

Australian Securities and Investments Commission Corporate Finance Liaison Meetings, May 2012 Adelaide, Brisbane, Melbourne, Perth, Sydney

Summary of issues

Fundraising

Prospectus disclosure guide –implementing RG 228

Since the release of RG 228 *Prospectuses: Effective disclosure for retail investors* in November 2011 we have observed that disclosure has improved, particularly in relation to business models. The most relevant risks are now being prominently disclosed, and described in terms relevant to the business rather than being drafted in legal technical terms.

We continue to find that documents could generally be more concise. Investment overviews are tending to be longer than what is contemplated in our guidance, as they are containing more than just 'key information'. While we have observed some reduction in repetition of information, this is an area for further improvement.

Complex debt offerings

The first six months of 2012 have seen an increase in the number of subordinated debt and hybrid offerings. In respect of these complex products ASIC is seeking prominent disclosure of the features and risks which distinguish these products from 'vanilla bonds'. We consider comparative tables comparing the features of these complex products to other investments offered by an issuer, may be a simple way to display this key information.

ASIC has issued Media Release 11-270 highlighting the need for retail investors to be able to understand the risks associated with these products. It is important that marketing channels for these products are appropriate and balanced.

Low- doc fundraising project

ASIC undertook a project reviewing disclosure made in respect of a sample of low documentation equity offerings. We found that these documents could better disclose the control and dilution implications for retail investors. We refer issuers to our guidance in RG 159 and Takeovers Panel Guidance Note 17.30.

We also expect issuers to consider whether communicating information by simply wrapping investor presentations with entitlement offer documents is effective. These presentations often contain information geared to institutional investors, which may obscure key information for retail investors.

Reissuance of debenture guidance

In February 2012 we reissued RG 69: *Debentures and notes: Improving disclosure to retail investors*, to enable certain types of products to be referred to as 'secured notes'. To call a note a 'secured note' the conditions in class order 12/1482 must be met.

We are monitoring the debenture and notes market, with a focus on prospectus disclosure, periodic reporting, continuous disclosure and the advertising of these products to ensure investors have access to high quality, timely disclosure.

Vanilla bonds

Given the Treasury consultation process about bond offerings, ASIC has extended for a further 6 months the \$50 million minimum subscription size for 'vanilla bonds' under class order 10/321. This is now due to expire on 12 November 2012.

Reporting of mineral and oil and gas resources and reserves

ASX consultation paper

In October 2011 ASX released an issues paper: *Reserves and resources disclosure rules for mining and oil and gas companies*. The paper suggests revisions to the JORC code related disclosure and also the adoption of the hydrocarbon classification system set out in the SPE-Petroleum Resource Management System for reporting of oil and gas resources and reserves.

ASX's proposed changes to the JORC code related disclosure include, among other things, the disclosure of key assumptions underpinning mineral resource and ore reserve estimates, and providing guidance on when a 'production target' (which will be defined) can be disclosed and what other disclosure must be made. The use of these forward looking statements has been a matter of ongoing concern for ASIC and the ASX. These statements continue to appear both in continuous disclosure to the market, and in documents required to be lodged with ASIC.

In December 2011, ASIC released a public response in respect of this. This articulated, among other things, our concern that production targets and financial information based on Inferred Resources alone do not have a reasonable basis and will therefore be taken to be misleading.

ASIC is continuing to work with the ASX and JORC to articulate whether there are rare and exceptional circumstances in which Inferred Resources alone may provide a reasonable basis for production targets and financial information.

The ASX intends to release an exposure draft of the revised listing rules in the second half of 2012.

Takeovers

Downstream acquisitions (RG 71)

In May 2012 we released the revised RG 71: *Downstream Acquisitions*. The revised guide consolidates and updates our guidance on downstream acquisitions including: when the exemption in item 14 of section 611 will apply; our approach to relief applications falling outside of the exemption; and the requirements for an independent expert reports used to set a downstream bid price.

The revised guide more clearly sets out our expectations for the independent expert and their role in determining the bid price.

Takeovers Policy update

ASIC is continuing its project to update and consolidate our published guidance on takeovers and hopes to put this to the market for consultation in the second half of 2012. The project is seeking to rearrange RG 159, RG 171 and 17 other smaller guides into 4 new regulatory guides which will cover:

- relevant interest and substantial holding notices,
- exceptions to s606 prohibition,
- takeovers and

-compulsory acquisition.

The revisions largely seek to update and reorganise our policies, but we are also seeking to address matters that arise frequently. These proposed changes will not constitute new or significant reform but rather update policy to reflect our current stance. Look for the consultation paper and draft regulatory guides later in 2012.

Further policy update

Operating and Financial Review (OFR)

The OFR forms part of a reporting entity's directors' report. It should provide information on an entity's operations, financial position, business strategy and prospects. ASIC is preparing a consultation paper and draft regulatory guide setting out matters we consider should be disclosed in the OFR. It is anticipated these will be released in the second half of 2012.

RG 174: Externally administered companies: Financial reporting and AGMs

Our Insolvency Practitioners stakeholder team has been corresponding with a number of liquidators to assess their compliance with the requirements of Chapter 2M. We have received responses from many of those liquidators corresponded with, and we are now assessing the effectiveness of their compliance systems for the purposes of Chapter 2M and 2G.

Compliance and transparency in financial reporting are matters of ongoing importance to ASIC, and the Insolvency Practitioners teams will monitor ongoing compliance by insolvency professionals.

ASX consultation on Guidance Note 8

As stated by the ASX in their Listed Entities Update of 3 April 2012, any revision of this guidance note should reflect the views of the High Court. Accordingly, this revision is on hold pending the High Court's decision in Fortescue Metals Group.

Advertising Policy

In February 2012 ASIC released RG 234: *Advertising financial products and advice services: Good practice guide*. In December 2011, ASIC released a public response in respect of this. Given that advertising plays a key role in many investors decisions, ASIC thinks it is important that advertisements give clear, accurate and balanced messages. The guide is designed to help promoters comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct. We encourage advertisers to create advertisements that do not just comply with the minimum acceptable requirements, but which assist investors in making appropriate decisions.

Enforcement Policy

ASIC released Information Sheet 151: *ASIC's approach to enforcement* in early 2012. The document only addresses enforcement action, which is just one of the regulatory tools available to ASIC. It sets out our powers, how we select matters for investigation and enforcement, and the enforcement process. This is available on our website.

Financial Services Assessment Program

ASIC has recently been assessed by the IMF to assess the soundness and stability of Australia's economy and financial system. The IMF's findings will be made available on their website at the conclusion of their review.