



16<sup>th</sup> August 2012

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Australian Securities and Investments Commission  
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By email: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

Dear Ms Frederick

**ASIC Consultation Paper 211 – Facilitating electronic offers of securities: Update to Regulatory Guide 107**

Thank you for the opportunity to make comments on ASIC Consultation Paper 211 (CP 211) and the proposed changes to Regulatory Guide 107 (RG 107). We apologise for the slight delay in making this submission.

The Australian Financial Markets Association (AFMA) is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets and provides leadership in advancing the interests of all market participants. These markets are an integral feature of the economy and perform the vital function of facilitating the efficient use of capital and management of risk. Market participants perform a range of important roles within these markets, including financial intermediation and market making.

AFMA represents over 130 members, including Australian and international banks, leading brokers, securities companies, state government treasury corporations, fund managers, traders in electricity and other specialised markets and industry service providers.

AFMA has only limited comments to make at this time in response to CP 211, as follows.

**1. Chapter 6D of the Corporations Act**

AFMA supports ASIC's interpretation of the fundraising provisions in Chapter 6D of the Act and the application of these provisions to using the internet and other electronic means for the distribution of disclosure documents and applications forms. Accordingly, we have no objection to the revocation of the class order relief in CO 00/44 for electronic disclosure documents and application forms.

## 2. Revised Regulatory Guide 107

AFMA members have provided feedback in relation to the following matters in draft updated RG 107.

### 2.1 Good practice guidance – Principle 3: Ensuring receipt of documents

*Offerors and distributors that distribute electronic disclosure documents for entitlement offers should **ensure** (emphasis added) that the investor receives the electronic disclosure document and electronic application form.*

The use of the word *ensure* is problematic, as this implies a level of obligation or onus on the offeror/distributor that goes beyond what RG107.76 and 77 require an offeror/distributor to do. That is, the email or notification can be sent to the address nominated by the investor, and the offeror/distributor can make all reasonable attempts to contact the investor by other means if they become aware that an existing investor has not received the electronic disclosure document. However, these actions will not always ensure that the investor receives the documents. RG 107.76 and 77 require best efforts, but not total certainty.

It would be useful to clarify whether there is an expectation that the electronic process will exceed that of traditional mail - for example, does the process of ensuring electronic disclosure documents have been received by the investor include the capture of email receipts, confirmation of read and the like.

### 2.2 Good practice guidance – Principle 4: Ensuring documents received are complete and protected from tampering

*Offerors, distributors and publishers should take reasonable measures to ensure that electronic disclosure documents received by investors are complete and have not been altered or tampered with.*

The concepts set out at RG 107.78 to 81 will facilitate some level of integrity but the key test will be a comparison of the original document (whether paper or readable image) with that disclosed to a customer.

The good practice guidance appears to relate to delivery, rather than to integrity in production (ie. version control and rendering copies (PDF or TIFF) from a controlled source). It should be noted that there may be cost issues involved in deploying a system that can properly support this Principle if it is intended to apply to how the document is produced, and not just to how it is delivered.

We would appreciate further clarification on this point.

### 2.3 Good practice guidance – Principle 8: Retaining copies of electronic documents

*Offerors, distributors and publishers should retain copies and records of all electronic disclosure documents so that investors are able to prove which version of the disclosure document they relied on.*

This Principle and the good practice guidance set out at RG 107.92 to 95 potentially impose cost, system design and maintenance issues.

Capture, management and retention of *each screen which would be displayed to the investor* [see RG107.94] will be a complex issue particularly in terms of how the capture works, and how and where such images are stored.

Although RG107.93 specifies a 7 year retention period, in practice and under various laws, the actual retention period will be 7 years from the closure of the account or service to which the offer relates. Thus, the period for which all affected documents and images (offer documents, applications, screens, etc.) must be kept will be longer than 7 years.

We suggest that ASIC revisits this Principle to further refine which records should be retained for the purposes of investor protection, which we understand is the underlying objective. It is not unreasonable for some onus to also be placed on an investor to retain copies of documents that they rely to make investment decisions. Capture and retention of every potentially relevant document and image by the offeror, distributor or publisher may be unduly administratively burdensome and costly, for limited practical benefit.

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Please contact me  
about this submission.

if you have any queries

Yours sincerely

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