



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 154

Infrastructure entities: Improving disclosure to retail investors—Further consultation

April 2011

About this paper

This consultation paper follows Consultation Paper 134 *Infrastructure entities: Improving disclosure to retail investors* (CP 134) and seeks further feedback on proposals to improve disclosure to retail investors in infrastructure entities.

It includes a draft regulatory guide that sets out benchmarks and disclosure principles to help retail investors better understand and assess such investments.

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 paper was issued on 8 April 2011 and is based on the Corporations Act as at 8 April 2011.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider relevant.

Your comments will help us develop our policy on improving disclosure to retail investors by infrastructure entities. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section F, 'Regulatory and financial impact'.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 6 May 2011 to:

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What will happen next?

Stage 1	8 April 2011	ASIC consultation paper released with draft regulatory guide
Stage 2	6 May 2011	Comments due on the consultation paper
	Third quarter, 2011	Finalisation of regulatory guide
Stage 3	Third quarter, 2011	Regulatory guide released

A Background to the proposals

Key points

Infrastructure entities typically have complex characteristics and risks that need to be disclosed fully so that retail investors can make informed investment decisions. There is a significant amount of public investment in infrastructure anticipated over the next decade, which makes improving disclosure for infrastructure entities especially important.

We have previously consulted on proposals for improved disclosure in Consultation Paper 134 *Infrastructure entities: Improving disclosure to retail investors* (CP 134) and have amended some of our proposals in response to submissions provided.

We are seeking further feedback on our amended proposals which are set out in the attached regulatory guide.

The proposed benchmarks and disclosure principles are designed to enable retail investors to make more informed investment decisions and compare business models of different infrastructure entities.

Initial consultation

- 1 In April 2010, we released Consultation Paper 134 *Infrastructure entities: Improving disclosure for retail investors* (CP 134) and consulted with various industry participants on the proposals set out in CP 134. We received 24 responses to CP 134 from a wide variety of sources, including from infrastructure entities themselves, relevant industry bodies, accounting firms and law firms.
- 2 Most respondents recognised the need to improve disclosure to enhance the quality of information provided to retail investors. Some submissions considered the proposed benchmarks to be unnecessary. However, if a benchmark approach were to be adopted, an ‘if not, why not’ approach was preferred.
- 3 The main comments received from respondents on the proposed benchmarks and additional disclosure guidance related to:
 - (a) whether the definition of ‘infrastructure entity’ was too broad and captured entities not commonly considered to be infrastructure entities. A number of respondents submitted that registered managed investment schemes that focus on investment in infrastructure entities as part of an investment portfolio should be excluded from the definition of ‘infrastructure entity’;
 - (b) whether the benchmarks and additional disclosure guidance should apply to infrastructure entities when they do not apply to other listed entities;

- (c) whether the benchmark model and additional disclosure guidance model on an ‘if not, why not’ basis, which assumes a one-size-fits-all approach, is appropriate, given the varying characteristics of infrastructure assets;
- (d) the static nature of the financial matrix benchmarks, many of which were based on industry averages at a fixed point in time;
- (e) the view in some submissions that changes in the infrastructure sector had resulted in ‘self-correction’ which meant that the proposed benchmarks and additional disclosure guidance were unnecessary;
- (f) the concern that disclosure of commercial in-confidence information for selected benchmarks might place infrastructure entities at a commercial disadvantage;
- (g) the added length, complexity and associated costs of the proposed disclosure documentation;
- (h) difficulties with obtaining information to disclose against the proposed benchmarks and address the additional disclosure guidance;
- (i) the possible risk of a reduction in opportunities to invest in infrastructure entities for retail investors because of the introduction of the proposed benchmarks and additional disclosure guidance; and
- (j) the possible risk that the proposed benchmarks and additional disclosure guidance would decrease the effectiveness of disclosure by infrastructure entities because retail investors might focus on information relating to the benchmarks and additional disclosure guidance only and not read the full disclosure documentation.

4 After assessing the responses, we conducted a further phase of informal consultation. During the additional consultation phase, we met with seven respondents. Before each meeting, we provided a summary of the major comments raised in the responses and our proposed changes to address the comments. The feedback to our proposed changes appeared generally to be positive, although two respondents restated their overarching comments, most of which are summarised above.

Further consultation

- 5 Despite some of the concerns raised in response to CP 134, we propose to retain our general approach to the introduction of benchmarks and disclosure guidance for infrastructure entities for the reasons identified in Table 1 below.
- 6 In response to feedback about the breadth of the proposed definition of ‘infrastructure entity’ in CP 134, we are proposing to adopt one of two options for this definition and seek your views on your preferred option: see Section B of this consultation paper.

- 7 We have amended the proposed benchmarks and additional disclosure guidance in CP 134 to address many of the comments received in submissions and consultation meetings. We have also separated the benchmarks and additional disclosure guidance into two sections, one containing benchmarks and one containing disclosure principles: see Section C of this consultation paper and Sections B and C of the attached draft regulatory guide.
- 8 We also include our proposals on how and when the proposed benchmarks and disclosure principles should be applied in disclosures to retail investors: see Sections D and E of this consultation paper and Section D of the attached draft regulatory guide.

Table 1: Why we are proposing to retain our benchmark approach and disclosure guidance

Issue or concern	ASIC's response
<i>Is the benchmark approach necessary?</i>	We think that the proposed benchmark approach facilitates disclosure of important issues and can help investors to compare certain key information for different infrastructure entities.
<i>Why focus on infrastructure entities?</i>	We believe the proposed benchmarks and disclosure principles for the infrastructure sector are appropriate to help investors focus on some of the complex characteristics and risks associated with such investments. Further, the anticipated volume of capital to be raised from the public over the next decade in this sector makes it important that disclosure is effective.
<i>What about the added length, complexity and costs of this disclosure?</i>	Disclosure against the benchmarks and applying the proposed disclosure principles may add length, complexity and costs to disclosure documents. However, we consider that retail investors should be able to understand the business model of an infrastructure entity they are considering investing in. Improved disclosure need not add significant length to disclosure documents where disclosure is clear, concise and effective.
<i>What about self-correction by the market already?</i>	We acknowledge that there has been some self-correction by the infrastructure sector (e.g. internalisations). However, it has not removed many issues addressed by the draft regulatory guide. Any self-correction may also be temporary.
<i>Will the benchmarks and disclosure principles reduce opportunities for retail investors?</i>	Infrastructure entities may decide to offer investment opportunities to wholesale investors, but not retail investors, because of the cost associated with improved disclosure. However, where an infrastructure entity does not provide disclosure against the benchmarks and apply the disclosure principles, such an investment might be inappropriate for retail investors and more appropriate for wholesale investors.
<i>Will the benchmarks and disclosure principles decrease the effectiveness of disclosure?</i>	We do not believe so. The proposed benchmarks and disclosure principles focus investors' attention on some key issues in a prominent location in a way that provides easy comparison between infrastructure entities. Other important issues relevant to particular infrastructure entities should still be disclosed in a prominent place in Product Disclosure Statements (PDSs) in a clear, concise and effective manner.

B What is an ‘infrastructure entity’?

Key points

We propose to adopt either Option 1 or Option 2 as the definition for ‘infrastructure entity’ and seek your views on your preferred option.

Definition of ‘infrastructure entity’

Proposal

B1 We propose to:

- (a) adopt either Option 1 or Option 2 as the definition for ‘infrastructure entity’ (see Table 2);
- (b) define ‘infrastructure assets’ as:

the physical plant, property or equipment of roads, railways, ports, airports and other transport facilities, telecommunications facilities, gas or electricity generation and transmission, water supply and sewerage, hospitals, education, public housing and recreational facilities.

Your feedback

- B1Q1 Do you prefer Option 1 or Option 2 as the definition for ‘infrastructure entity’? Please give your reasons.
- B1Q2 For Option 2, what should ‘non-cash assets’ include? Is it appropriate to include ‘equity accounted unlisted entities’? If not, why not.
- B1Q3 Please explain the impact, if any, (including quantitative figures) on your business of implementing either option.
- B1Q4 Is the definition of ‘infrastructure assets’ appropriate? If not, why not? Please include any suggested changes.

Table 2: Options for definition of ‘infrastructure entity’

Option 1 (our preferred option)	Option 2
An infrastructure entity is 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:	An infrastructure entity is a listed or unlisted registered managed investment scheme, company or stapled structure investment that has been offered to retail investors on the basis that at least 70% of the value of its non-cash assets may derive from:
(a) infrastructure assets;	(a) infrastructure assets or the right to operate infrastructure assets; and/or
(b) the right to operate infrastructure assets; or	(b) investments in equity accounted unlisted entities which invest either directly or indirectly in infrastructure assets.
(c) other entities which, either directly or indirectly, primarily invest in infrastructure assets.	

Explanation

Proposed definition in CP 134

9 In CP 134, we proposed the following definition for an ‘infrastructure entity’:

A listed or unlisted registered managed investment scheme or company in which retail investors invest that has, or is likely to have, at least 70% of its non-cash assets in listed or unlisted infrastructure entities or infrastructure assets. These assets may be roads, railways, ports, airports, other transport facilities, telecommunication facilities, waste processing, gas or electricity generation, transmission or distribution, water supply and sewerage, hospitals, education, public housing or recreational facilities.

10 Some of the comments we received included:

- (a) the proposed definition was too broad and included assets and sectors that may not traditionally be considered infrastructure—for example, the distribution of gas and electricity;
- (b) under the proposed definition, the benchmarks would apply to managed investment schemes and investment companies, whose assets primarily comprise listed infrastructure entities. These submissions noted that the proposals for improved disclosure would significantly increase operating costs for these entities and that they may not have access to the necessary information; and
- (c) clarification was needed on:
 - (i) the date that the 70% asset threshold would apply from;
 - (ii) how entities whose non-cash assets exceed the threshold at certain points in time, but not continuously, would be treated;
 - (iii) whether an entity that raises funds at an initial public offering would need to comply because, immediately before and after the capital raising, the entity would be unlikely to meet the 70% threshold; and
 - (iv) the meaning of non-cash assets’ and ‘entity’ (i.e. does ‘entity’ refer to the parent or the consolidated group?).

Options for your feedback

11 The definition in *Option 1*:

- (a) has been narrowed by removing gas and electricity distribution and waste processing and limited by including a reference to physical plant, property and equipment in the definition of ‘infrastructure assets’ (see paragraph 13);
- (b) replaces the 70% asset threshold with a ‘primary strategy’ concept; and
- (c) removes the concept of ‘non-cash assets’.

We prefer Option 1 as we believe it addresses more of the issues raised in response to the proposed definition in CP 134.

12 The definition in *Option 2*:

- (a) has been narrowed in the same way as Option 1; and
- (b) addresses the uncertainty surrounding when the 70% threshold applies by focusing on what basis the entity was offered to the public.

If Option 2 is the preferred choice, we would provide guidance on ‘non-cash assets’ and whether ‘entity’ is the consolidated group.

Definition of ‘infrastructure assets’

13 The definition of ‘infrastructure entity’ in the attached draft regulatory guide is based on Option 1. It defines ‘infrastructure assets’ as:

the physical plant, property or equipment of roads, railways, ports, airports and other transport facilities, telecommunications facilities, gas or electricity generation and transmission, water supply and sewerage, hospitals, education, public housing and recreational facilities.

14 The proposed definition of infrastructure assets is intended to be an exhaustive list. Our intention is that the proposed regulatory guide should apply only to those infrastructure entities whose main business is to invest in or hold infrastructure assets. We do not propose to cover entities that hold infrastructure assets for incidental purposes.

C Benchmarks and disclosure principles

Key points

We propose that infrastructure entities should disclose against the proposed benchmarks on an ‘if not, why not’ basis. This means that where a particular benchmark is not met, the infrastructure entity should explain the reasons for this and how it addresses the issue in another way.

In addition to the benchmarks, we propose that an infrastructure entity provide the information outlined in the proposed disclosure principles.

Benchmarks

Proposal

- c1 We propose to apply the benchmarks in Section B of the attached draft regulatory guide to infrastructure entities: see Table 3. Infrastructure entities should disclose against these benchmarks on an ‘if not, why not’ basis: see the attached draft regulatory guide at RG 000.15–RG 000.17.

Your feedback

- C1Q1 Do you agree with the proposed benchmarks? If not, please identify which benchmarks you disagree with and why.
- C1Q2 Please provide details on any additional costs (including quantitative figures) in disclosing against each benchmark.
- C1Q3 Are there other, more relevant, benchmarks that would highlight important information for retail investors? If so, what are they?

Table 3: Proposed benchmarks

Benchmark	Summary	Reference
1 Corporate structure and management	Benchmark 1 addresses whether the infrastructure entity’s corporate governance policies and practices comply with Australian Securities Exchange Limited (ASX) Listing Rules Guidance Note 9A <i>Corporate Governance—ASX Corporate Governance Council—Revised Corporate Governance Principles and Recommendations</i> (GN 9A).	See the attached draft regulatory guide at RG 000.24–RG 000.26
2 Remuneration of management	Benchmark 2 addresses whether incentive-based remuneration paid to management is derived from the infrastructure entity’s performance.	See the attached draft regulatory guide at RG 000.27–RG 000.29

Benchmark	Summary	Reference
3 Classes of units and shares	Benchmark 3 addresses whether all units or shares of the infrastructure entity are fully paid and have the same rights.	See the attached draft regulatory guide at RG 000.30–RG 000.32
4 Substantial related party transactions	Benchmark 4 applies only to unlisted infrastructure entities and addresses whether the entity has complied with ASX Listing Rule 10.1 for substantial related party transactions.	See the attached draft regulatory guide at RG 000.33–RG 000.36
5 Cash flow forecast	Benchmark 5 addresses whether the infrastructure entity has prepared and had approved by its directors certain cash flow forecasts.	See the attached draft regulatory guide at RG 000.37–RG 000.39
6 Base-case financial model	Benchmark 6 addresses whether an agreed-upon procedures check has been performed on the infrastructure entity's base-case financial model and whether any material issues identified have been rectified.	See the attached draft regulatory guide at RG 000.40–RG 000.43
7 Performance and forecast	Benchmark 7 applies to operating assets and addresses whether performance for the first two years of operation equals or exceeds the original disclosed forecasts.	See the attached draft regulatory guide at RG 000.44–RG 000.46
8 Distributions	Benchmark 8 applies only to infrastructure entities that are unit trusts and addresses whether distributions will be paid from scheme borrowings.	See the attached draft regulatory guide at RG 000.47–RG 000.50
9 Updating the unit price	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 withdrawals and issues of units.	See the attached draft regulatory guide at RG 000.51–RG 000.53

Explanation

Proposed benchmarks in CP 134

- 15 In CP 134, we proposed the following benchmarks (with sub-benchmarks under each):
- (a) *Corporate structure and management*: This benchmark addressed the infrastructure entity's corporate structure, related party policy, policy on independence of directors, remuneration of management and fees.
 - (b) *Funding*: This benchmark addressed the infrastructure entity's policy on borrowing and hedging.
 - (c) *Assumptions and sensitivity analysis*: This benchmark addressed the key assumptions in the infrastructure entity's business model and sensitivity analysis of those assumptions.

- (d) *Valuation policy*: This benchmark addressed the infrastructure entity's policy on valuation of assets.
- (e) *Distribution policy*: This benchmark addressed the infrastructure entity's policy on funding and payment of distributions.
- (f) *Withdrawal policy*: This benchmark addressed the withdrawal policy of an infrastructure entity that is a unit trust.
- (g) *Portfolio diversification*: This benchmark addressed the infrastructure entity's policy on portfolio diversification.

Amended benchmarks

- 16 The proposed amended benchmarks in the attached draft regulatory guide focus on certain issues which we consider important for retail investors to understand about infrastructure entities and to establish a common standard against which such entities should disclose. We believe disclosure against these benchmarks will help achieve consistent and clear disclosure to investors so that investors can more easily compare infrastructure entities.
- 17 We have addressed many of the comments received in submissions to CP 134 and consultation meetings. For example, we propose to:
- (a) provide flexibility for infrastructure entities that hold investments in wholesale or overseas infrastructure entities and may not have access to all the relevant information (see the attached draft regulatory guide at RG 000.10–RG 000.11);
 - (b) remove the benchmarks on the term of the management agreements and base fees;
 - (c) replace the benchmarks on payment of performance fees, funding and withdrawal policies with disclosure principles (see the attached draft regulatory guide at RG 000.59–RG 000.60, RG 000.64–RG 000.67, RG 000.68–RG 000.70 and RG 000.83–RG 000.84);
 - (d) amend the benchmarks on:
 - (i) assumptions and sensitivity analysis to reflect some of the comments received. This includes:
 - (A) in relation to the base-case financial model, removing the benchmarks on model assumptions and consistency for debt and equity raisings and including these in disclosure principles;
 - (B) adding a new benchmark for the infrastructure entity to state, among other things, whether an agreed-upon procedures check on its base-case financial model has been performed; and
 - (C) adding new disclosure principles for confirmation by the directors about the reasonableness of the assumptions and disclosure of the agreed-upon procedures relied on by the

- auditor to check the base-case financial model (see the attached draft regulatory guide at RG 000.73–RG 000.78);
- (ii) valuations, including removing the proposed valuation benchmarks in CP 134 and enhancing the relevant disclosure principle on valuations (see the attached draft regulatory guide at RG 000.79–RG 000.80);
 - (iii) distributions, for the infrastructure entity to disclose whether or not distributions will be paid from scheme borrowings (see the attached draft regulatory guide at RG 000.47–RG 000.50); and
- (e) add a new benchmark for disclosure about whether the directors of the infrastructure entity have approved:
- (i) a 12-month cash flow forecast for the entity and have engaged an auditor to check the forecast; and
 - (ii) an unaudited cash flow forecast for the remaining life of each substantial infrastructure asset (see the attached draft regulatory guide at RG 000.37–RG 000.39).

Note: The proposed new benchmark in paragraph 17(e) replaces the additional disclosure guidance that the infrastructure entity should disclose a cash flow forecast for the next five years.

- 18 After considering the comments received, we have decided to retain certain benchmarks. For example, we propose to retain the benchmarks on:
- (a) corporate governance policies and practices (see the attached draft regulatory guide at RG 000.24–RG 000.26);
 - (b) incentive based remuneration (see the attached draft regulatory guide at RG 000.27–RG 000.29); and
 - (c) different classes of units (see the attached draft regulatory guide at RG 000.30–RG 000.32).

If not, why not

- 19 The ‘if not, why not’ approach means explaining how an issuer deals with the business factor or concern underlying the benchmark. This also includes explaining the alternative systems and controls an issuer has in place to deal with the concern underlying the benchmark where the benchmark is not met.

- 20 We confirm our proposed approach in CP 134 that the infrastructure entity provide:
- (a) up-front disclosures in the PDS or prospectus; and
 - (b) updates in ongoing disclosures at least annually and as material changes occur.

See Section D of this consultation paper.

Disclosure principles

Proposal

- c2 We propose to apply the disclosure principles in Section C of the attached draft regulatory guide to infrastructure entities: see Table 4. We expect infrastructure entities to include the information outlined in the disclosure principles in the relevant disclosure document.

Your feedback

C2Q1 Do you agree with the proposed disclosure principles? If not, please identify which principles you disagree with and why.

C2Q2 Please provide details on the additional costs (if any) of applying the disclosure principles.

C2Q3 Do you think there are other, more relevant disclosure principles that infrastructure entities should apply to highlight important information for retail investors?

C2Q4 As noted in paragraph 17(b), we are considering removing the proposed benchmark in CP 134 for the infrastructure entity to disclose if there are any arrangements that could entrench management beyond a five-year term. The objective of this benchmark was to help investors understand the effects of long-term management arrangements (e.g. on potential control transactions). Will the amended benchmarks and disclosure principles achieve this objective? What other measures (if any) are needed to achieve this objective?

Table 4: Proposed disclosure principles

Disclosure principle	Summary	Reference
1 Key relationships	Disclosure Principle 1 addresses the infrastructure entity’s key relationships (e.g. controlling arrangements) including for significant assets under development.	See the attached draft regulatory guide at RG 000.56–RG 000.58
2 Management and performance fees	Disclosure Principle 2 addresses how management fees and performance fees will be paid and the justification for those fees.	See the attached draft regulatory guide at RG 000.59–RG 000.60
3 Related party transactions	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 arms’ length terms or member approval has been sought.	See the attached draft regulatory guide at RG 000.61–RG 000.63
4 Financial ratios	Disclosure Principle 4 addresses the infrastructure entity’s 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).	See the attached draft regulatory guide at RG 000.64–RG 000.67

Disclosure principle	Summary	Reference
5 Capital expenditure and debt maturities	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.	See the attached draft regulatory guide at RG 000.68–RG 000.70
6 Foreign exchange and hedging	Disclosure Principle 6 addresses the infrastructure entity's policies on foreign exchange and hedging and whether the actual foreign exchange and/or variable interest rate exposure conform with these policies.	See the attached draft regulatory guide at RG 000.71–RG 000.72
7 Base-case financial model	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 entity if key assumptions were materially less favourable than anticipated.	See the attached draft regulatory guide at RG 000.73–RG 000.78
8 Valuations	Disclosure Principle 8 addresses whether valuations, or a summary of valuations for significant infrastructure assets, are available to investors.	See the attached draft regulatory guide at RG 000.79–RG 000.80
9 Distribution policy	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.	See the attached draft regulatory guide at RG 000.81–RG 000.82
10 Withdrawal policy	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.	See the attached draft regulatory guide at RG 000.83–RG 000.84
11 Portfolio diversification	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.	See the attached draft regulatory guide at RG 000.85–RG 000.87

Explanation

- 21 The purpose of the disclosure principles in the attached draft regulatory guide is to improve the consistency and quality of disclosure by infrastructure entities and to enhance investor confidence. The disclosure principles cover those areas which we believe retail investors should understand to make informed investment decisions.
- 22 The proposed disclosure principles are substantially based on the additional disclosure guidance proposed in CP 134. However, some of the disclosure principles replace certain benchmarks we proposed in CP 134.

- 23 We have addressed many of the comments received in response to CP 134 and consultation meetings. For example, we propose to:
- (a) add disclosure principles on financial ratios, hedging and withdrawal policies to replace benchmarks;
 - (b) remove the additional disclosure requirement on disclosing some confidential information about funding arrangements;
 - (c) remove the additional disclosure requirement on credit market disruption; and
 - (d) replace the additional disclosure guidance on disclosing a five-year cash flow forecast with a benchmark (see paragraph 17(e)).

D Form and method of disclosure

Key points

We propose to include guidance on how infrastructure entities should disclose against the benchmarks and apply the disclosure principles so that investors can find the relevant information.

PDS and prospectus disclosure

Proposal

D1 We consider that:

- (a) it is best practice for disclosure documents to contain a summary in table form within the first 15 pages setting out the infrastructure entity's disclosure against the benchmarks, including an explanation on an 'if not, why not' basis where the infrastructure entity does not meet the benchmark; and
- (b) the information outlined in the disclosure principles should be disclosed as soon as practicable after the benchmark summary table.

See the attached draft regulatory guide at RG 000.88–RG 000.91.

Your feedback

D1Q1 Do you foresee any difficulties associated with providing a summary of disclosure against the benchmarks in the first 15 pages of the disclosure document?

D1Q2 Do you foresee any difficulties associated with providing the information outlined in the disclosure principles in this manner?

Explanation

- 24 The purpose of the proposed form of disclosure is to achieve consistent disclosure about particular features of an infrastructure entity in a format that allows investors to compare different infrastructure entities. We think it is best practice for disclosure to be in table form, with a separate row for each benchmark: see the example in the appendix to the attached draft regulatory guide.
- 25 For each benchmark, the table should state the benchmark, whether or not the benchmark is met and provide an explanation if the benchmark is not met. We consider that any further disclosure required against the benchmark should be:

- (a) clearly and prominently disclosed in the PDS as close to the benchmark summary table as is practicable, preferably with a reference in the table to where that information can be found in the PDS; and
- (b) updated in ongoing disclosures, as required (see proposal D2).

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

Ongoing disclosure

Proposal

D2 We consider that where there are material changes to disclosure against the benchmarks and/or information provided under the disclosure principles, an infrastructure entity should update investors:

- (a) by way of ongoing disclosures; or
- (b) at least annually: see the attached draft regulatory guide at RG 000.18 and RG 000.93.

We encourage infrastructure entities to communicate this information to investors as soon as practicable by the most effective means possible (e.g. through updates on the entity's website): see Section D of the attached draft regulatory guide.

Your feedback

D2Q1 Are there practical problems for an infrastructure entity in updating information on the benchmarks and disclosure principles on an ongoing basis? If so, what would ensure that investors are adequately informed about the infrastructure entity's ongoing performance against the benchmarks and disclosure principles?

D2Q2 Do you foresee any difficulties with providing updates to investors at least annually?

Explanation

27 Our proposal that an infrastructure entity should disclose against the benchmarks and provide the information outlined the disclosure principles on an ongoing basis is similar to what we proposed in CP 134. However, we have now included further details about how that disclosure may be provided (e.g. via a website).

E Timing for implementation

Key points

We propose to implement the proposed benchmarks and disclosure principles to cover both new and existing disclosure documents.

Proposal

E1 We propose that infrastructure entities should address the benchmarks and apply the disclosure principles in:

- (a) new PDSs or prospectuses dated on or after 1 January 2012; and
- (b) existing PDSs or prospectuses dated before 1 January 2012 through a new or supplementary PDS or prospectus by the first day of the infrastructure entity's next financial year that begins on or after 1 January 2012.

See the attached draft regulatory guide at RG 000.21–RG 000.22.

Your feedback

E1Q1 Do you agree with the proposed timing for implementation? If not, why not?

E1Q2 Are there any practical problems for infrastructure entities in meeting this timeframe? If so, what alternative would ensure that investors have access to improved disclosure as soon as possible?

Explanation

- 28 We think that it is important for existing and prospective retail investors to have access to improved disclosure on infrastructure entities as soon as possible. The process of implementing our approach should include both updating PDSs and prospectuses for prospective investors and providing existing investors with updated disclosure that reflects the proposed benchmarks and disclosure principles.

F Regulatory and financial impact

- 29 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) improving the quality of disclosure on investments that have complex characteristics and risks; and
 - (b) not unduly interfering with the operating and marketing of infrastructure investments.
- 30 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
 - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 31 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 32 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about our proposals or any alternative approaches:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.

See 'The consultation process' p. 4.

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to:</p> <p>(a) adopt either Option 1 or Option 2 as the definition for ‘infrastructure entity’ (see Table 2);</p> <p>(b) define ‘infrastructure assets’ as:</p> <p>the physical plant, property or equipment of roads, railways, ports, airports and other transport facilities, telecommunications facilities, gas or electricity generation and transmission, water supply and sewerage, hospitals, education, public housing and recreational facilities.</p>	<p>B1Q1 Do you prefer Option 1 or Option 2 as the definition for ‘infrastructure entity’? Please give your reasons.</p> <p>B1Q2 For Option 2, what should ‘non-cash assets’ include? Is it appropriate to include ‘equity accounted unlisted entities’? If not, why not.</p> <p>B1Q3 Please explain the impact, if any, (including quantitative figures) on your business of implementing either option.</p> <p>B1Q4 Is the definition of ‘infrastructure assets’ appropriate? If not, why not? Please include any suggested changes.</p>
<p>C1 We propose to apply the benchmarks in Section B of the attached draft regulatory guide to infrastructure entities: see Table 3. Infrastructure entities should disclose against these benchmarks on an ‘if not, why not’ basis: see the attached draft regulatory guide at RG 000.15–RG 000.17.</p>	<p>C1Q1 Do you agree with the proposed benchmarks? If not, please identify which benchmarks you disagree with and why.</p> <p>C1Q2 Please provide details on any additional costs (including quantitative figures) in disclosing against each benchmark.</p> <p>C1Q3 Are there other, more relevant, benchmarks that would highlight important information for retail investors? If so, what are they?</p>
<p>C2 We propose to apply the disclosure principles in Section C of the attached draft regulatory guide to infrastructure entities: see Table 4. We expect infrastructure entities to include the information outlined in the disclosure principles in the relevant disclosure document.</p>	<p>C2Q1 Do you agree with the proposed disclosure principles? If not, please identify which principles you disagree with and why.</p> <p>C2Q2 Please provide details on the additional costs (if any) of applying the disclosure principles.</p> <p>C2Q3 Do you think there are other, more relevant disclosure principles that infrastructure entities should apply to highlight important information for retail investors?</p> <p>C2Q4 As noted in paragraph 17(b), we are considering removing the proposed benchmark in CP 134 for the infrastructure entity to disclose if there are any arrangements that could entrench management beyond a five-year term. The objective of this benchmark was to help investors understand the effects of long-term management arrangements (e.g. on potential control transactions). Will the amended benchmarks and disclosure principles achieve this objective? What other measures (if any) are needed to achieve this objective?</p>

Proposal	Your feedback
<p>D1 We recommend that:</p> <ul style="list-style-type: none"> (a) disclosure documents contain a summary in table form within the first 15 pages setting out the infrastructure entity's disclosure against the benchmarks, including an explanation on an 'if not, why not' basis where the infrastructure entity does not meet the benchmark; and (b) the information outlined in the disclosure principles be disclosed as soon as practicable after the benchmark summary table. <p>See the attached draft regulatory guide at RG 000.88–RG 000.91.</p>	<p>D1Q1 Do you foresee any difficulties associated with providing a summary of disclosure against the benchmarks in the first 15 pages of the disclosure document?</p> <p>D1Q2 Do you foresee any difficulties associated with providing the information outlined in the disclosure principles in this manner?</p>
<p>D2 We consider that where there are material changes to disclosure against the benchmarks and/or information provided under the disclosure principles, an infrastructure entity should update investors:</p> <ul style="list-style-type: none"> (a) by way of ongoing disclosures; or (b) at least annually: see the attached draft regulatory guide at RG 000.18 and RG 000.93. <p>We encourage infrastructure entities to communicate this information to investors as soon as practicable by the most effective means possible (e.g. through updates on the entity's website): see Section D of the attached draft regulatory guide.</p>	<p>D2Q1 Are there practical problems for an infrastructure entity in updating information on the benchmarks and disclosure principles on an ongoing basis? If so, what would ensure that investors are adequately informed about the infrastructure entity's ongoing performance against the benchmarks and disclosure principles?</p> <p>D2Q2 Do you foresee any difficulties with providing updates to investors at least annually?</p>
<p>E1 We propose that infrastructure entities should address the benchmarks and apply the disclosure principles in:</p> <ul style="list-style-type: none"> (a) new PDSs or prospectuses dated on or after 1 January 2012; and (b) existing PDSs or prospectuses dated before 1 January 2012 through a new or supplementary PDS or prospectus by the first day of the infrastructure entity's next financial year that begins on or after 1 January 2012. <p>See the attached draft regulatory guide at RG 000.21–RG 000.22.</p>	<p>E1Q1 Do you agree with the proposed timing for implementation? If not, why not?</p> <p>E1Q2 Are there any practical problems for infrastructure entities in meeting this timeframe? If so, what alternative would ensure that investors have access to improved disclosure as soon as possible?</p>



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 000

Infrastructure entities: Improving disclosure for retail investors

April 2011

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.

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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 draft regulatory guide was issued on 8 April 2011 and is based on legislation and regulations as at 8 April 2011.

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 which 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 000.15–RG 000.17. 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 summary table.

Improving disclosure to retail investors

- RG 000.1 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 000.2 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 disclosure 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 000.3 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 000.4 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 disclosures, taking into

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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.

- RG 000.5 For example, Pt 7.9 of the *Corporations Act 2001* (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 000.6 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 000.7 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) infrastructure assets;
 - (b) the right to operate infrastructure assets; or
 - (c) other entities which, either directly or indirectly, primarily invest in infrastructure assets.
- RG 000.8 Infrastructure assets are the physical plant, property or equipment of roads, railways, ports, airports and other transport facilities, telecommunications facilities, gas or electricity generation and transmission, water supply and sewerage, hospitals, education, public housing and recreational facilities.
- RG 000.9 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 will apply to infrastructure entities that may also be considered property funds.
- RG 000.10 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

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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.

- RG 000.11 We would expect those 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.

Benchmarks and disclosure principles

- RG 000.12 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 and clear disclosure to investors so they can assess an infrastructure entity and more easily compare it with other infrastructure entities.
- RG 000.13 Meeting the benchmarks and applying the disclosure principles is not mandatory. They are merely used to establish a framework for disclosure of issues regarded as important.
- RG 000.14 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.

Disclosure against the benchmarks: 'If not, why not'

- RG 000.15 An infrastructure entity should disclose whether it meets the benchmarks in Section B. If it does not meet a benchmark, it should explain why not. 'Why not' means explaining how the infrastructure entity deals with the business factors or issues underlying the benchmark in another way.
- RG 000.16 We consider that an infrastructure entity's disclosure could be inadequate if:
- (a) the entity states that a benchmark was met on a partial basis and there is a lack of explanation about why the benchmark was not fully met; or
 - (b) the entity does not address all of the elements of a benchmark in the disclosure.

- RG 000.17 If a benchmark is not relevant to an infrastructure entity, the entity should disclose this fact along with a brief explanation about why the benchmark is not applicable.

Method and form of disclosure

- RG 000.18 Disclosure against the benchmarks and the information outlined in the disclosure principles should be:
- (a) included in the PDS or prospectus, preferably in table form (see the appendix to this guide); and
 - (b) updated in ongoing disclosures as material changes occur. We also recommend that disclosure updates be provided at least annually (if not already provided under ongoing disclosure obligations).
- RG 000.19 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.
- RG 000.20 Provisions in the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act) apply to disclosure made in advertising material. Advertising by infrastructure entities should support investor understanding of disclosure against the benchmarks and information addressing the disclosure principles and be consistent with all corresponding disclosures on that subject matter in the PDS or prospectus.

Timing for implementing improved disclosure

- RG 000.21 Infrastructure entities must disclose against the benchmarks and apply the disclosure principles in all new PDSs or prospectuses dated on or after 1 January 2012.
- RG 000.22 For an existing PDS or prospectus dated before 1 January 2012, the infrastructure entity must, by the first day of the entity's next financial year that begins on or after 1 January 2012, update the PDS or prospectus by providing a new or supplementary PDS or prospectus that includes disclosure against the benchmark and the information outlined in the disclosure principles.

B Benchmarks

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.

The benchmarks cover corporate structure and management, remuneration of management, classes of units and shares, substantial related party transactions, cash flow forecast, base-case financial model, performance and forecast, distributions and updating the unit price.

Summary of the benchmarks

RG 000.23 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 000.15–RG 000.17.

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
1 Corporate structure and management	Benchmark 1 addresses whether the infrastructure entity’s corporate governance policies and practices comply with Australian Securities Exchange Limited (ASX) Listing Rules Guidance Note 9A <i>Corporate Governance—ASX Corporate Governance Council—Revised Corporate Governance Principles and Recommendations</i> (GN 9A).
2 Remuneration of management	Benchmark 2 addresses whether incentive-based remuneration paid to management is derived from the infrastructure entity’s performance.
3 Classes of units and shares	Benchmark 3 addresses whether all units or shares of the infrastructure entity are fully paid and have the same rights.
4 Substantial related party transactions	Benchmark 4 applies only to unlisted infrastructure entities and addresses whether the entity has complied with ASX Listing Rule 10.1 in respect of substantial related party transactions.
5 Cash flow forecast	Benchmark 5 addresses whether the infrastructure entity has prepared and had approved by its directors certain cash flow forecasts.
6 Base-case financial model	Benchmark 6 addresses whether an agreed-upon procedures check has been performed on the infrastructure entity’s base-case financial model and whether any material issues identified have been rectified.

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Benchmark	Description
7 Performance and forecast	Benchmark 7 applies to operating assets and addresses whether performance for the first two years of operation equals or exceeds the original disclosed forecasts.
8 Distributions	Benchmark 8 applies only to infrastructure entities that are unit trusts and addresses whether distributions will be paid from scheme borrowings.
9 Updating the unit price	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 withdrawals and issues of units.

Benchmark 1: Corporate structure and management

RG 000.24 The infrastructure entity's corporate governance policies and practices conform with the principles and recommendations in GN 9A.

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

Explanation

RG 000.25 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 000.26 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 000.27 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.

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.

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Explanation

- RG 000.28 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 000.29 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 000.30 All units or shares are fully paid and have the same rights.

Explanation

- RG 000.31 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 which vary from their own (e.g. priority rights).
- RG 000.32 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 000.33 If the infrastructure entity is unlisted, it complies with ASX Listing Rule 10.1 for substantial related party transactions as if it were an ASX-listed entity.

Note 1: See 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 re-issued Regulatory Guide 76 *Related party transactions* (RG 76). This may result in additional guidance on related party transactions for infrastructure entities.

Explanation

- RG 000.34 An independent assessment for a proposed related party transaction can help investors to assess whether the transaction is in their best interests.

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- RG 000.35 If the benchmark is not met, the unlisted infrastructure entity should explain on what basis it will enter into related party transactions.

Related disclosure

- RG 000.36 We also expect all infrastructure entities to provide disclosure on certain types of related party transactions: see RG 000.61–RG 000.63.

Benchmark 5: Cash flow forecast

- RG 000.37 The infrastructure entity has, for the current financial year, prepared and had approved by its directors:
- (a) a 12-month cash flow forecast for which the entity has engaged a suitably qualified person or firm to provide, in accordance with 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 of each significant infrastructure asset.

Note: The cash flow forecasts in this benchmark should be updated for any material changes to the assumptions in the forecasts.

Explanation

- RG 000.38 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 auditors. This will encourage more rigorous analysis of the assumptions within cash flow forecasts.
- RG 000.39 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 000.40 The infrastructure entity will perform an agreed-upon procedures check on its base-case financial model:
- (a) before any new material transaction; and

- (b) at least once every three years.

All material issues identified in that check have been rectified or will be rectified within the agreed timeframe.

Note: See 'Key terms' for the definition of 'agreed-upon procedures'.

Explanation

- RG 000.41 We consider that investor confidence will be enhanced if investors understand how the reasonableness of the assumptions in the infrastructure entity's base-case financial model was confirmed and that an auditor or independent advisory firm has performed an agreed-upon procedures check of the model.
- RG 000.42 If the benchmark is not met, the infrastructure entity should explain why the agreed-upon procedures check has not been performed, how it is satisfied with the mechanical integrity of the model and how the reasonableness of the assumptions was confirmed.

Related disclosure

- RG 000.43 In certain circumstances, we also expect infrastructure entities to provide additional information on the base-case financial model: see RG 000.73–RG 000.76.

Benchmark 7: Performance and forecast

- RG 000.44 For any operating asset developed by the infrastructure entity, or completed immediately before the infrastructure entity's ownership, the actual performance for the first two years of operation equals or exceeds the original disclosed forecasts used to justify the acquisition or development of that asset.

Note: This benchmark should be addressed for each relevant operating asset for the first two years of operation and updated as part of the ongoing disclosures. The benchmark should also be addressed in any PDS or prospectus between the first and third anniversary of completion of development of the asset.

Explanation

- RG 000.45 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 000.46 If the benchmark is not met, the infrastructure entity should explain why the actual results are below forecast (e.g. which assumptions were not met).

Benchmark 8: Distributions

RG 000.47 If the infrastructure entity is a unit trust, it will not pay distributions from scheme borrowings.

Explanation

RG 000.48 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 000.49 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 000.50 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 Regulatory Guide 170 *Prospective financial information* (RG 170).

Benchmark 9: Updating the unit price

RG 000.51 If the infrastructure entity is unlisted and a unit trust, after finalising a new valuation for an infrastructure asset, the infrastructure entity will review, and update if appropriate, the unit price before issuing new units or redeeming units.

Explanation

RG 000.52 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 000.53 If the benchmark is not met, the infrastructure entity should explain how often the unit price is updated.

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C Disclosure principles

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.

The disclosure principles cover key relationships, management and performance fees, related party transactions, financial ratios, capital expenditure and debt maturities, foreign exchange and hedging, base-case financial models, valuations, distribution policy, withdrawal policy and portfolio diversification.

Summary of the disclosure principles

RG 000.54 We expect infrastructure entities to clearly and prominently disclose the information outlined in the 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 of this guide.

RG 000.55 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
1 Key relationships	Disclosure Principle 1 addresses the infrastructure entity's key relationships (e.g. controlling arrangements) including for significant assets under development.
2 Management and performance fees	Disclosure Principle 2 addresses how management fees and performance fees will be paid and the justification for those fees.
3 Related party transactions	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 arms' length terms or member approval has been sought.

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Disclosure principle	Summary
4 Financial ratios	Disclosure Principle 4 addresses the infrastructure entity's 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).
5 Capital expenditure and debt maturities	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.
6 Foreign exchange and hedging	Disclosure Principle 6 addresses the infrastructure entity's foreign exchange and hedging policies and whether the actual foreign exchange and/or variable interest rate exposure conform to these policies.
7 Base-case financial model	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.
8 Valuations	Disclosure Principle 8 addresses whether valuations, or a summary of valuations for significant infrastructure assets, are available to investors.
9 Distribution policy	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.
10 Withdrawal policy	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.
11 Portfolio diversification	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 000.56 We consider that an infrastructure entity should disclose the following details in the PDS or prospectus (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;
- (b) for any significant 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

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- (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.

Explanation

- RG 000.57 Key relationships can have an important influence on decisions relating to infrastructure entities. Investment in infrastructure entities which undertake development can be more risky than passive investments.
- RG 000.58 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 fees and performance fees

- RG 000.59 We consider that an infrastructure entity should disclose the following details in the PDS or prospectus:
- (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 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 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 000.60 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 000.61 We consider that an infrastructure entity should disclose in the PDS or prospectus 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 000.62 Investors should have sufficient information to assess related party transactions and agreements and the rationale for entering into such transactions and agreements.
- RG 000.63 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 000.64 We expect an infrastructure entity to disclose the following details in the PDS or prospectus:
- (a) any target and actual financial ratios for the entity and how those 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 000.65 The liabilities and assets 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 000.66 We consider that financial ratios are 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 have therefore provided flexibility on disclosure of financial ratios.

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RG 000.67 Investors should also be able to simply assess the actual level of debt risk for an infrastructure entity in comparison to any target debt levels.

Disclosure Principle 5: Capital expenditure and debt maturities

RG 000.68 We consider that it is best practice for an infrastructure entity to disclose the following details in the PDS or prospectus:

- (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.

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/ principal and interest
Up to 1 year							
Between 1 and 2 years							
Between 2 and 5 years							
Total							

Explanation

RG 000.69 It is important for investors to understand the capital expenditure requirements for infrastructure entities and how these requirements will be funded.

RG 000.70 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

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are due to mature within a relatively short timeframe can be a significant risk factor, especially in periods where credit is more difficult and expensive to obtain.

Disclosure Principle 6: Foreign exchange and hedging

- RG 000.71 We expect an infrastructure entity to disclose the following details in the PDS or prospectus:
- (a) any current interest rate and foreign exchange hedging policy for the entity; and
 - (b) whether the entity's foreign exchange and/or variable interest rate exposure conforms with its interest rate and foreign exchange hedging policy.

Explanation

- RG 000.72 The returns of an infrastructure entity may be substantially affected by changes in the interest rate and/or foreign exchange rates. It is important for investors to understand the infrastructure entity's foreign exchange and hedging policies and any material variances between its actual position and those policies.

Disclosure Principle 7: Base-case financial model

- RG 000.73 We expect an infrastructure entity to disclose the following details in the PDS or prospectus.
- RG 000.74 For a transaction involving a significant infrastructure asset, the entity should disclose the following details for its base-case financial model:
- (a) the key assumptions and the source of those assumptions;
 - (b) a confirmation by the directors of the infrastructure entity 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 that the auditor or independent advisory firm has used to check the base-case financial model; and
 - (e) any conflicts of interest that may arise in the agreed-upon procedures check.
- RG 000.75 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 000.76 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 the 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 debt and the model used to raise equity, respectively, within six months of each other in the current financial year.

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

Explanation

RG 000.77 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 000.78 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.

Disclosure Principle 8: Valuations

RG 000.79 The infrastructure entity should disclose:

- (a) details on the entity's valuation policy;
- (b) if, and how, valuations and supporting documentation are available to investors. Alternatively, the infrastructure entity can provide a summary of the valuations (required for significant infrastructure assets only) containing, at a minimum, the following information:

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- (i) who prepared the valuation (including whether the valuation was prepared by management 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 yield;
 - (ix) the discount 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 000.80 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 000.81 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 000.82 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.

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Disclosure Principle 10: Withdrawal policy

- RG 000.83 We understand that most PDSs will generally contain information on withdrawals (if withdrawal rights apply). However, for the sake of clarity, we would expect PDSs for infrastructure entities that are unlisted to contain 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 000.84 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 000.85 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 000.86 Portfolio diversification is an important risk management tool. It is also often an important consideration for investors. It is therefore important that investors understand whether an infrastructure entity's assets accord with its portfolio diversification policy.
- RG 000.87 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 disclosures 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 the PDS or prospectus

- RG 000.88 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.
- RG 000.89 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 000.90 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 disclosures, if required (see RG 000.92–RG 000.93).

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- RG 000.91 The Corporations Amendment Regulations 2010 (No. 5) amend the Corporations Regulations 2001 (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 000.94–RG 000.98.

Ongoing disclosures

- RG 000.92 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 000.94–RG 000.98.

- (b) providing periodic statements to investors in registered schemes under s1017D of the Corporations Act;
- (c) for disclosing entities and registered 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 000.93 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 disclosures. 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 000.94 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 000.95 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 000.96 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 000.97 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, where the entity is aware that a significant number of investors might not have ready access to the internet.
- RG 000.98 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
1 The infrastructure entity's corporate governance policies and practices conform with the principles and recommendations in GN 9A.	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
2 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.	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
3 All units or shares are fully paid and have the same rights.	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
4 If the infrastructure entity is unlisted, it complies with ASX Listing Rule 10.1 for substantial related party transactions as if it were an ASX-listed entity.	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
5 The infrastructure entity has, for the current financial year, prepared and had approved by its directors: <ul style="list-style-type: none"> • a 12-month cash flow forecast for which the entity has engaged a suitably qualified person or firm to, in accordance with auditing standards, provide: <ul style="list-style-type: none"> – negative assurance on the reasonableness of the assumptions used in the forecast; and – 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 • an unaudited cash flow forecast for the remaining life of each significant infrastructure asset. 	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].

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Benchmark	Statement	Explanation	Reference
<p>6 The infrastructure entity will perform an agreed-upon procedures check on its base-case financial model:</p> <ul style="list-style-type: none"> • before any new material transaction; and • at least once every three years. <p>All material issues identified in that check have been rectified or will be rectified within the agreed timeframe.</p>	The benchmark is met.	N/A	For additional disclosure on this benchmark, see [section X] of this [relevant disclosure document].
<p>7 For any operating asset developed by the infrastructure entity, or completed immediately before the infrastructure entity's ownership, the actual performance for the first two years of operation equals or exceeds the original 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 non-compliance with this benchmark, see [section X] of this [relevant disclosure document].
<p>8 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>9 If the infrastructure entity is unlisted and a unit trust, after finalising a new valuation for an infrastructure asset, the infrastructure entity will review, and update 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
agreed-upon procedures	The agreed-upon procedures described in Auditing Standard 904 <i>Engagements to perform agreed-upon procedures</i>
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASX	The exchange market known as ASX, operated by ASX Limited
ASX Listing Rules	ASX Listing Rules, as amended from time to time
auditing standards	Auditing standards prepared by the Auditing & Assurance Standards Board 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 scheme, the directors of the responsible entity of that scheme
EBITDA	Earnings before interest, taxation, depreciation and amortisation
financial ratios	Means the: <ul style="list-style-type: none"> • gearing ratio; • net debt/EBITDA ratio; • short-term debt/EBITDA ratio; and • look-through gearing ratio <p>or</p> <ul style="list-style-type: none"> • 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

Term	Meaning in this document
	financial ratios have changed from those last disclosed, if relevant)
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: $\frac{\text{Total liabilities}}{\text{Total assets}}$
GN 9A (for example)	An ASX guidance note (in this example, numbered 9A)
look-through gearing ratio	The ratio calculated as: $\frac{\text{Total liabilities} + \text{proportionate share of liabilities of equity accounted investments}}{\text{Total assets} + \text{proportionate share of liabilities of equity accounted investments}}$
net debt/EBITDA ratio	The ratio calculated (on a consolidated and/or proportionate earnings basis) using the following formula, based on the latest financial statements: $\frac{\text{Net debt (being total interest-bearing liabilities less cash and cash equivalents)}}{\text{EBITDA}}$
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 Note: See s761A for the exact definition.
Pt 7.9 (for example)	A part of the Corporations Act (in this example, numbered 7.9), unless otherwise specified
RG 76 (for example)	An ASIC regulatory guide (in this example numbered 76)
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

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Term	Meaning in this document
short-term debt/EBITDA ratio	<p>The ratio calculated (on a consolidated and/or 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	<p>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</p>
significant infrastructure asset	<p>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</p>
substantial related party transaction	<p>For unlisted infrastructure entities, a transaction to which ASX Listing Rule 10.1 would apply as if that entity were a listed infrastructure entity</p>

Related information

Headnotes

infrastructure entity, infrastructure assets, disclosure principles, benchmarks, PDS, prospectus, disclosure document

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 170 *Prospective financial information*

RG 198 *Unlisted disclosing entities: Continuous disclosure obligations*

Legislation

ASIC Act

Corporations Act, Chs 2E, 2M, 6CA, 6D, Pt 7.9

Corporations Amendment Regulations 2010 (No. 5)

Corporations Regulations

Consultation papers

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

Other publications

GN 9A *Corporate Governance—ASX Corporate Governance Council—Revised Corporate Governance Principles and Recommendations*

ASX Listing Rule 10.1

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