



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 217

# Presentation of financial statements by stapled entities

October 2013

## About this paper

This consultation paper seeks your feedback on our proposal to issue an ASIC class order to allow stapled entities to present combined or consolidated financial statements covering all entities in a stapled group. We have prepared this paper because stapled entities may not be able to present combined or consolidated financial statements covering all entities in a stapled group under the new Australian Accounting Standard AASB 10 *Consolidated Financial Statements* (AASB 10) that applies for reporting periods commencing on or after 1 January 2013.

### 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 in October 2013 and is based on the Corporations Act as at the date of issue.

### 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 important.

Your comments will help us develop our policy on the preparation of financial statements by stapled groups. 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 C, '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 30 November 2013 to:

Doug Niven  
 Senior Executive Leader  
 Financial Reporting and Audit  
 Australian Securities and Investments Commission  
 Level 5, 100 Market Street  
 Sydney NSW 2000  
 email: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

### What will happen next?

<b>Stage 1</b>	10 October 2013	ASIC consultation paper released
<b>Stage 2</b>	30 November 2013	Comments due on the consultation paper
<b>Stage 3</b>	20 December 2013	Class order released

## A Background to the proposals

### Key points

A stapled entity is an entity whose securities, under the terms on which they are traded on a prescribed financial market, must be transferred together with a security of one or more other entities. The stapled entity and each entity controlled by the stapled entity are referred to in this paper as the 'stapled group'.

All stapled entities are disclosing entities and are required to prepare a financial report under Pt 2M.3 of the *Corporations Act 2001* (the Corporations Act). The accounting standards may also require a company, registered scheme or disclosing entity to prepare consolidated financial statements.

This consultation paper asks for your feedback on our proposal to issue an ASIC class order to allow stapled entities to present combined financial statements covering all entities in a stapled group. We have issued this paper because stapled entities may not be able to present combined or consolidated financial statements covering all entities in a stapled group due to the requirements of new Australian Accounting Standard AASB 10 *Consolidated Financial Statements* (AASB 10).

### Overview of financial statement requirements for stapled entities

- 1 Presentation of combined financial statements or consolidated financial statements covering all stapled entities in a stapled group is likely to be useful to investors in those entities.
- 2 In our view, s297 and s305 of the Corporations Act may require the financial statements of each of the stapled entities in a stapled group to include combined or consolidated financial statements covering all entities in a stapled group in order to provide a 'true and fair view' of their financial position and performance, particularly where there are significant financial or operating relationships between the stapled entities. However, AASB 10 may not require combined or consolidated financial statements to be presented. In that case, s295(2) and s 303(2) of the Corporations Act would prevent a stapled entity from including in its financial report any financial statements other than those required by the accounting standards.

### Requirements of the new consolidation accounting standard

- 3 AASB 10 requires an entity that is a parent to present consolidated financial statements. A parent is an entity that controls one or more entities.

- 4 Under AASB 10, for an entity (the investor) to have control of another entity (the investee), an investor must have:
- (a) power over the investee;
  - (b) exposure or rights to variable returns from its involvement with the investee; and
  - (c) the ability to use its power over the investee to affect the amount of the investor's returns.
- 5 The use of the terms 'investor' and 'investee' in AASB 10 appear to indicate that an entity is only controlled and consolidated where there is ownership or other financial interest in the entity. In a typical stapled group, none of the stapled entities will have an investment or in substance investment in any of the other stapled entities.
- 6 Having regard to the 'control' test in AASB 10, it may not be possible for one stapled entity to consolidate other stapled entities for one or more of the following reasons:
- (a) none of the stapled entities have an ownership or other financial interest in any of the other stapled entities;
  - (b) none of the stapled entities have power over the other stapled entities, particularly where a third party manages all of the entities;
  - (c) there are no variable returns between the stapled entities;
  - (d) if a stapled entity meets the definition of an 'investment entity' in AASB 10, then AASB 10 prohibits the preparation of consolidated financial statements that include the other stapled entities; and
  - (e) where the stapled entities are a trustee/manager and a managed investment scheme, it may be unclear as to why control would exist merely because the two entities are stapled when it would not otherwise exist.
- 7 There is an alternative view that consolidated financial statements are required where there has been an initial business combination for the purposes of Australian Accounting Standard AASB 3 *Business Combinations* (AASB 3). AASB 3 acknowledges that a business combination can occur by contract alone and uses a stapling arrangement as an example.
- 8 There are a number of potential issues with this alternative view:
- (a) AASB 3 deals with the initial accounting for business combinations, not the ongoing consolidation accounting requirements;
  - (b) a business combination will only be accounted for under AASB 3 where an entity controls another entity using the control test in AASB 10;
  - (c) AASB 10 makes no references to AASB 3 in determining ongoing requirements to prepare consolidated financial statements; and

- (d) investment entities are still prohibited from preparing consolidated financial statements.

## Our proposals for stapled entity financial statements

- 9 Although there are different views of the financial statement requirements for stapled entities under the accounting standards, our proposed class order would provide relief from s295(2) and s303(2) of the Corporations Act to allow stapled entities to present combined financial statements. Relief would provide certainty to preparers of stapled entity financial reports.
- 10 It is unlikely that the issues surrounding the application of AASB 10 to stapled entities could be resolved by the International Accounting Standards Board or the International Financial Reporting Standards (IFRS) Interpretations Committee before the 31 December 2013 reporting period. It is also possible that the view could be formed that combined or consolidated financial statements covering all entities in a stapled group are not typically permitted. As a result, we are seeking your feedback to our proposals in this consultation paper to help determine whether ASIC should issue a class order to allow the presentation of combined financial statements.
- 11 Before AASB 10 became operative, financial statements for a stapled group were presented as either:
- (a) *combined financial statements*—where assets, liabilities, equity, revenue, expenses and cash flows of the stapled entities were aggregated and inter-entity transactions and balances eliminated; or
  - (b) *consolidated financial statements*—where one of the stapled entities was identified as the parent and the interests held by investors in the other stapled entities were presented as non-controlling interests.
- 12 There are disadvantages to providing investors with consolidated financial statements instead of combined financial statements. These include:
- (a) profits of the controlled stapled entities are required to be shown as attributable to ‘non-controlling interests’, instead of being attributable to the investors of the controlling entity; and
  - (b) ‘earnings per share’ calculations do not include any profits attributable to the controlled stapled entities.
- 13 For the reasons set out at paragraph 12, we do not consider that consolidated financial statements best reflect the interests of the holders of stapled securities in all entities of a stapled group. We therefore propose to issue a class order to allow combined financial statements covering all entities in a stapled group to be presented.

- 14 We believe that combined financial statements are necessary to give a ‘true and fair view’ of the individual stapled entities in a stapled group by providing an overall view of the entire arrangement, particularly where there are financial or operating interrelationships between the entities. For example, combined financial statements eliminate inter-entity transactions, including any inter-entity borrowing costs capitalised into development property in one stapled entity and shown as revenue in another stapled entity.

### **International approaches**

- 15 Stapled group arrangements also exist in Canada (Canada has also adopted the IFRS). A control relationship is not considered to exist in stapled groups in Canada and so consolidated financial statements are not presented. The Ontario Securities Commission has granted relief to allow stapled entities to present combined financial statements.

## **Your feedback**

- 16 We are interested in any feedback you have on our proposals. We will take your comments into account before we release an ASIC class order to allow stapled entities to present combined or consolidated financial statements covering all entities in a stapled group.



## B Our proposals for stapled entity financial statements

### Key points

We believe that combined financial statements or consolidated financial statements covering all entities in a stapled group provide investors with useful and meaningful information. It is our view that the information contained in combined financial statements provides more relevant information to investors than consolidated financial statements. For this reason, we propose to provide class order relief to allow stapled entities to present combined financial statements.

We also seek your feedback as to whether we should provide relief to allow consolidated financial statements covering all entities in a stapled group to be presented, in place of combined financial statements, where consolidated financial statements were presented in previous reporting periods.

## Combined financial statements

### Proposal

**B1** We propose to:

- (a) provide relief from s295(2) and s303(2) of the Corporations Act, by issuing a class order to allow stapled entities to present combined financial statements; and
- (b) require combined financial statements to be subject to audit, or review by the auditor, as a condition of the proposed relief.

Note: A class order is necessary because the preparation of combined financial statements is not required by the accounting standards or permitted under s295(2) and s303(2) of the Corporations Act.

### *Your feedback*

**B1Q1** Do you agree with our proposal to allow combined financial statements to be presented for a stapled group? If not, what alternative would you prefer and why?

**B1Q2** Should we allow consolidated financial statements for all entities in a stapled group to be presented, in place of combined financial statements, where consolidated financial statements were presented in previous financial reports? If so, please state your reasons.

**B1Q3** Do you agree that combined financial statements should be subject to audit or review by the auditor? If not, why not?

## Rationale

- 17 Section 295(2) and s303(2) of the Corporations Act do not allow financial statements that are not required by the accounting standards to be included in a financial report. As such, presentation of combined financial statements would be a departure from the requirements of the Corporations Act if the accounting standards do not require preparation of combined financial statements covering all of the stapled entities in a stapled group.
- 18 We propose to provide relief from s295(2) and s303(2) of the Corporations Act because those provisions may prevent the presentation of combined financial statements in the financial report of a stapled entity.
- 19 Combined financial statements are our preferred form of presentation. We consider the presentation of some of the interests of the holders of stapled securities as non-controlling interests in consolidated financial statements is less useful to investors because of their common ownership of securities in all of the stapled entities. Similarly, the ‘earnings per stapled security’ measure presented in combined financial statements is a better indicator of performance than the ‘earnings per stapled security’ measure presented in consolidated financial statements.
- 20 In previous reporting periods, some stapled entities have presented consolidated financial statements covering all entities in a stapled group. We seek your feedback on whether class order relief should allow these stapled entities to continue to present consolidated financial statements instead of combined financial statements.
- 21 It is our view that combined financial statements should be subject to audit, or review by the auditor, because of the importance of the information contained in them to investors, and given that investors would be presented with the audited or reviewed financial statements of the individual stapled entities.
- 22 If class order relief is not granted, entities could consider presenting combined financial information outside the financial report. However, some entities might then decide not to present combined financial information if it were considered that combined financial statements were not permitted by the accounting standards and the Corporations Act.

## 'True and fair view' requirement

### Proposal

**B2** We propose to include a statement to the effect that combined financial statements covering all entities in a stapled arrangement are necessary to give a 'true and fair view' of the financial position and performance of each of the stapled entities.

#### *Your feedback*

B2Q1 Do you agree with our proposal? If not, why not?

### Rationale

23 Although the application of the proposed ASIC class order will be optional, we consider presentation of combined financial statements necessary to satisfy the requirements in s297 and s305 of the Corporations Act to give a 'true and fair view' of financial statements of each of the stapled entities, particularly where there are significant financial or operating interrelationships between the stapled entities. Section 297 and s305 require financial statements (and notes to financial statements) to provide a 'true and fair view' of the financial position and performance of the stapled entity being reported on. It is our view that the information contained in combined financial statements is likely to be useful to investors in stapled entities.

Note: The proposed class order is not be intended to encourage the use of stapled group arrangements.

## Presentation of financial statements for each stapled entity

### Proposal

**B3** We propose that the proposed class order in proposal B1 will not relieve entities in a stapled group from presenting financial statements required by accounting standards.

#### *Your feedback*

B3Q1 Do you agree with our proposal? If not, why not?

### Rationale

24 Financial reports are required to contain a statement of compliance with IFRS. To make a positive statement of compliance with IFRS, any combined financial statements covering all entities in a stapled group must be in addition to the financial statements required by the accounting standards.

25 Accounting standards may require financial statements for each entity in a stapled group to exclude other entities in the stapled group. These financial

statements cover the stapled entity and, where relevant, consolidate any controlled entities except for other stapled entities.

Note: Disclosure of abbreviated financial information would be required for the separate stapled entities if they present consolidated financial statements. It may have been previous practice by some stapled entities not to present this information for all stapled entities.

- 26 It is important that financial reports of Australian entities are regarded as fully IFRS compliant by international investors. IFRS compliance enables investors to identify that financial reports are prepared in accordance with high quality standards, comparable with other international entities using IFRS, and are prepared on a basis that is understood in global markets. This will assist to facilitate capital flows and investment in Australian entities.
- 27 Financial statements for each entity may also provide investors with meaningful and consistent information for all of the stapled entities, for example, information relevant to investors where there are different tax treatments for each stapled entity and different legal constraints on making distributions.

## Presentation of financial statements in a single financial report

### Proposal

- B4** We propose to continue to provide the relief provided in Class Order [CO 05/642] *Combining financial reports of stapled security issuers* to allow all stapled entities in one stapled group to present financial statements together in a single financial report, including any combined or consolidated financial statements.

#### Your feedback

- B4Q1 Do you agree with our proposal to continue the relief in [CO 05/642]? If not, why not?

### Rationale

- 28 Class order [CO 05/642] allows all stapled entities in a stapled group to present their financial statements together in a single financial report. In the absence of the relief provided by [CO 05/642], presentation of financial statements of the different stapled entities in a single financial report is prevented by s295(2) and s303(2) of the Corporations Act.
- 29 We consider the presentation of the results of all stapled entities in one financial report is more meaningful to investors, particularly where the stapled entities operate together.

## C Regulatory and financial impact

- 30 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 that the proposed class order relief will result in useful and meaningful information for investors, and facilitate consistency in presentation and comparability of financial information between stapled groups.
- 31 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).
- 32 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.
- 33 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
  - (b) the likely effect on competition; and
  - (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

## Key terms

Term	Meaning in this document
AASB	Australian Accounting Standards Board
AASB 3 (for example)	AASB 3 (for example) refers to a particular Australian accounting standard issued by the Australian Accounting Standards Board (AASB)
accounting standards	As defined in s9 of the Corporations Act (also referred to as 'Australian accounting standards')  Note: Australian accounting standards are based on IFRS
combined financial statements	In relation to a stapled group, financial statements that aggregate two or more entities that are members of the group, eliminating inter-entity transactions and balances, but without:  (a) identifying an acquirer or one or more acquirees; and  (b) eliminating equity or reserves of the acquirees that existed when the terms on which the securities of the entities were traded on a prescribed financial market first required the securities to be transferred together
consolidated financial statements	The financial statements of a group in which the assets, liabilities, equity, income, expenses and cash flows of the parent and its subsidiaries are presented as those of a single economic entity
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
[CO 05/642] (for example)	An ASIC class order (in this example numbered 05/642)
financial report	A full-year or half-year financial report required under Part 2M.3 of the Corporations Act
IASB	International Accounting Standards Board
IFRS	International Financial Reporting Standards issued by the IASB
managed investment scheme	As defined in s9 of the Corporations Act
Pt 2M.3 (for example)	A part of the Corporations Act (in this example numbered 2M.3), unless otherwise specified
s766E (for example)	A section of the Corporations Act (in this example numbered 766E), unless otherwise specified

<b>Term</b>	<b>Meaning in this document</b>
stapled group	<p>The group of entities consisting of:</p> <ul style="list-style-type: none"><li>(a) a stapled entity and each other stapled entity a security of which under the terms on which it is traded on a prescribed financial market must be transferred with a security of the first-mentioned stapled entity; and</li><li>(b) all other entities controlled by the stapled entities referred to in (a)</li></ul>
stapled entity	<p>An entity a security of which under the terms on which it is traded on a prescribed financial market must be transferred together with a security of one or more other entities</p>

## List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to:</p> <p>(a) provide relief from s295(2) and s303(2) of the Corporations Act, by issuing a class order to allow stapled entities to present combined financial statements; and</p> <p>(b) require combined financial statements to be subject to audit, or review by the auditor, as a condition of the proposed relief.</p> <p>Note: A class order is necessary because the preparation of combined financial statements is not required by the accounting standards or permitted under s295(2) and s303(2) of the Corporations Act.</p>	<p>B1Q1 Do you agree with our proposal to allow combined financial statements to be presented for a stapled group? If not, what alternative would you prefer and why?</p> <p>B1Q2 Should we allow consolidated financial statements for all entities in a stapled group to be presented, in place of combined financial statements, where consolidated financial statements were presented in previous financial reports? If so, please state your reasons.</p> <p>B1Q3 Do you agree that combined financial statements should be subject to audit or review by the auditor? If not, why not?</p>
<p>B2 We propose to include a statement to the effect that combined financial statements covering all entities in a stapled arrangement are necessary to give a 'true and fair view' of the financial position and performance of each of the stapled entities.</p>	<p>B2Q1 Do you agree with our proposal? If not, why not?</p>
<p>B3 We propose that the proposed class order in proposal B1 will not relieve entities in a stapled group from presenting financial statements required by accounting standards.</p>	<p>B3Q1 Do you agree with our proposal? If not, why not?</p>
<p>B4 We propose to continue to provide the relief provided in Class Order [CO 05/642] Combining financial reports of stapled security issuers to allow all stapled entities in one stapled group to present financial statements together in a single financial report, including any combined or consolidated financial statements.</p>	<p>B4Q1 Do you agree with our proposal to continue the relief in [CO 05/642]? If not, why not?</p>