



ASIC

Australian Securities & Investments Commission

REPORT 269

Response to submissions on CP 150 Disclosing financial information other than in accordance with accounting standards

December 2011

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 150 *Disclosing financial information other than in accordance with accounting standards* (CP 150) and details our responses in relation to those issues.

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.

Disclaimer

This report 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.

This report does not contain ASIC policy. Please see Regulatory Guide 230 *Disclosing non-IFRS financial information* (RG 230).

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A Overview/Consultation process

- 1 In Consultation Paper 150 *Disclosing financial information other than in accordance with accounting standards* (CP 150), we consulted on proposals to provide guidance on when it is and is not appropriate to use non-conforming financial information in financial reports, documents related to a financial report and transaction documents.
- 2 We also included guidelines for directors and accountants on presenting non-conforming financial information. Our proposed guidance and guidelines were set out in a draft regulatory guide attached to CP 150 (guide).
- 3 This report highlights the key issues that arose out of the submissions received on CP 150 and our responses to those issues.
- 4 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 150. We have limited this report to the key issues.
- 5 For a list of the non-confidential respondents to CP 150, see the appendix. Copies of the submissions are on the ASIC website at www.asic.gov.au/cp under CP 150.

Responses to consultation

- 6 We received 33 responses to CP 150 (one of which is confidential) from accounting firms, accounting and auditing standard setters, companies and professional bodies. We are grateful to respondents for taking the time to send us their comments.
- 7 Most respondents were supportive of ASIC issuing guidance.
- 8 The main issues raised by respondents related to:
 - concerns with the proposed title of the guide and proposed definitions for ‘non-conforming financial information’ and other terms;
 - that the guide was too prescriptive and should be more principles-based;
 - that it was inappropriate for ASIC to interpret accounting standards and some proposals could be inconsistent with accounting standards;
 - whether transaction documents should be covered by the guide and concerns with some proposed guidelines for these documents; and
 - that more guidance was needed on the concept of ‘prominence’ in the context of reducing the risk of disclosure of non-conforming financial information being misleading.

Terminology

- 9 As a result of some of the submissions we received on CP 150, in the final regulatory guide, we refer to ‘non-IFRS financial information’ (rather than ‘non-conforming financial information’) as a more positive and descriptive term: see Regulatory Guide 230 *Disclosing non-IFRS financial information* (RG 230).
- 10 In this report, however, we have retained the terminology used in CP 150.

B Title of guide and definitions

Key points

Concerns were expressed that the proposed title of the guide, '*Disclosing financial information other than in accordance with accounting standards*' could imply that the information disclosed was in some way illegitimate and could be improved.

In CP 150, we introduced a number of definitions, including 'non-conforming financial information', 'alternative profit information' and 'pro forma financial information'.

We received significant feedback outlining concerns with both the term 'non-conforming financial information' and the associated definition. Some concerns were also expressed with the wording of the other definitions.

Non-conforming financial information

- 11 In CP 150, we defined 'non-conforming financial information' as:
 financial information that is required to be prepared and presented in accordance with the accounting standards when it appears in a financial report prepared under the requirements of the Corporations Act, whether that information appears in the financial report or another document, but is presented on a basis that is not in accordance with all relevant accounting standards.
- 12 We received significant feedback outlining concerns with both the term 'non-conforming financial information' and the associated definition.
- 13 Feedback received included that the proposed term (and the proposed title of the guide) could have negative connotations and imply that the associated information was illegitimate in some way.
- 14 Concern was also expressed that the definition required careful reading to understand, and may capture information not intended to be captured, such as information required by the Australian Bureau of Statistics, the Australian Prudential Regulation Authority, and other regulators.
- 15 Questions were raised about whether other financial updates, such as marketing updates based on sales and production figures, were intended to be included in the definition.

ASIC's response

As a result of the feedback received, we have changed the key term in RG 230 to 'non-IFRS financial information' and amended the definition of this term to mean:

financial information that is presented other than in accordance with all relevant accounting standards.

Note: International Financial Reporting Standards (IFRS) are issued by the International Accounting Standards Board (IASB). In RG 230, when 'IFRS' is used to describe an item of information (e.g. 'IFRS profit'), that item should be taken to be prepared in accordance with IFRS.

We further state that two of the most common forms of non-IFRS financial information are non-IFRS profit information and pro forma financial information, which are also defined: see paragraphs 16–18 and paragraphs 19–21 of this report. We have also provided further clarity in RG 230 through common examples of what does and does not constitute non-IFRS financial information.

The title of RG 230 is now '*Disclosing non-IFRS financial information*'.

Alternative profit information

- 16 In CP 150, we defined 'alternative profit information' as:
a common type of non-conforming financial information. It often excludes particular expenses, such as impairment losses. Alternative profit information is often described as 'underlying profit' or 'cash basis profit'.
- 17 Many respondents expressed no concerns with our definition of alternative profit information.
- 18 However, some respondents commented that using the words 'often excludes particular expenses' was a one-sided view and that major impairment expenses can be usefully separated from other expenses. Some respondents also questioned whether the term 'cash basis profit' is widely used outside of the banking industry.

ASIC's response

We have changed the key term in RG 230 to 'non-IFRS profit information' and, as a result of the feedback received, have amended the definition of this term as follows:

'*Non-IFRS profit information*' is a common type of non-IFRS financial information. It is profit information calculated on a basis other than in accordance with IFRS, or calculated in accordance with IFRS but adjusted in some manner. Entities calculate non-IFRS profit information in different ways and use different descriptions.

Pro forma financial information

- 19 In CP 150, we defined ‘pro forma financial information’ as:
non-conforming financial information that is intended to show the effects of proposed transactions and is often used in transaction documents, such as prospectuses, scheme of arrangement documents and takeover documents.
- 20 Many respondents expressed no concerns with our definition of pro forma financial information.
- 21 However, feedback received included that we should harmonise guidance with overseas regulators, and that the definition should also refer to Product Disclosure Statements (PDSs).

ASIC’s response

As a result of feedback received, we have amended the definition of ‘pro forma financial information’ as follows:

‘Pro forma financial information’ is non-IFRS financial information that is intended to show the effects of proposed or completed transactions for illustrative purposes. It is often used in transaction documents, such as prospectuses, Product Disclosure Statements (PDSs), scheme of arrangement documents and takeover documents.

We have reviewed overseas guidance and consider that our revised definition in RG 230 is mostly consistent with that guidance.

The definition of ‘pro forma financial information’ now includes PDSs.

C Prescriptiveness of the guide

Key points

We received some feedback that the draft regulatory guide was too prescriptive in a number of areas and should be more principles-based.

Need for guidance

- 22 There was overall support for the need for guidance from ASIC, with only a few respondents stating that guidance was not needed, given other guidance that already exists in the market.
- 23 However, some respondents commented that the guide was too prescriptive and needs to be more principles-based.

ASIC's response

We have removed much of the proposed detailed guidance (e.g. paragraphs 58–63 in the draft regulatory guide, which covered 'unrealised gains and losses' and 'excluding costs').

We have also reduced repetitiveness wherever possible.

However, we needed to balance our changes with requests from a number of respondents seeking further guidance in particular areas (e.g. 'prominence': see Section F of this report).

D Consistency with accounting standards

Key points

We received some feedback that it was not appropriate for ASIC to interpret accounting standards and that some of our proposals were inconsistent with current standards, particularly Australian Accounting Standard AASB 101 *Presentation of financial statements*.

We also received feedback questioning our view that information prepared in accordance with accounting standards will give a true and fair view of an entity's financial position and performance in all but exceptional circumstances.

AASB 101

- 24 In CP 150, we stated that AASB 101 *Presentation of financial statements* does not permit alternative profit information to be included in an income statement.
- 25 We elaborated on this by acknowledging that AASB 101 both permits and requires additional line items and subtotals to be disclosed in the income statement to provide users with a better understanding of the components of the statutory profits and performance of the entity. However, we stated that, in our view, alternative profit information is not subtotal information permitted by AASB 101 because it is not necessary to an understanding of the performance of the entity.
- 26 Feedback received included that:
- it was not appropriate for ASIC to interpret accounting standards; and
 - our interpretation of AASB 101 was incorrect.
- 27 In CP 150, we also expressed our view that information prepared in accordance with accounting standards will give a true and fair view of an entity's financial position and performance in all but exceptional circumstances.
- 28 We received some feedback stating that there are a number of instances when accounting standards do not give a true and fair view.

ASIC's response

As a regulator, it is necessary for ASIC to interpret accounting standards to an extent.

We have consulted with relevant and informed parties on the interpretation of AASB 101.

In RG 230, we have set out in more detail what we consider to be the appropriate interpretation of the requirement for 'additional line items and subtotals' in AASB 101.

E Transaction documents

Key points

A number of respondents indicated that they thought our proposals on transaction documents in CP 150 would be better considered in the context of Consultation Paper 155 *Prospectus disclosure: Improving disclosure for retail investors* (CP 155).

Concerns were also expressed with some of the proposed guidelines for transaction documents.

Including guidance in CP 150

- 29 A number of respondents indicated they thought our proposals on transaction documents (Section E of CP 150) were more closely aligned with, and would be better considered in the context of, Consultation Paper 155 *Prospectus disclosure: Improving disclosure for retail investors* (CP 155).

ASIC's response

We consider that the most appropriate place for guidance on pro forma financial information in transaction documents is in the context of RG 230 (based on our proposed guidance in CP 150).

This is because CP 155—and associated Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228), issued November 2011—are concerned with prospectus disclosure only, rather than all transaction documents.

Concerns with proposed guidelines

- 30 Concerns were expressed that the proposed guidelines for transaction documents in the draft regulatory guide were too prescriptive. For our response on this issue, see Section C of this report.
- 31 In CP 150, we stated that the proposed guidelines for documents related to a financial report were also relevant for transaction documents. A number of respondents expressed concerns with this view.
- 32 There was significant disagreement with our proposal that a pro forma statement of comprehensive income should not stop at earnings before interest and tax (EBIT) or earnings before interest, tax, depreciation and amortisation (EBITDA), but continue down to net profit after tax (NPAT).

33 In terms of the disclosure of historical financial information in transaction documents, a number of respondents argued that disclosure of the most recent statement of financial position alone was generally considered sufficient, and it was sometimes not possible to disclose details of equity.

ASIC's response

We have changed our guidelines in RG 230 to state that preparers of transaction documents should consider carefully whether a pro forma statement of comprehensive income should stop at EBIT or EBITDA, or continue to NPAT.

We have outlined the benefits to users of continuing to NPAT in that it provides an understanding of the funding and tax impacts of a transaction.

We have also outlined the factors that preparers of transaction documents should consider in deciding whether to take the pro forma statement of comprehensive income to NPAT. These factors include the stability of the business and the impact of the transaction on the level of debt.

In RG 230, we state that, where the pro forma statement of comprehensive income does not extend to NPAT, an explanation should be provided, as well as narrative explanations to explain likely funding, tax and amortisation impacts of the transaction.

We have also changed our guidance to state that the most recent statement of financial position (either full year or half year) would be sufficient, and 'wherever possible' a statement of financial position should not omit details of equity.

F Prominence

Key points

At a number of points throughout CP 150, we referred to the prominence of non-conforming financial information as compared to the associated statutory information.

We received feedback on some inconsistent references to prominence in the draft regulatory guide, and on our view that non-conforming financial information not be presented with greater prominence than the associated statutory information.

Some respondents also asked us to provide more practical guidance to assist in interpreting the term 'prominence'.

References to prominence

- 34 Concerns were expressed that there were inconsistent references to 'prominence' in the draft regulatory guide, when discussing the relative prominence of non-conforming financial information as compared to the associated statutory information.
- 35 In particular, there were some references to 'greater prominence' and some to 'undue prominence'.

Concept of greater prominence

- 36 Concerns were expressed about our view that non-conforming financial information should not be given greater (or undue) prominence over the associated statutory information.
- 37 Some respondents considered that giving greater prominence to statutory information was inappropriate because non-statutory financial information can be more meaningful than the statutory financial information.

Practical guidance

- 38 There were a number of requests for us to provide more guidance on how to apply the concept of greater prominence in practice.
- 39 For example, we state that a reconciliation between the non-conforming and statutory figures should be provided, and there were questions about how often this should be done (e.g. whether it should be in every document, or every time the non-statutory financial information is mentioned in the one document).

ASIC's response

We consider that it is appropriate for statutory financial information to be presented with equal or greater prominence than non-conforming (or non-IFRS) financial information. This is consistent with overseas guidance (particularly in the United States and European Union) and emphasises the importance of the statutory figures.

For consistency, we now refer only to 'equal or greater prominence' and not 'undue prominence'.

We have not provided detailed guidance in RG 230 on the concept of greater prominence, given the large number of documents and contexts in which non-IFRS financial information can appear. Instead, we have outlined some guiding principles, which require the context of the disclosure to be considered, and provided some examples of appropriate and inappropriate disclosure.

Appendix: List of non-confidential respondents

- AMP Limited
 - ANZ Banking Group Limited
 - APN News & Media Limited
 - Ardent Leisure Group
 - Aristocrat Leisure Limited
 - Auditing and Assurance Standards Board
 - Australasian Investor Relations Association
 - Australian Accounting Standards Board
 - Australian Bankers' Association Inc
 - Australian Corporate Reporting Users Forum
 - Australian Institute of Company Directors
 - Brambles Limited
 - Business Council of Australia
 - Challenger Limited
 - Chartered Secretaries Australia
 - Computershare Limited
 - Deloitte Touche Tohmatsu
 - Ernst & Young
 - Financial Reporting Council
 - Financial Services Institute of Australasia
 - Grant Thornton Australia Limited
 - Group of 100
 - Hanrick Curran Audit
 - Joint Accounting Bodies
 - KPMG
 - Law Council of Australia
 - Origin Energy Limited
 - PricewaterhouseCoopers Australia
 - Property Council of Australia
 - Qantas Airways Limited
 - Rio Tinto Limited
 - Telstra Corporation Limited
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