken to be misleading.

Section 1041H states:

A person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive.

- RG 170.51 It follows that if there is advertising of prospective financial information without reasonable grounds, the advertisement will be misleading. It should be clear from any advertisement that these forward-looking statements are not guaranteed to occur. For more information on presenting prospective financial information and related assumptions and risks, see Section D.
- RG 170.52 Principles in this guide may assist in other contexts where a person must have reasonable grounds for stating prospective financial information (e.g. takeovers or scheme documents: see s670A(2)). Whether or not there are reasonable grounds for prospective financial information in these contexts

will need to be assessed on the particular facts of each case. However, the principles set out in this guide may provide some general guidance.

ASIC's powers

- RG 170.53 An issuer of a disclosure document or PDS that contains prospective financial information should be prepared to identify all the grounds upon which the prospective financial information is based.
- RG 170.54 If an issuer includes prospective financial information in a disclosure document or PDS, we may also closely examine supporting documents to determine whether there are reasonable grounds for including the prospective financial information if:
- (a) the issuer is in the start-up phase;
 - (b) the issuer will substantially change its operations following the fund or capital raising;
 - (c) the issuer's present activities constitute research and development of products and the development is not significantly advanced to warrant a reasonable expectation that the products will be commercialised; or
 - (d) the prospective financial information indicates a return significantly higher than industry competitors or historical performance.
- RG 170.55 If we consider that there may not be reasonable grounds for a statement in a disclosure document or PDS, we may exercise our administrative, investigative or consumer protection powers. These include issuing:
- (a) substantiation notices; and
 - (b) interim stop orders.

Substantiation notices

- RG 170.56 If an issuer makes a claim or representation promoting the supply or possible supply of financial services and we suspect that the claim or representation may be in breach of a consumer protection provision, we may issue a notice to the issuer to require it to provide information that supports the claim or representation under s12GY of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

Interim stop orders

- RG 170.57 If the existence of reasonable grounds for prospective financial information is unclear and a delay in resolving our concerns may be seen to be prejudicial to the public interest, we may make an interim stop order affecting the disclosure document or PDS (see s739(3) and 1020E(5) of the Corporations Act) without reference to the issuer.

D How should prospective financial information be disclosed?

Key points

Prospective financial information in a disclosure document or PDS can be misleading if it is presented in isolation from the assumptions and a description of the methodologies used to develop the information.

Prospective financial information should generally be accompanied by full details of assumptions, the time period covered by the information, the risks that projections will not be achieved and an explanation of how the information was calculated: see RG 170.58–RG 170.83.

An issuer must also ensure that the prospective financial information is not presented in a way that may be misleading: see RG 170.84–RG 170.89.

Even if there are reasonable grounds for including prospective financial information, issuers should consider including a warning statement to ensure that investors understand the risks in placing undue reliance on the information: RG 170.91–RG 170.94.

Provision of supporting information

RG 170.58 Additional information must be provided with prospective financial information that investors would reasonably require for the purpose of making a decision whether to acquire the financial product or to enable investors and their advisers to make an informed assessment about the product under s710, 714, 715 or 1013D. Information can be misleading if it is presented in isolation from the assumptions and a description of the methodologies used to develop the information: see *Wesfi Ltd v. Blend Investments Pty Ltd* (1999) 31 ACSR 69 and *Cultus Petroleum NL v. OMV Australia Pty Ltd* (1999) 32 ACSR 1.

RG 170.59 Investors should be given enough information to enable them to:

- (a) assess whether the prospective financial information is relevant and reliable (i.e. to form their own view about how reasonable the grounds are for making the statement); and
- (b) identify with certainty the facts and circumstances that support prospective financial information, as well as being able to demonstrate that the information is reasonable.

Note: Disclosure of this information is required under s710 and 1013D of the Corporations Act.

- RG 170.60 We consider prospective financial information in a disclosure document or PDS should be accompanied by:
- (a) full details of the assumptions used to prepare the prospective financial information (see RG 170.61–RG 170.70);
 - (b) the time period covered by the prospective financial information (see RG 170.71–RG 170.74);
 - (c) the risks that the predictions in the prospective financial information will not be achieved (see RG 170.75–RG 170.77); and
 - (d) an explanation of how the prospective financial information was calculated and the reasons for any departures from accounting standards or industry standards that investors would reasonably expect to be followed (see RG 170.78–RG 170.83).

Full details of the assumptions

- RG 170.61 A disclosure document or PDS must specifically disclose any assumptions used in compiling prospective financial information that materially affect the forecast outcome. The assumptions should be detailed and specific enough to enable the investor to work through all of the prospective financial information. This may require details about how returns are calculated during each year that the information covers. Among other things, assumptions about expenditures, revenues, inflation rates and other such variables should be clearly disclosed and highlighted if different assumptions have been used for different parts of the term that the prospective financial information covers.
- RG 170.62 Investors must be able to assess:
- (a) the validity of the assumptions on which the prospective financial information is based;
 - (b) the likelihood of the assumptions actually occurring; and
 - (c) the effect on the prospective financial information if the assumptions vary.
- RG 170.63 We expect a disclosure document or PDS to disclose material assumptions about:
- (a) specific future economic conditions; and
 - (b) particular circumstances affecting a company or financial product and the industries relevant to that company or financial product.
- RG 170.64 Disclosure of the material assumptions allows an investor or adviser to make an informed assessment of an issuer's prospects, or a person as a retail client to make an informed decision whether to acquire the product.

- RG 170.65 An assessment of the impact of these assumptions on prospective financial information should also be included. However, a disclosure document or PDS does not have to:
- (a) state general assumptions, such as the absence of war or natural disasters, unless the forecast takes these events into account; or
 - (b) disclose assumptions that would not materially affect the prospective financial information.
- RG 170.66 It is not sufficient to state the general nature of an assumption. Specific quantities or amounts should be set out. For example, it may not be sufficient to state that prospective financial information is based on an anticipated recovery in equity markets, without setting out the amount of the required recovery: see *GIO Australia Holdings Ltd v. AMP Insurance Investment Holdings Pty Ltd* (1998) 29 ACSR 584.
- RG 170.67 We consider that because the presence or absence of reasonable assumptions is a factor in any determination of whether an issuer has satisfied the relevant disclosure obligation, the basis for the assumptions underlying the prospective financial information should be stated in the disclosure document or PDS in order that an investor has some means of assessing that information: see *Miba Pty Ltd v. Nescor Industries* (1996) 141 ALR 525 and *Wesfi Ltd v. Blend Investments Pty Ltd* (1999) 31 ACSR 69.
- RG 170.68 Disclosure of the basis for prospective financial information may reduce the capacity of the information to mislead because such disclosure assists the assessment/decision of an investor or retail client.

Sensitivity analyses

- RG 170.69 Including a sensitivity analysis is a useful means of demonstrating the responsiveness of prospective financial information to material changes in key assumptions underlying the information. A sensitivity analysis should show the impact of change on significant assumptions to highlight the importance of those assumptions in calculating the prospective financial information. However, a sensitivity analysis alone is not an adequate substitute for prospective financial information prepared in accordance with s728(2) (if it is required) or explaining all relevant assumptions and risks.
- RG 170.70 Sensitivity analyses using positive or optimistic variables should generally be accompanied by a corresponding set of analyses based on negative or pessimistic variables of substantially similar weight. The range of variables covered by a sensitivity analysis should be reasonable.

The time period

- RG 170.71 The time period covered by the prospective financial information is an assumption that forms part of the information that must be disclosed.

- RG 170.72 It may be appropriate to explain why a particular period was selected. An issuer setting out prospective financial information covering periods affected by cyclical or seasonal factors, or income support guarantees that will expire after the period, must ensure investors are not misled about how representative the period is likely to be. If there are specific considerations that affect a chosen period, those matters should be disclosed.
- RG 170.73 Prospective financial information should be based on the financial years of the issuer. This means that:
- (a) investors can compare results with previous year financial results; and
 - (b) periods are not selected to create a misleading impression.
- RG 170.74 Subject to our comments in RG 170.72, if reliable prospective financial information can only be reasonably stated for part of a financial year, it can be made for that part only.

The risks

- RG 170.75 Any disclosure document or PDS that contains prospective financial information must indicate what factors may lead to a significant difference between the prospective financial information and the actual results. The disclosure of these factors should be in an unambiguous and unequivocal form.
- RG 170.76 The following risks relevant to prospective financial information should be disclosed:
- (a) risks associated with a particular asset class for the financial product—for example, the volatility of share prices or the fact taxation deductions may be disallowed for scheme interests subject to a product ruling; and
 - (b) risks specific to the proposed investment strategy—for example, the risks associated with particular investment plans or investing in emerging industries.
- RG 170.77 In the absence of these warnings, prospective financial information may have a greater capacity to be misleading.

The methodology

- RG 170.78 Investors must be able to assess the reliability of prospective financial information. To do this, they should be able to assess whether the key assumptions are likely to occur. Therefore, a disclosure document or PDS must disclose material details about the enquiries and research undertaken and the process followed in preparing the information.
- RG 170.79 A disclosure document or PDS may show prospective financial information in the format of financial statements required by the Corporations Act, such

as a statement of financial position. Therefore, investors would generally expect that information is prepared in accordance with accounting or industry standards. As a general principle, the following should be disclosed in a disclosure document or PDS:

- (a) the reasons for any departure from current accounting or industry standards that apply;
- (b) the reason a particular accounting or industry standard is applied in a particular way when there is some discretion involved; and
- (c) the reason a particular accounting or disclosure treatment is adopted when current practices differ among relevant professionals.

RG 170.80 Where non-statutory financial information is included in a disclosure document or PDS, corresponding information that is prepared in accordance with the recognition and measurement requirements of accounting standards should also be disclosed with sufficient prominence.

Note: 'Non-statutory financial information' is any financial information, financial figure, measure or ratio that is prepared on a basis that is not in accordance with all relevant accounting standards. Non-statutory financial information may exclude certain transactions, or present transactions or balances on a different recognition and measurement basis from that required or permitted by accounting standards.

RG 170.81 The issuer should also disclose the effects of any chosen accounting treatment on the prospective financial information. The effects should be disclosed in enough detail for investors to properly assess the information. Reasons for preparing prospective financial information in a particular way will not need to be given if they would not be material to investors. We are not concerned with trivial or unimportant differences in accounting treatment in a prospectus.

RG 170.82 Similarly, if an expert adopts a particular methodology in preference to others when preparing prospective financial information, it should be explained. Experts should see RG 111 for more detailed guidance.

RG 170.83 The methodology itself should not be misleading. For example, calculation of prospective financial information in a manner that does not take into account the time value of money may be misleading if investors do not understand that fact.

Presentation of prospective financial information

RG 170.84 Section 728(2) is not an exhaustive statement of when prospective financial information is misleading. The presentation, accompanying disclosures and terminology used in prospective financial information should also be considered. A statement that is literally true may at the same time be misleading and deceptive: see *Hornsby Building Information Centre Pty Ltd v. Sydney Building Information Centre Ltd* (1978) 140 CLR 216 at 228.

- RG 170.85 If significant information is presented in a way that investors are likely to overlook, a disclosure document or PDS may be misleading: see *Fraser v. NRMA Holdings Ltd* (1995) 13 ACLC 132 and *Pancontinental Mining Ltd v. Goldfields Ltd* (1995) 16 ACSR 463. Therefore, a disclosure document or PDS must present the information needed to assess the reliability of prospective financial information in a way that clearly connects both types of information. This usually means that the information about assumptions, and other matters underlying prospective financial information, should be in the same part of the disclosure document or PDS as the prospective financial information itself.
- RG 170.86 We consider that prospective financial information and associated material should be disclosed:
- (a) with its assumptions and limits prominently displayed immediately after the information, or in a way that ensures that an investor is made aware of the existence, nature and quantity or amount of the assumptions and limits at the time they read it;
 - (b) with the assumptions and limits displayed in a way which is not less prominent than the prospective financial information (i.e. when compared to the ‘key’ statement); and
 - (c) so that prominence is not given to a more favourable figure or fact in the forecast range if a range is cited.

Use of ranges

- RG 170.87 Presenting prospective financial information as a range may reduce the risk that investors will place undue weight on it, as may occur with a single point estimate. However, giving a range is only appropriate for significant totals, such as net profits or net assets. Ranges may be confusing or misleading if they are used for every item that appears in a statement of financial position.
- RG 170.88 If prospective financial information is expressed as a range, the range must be small enough to give meaningful information about an issuer’s prospects. A disclosure document or PDS should state which variables will have a significant effect on the outcome within the range. It may be misleading to include a range when the maker expects the results to be at the lower end of the range. If a range is given, the link between the assumptions and the upper and lower ends of the range should be clear. It may be appropriate to express prospective financial information as a statement that a result of at least a specific amount is likely.

Use of technical terms

- RG 170.89 The use of terms like ‘forecasts’ may imply that their contents are calculated in accordance with auditing or accounting standards. The term ‘forecasts’

has a particular accounting meaning. The use of that or other technical terms should not be misleading to investors. Issuers should ensure that the use of any technical terms is adequately explained in a disclosure document or PDS and is not misleading. In particular, care should be taken to ensure that the use of terminology is consistent throughout a disclosure document or PDS to avoid investor confusion.

Disclosure of confidential information

RG 170.90 The commercial benefits of keeping certain information confidential are relevant in assessing what is reasonable for investors to require or expect for the purposes of s710 and 1013F(1). However, these commercial benefits do not justify withholding information that may deter investors from acquiring the securities if that information were generally known. Careful disclosure may often satisfy the requirements of the Corporations Act without revealing confidential information.

Warning about reliability of prospective financial information

RG 170.91 Even if there are reasonable grounds to state prospective financial information, issuers should consider including a warning so that an investor will understand its predictive character and the risks in placing undue reliance on that information.

RG 170.92 Any cautionary language should be displayed together with the prospective financial information or otherwise in a manner sufficiently prominent to ensure that a reader of the disclosure document or PDS will be no less likely to view it than the prospective financial information itself.

RG 170.93 We do not intend to prescribe the nature or content of what may constitute meaningful cautionary language and risk disclosure. However, we suggest that disclosure should include unambiguous statements clarifying that the prospective financial information:

- (a) is predictive in character;
- (b) may be affected by inaccurate assumptions or by known or unknown risks and uncertainties; and
- (c) may differ materially from results ultimately achieved.

RG 170.94 The use of warnings and other cautionary language will not always be sufficient to prevent particular information being misleading and importantly will not, of itself, affect the requirement for there to be reasonable grounds to state the information.

Key terms

Term	Meaning in this document
AGS 1064 (for example)	Auditing and Assurance Guidance Statement issued by the AUASB (in this example numbered 1064)
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
AUASB	Auditing and Assurance Standards Board
AUS 804 (for example)	Auditing standard issued by the AUASB (in this example numbered 804)
CLERP Bill	Corporate Law Economic Reform Program Bill 1998
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
disclosure document	For an offer of securities, this includes a prospectus, a profile statement and an offer information statement
financial product	Generally a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>
forecast	Prospective financial information prepared on the basis of assumptions about future events that management expects to take place and the actions management expects to take as of the date the information is prepared
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act <p>Note: See s761A for the exact definition.</p>
projection	Prospective financial information prepared on the basis of: <ul style="list-style-type: none"> • hypothetical assumptions about future events and management actions that are not necessarily expected to take place; or • a mixture of assumptions management expects to take place and hypothetical assumptions

Term	Meaning in this document
prospective financial information	Financial information of a predictive character based on assumptions about events that may occur in the future and on possible actions by an entity
RG 70 (for example)	An ASIC regulatory guide (in this example, numbered 70)
s728 (for example)	A section of the Corporations Act (in this example numbered 728)
Sch 10C	A schedule of the Corporations Regulations (in this example numbered 10C), unless otherwise specified
shorter PDS	A PDS that is required to comply with the shorter PDS regime
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2C and Sch B, C, D and E of the Corporations Regulations, which prescribe the content and length of the PDS for margin loans, superannuation products and simple managed investment schemes

Related information

Headnotes

advertising, assumptions, disclosure document, disclosure obligations, forecasts, independent accountant, independent industry expert, issuers of financial products, misleading and deceptive conduct, Product Disclosure Statement (PDS), prospective financial information, reasonable grounds

Regulatory guides

RG 70 *Prospectuses for cash box and investment companies*

RG 111 *Content of expert reports*

RG 112 *Independence of experts*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

Information sheets

INFO 133 *Shorter and simpler PDSs: Superannuation, managed investment schemes and margin lending*

Legislation

ASIC Act, s12GY

Corporations Act, s670A(2), 710, 714, 715, 728(2), 739(3), 769C, 1013D, 1013F(1), 1020E(5) and 1041H

Corporations Regulations, Schs 10A, 10BA, 10C, 10D and 10E

Cases

AAPT v. Cable & Wireless Optus Ltd (1999) 32 ACSR 63, *ASC v. McLeod* (2000) 18 ACLC 424, *Cultus Petroleum NL v. OMV Australia Pty Ltd* (1999) 32 ACSR 1, *Fraser v. NRMA Holdings Ltd* (1995) 13 ACLC 132, *George v. Rockett* (1990) 170 CLR 104, *GIO Australia Holdings Ltd v. AMP Insurance Investment Holdings Pty Ltd* (1998) 29 ACSR 584, *Hornsby Building Information Centre Pty Ltd v. Sydney Building Information Centre Ltd* (1978) 140 CLR 216, *Makita v. Sprowles* [2001] NSWCA 305, *Miba Pty Ltd v. Nescor Industries* (1996) 141 ALR 525, *Pancontinental Mining Ltd v. Goldfields Ltd* (1995) 16 ACSR 463, *Re Aldred & Dept of the Treasury* (1994) 35 ALD 685, *Sykes v. Reserve Bank of Australia* (1999) ATPR 41–699, *Wesfi Ltd v. Blend Investments Pty Ltd* (1999) 31 ACSR 69