



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 231

# Infrastructure entities: Improving disclosure for retail investors

January 2012

### **About this guide**

This guide is for listed and unlisted infrastructure entities and their advisers.

It sets out ASIC's benchmarks and disclosure principles for improved disclosure to retail investors to help investors understand and assess infrastructure entities and make better informed investment decisions.

### 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 guide was issued in January 2012 and is based on legislation and regulations as at the date of issue.

### 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.

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## A Overview

### Key points

Investment in infrastructure assets is important for the maintenance of critical systems and services for our community and has significance for capital flows in Australia.

We believe retail investor confidence will be enhanced through improved disclosure that enables investors to better understand the characteristics of infrastructure entities and the risks associated with them.

We have developed a set of benchmarks (see Section B) and disclosure principles (see Section C) to assist infrastructure entities in preparing disclosure documents for retail investors.

Infrastructure entities should address the benchmarks on an 'if not, why not' basis: see RG 231.18–RG 231.20. Disclosure against the benchmarks should be in table form: see Section D. The information outlined in the disclosure principles should be clear and prominent, and included as soon as practicable after the benchmark table.

### Improving disclosure to retail investors

- RG 231.1 Investment in infrastructure assets is important for the maintenance of critical systems and services for our community and has significance for capital flows in Australia. We believe that improving the quality of disclosure by infrastructure entities to retail investors through benchmarks and disclosure principles will enhance investor confidence in, and understanding of, such investments.
- RG 231.2 Infrastructure entities typically have complex characteristics and risks that retail investors need to understand to make informed investment decisions. To help improve the quality of disclosure, we have developed a set of benchmarks and disclosure principles. We believe that disclosing against the benchmarks and applying the disclosure principles will provide meaningful and consistent information, enabling investors to understand the characteristics of infrastructure entities and the risks associated with them.
- RG 231.3 The need to provide such information to investors in the infrastructure sector is particularly important because there is an increasing tendency for infrastructure to be funded by capital raised from the public.
- RG 231.4 The benchmarks and disclosure principles in this guide represent our guidance on the information that would reasonably be expected to be included in a disclosure document and ongoing disclosure, taking into

account various factors, including whether such information would have a material impact on a retail investor's decision to invest, and continue to invest, in the infrastructure entity.

## Current regulation of infrastructure entities

- RG 231.5 The offer of interests in infrastructure entities is regulated under the *Corporations Act 2001* (Corporations Act). For example, Pt 7.9 of the Corporations Act requires a Product Disclosure Statement (PDS) to contain, among other things, information about the characteristics and risks of infrastructure entities that might reasonably be expected to have a material influence on a retail client's decision to invest. Similarly, this information might reasonably be expected to be disclosed in a Ch 6D disclosure document, such as a prospectus.
- RG 231.6 For example, an interest in an infrastructure entity in the form of a registered managed investment scheme is a financial product, and so the obligations for the offer of financial products in Pt 7.9 apply to the offer of interests in such an infrastructure entity, including the requirement to prepare a PDS.
- Note: Different laws and regulations may apply to infrastructure entities in a form other than a managed investment scheme.
- RG 231.7 In addition, Ch 5C imposes various requirements on infrastructure entities, including (where applicable) the requirements to be registered as a managed investment scheme, to be operated by a responsible entity that holds an Australian financial services (AFS) licence, and to have a scheme constitution and compliance plan.
- RG 231.8 The Corporations Act requires disclosure in the form of a PDS for an offer of interests in an infrastructure managed investment scheme to retail investors. The PDS must:
- (a) be worded and presented in a clear, concise and effective manner (s1013C(3));
  - (b) make specific disclosures (s1013D), including among other things about the significant risks associated with holding the product; and
  - (c) include all other information that might reasonably be expected to have a material influence on the decision of a reasonable person (when investing as a retail client) about whether or not to invest in the product (s1013E).
- RG 231.9 The general PDS content requirement in s1013E is designed to:
- (a) promote efficiency in the capital markets;
  - (b) promote disclosure of relevant information;

- (c) reduce the likelihood of omitting important information;
  - (d) focus responsible entities on the information needs of investors; and
  - (e) be sufficiently flexible to accommodate changes in investors' information needs.
- RG 231.10 A responsible entity of an infrastructure managed investment scheme also has obligations to provide ongoing disclosure to investors under the Corporations Act, including:
- (a) disclosure of material changes and significant events (s675 and 1017B);
  - (b) notification of any material change to a matter that would be required to be specified in a PDS (s1017B); and
  - (c) periodic statements to members who acquired their interests as retail clients (s1017D).
- RG 231.11 There are also general consumer protection provisions in the *Australian Securities and Investments Commission Act 2001* (ASIC Act), including prohibitions against misleading and deceptive conduct, as well as prohibitions against false or misleading representations.
- RG 231.12 In administering the law, we are able to exercise our regulatory powers without notice; however, it can be more effective and efficient to provide the market with specific and clear guidance on our view of the existing requirements of the Corporations Act—as they apply to particular financial products. This approach informs the industry as a whole about our views on the requirements of the Corporations Act, rather than communication of these views on an individual basis, which can be disruptive to individual fundraising and inefficient for ASIC.
- RG 231.13 For example, in *Regulatory Guide 228 Prospectuses: Effective disclosure for retail investors* (RG 228), we provided guidance that a prospectus will generally be 'clear, concise and effective' if it:
- (a) highlights key information (e.g. through an 'investment overview' that gives cross-references to the more detailed information);
  - (b) uses plain language;
  - (c) is as short as possible;
  - (d) explains complex information, including any technical terms; and
  - (e) is logically ordered and easy to navigate.
- RG 231.14 It is important to note that disclosure against the benchmarks and applying the disclosure principles does not ensure that the disclosure obligations (including under the Corporations Act) for an infrastructure entity have been met. The benchmarks and disclosure principles only assist with disclosure of specific issues within the broader disclosure requirements.

## Who this guide applies to

- RG 231.15 The benchmarks and disclosure principles are intended to apply to infrastructure entities. For the purposes of this guide, an infrastructure entity is defined as a listed or unlisted registered managed investment scheme, company or stapled structure investment that has been offered to retail investors on the basis that its primary strategy or investment mandate is to invest in any of:
- (a) the physical plant, property or equipment of infrastructure assets;
  - (b) the right to operate infrastructure assets; or
  - (c) other unlisted entities which, either directly or indirectly, primarily invest in the assets referred to in paragraph (a) or (b) above.
- RG 231.16 Infrastructure assets include roads, railways, ports, airports, telecommunications facilities, electricity generation, gas or electricity transmission or distribution, water supply or sewerage, and hospitals.
- RG 231.17 For an infrastructure entity that is also a property fund, we note that *Regulatory Guide 46 Unlisted property schemes: Improving disclosure for retail investors* (RG 46) excludes infrastructure entities. Our intention is that this guide on infrastructure entities will apply to infrastructure entities that may also be considered property funds.

## The benchmark model of disclosure

- RG 231.18 The benchmark model of disclosure:
- (a) identifies, for a particular financial product, the key characteristics and risks potential investors should understand before making a decision to invest;
  - (b) includes a benchmark to assist an issuer to address the risks when establishing its business model and compliance procedures; and
  - (c) provides the infrastructure entity with an opportunity to identify whether it meets the benchmark and, if does not meet the benchmark, to explain why not.
- RG 231.19 ‘Why not’ also means explaining how an infrastructure entity deals with the issues underlying the benchmark.
- RG 231.20 Disclosure on an ‘if not, why not’ basis is required:
- (a) up-front in the PDS or prospectus; and
  - (b) as material changes occur—in a supplementary PDS or prospectus, continuous disclosure notice, notice under s1017B or periodic reports.

## The disclosure principle model of disclosure

- RG 231.21 In addition, the issuer needs to apply disclosure principles when disclosing to investors. The disclosure principle model of disclosure:
- (a) identifies, for a particular financial product, the key characteristics and risks potential investors should understand before making a decision to invest;
  - (b) enables an issuer to apply the disclosure principles to those key characteristics and risks, where appropriate; and
  - (c) sets out our expectations regarding disclosure in a PDS or prospectus and other disclosure material in order for the infrastructure entity to comply with the Corporations Act.
- RG 231.22 The disclosure principles clarify the standards to which retail investors are to be provided with key information to assess financial products for which there are typically few readily comparable products.

## Benchmarks and disclosure principles for infrastructure entities

- RG 231.23 The purpose of the benchmarks and disclosure principles is to target certain key risk areas that have an impact on infrastructure entities and establish a common standard against which such entities should disclose. We believe disclosure against the benchmarks and applying the disclosure principles will help to achieve consistent, clear and comparable disclosure to investors, so they can assess an infrastructure entity and more easily compare it with other infrastructure entities.
- RG 231.24 We recognise that in certain circumstances it may be difficult for certain infrastructure entities to disclose the information requested because it is not available to them. For example, an infrastructure entity that holds investments in wholesale or overseas infrastructure entities may not have access to all the information specified in the benchmarks and/or the disclosure principles for those underlying investments. We would expect infrastructure entities to use reasonable endeavours to obtain and provide such information to meet the obligations of the responsible entity or officers of a company to have sufficient information to make investment decisions. However, if an infrastructure entity does not have that information, it should disclose why it was not able to provide the information.
- RG 231.25 Meeting the benchmarks is not mandatory. They are merely used to establish a framework for disclosure of issues regarded as important. Further, infrastructure entities should also take into account other relevant regulatory guides in disclosing against the benchmarks and applying the disclosure principles (e.g. Regulatory Guide 170 *Prospective financial information* (RG 170)).



- RG 231.26 Failing to meet one or more of the benchmarks (or failing to disclose certain information outlined in the disclosure principles) does not mean that a particular infrastructure entity is necessarily a poor investment. However, we believe it is important for investors to know when an infrastructure entity does not meet a benchmark (or has not disclosed certain information) so that they can assess the potential impact of this information on their investment decision.
- RG 231.27 In some circumstances, disclosures may be made on a website—for example, through reliance on Class Order [CO 03/237] *Updated information in product disclosure statements* or incorporation by reference.

## Clarification on advertising

- RG 231.28 In relation to advertising, issuers of infrastructure entities should ensure that:
- (a) there is disclosure that investors risk losing some or all of their principal investment;
  - (b) returns on the investment are only quoted if they are accompanied by prominent disclosure that there is a risk the investment may achieve lower than expected returns;
  - (c) statements in advertisements are consistent with all corresponding disclosures on that subject in the PDS or prospectus; and
  - (d) if an investment rating is used, it is properly explained.

## Education of investors

- RG 231.29 As a complement to this regulatory guide, we have published an investor guide to assist investors' understanding of the risk areas and how to evaluate the issuer's responses on how it addresses those risk areas: see *Investing in infrastructure?* Educating investors will help them understand and use the benchmarks, together with the 'if not, why not' responses and the disclosure principle information, in their investment decision making.
- RG 231.30 We also encourage infrastructure entities to provide investors with a copy of the investor guide with the PDS or prospectus.

## Timing for implementing improved disclosure

- RG 231.31 Disclosing against the benchmarks and applying the disclosure principles applies to both existing and new offers of interests and securities in infrastructure entities.

RG 231.32 By 1 July 2012, where the product under the prospectus or PDS has ceased to be available to new investors but there are existing retail holders of that product, infrastructure entities should address the benchmarks on an ‘if not, why not’ basis and apply the disclosure principles in updated disclosure that is brought to the attention of existing investors. This could be by using the infrastructure entity’s normal investor communication channels (e.g. in a regular investor update, in a periodic statement under s1017D or by including the information on a website that is used to communicate with investors).

RG 231.33 By 1 July 2012, if an existing PDS or prospectus is still in use, infrastructure entities should either:

- (a) update the PDS or prospectus by a new or a supplementary PDS or supplementary prospectus so that it includes the benchmark and additional disclosure principle information; or
- (b) for an infrastructure entity that is a managed investment scheme, include the benchmark and additional disclosure principle information on a website referred to in the PDS (if the omission of information from the PDS is not materially adverse).

Note: We consider that if the omission of the benchmark and additional disclosure principle information from an existing PDS is not materially adverse, the responsible entity will generally be able to rely on [CO 03/237] to update the PDS for this information without the need for a supplementary or new PDS.

RG 231.34 PDSs and prospectuses dated on or after 1 July 2012 should clearly and prominently disclose against the benchmarks on an ‘if not, why not’ basis and apply the disclosure principles. The PDS or prospectus should also explain how the infrastructure entity intends to update investors for ongoing disclosure.

RG 231.35 If there are any material changes to the infrastructure entity’s performance against the benchmarks or in the disclosure principle information, the infrastructure entity should deal with this in ongoing disclosure. It is good practice to update investors on material changes to key information as soon as practicable (e.g. by updating a website used for this purpose).

RG 231.36 It is good practice for an infrastructure entity to update investors at least annually on the status of its performance against the benchmarks and the disclosure principles, including whether the information has been updated for any material changes since the last investor report.

## B Benchmarks for infrastructure entities

### Key points

Infrastructure entities should provide improved disclosure for retail investors by disclosing whether or not the benchmarks have been met on an ‘if not, why not’ basis.

Infrastructure entities should disclose against benchmarks on:

- corporate structure and management (see RG 231.38–RG 231.40);
- the remuneration of management (see RG 231.41–RG 231.43);
- the classes of units and shares (see RG 231.44–RG 231.46);
- substantial related party transactions (see RG 231.47–RG 231.50);
- cash flow forecasts (see RG 231.51–RG 231.54);
- the entity’s base-case financial model (see RG 231.55–RG 231.58);
- performance against publicly disclosed forecasts for operating assets (see RG 231.59–RG 231.61);
- distributions—if the entity is a unit trust (see RG 231.63–RG 231.66); and
- updating the unit price—if the entity is unlisted and a unit trust (see RG 231.67–RG 231.69).

### Summary of the benchmarks

RG 231.37 We have developed nine benchmarks that apply to infrastructure entities: see Table 1. Infrastructure entities should address the benchmarks on an ‘if not, why not’ basis: see RG 231.18–RG 231.20.

Note: For our detailed guidance on the form and method of disclosure, see Section D of this guide.

**Table 1: Benchmarks for infrastructure entities in which retail investors invest**

Benchmark	Description
<b>1 Corporate structure and management</b>	Benchmark 1 addresses whether the infrastructure entity’s corporate governance policies and practices conform with ASX Listing Rules Guidance Note 9A <i>Corporate governance—ASX Corporate Governance Council—Revised corporate governance principles and recommendations</i> (GN 9A).
<b>2 Remuneration of management</b>	Benchmark 2 addresses whether incentive-based remuneration paid to management is derived from the infrastructure entity’s performance.

Benchmark	Description
<b>3 Classes of units and shares</b>	Benchmark 3 addresses whether all units or shares of the infrastructure entity are fully paid and have the same rights.
<b>4 Substantial related party transactions</b>	Benchmark 4 addresses whether the infrastructure entity has complied with ASX Listing Rule 10.1 <i>Acquisition and disposal of assets</i> (ASX Listing Rule 10.1) for substantial related party transactions.
<b>5 Cash flow forecast</b>	Benchmark 5 addresses whether the infrastructure entity has prepared and had approved by its directors certain cash flow forecasts.
<b>6 Base-case financial model</b>	Benchmark 6 addresses whether an agreed-upon procedures check has been performed on the infrastructure entity's base-case financial model and whether there are any findings that would be materially relevant to the infrastructure entity's investment decision.
<b>7 Performance and forecast</b>	Benchmark 7 applies to operating assets and addresses whether performance for the first two years of operation equals or exceeds the original disclosed forecasts.
<b>8 Distributions</b>	Benchmark 8 applies only to infrastructure entities that are unit trusts and addresses whether distributions will be paid from scheme borrowings.
<b>9 Updating the unit price</b>	Benchmark 9 applies only to unlisted infrastructure entities that are unit trusts and addresses whether the infrastructure entity has, after valuations, reviewed and updated the unit price before issuing new units or redeeming units.

## Benchmark 1: Corporate structure and management

RG 231.38 The infrastructure entity's corporate governance policies and practices conform with the principles and recommendations in GN 9A.

Note 1: See [www.asxgroup.com.au/asx-listing-rules-guidance-notes-and-waivers.htm](http://www.asxgroup.com.au/asx-listing-rules-guidance-notes-and-waivers.htm) for the full set of ASX Guidance Notes.

Note 2: Our intention is that this benchmark applies to both listed and unlisted infrastructure entities.

### Explanation

RG 231.39 Disclosure of the corporate governance and control structure of the infrastructure entity provides transparency about the context within which directors and other officeholders fulfil their duty to give priority to the interests of investors or, for a company, the company as a whole.

RG 231.40 If the benchmark is not met, the infrastructure entity should explain which components of the corporate governance policies and practices do not conform with GN 9A.

## Benchmark 2: Remuneration of management

- RG 231.41 Incentive-based remuneration paid to management for the infrastructure entity is derived from the performance of the infrastructure entity and not the performance of other entities within its consolidated group, except where the infrastructure entity is the parent of the consolidated group.

Note: The measure of performance will vary depending on the arrangements between the infrastructure entity and its management. If the incentive-based remuneration of management is derived from the performance of an entity other than the infrastructure entity (e.g. a parent or sponsor entity), the infrastructure entity should disclose that it does not meet this benchmark and provide a description of the remuneration arrangements.

### Explanation

- RG 231.42 We believe it is important for investors to understand the extent to which the remuneration of management and board members is derived from the performance of the infrastructure entity. This information will allow investors to form a view about how the incentives and rewards provided to management and the board might influence investment decisions.
- RG 231.43 If the benchmark is not met, the infrastructure entity should explain how the incentive-based remuneration policy operates.

## Benchmark 3: Classes of units and shares

- RG 231.44 All units or shares are fully paid and have the same rights.

### Explanation

- RG 231.45 It is important for investors to understand whether units or shares acquired have been fully or partly paid. If the units or shares are partly paid, investors should understand what obligations for further payment attach to those units or shares. Investors also need to understand if other investors have rights that vary from their own (e.g. priority rights).
- RG 231.46 If the benchmark is not met, the infrastructure entity should explain what proportion is paid and/or on what basis the rights attached to the units or shares differ.

## Benchmark 4: Substantial related party transactions

- RG 231.47 The infrastructure entity complies with ASX Listing Rule 10.1 for substantial related party transactions.

Note 1: See [www.asxgroup.com.au/asx-listing-rules-guidance-notes-and-waivers.htm](http://www.asxgroup.com.au/asx-listing-rules-guidance-notes-and-waivers.htm) for the full set of ASX Listing Rules.

Note 2: We have recently reissued Regulatory Guide 76 *Related party transactions* (RG 76). This provides additional guidance on related party transactions for infrastructure entities.

Note 3: Our intention is that this benchmark applies to both listed and unlisted infrastructure entities.

## Explanation

- RG 231.48 An independent assessment for a proposed related party transaction can help investors to assess whether the transaction is in their best interests.
- RG 231.49 If the benchmark is not met, the infrastructure entity should explain on what basis it will enter into related party transactions. For example, a listed infrastructure entity that has obtained an ASX waiver from ASX Listing Rule 10.1 should disclose that it does not meet the benchmark because it has obtained a waiver. An infrastructure entity that has not obtained an independent expert report should provide reasons why it has not done so.

## Related disclosure

- RG 231.50 We also expect all infrastructure entities to provide disclosure on certain types of related party transactions: see Disclosure Principle 3 at RG 231.77–RG 231.79.

## Benchmark 5: Cash flow forecast

- RG 231.51 The infrastructure entity has, for the current financial year, prepared and had approved by its directors:
- (a) a 12-month cash flow forecast for the infrastructure entity and has engaged an independent suitably qualified person or firm to provide, in accordance with the auditing standards:
    - (i) negative assurance on the reasonableness of the assumptions used in the forecast; and
    - (ii) positive assurance that the forecast is properly prepared on the basis of the assumptions and on a basis consistent with the accounting policies adopted by the entity; and
  - (b) an internal unaudited cash flow forecast for the remaining life, or the right to operate (if less), for each new significant infrastructure asset acquired by the infrastructure entity.

Note 1: The cash flow forecast should be updated for any material changes to the assumptions in the forecast.

Note: For the definition of ‘significant infrastructure asset’, see the ‘Key terms’.

## Explanation

- RG 231.52 Cash flow forecasts are an important indicator of an infrastructure entity's sustainable capacity to meet its commitments. We consider it appropriate that cash flow forecasts are checked and approved by directors and examined by an independent suitably qualified person or firm. This will encourage more rigorous analysis of the assumptions within cash flow forecasts.
- RG 231.53 For the purposes of disclosing against this benchmark, a new infrastructure asset in its first year of operation can be excluded from the forecast. If an independent suitably qualified person or firm would not provide negative assurance on the reasonableness of the assumptions used in the forecast because there is no operating history for the new infrastructure asset, the infrastructure entity may still disclose that it meets the benchmark.
- RG 231.54 If the benchmark is not met, the infrastructure entity should explain what other measures have been taken to demonstrate its capacity to meet its commitments.

## Benchmark 6: Base-case financial model

- RG 231.55 Before any new material transaction, and at least once every three years, an assurance practitioner performs an agreed-upon procedures check on the infrastructure entity's base-case financial model that:
- (a) checks the mathematical accuracy of the model, including that:
    - (i) the calculations and functions in the model are in all material respects arithmetically correct; and
    - (ii) the model allows changes in assumptions, for defined sensitivities, to correctly flow through to the results; and
  - (b) includes no findings that would, in the infrastructure entity's opinion, be materially relevant to the infrastructure entity's investment decision.

Note: See the 'Key terms' for the definitions of 'agreed-upon procedures' and 'assurance practitioner'. 'Defined sensitivities' are agreed upon between the assurance practitioner and the infrastructure entity.

## Explanation

- RG 231.56 We consider that investor confidence will be enhanced if investors are aware that an agreed-upon procedures check of the infrastructure entity's base-case financial model has been performed by an assurance practitioner.
- RG 231.57 If the benchmark is not met, the infrastructure entity should explain why the agreed-upon procedures check has not been performed and how it is satisfied

with the mathematical accuracy of the model and that the forecast is properly prepared on the basis of the assumptions.

### **Related disclosure**

- RG 231.58 In certain circumstances, we also expect infrastructure entities to provide additional information on the base-case financial model: see Disclosure Principle 7 at RG 231.89–RG 231.94.

## **Benchmark 7: Performance and forecast**

- RG 231.59 For any operating asset developed by the infrastructure entity, or completed immediately before the infrastructure entity's ownership, the actual outcome for the first two years of operation equals or exceeds any original publicly disclosed forecasts used to justify the acquisition or development of that asset.

Note: This benchmark should be addressed for the first two years of operation of each relevant operating asset and updated as part of the ongoing disclosure. The benchmark should also be addressed in any PDS or prospectus between the first and third anniversary of completion of development of the asset. This benchmark only operates on publicly disclosed forecasts. If no forecasts have been publicly disclosed, then the benchmark is not applicable.

### **Explanation**

- RG 231.60 It is important for investors to understand how an investment is performing against their expectations and for the infrastructure entity to explain why the expectations may not have been met.
- RG 231.61 If the benchmark is not met, the infrastructure entity should explain why the actual results are below the forecast (e.g. which assumptions were not met).

### **Related disclosure**

- RG 231.62 Any material discrepancies between the publicly disclosed forecasts and the actual performance for the first two years of operation should be disclosed under Disclosure Principle 7: see RG 231.89–RG 231.94.

## **Benchmark 8: Distributions**

- RG 231.63 If the infrastructure entity is a unit trust, it will not pay distributions from scheme borrowings.



### Explanation

- RG 231.64 If an infrastructure entity that is a unit trust borrows against the assets of the scheme, investors' interests in these assets will generally rank behind those of the lender.
- RG 231.65 Investors in such infrastructure entities with high borrowings face the risk that distributions may not be sustainable. Investors often rely heavily on distributions from investments. To assess whether current distributions are sustainable, investors should understand whether these distributions are funded from income or debt. Investors also face the risk that they may lose part or all of their investment if the entity defaults on these loans.
- RG 231.66 If the benchmark is not met, the infrastructure entity should explain how it will pay distributions.

Note: This explanation should be made in accordance with RG 170.

## Benchmark 9: Updating the unit price

- RG 231.67 If the infrastructure entity is unlisted and a unit trust, after finalising a new valuation for an infrastructure asset, the infrastructure entity reviews, and updates if appropriate, the unit price before issuing new units or redeeming units.

### Explanation

- RG 231.68 The market value of an asset can be a significant influence on the unit price for a scheme. It is important that unit prices reflect the current value of infrastructure assets when units are issued or redeemed.
- RG 231.69 If the benchmark is not met, the infrastructure entity should explain how often the unit price is updated.

## C Disclosure principles for infrastructure entities

### Key points

As part of their disclosure obligations under Pt 7.9 and Ch 6D of the Corporations Act, we expect infrastructure entities to disclose various matters, including information about significant characteristics or features attaching to investments in infrastructure entities.

In practice, we expect infrastructure entities to provide information about the matters set out in the following disclosure principles:

- key relationships (see RG 231.72–RG 231.74);
- management and performance fees (see RG 231.75–RG 231.76);
- related party transactions (see RG 231.77–RG 231.79);
- financial ratios (see RG 231.80–RG 231.83);
- capital expenditure and debt maturities (see RG 231.84–RG 231.86);
- foreign exchange and interest rate hedging (see RG 231.87–RG 231.88);
- the entity's base-case financial model (see RG 231.89–RG 231.94);
- valuations (see RG 231.95–RG 231.96);
- distribution policy (see RG 231.97–RG 231.98);
- withdrawal policy (see RG 231.99–RG 231.100); and
- portfolio diversification (see RG 231.101–RG 231.103).

### Summary of the disclosure principles

RG 231.70 We expect infrastructure entities to clearly and prominently disclose the information outlined in the 11 disclosure principles: see Table 2. This information should be disclosed as soon as practicable after disclosure against the benchmarks in any PDS or prospectus so that retail investors can compare the disclosure of certain information for infrastructure entities.

Note: For our detailed guidance on the form and method of disclosure, see Section D.

RG 231.71 The purpose of the disclosure principles is to improve the consistency and quality of disclosure by infrastructure entities and to enhance investor confidence.

**Table 2: Disclosure principles for infrastructure entities in which retail investors invest**

Disclosure principle	Summary
<b>1 Key relationships</b>	Disclosure Principle 1 addresses the infrastructure entity's key relationships (e.g. controlling arrangements), including for significant infrastructure assets under development.
<b>2 Management and performance fees</b>	Disclosure Principle 2 addresses how management fees and performance fees will be paid and the justification for those fees.
<b>3 Related party transactions</b>	Disclosure Principle 3 addresses what details we expect to be disclosed for related party arrangements relevant to an investor's investment decision, including any financial benefits in the arrangements or whether the arrangements are on arm's length terms or member approval has been sought.
<b>4 Financial ratios</b>	Disclosure Principle 4 addresses the infrastructure entity's publicly disclosed target and actual financial ratios and how investors can use these ratios in practical terms (e.g. to assess the level of debt-related risk).
<b>5 Capital expenditure and debt maturities</b>	Disclosure Principle 5 addresses the infrastructure entity's planned capital expenditure requirements (including funding of these requirements) and certain information on its material debt maturities.
<b>6 Foreign exchange and interest rate hedging</b>	Disclosure Principle 6 addresses the infrastructure entity's foreign exchange and interest rate hedging policies, and whether the actual foreign exchange and/or variable interest rate exposure conforms with these policies.
<b>7 Base-case financial model</b>	Disclosure Principle 7 addresses various aspects of the infrastructure entity's base-case financial model (e.g. the assumptions, procedures) and an analysis of the effect on the infrastructure entity if key assumptions were materially less favourable than anticipated.
<b>8 Valuations</b>	Disclosure Principle 8 addresses whether valuations, or a summary of valuations for significant infrastructure assets, are available to investors, as well as any potential conflicts of interest that may arise in the preparation of valuations.
<b>9 Distribution policy</b>	Disclosure Principle 9 applies to infrastructure entities that are unit trusts and addresses the entity's distribution policy, the source of distribution payments and the risks associated with distributions being paid from sources other than operating cash flow.
<b>10 Withdrawal policy</b>	Disclosure Principle 10 applies to infrastructure entities that are unlisted trusts and addresses the entity's withdrawal policy, how investors will be notified of changes to this policy and risks that may affect the ability of investors to withdraw their money.
<b>11 Portfolio diversification</b>	Disclosure Principle 11 addresses the infrastructure entity's portfolio diversification policy, its actual portfolio diversification position and an explanation for any material variances between these positions.

## Disclosure Principle 1: Key relationships

RG 231.72 We consider that an infrastructure entity should disclose the following details (preferably through a diagram):

- (a) the important relationships for the entity and any other related party arrangements relevant to an investor’s investment decision, including any controlling arrangements, special voting rights or director appointment rights; and
- (b) for any significant infrastructure asset under development:
  - (i) key relationships in the development, including with any concessionaire, developer, builder, sponsor, promoter, asset manager, independent expert, financier, joint venture party, issuer or manager; and
  - (ii) key participants that bear material development-related risks, including for timing and cost of delivery of the development, procurement and cost of financing for the development, and guaranteeing the performance of other entities.

Note: For the definition of ‘significant infrastructure asset’, see the ‘Key terms’.

### Explanation

- RG 231.73 Key relationships can have an important influence on decisions relating to infrastructure entities. Investment in infrastructure entities that undertake development can be more risky than passive investments.
- RG 231.74 We consider that an investor should be aware of the key relationships in a development, the risks associated with the development and which participants bear the risks.

## Disclosure Principle 2: Management and performance fees

- RG 231.75 We consider that an infrastructure entity should disclose the following details:
- (a) all fees and related costs associated with the management of the entity’s assets paid or payable directly or indirectly out of the money invested in the entity, providing a clear justification for the fees;
 

Note: A registered managed investment scheme must ensure that it complies with the requirements for disclosure of fees and costs in Sch 10 of the Corporations Regulations 2001 (Corporations Regulations).
  - (b) if performance fees are payable, how these fees will be paid—for example:
    - (i) *for mature operating infrastructure assets*—explain if and how the performance fees will be paid, including whether these fees are payable only from operating cash flow; and
    - (ii) *for operating infrastructure assets in a growth phase and development assets*—explain how the performance fees will be

paid, including whether these fees are funded by debt, capital, the issue of securities or otherwise, and the risks to members in paying performance fees in those ways.

### Explanation

RG 231.76 It is important for investors to understand the fees payable by an infrastructure entity, the justification for those fees and the funding of those fees. Some management fee structures can result in inflated fees, excessive growth in capital requirements, inflated asset prices and a high volume of asset transactions with sponsor entities or other related entities.

## Disclosure Principle 3: Related party transactions

RG 231.77 We consider that an infrastructure entity should disclose details of any related party arrangements relevant to the investment decision, including the following details:

- (a) the value of the financial benefit and the consideration payable;
- (b) the nature of the relationship (i.e. the identity of the related party, and the nature of the arrangements between parties, in addition to how the parties are related for the purposes of the Corporations Act or ASX Listing Rules);

Note: For group structures, the nature of these relationships should be disclosed for all group entities.

- (c) whether the arrangement is on arm's length terms, the remuneration is reasonable, some other Ch 2E exception applies or ASIC has granted relief;
- (d) whether member approval for the transaction has been sought and, if so, when (e.g. if member approval was obtained before the initial public offering (IPO) of securities in the entity);
- (e) the risks associated with the related party arrangement;
- (f) the policies and procedures that the infrastructure entity has in place for entering into related party transactions, including how compliance with these policies and procedures is monitored;
- (g) for management agreements with related parties:
  - (i) the term of the agreement;
  - (ii) if a fee is payable by the infrastructure entity on termination of the agreement, the method of termination that will incur a fee and details on how that fee is calculated;
  - (iii) any exclusivity arrangements in the management agreement;

- (iv) whether a copy of the agreement is available to investors and, if so, how an investor can obtain a copy of the agreement; and
  - (v) any other arrangements that have the potential or actual effect of entrenching the existing management (e.g. termination of current management agreement triggers the commencement of other management arrangements or any other rights such as the rights to acquire the assets); and
- (h) for transactions with related parties involving a significant infrastructure asset:
- (i) what steps the infrastructure entity took to evaluate the transaction; and
  - (ii) if not otherwise disclosed, a summary of any independent expert opinion obtained for the transaction and whether, and if so how, an investor can obtain a copy of the opinion.

### Explanation

- RG 231.78 Investors should have sufficient information to assess related party transactions and agreements, and the rationale for entering into such transactions and agreements.
- RG 231.79 We also expect infrastructure entities to disclose information about existing related party transactions in disclosure documents except to the extent that:
- (a) such disclosure may confuse investors by dealing with inconsequential matters; or
  - (b) investors already have adequate information about the related party transactions as a result of past disclosures and it is not reasonable for the information to be repeated in full.

## Disclosure Principle 4: Financial ratios

- RG 231.80 We consider that an infrastructure entity should disclose the following details:
- (a) if target financial ratios have been publicly disclosed, the respective financial ratios actually achieved for the entity and how those target and actual ratios are calculated; and
  - (b) an explanation of what the financial ratios mean in practical terms and how investors can use the ratios to determine the entity's level of debt-related risk.
- RG 231.81 The liabilities, assets and earnings used to calculate the ratios should be based on the entity's latest audited or reviewed financial statements, or the

latest valuations. If there have been material changes since the financial statements, the updated calculations should be provided as part of the infrastructure entity's ongoing disclosure obligations.

### Explanation

- RG 231.82 We acknowledge that financial ratios can be important information for investors when they are comparing relative risks and returns of infrastructure entities. We recognise that different ratio settings and formulas are appropriate for different infrastructure assets and entity structures. We also acknowledge that some infrastructure entities disclose target financial ratios and others do not. We have therefore provided flexibility on disclosure of financial ratios.
- RG 231.83 Investors should also be able to simply assess the actual level of debt risk for an infrastructure entity in comparison to any publicly disclosed target debt levels.

## Disclosure Principle 5: Capital expenditure and debt maturities

- RG 231.84 We consider that an infrastructure entity should disclose the following details:
- (a) its planned capital expenditure for the next 12 months and how this expenditure is to be funded (any material changes to this planned expenditure should be updated as part of the entity's ongoing disclosure obligations); and
  - (b) a breakdown of material debt maturities for the entity, in the intervals set out in Table 3, on a consolidated contractual basis showing the drawn amount, the undrawn amount, the total drawn and undrawn amount, the percentage of variable interest rate risk, the weighted average interest rate, the percentage of debt that is not limited recourse to a particular asset (i.e. 'ring fenced') and whether the debt is fully amortising or requires principal and interest payments.

### Explanation

- RG 231.85 It is important for investors to understand the capital expenditure requirements for infrastructure entities and how these requirements will be funded.
- RG 231.86 Information about debt and credit facilities is also important. For example, the viability of an infrastructure entity can be affected if security against debt is not limited to the asset level ('ring fenced'). Debt and credit facilities that are due to mature within a relatively short timeframe can be a significant risk

factor, especially in periods when credit is more difficult and expensive to obtain.

**Table 3: Breakdown of material debt maturities for the infrastructure entity**

Year	Drawn (\$000s)	Undrawn (\$000s)	Total (\$000s)	% of variable interest rate risk	Weighted average interest rate	% of debt that is not limited recourse to a particular asset ('ring fenced')	Fully amortising or principal and interest payments
Up to 1 year							
Between 1 and 2 years							
Between 2 and 5 years							
<b>Total</b>							

## Disclosure Principle 6: Foreign exchange and interest rate hedging

- RG 231.87 We consider that an infrastructure entity should disclose the following details:
- any current foreign exchange and interest rate hedging policy for the entity; and
  - whether the entity's foreign exchange and/or variable interest rate exposure conforms with its foreign exchange and interest rate hedging policy.

### Explanation

- RG 231.88 The returns of an infrastructure entity may be substantially affected by changes in foreign exchange and/or interest rates. It is important for investors to understand the infrastructure entity's foreign exchange and interest rate hedging policies, and any material variances between its actual position and those policies.

## Disclosure Principle 7: Base-case financial model

- RG 231.89 For an acquisition of a significant infrastructure asset, we consider that the infrastructure entity should disclose the following details for its base-case financial model:
- the key assumptions and the source of those assumptions;



- (b) a confirmation by the directors as to whether or not they consider that the assumptions are reasonable;
- (c) any process the directors undertook to satisfy themselves that the assumptions were reasonable, including if an expert provided an opinion on the model and, if so, provide a summary of that expert opinion;
- (d) the agreed-upon procedures check that the assurance practitioner has performed to review the base-case financial model (as per Benchmark 6) and any findings which were materially relevant to the investment decision; and
- (e) any conflicts of interest that may arise in either the expert opinion or the agreed-upon procedures check.

RG 231.90 We consider that the infrastructure entity should provide a table disclosing up to five of the key assumptions in its base-case financial model that are likely to have the most material impact:

- (a) on the operating performance of the entity for at least the next 12 months; or
- (b) in the case of a development asset, in the first year of operation, demonstrating the impact on the infrastructure entity and investor equity, if any (and separately if all) of the assumptions were materially less favourable than anticipated (e.g. 25% less).

RG 231.91 We consider that the infrastructure entity should also disclose:

- (a) a reasonable estimate of the operating capacity of the entity's significant infrastructure assets;
- (b) for any operating asset developed by the infrastructure entity or completed immediately before the infrastructure entity's ownership, any material discrepancies between any publicly disclosed forecasts and the actual performance for the first two years of operation; and
- (c) any material discrepancies between the assumptions contained in the infrastructure entity's base-case financial model used to raise any debt and the model used to raise any equity, respectively, within six months of each other in the current financial year.

Note 1: If any of the above disclosures relate to prospective financial information, the disclosures should be consistent with our guidance in RG 170.

Note 2: For the definition of 'significant infrastructure asset', see the 'Key terms'.

## Explanation

RG 231.92 It is important for investors to understand the key assumptions that are used to estimate the returns of an infrastructure entity's assets and the actual performance of the entity in comparison with those assumptions.

- RG 231.93 Disclosure about the effect on returns if an asset underperforms will help investors to assess the risks associated with the infrastructure entity. It will also provide investors with confidence to understand how the reasonableness of the assumptions in the base-case financial model was confirmed and that the auditor or independent advisory firm has performed the agreed-upon procedures for the model.
- RG 231.94 RG 231.89 applies to acquisitions of significant infrastructure assets only. RG 231.91(a) only applies to significant infrastructure assets. RG 231.91(b) applies to any operating asset developed or acquired by the infrastructure entity in respect of which publicly disclosed forecasts have been made.

## Disclosure Principle 8: Valuations

- RG 231.95 We consider that the infrastructure entity should disclose:
- (a) details on the entity's valuation policy;
  - (b) whether valuations and supporting documentation are available to investors and, if so, how they are made available. If valuations and supporting documentation are not available to investors, the infrastructure entity should provide a summary of the valuations (required for significant infrastructure assets only) containing, at a minimum, the following information:
    - (i) whether the valuation was prepared internally or externally;
    - (ii) the date of the valuation;
    - (iii) the scope of the valuation and any limitations on the scope;
    - (iv) the purpose of the valuation;
    - (v) the value assessed and key assumptions used to determine value;
    - (vi) the key risks specific to the infrastructure assets being valued;
    - (vii) the valuation methodology;
    - (viii) the period of any forecast and terminal value assumptions;
    - (ix) the discount rate and the basis for calculating this rate; and
    - (x) the income capital expenditure and capital growth rates over the forecast period; and
  - (c) any circumstances that may result in a conflict of interest arising in the preparation of the valuations.

### Explanation

- RG 231.96 It is important for investors to have access to, and understand, basic information about valuations and their key assumptions. Investors should

also understand the infrastructure entity's policy on valuations so that they can form a view about their reliability.

## Disclosure Principle 9: Distribution policy

- RG 231.97 We consider that an infrastructure entity that is a unit trust should disclose:
- (a) the current distribution policy and any rights that the entity has to change the policy;
  - (b) on payment of distributions, the portion attributable to, for example, income, capital and debt; and
  - (c) the risks associated with distributions being paid from sources other than operating cash flow, including the sustainability of such distributions.

### Explanation

- RG 231.98 It is important for investors to understand the infrastructure entity's distribution policy and the source of funding of distributions. Investors should also be provided with information on the extent to which distributions are sustainable if paid from sources other than operating cash flow.

## Disclosure Principle 10: Withdrawal policy

- RG 231.99 We understand that most PDSs will generally contain information on withdrawals (if withdrawal rights apply). However, for the sake of clarity, we consider that infrastructure entities that are unlisted trusts should disclose at minimum the following information:
- (a) whether there is a right of withdrawal and, if so, the maximum period allowed for satisfying withdrawal requests under the constitution of the infrastructure entity;
  - (b) the withdrawal policy and any rights that the infrastructure entity has to change the policy;
  - (c) any significant risk factors or limitations that may impact on the ability of investors to withdraw from the infrastructure entity;
  - (d) how investors can exercise their withdrawal rights, including any conditions on exercise;
  - (e) if withdrawal from the infrastructure entity may be funded from an external liquidity facility, the material terms of this facility, including any rights the provider has to suspend or cancel the facility;

- (f) how investors will be notified of any material changes to withdrawal rights and the withdrawal policy (e.g. if withdrawal rights are to be suspended); and
- (g) whether the amount of capital in the infrastructure entity has been reduced by more than 10% in the last three months (this information can be updated via website disclosure).

### **Explanation**

RG 231.100 Investors need to understand their withdrawal rights, the risk factors that may impact on their capacity to withdraw and how withdrawals will be funded.

## **Disclosure Principle 11: Portfolio diversification**

RG 231.101 We consider that an infrastructure entity should disclose:

- (a) details on whether it has a portfolio diversification policy and, if so, details of that policy (e.g. any criteria addressing investment size, asset and investment type, location, and political, operating and financing risk);
- (b) its actual portfolio diversification position compared to its portfolio diversification policy; and
- (c) if there is a material variance between the entity's diversification policy and its actual position, an explanation of why the variance exists and the measures being taken to rectify it.

### **Explanation**

RG 231.102 Portfolio diversification is a key risk management tool. It is also often a consideration for investors. It is therefore important that investors understand whether an infrastructure entity's assets accord with its portfolio diversification policy.

RG 231.103 We acknowledge that there are infrastructure entities with only one asset type, but these often diversify in other ways (e.g. by location). We believe it is necessary for investors to be aware of any concentration risk associated with the entity's investment policy.

## D Form and method of disclosure

### Key points

It is best practice for a PDS or a prospectus for an infrastructure entity to contain a table within the first 15 pages summarising the entity's disclosure against the benchmarks, including explanations if it does not meet the benchmarks.

We also recommend that the information outlined in the disclosure principles be included as soon as practicable after the benchmark summary table.

If there are any material changes to the disclosure against the benchmarks and/or the information provided under the disclosure principles, infrastructure entities should provide updates through ongoing disclosure to investors.

Infrastructure entities that are subject to the shorter PDS regime may be able to disclose against the benchmarks and apply the disclosure principles by providing the relevant disclosures on a website.

### Disclosure in a PDS or prospectus

RG 231.104 We consider that it is best practice for disclosure against the benchmarks to be in the form of a summary table within the first 15 pages of the PDS or prospectus, with a separate section for each benchmark: see the example in the appendix to this guide.

Note: Infrastructure entities should also refer to Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168) and RG 228.

RG 231.105 For each benchmark, the table should state the benchmark and whether or not the benchmark is met. If the benchmark is not met, an explanation should be provided as to why the benchmark is not met. Infrastructure entities may consider it useful to include references in the table explaining where any additional information on the benchmarks (including the information outlined in the disclosure principles) may be found.

RG 231.106 We also recommend that any further information disclosed against the benchmark (including the information outlined in the disclosure principles) be:

- (a) clearly and prominently disclosed in the PDS or prospectus as close to the benchmark summary table as is practicable; and
- (b) updated in ongoing disclosure, if required (see RG 231.109–RG 231.110).

- RG 231.107 We provided guidance in RG 228 that a prospectus will generally be ‘clear, concise and effective’ if it:
- (a) highlights key information (e.g. through an investment overview that gives cross-references to the more detailed information);
  - (b) uses plain language;
  - (c) is as short as possible;
  - (d) explains complex information, including any technical terms; and
  - (e) is logically ordered and easy to navigate.
- RG 231.108 The Corporations Amendment Regulations 2010 (No. 5) amend the Corporations Regulations to provide for substantially shorter and simpler PDSs for certain managed investment schemes, margin loans and superannuation products. Infrastructure entities that are subject to this shorter PDS regime may be able to disclose against the benchmarks and apply the disclosure principles by providing the relevant disclosures on a website: see RG 231.111–RG 231.115.

## Ongoing disclosure

- RG 231.109 Infrastructure entities may have obligations under the Corporations Act (e.g. under Chs 2M, 6CA and 6D, and Pt 7.9) to provide ongoing disclosure to investors, including:
- (a) issuing a supplementary PDS or prospectus when there are certain material changes to information in a current PDS or prospectus;
 

Note: PDSs commonly allow information to be updated on a website if the information is not materially adverse: see [CO 03/237]. We consider that if omitting disclosure against the benchmarks and the information outlined in the disclosure principles is not materially adverse, the infrastructure entity will generally be able to rely on [CO 03/237] to update the PDS for this information without the need for a supplementary or new PDS: see RG 231.111–RG 231.115.
  - (b) providing periodic statements to investors in registered managed investment schemes under s1017D of the Corporations Act;
  - (c) for disclosing entities and registered managed investment schemes, disclosing material changes and significant events (e.g. s674, 675 and 1017B); and
  - (d) complying with annual reporting obligations (e.g. under Ch 2M).
- RG 231.110 If there have been any material changes to an infrastructure entity’s performance against the benchmarks (including its alternative approach to meeting the benchmarks) or to the information provided under the disclosure principles, the entity should explain these in ongoing disclosure. We also recommend that infrastructure entities review disclosure against the

benchmarks and the information outlined in the disclosure principles annually and provide an update if appropriate.

## Disclosure via websites

- RG 231.111 We acknowledge that disclosure of information on a website allows an infrastructure entity to provide material information to investors in a timely and efficient way. For our guidance on using this method of disclosure, see Regulatory Guide 198 *Unlisted disclosing entities: Continuous disclosure obligations* (RG 198).
- RG 231.112 Disclosure against the benchmarks should be located in a single place on the website. The homepage should contain a prominent link to this location so that investors can easily access it. If investors have to look for information in a number of places, there is a greater likelihood that they will not find all the information necessary to make an informed investment decision.
- RG 231.113 However, we would discourage an infrastructure entity from publishing lengthy documents on its website in which the material information is ‘buried’ among information that is not material. If an infrastructure entity considers that an investor may have difficulty readily identifying material information, it should consider separately highlighting that information to investors.
- RG 231.114 In addition to making material information available on its website, an infrastructure entity should also consider whether direct disclosure of the information to investors is appropriate. This may occur, for example, if the entity is aware that a significant number of investors might not have ready access to the internet.
- RG 231.115 An infrastructure entity that discloses material information on its website should consider giving investors the option of receiving an email alert when material information is updated. We strongly encourage this type of facility because it helps investors to become aware of relevant information as soon as possible after it is published.

## Appendix: Example of disclosure against the benchmarks

Benchmark	Statement	Explanation	Reference
<p><b>Benchmark 1: Corporate structure and management</b></p> <p>The infrastructure entity's corporate governance policies and practices conform with the principles and recommendations in GN 9A.</p>	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
<p><b>Benchmark 2: Remuneration of management</b></p> <p>Incentive-based remuneration paid to management for the infrastructure entity is derived from the performance of the infrastructure entity and not the performance of other entities within its consolidated group, except where the infrastructure entity is the parent of the consolidated group.</p>	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
<p><b>Benchmark 3: Classes of units and shares</b></p> <p>All units or shares are fully paid and have the same rights.</p>	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
<p><b>Benchmark 4: Substantial related party transactions</b></p> <p>The infrastructure entity complies with ASX Listing Rule 10.1 for substantial related party transactions.</p>	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
<p><b>Benchmark 5: Cash flow forecast</b></p> <p>The infrastructure entity has, for the current financial year, prepared and had approved by its directors:</p> <ul style="list-style-type: none"> <li>• a 12-month cash flow forecast for the infrastructure entity and has engaged an independent suitably qualified person or firm to provide, in accordance with the auditing standards: <ul style="list-style-type: none"> <li>– negative assurance on the reasonableness of the assumptions used in the forecast; and</li> <li>– positive assurance that the forecast is properly prepared on the basis of the assumptions and on a basis consistent with the accounting policies adopted by the entity; and</li> </ul> </li> <li>• an internal unaudited cash flow forecast for the remaining life, or the right to operate (if less), for each new significant infrastructure asset acquired by the infrastructure entity.</li> </ul>	The benchmark is not met.	The 12-month cash flow forecast for the current financial year has not yet been approved by the board because [insert reasons].	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].



Benchmark	Statement	Explanation	Reference
<p><b>Benchmark 6: Base-case financial model</b></p> <p>Before any new material transaction, and at least once every three years, an assurance practitioner performs an agreed-upon procedures check on the infrastructure entity's base-case financial model that:</p> <ul style="list-style-type: none"> <li>• checks the mathematical accuracy of the model, including that: <ul style="list-style-type: none"> <li>– the calculations and functions in the model are in all material respects arithmetically correct; and</li> <li>– the model allows changes in assumptions, for defined sensitivities, to correctly flow through to the results; and</li> </ul> </li> <li>• includes no findings that would, in the infrastructure entity's opinion, be materially relevant to the infrastructure entity's investment decision.</li> </ul>	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
<p><b>Benchmark 7: Performance and forecast</b></p> <p>For any operating asset developed by the infrastructure entity, or completed immediately before the infrastructure entity's ownership, the actual outcome for the first two years of operation equals or exceeds any original publicly disclosed forecasts used to justify the acquisition or development of the asset.</p>	The benchmark is not met.	The actual performance did not equal or exceed the forecasts for [insert asset(s)] for the following key reasons: [insert key reasons].	For additional disclosure on this benchmark, including detailed reasoning for not meeting this benchmark, see [section X] of this [relevant disclosure document].
<p><b>Benchmark 8: Distributions</b></p> <p>If the infrastructure entity is a unit trust, it will not pay distributions from scheme borrowings.</p>	The benchmark is not met.	[X] pays distributions from scheme borrowings because [insert reasons]	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
<p><b>Benchmark 9: Updating the unit price</b></p> <p>If the infrastructure entity is unlisted and a unit trust, after finalising a new valuation for an infrastructure asset, the infrastructure entity reviews, and updates if appropriate, the unit price before issuing new units or redeeming units.</p>	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services  Note: This is a definition contained in s761A of the Corporations Act.
agreed-upon procedures	The agreed-upon procedures as described in the Standard on Related Services ASRS 4400 <i>Agreed-upon procedures engagements to report factual findings</i> , issued by the AUASB
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
assurance practitioner	An assurance practitioner as defined in the Standard on Related Services ASRS 4400 <i>Agreed-upon procedures engagements to report factual findings</i> , issued by the AUASB
ASX	The exchange market known as ASX, operated by ASX Limited
ASX Listing Rules	ASX Listing Rules, as amended from time to time
AUASB	Auditing and Assurance Standards Board
auditing standards	Auditing standards prepared by the AUASB of the Australian Accounting Research Foundation
Ch 6D (for example)	A chapter of the Corporations Act (in this example, numbered 6D)
[CO 03/237] (for example)	An ASIC class order (in this example, numbered 03/237)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
CP 134	An ASIC consultation paper (in this example, numbered 134)
directors	The directors of the infrastructure entity, or for an infrastructure entity that is a registered managed investment scheme, the directors of the responsible entity of that scheme

Term	Meaning in this document
EBITDA	Earnings before interest, taxation, depreciation and amortisation
financial ratios	Means the: <ul style="list-style-type: none"> <li>• gearing ratio;</li> <li>• net debt/EBITDA ratio;</li> <li>• short-term debt/EBITDA ratio; and</li> <li>• look-through gearing ratio</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>• if the directors of the infrastructure entity consider that these ratios are inappropriate, alternative ratios indicating the infrastructure entity's level of debt-related risk, with an explanation as to why those ratios are more appropriate (addressing why the financial ratios have changed from those last disclosed, if relevant)</li> </ul>
gearing ratio	The ratio calculated (excluding any investors' contributions classified as liabilities, other than borrowings) using the following formula separately on both 'on balance sheet' and 'off balance sheet (proportionate share)' bases: $\frac{\text{Net debt}}{\text{Total assets}}$
GN 9A (for example)	An ASX guidance note (in this example, numbered 9A)
infrastructure entity	A listed or unlisted registered managed investment scheme, company or stapled structure investment that has been offered to retail investors on the basis that its primary strategy or investment mandate is to invest in any of: <ol style="list-style-type: none"> <li>the physical plant, property or equipment of infrastructure assets;</li> <li>the right to operate infrastructure assets; or</li> <li>other unlisted entities which, either directly or indirectly, primarily invest in the assets referred to in paragraph (a) or (b) above.</li> </ol>
look-through gearing ratio	The ratio calculated as: $\frac{\text{Net debt}}{\text{Total assets} + \text{Proportionate share of assets of equity accounted investments}}$
net debt	Total interest-bearing liabilities less cash and cash equivalents

Term	Meaning in this document
net debt/EBITDA ratio	<p>The ratio calculated (on a consolidated and proportionate earnings basis) using the following formula, based on the latest financial statements:</p> $\frac{\text{Net debt (being total interest-bearing liabilities less cash and cash equivalents)}}{\text{EBITDA}}$
Product Disclosure Statement (PDS)	<p>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> <p>Note: See s761A for the exact definition.</p>
Pt 7.9 (for example)	A part of the Corporations Act (in this example, numbered 7.9), unless otherwise specified
related party	Has the meaning given to that term in s228 of the Corporations Act
retail investor	A retail client who invests in an infrastructure entity
RG 46	An ASIC regulatory guide (in this example, numbered 46)
s674 (for example)	A section of the Corporations Act (in this example, numbered 674), unless otherwise specified
short-term debt/EBITDA ratio	<p>The ratio calculated (on a consolidated and proportionate earnings basis) using the following formula, based on the latest financial statements:</p> $\frac{\text{Short-term debt (being interest-bearing liabilities required to be classified as current under the accounting standards)}}{\text{EBITDA}}$
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 Schs 10B, 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
significant infrastructure asset	An infrastructure asset whose current value, or for an uncompleted development asset its anticipated completed value, is 15% or more of the total current value of the infrastructure entity's assets as set out in the latest financial accounts
substantial related party transaction	A transaction to which ASX Listing Rule 10.1 would apply as if the infrastructure entity was a listed infrastructure entity

## Related information

### Headnotes

benchmarks, disclosure document, disclosure principles, infrastructure assets, infrastructure entity, Product Disclosure Statement, PDS, prospectus

### Class order

[CO 03/237] *Updated information in product disclosure statements*

### Regulatory guides

RG 46 *Unlisted property schemes: Improving disclosure for retail investors*

RG 76 *Related party transactions*

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

RG 170 *Prospective financial information*

RG 198 *Unlisted disclosing entities: Continuous disclosure obligations*

RG 228 *Prospectuses: Effective disclosure for retail investors*

### Legislation

ASIC Act

Corporations Act, Chs 2E, 2M, 5C, 6CA and 6D, Pt 7.9, s674, 675, 1013C, 1013D, 1013E, 1017B and 1017D

Corporations Amendment Regulations 2010 (No. 5)

Corporations Regulations

### Consultation papers

CP 134 *Infrastructure entities: Improving disclosure for retail investors*

### Investor guide

*Investing in infrastructure?*

## **Other publications**

*GN 9A Corporate governance—ASX Corporate Governance Council—  
Revised corporate governance principles and recommendations*

*ASX Listing Rule 10.1 Acquisition and disposal of assets*