ASIC
Australian Securities & Investments Commission

REPORT 127

Debentures—improving disclosure for retail investors

April 2008

About this report

This report:

- presents the findings of our first review into disclosures made by each of the unlisted, unrated debenture issuers against ASIC's eight benchmarks that are listed in Regulatory Guide 69 *Debentures – Improving Disclosure for Retail Investor*; and
- lists the entities that were required to make disclosures in accordance with RG 69. Copies of the disclosures are available in full on www.asic.gov.au/uud

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.

Contents

Review findings

1 Debentures held by retail investors are used as a source of finance for a range of business models and activities. However a lack of clear benchmarks for these products has made it difficult for investors to adequately understand, assess and compare these products.

2 In 2007 we released Regulatory Guide 69 *Debentures – Improving Disclosure for Retail Investor.* This set out our 8 benchmarks that apply to unlisted debentures to give investors new and additional information on which they can make improved investment decisions.

3 It should be understood though, that when an issuer of an unlisted debenture does not meet a particular benchmark, it does not mean that a particular debenture is necessarily a poor investment. Rather the additional disclosure made, on the 'if not – why not' basis will allow investors to assess its impact on their investment decision.

4 The regulatory framework places special emphasis on the needs of retail investors, and makes disclosure the key tool for them. Disclosure is not designed to stop investors from taking investment risks, but rather to help them understand the risks involved in any particular investment or type of investment. This enables investors to make an informed decision about whether:

- the potential reward (the return on their investment) matches the level of risk involved, and
- they are prepared to take that risk.

5 We believe that our approach balances the need to improve disclosure to allow investors to make informed decisions, and the wish to not unduly interfere with this type of fundraising.

First review of investor disclosures

6 In RG 69 we said that we would be reviewing investor disclosures. The findings from our initial review are contained in this report.

7 Appendix 1 lists all entities that were required to make disclosures in accordance with RG 69. A copy of their actual disclosures is at www.asic.gov.au/uudlist.

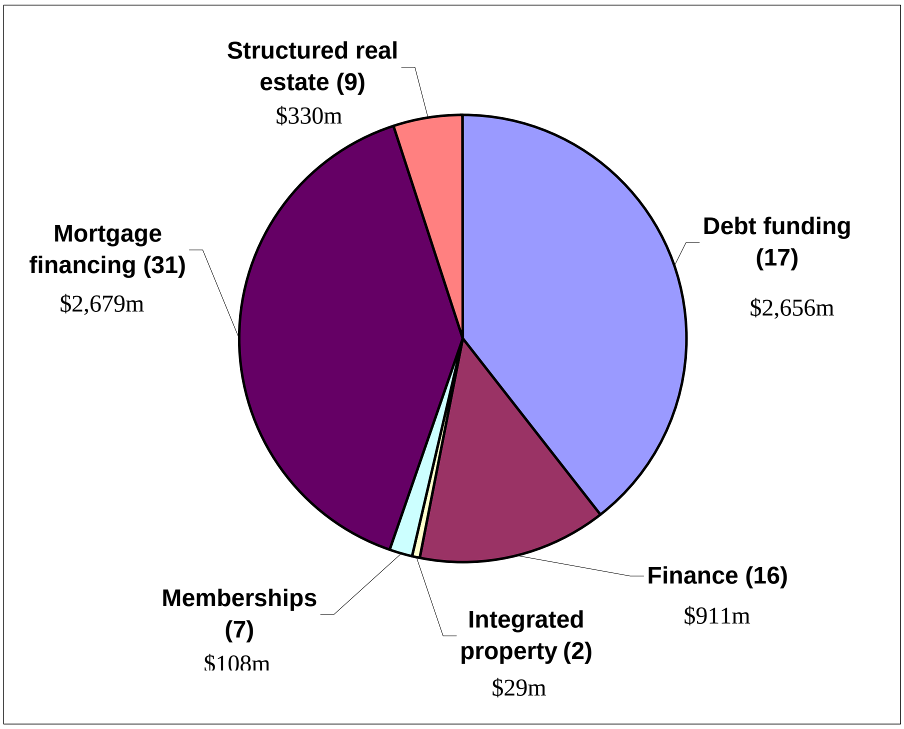
Disclosures by issuers

Table 1: Number of issues of unlisted unrated debentures

Category of principal business and the purpose and application of funds*	as at August 2007	as at March 2008
Debt capital funding	21	17
Finance	15	16
Integrated property	3	2
Memberships	7	7
Mortgage financing	36	31
Structured real estate investments	10	9
Total	**92**	**82****
Issues that have exited		**(16)**

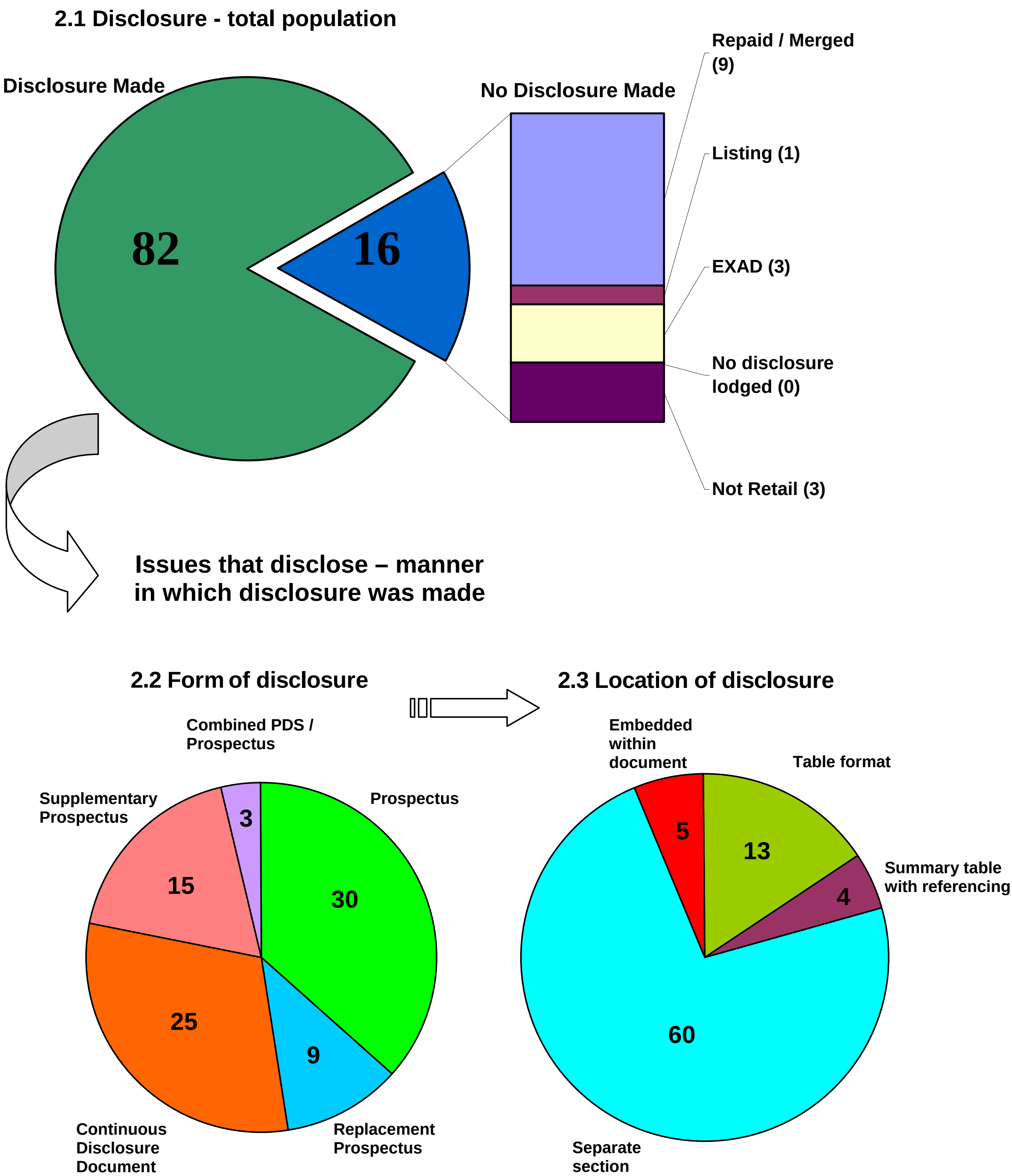
*See Appendix 2 for description of categories
**Includes 3 new unlisted, unrated debenture issuers that entered the market; and 3 unlisted, unrated debenture issues, from existing debenture issuers.

Figure 1: Unlisted, unrated debentures by amount – total $6,713m



8 82 unlisted, unrated debenture issues have reported against the benchmarks in RG 69. The reconciliation of debenture issues required to report is set out in Figure 2.

Figure 2: Unlisted, unrated debenture issues – disclosure against ASIC's Benchmarks



16 issues not required to disclose against benchmarks

9 It should be noted that 16 issues from this group were not required to provide disclosure against the benchmarks, for the following reasons:

- 9 issuers have repaid their debenture issues (or have merged with another debenture issuer);
- 1 issuer has sought to list their debentures, noting that the requirements of RG 69 do not apply to listed debentures;
- 3 issuers have since the release of original consultation paper entered into a form of external administration; and
- 3 issuers that were previously mentioned, have since confirmed that their debentures are not available to retail investors and therefore the requirements of RG 69 do not apply to them.

How issuers disclose against benchmarks

10 RG 69 outlined that the disclosures against the benchmarks could be given to investors either by:

- issuing a supplementary or replacement prospectus; or
- lodging a continuous disclosure notice with ASIC.

11 ASIC expected that disclosure against the benchmarks would not lead to longer or more complex disclosure documents. Rather, we expected that these disclosures would help issuers produce disclosure documents that were more:

- focused on the issues that matter to investors; and
- clear, concise and effective.

12 This expectation would appear to have been achieved. The majority of debenture issuers have provided the disclosure against the benchmarks in a clearly labelled separate section of their disclosure documents, thus making these disclosures very easy for investors to locate [refer to figure 2.2 above].

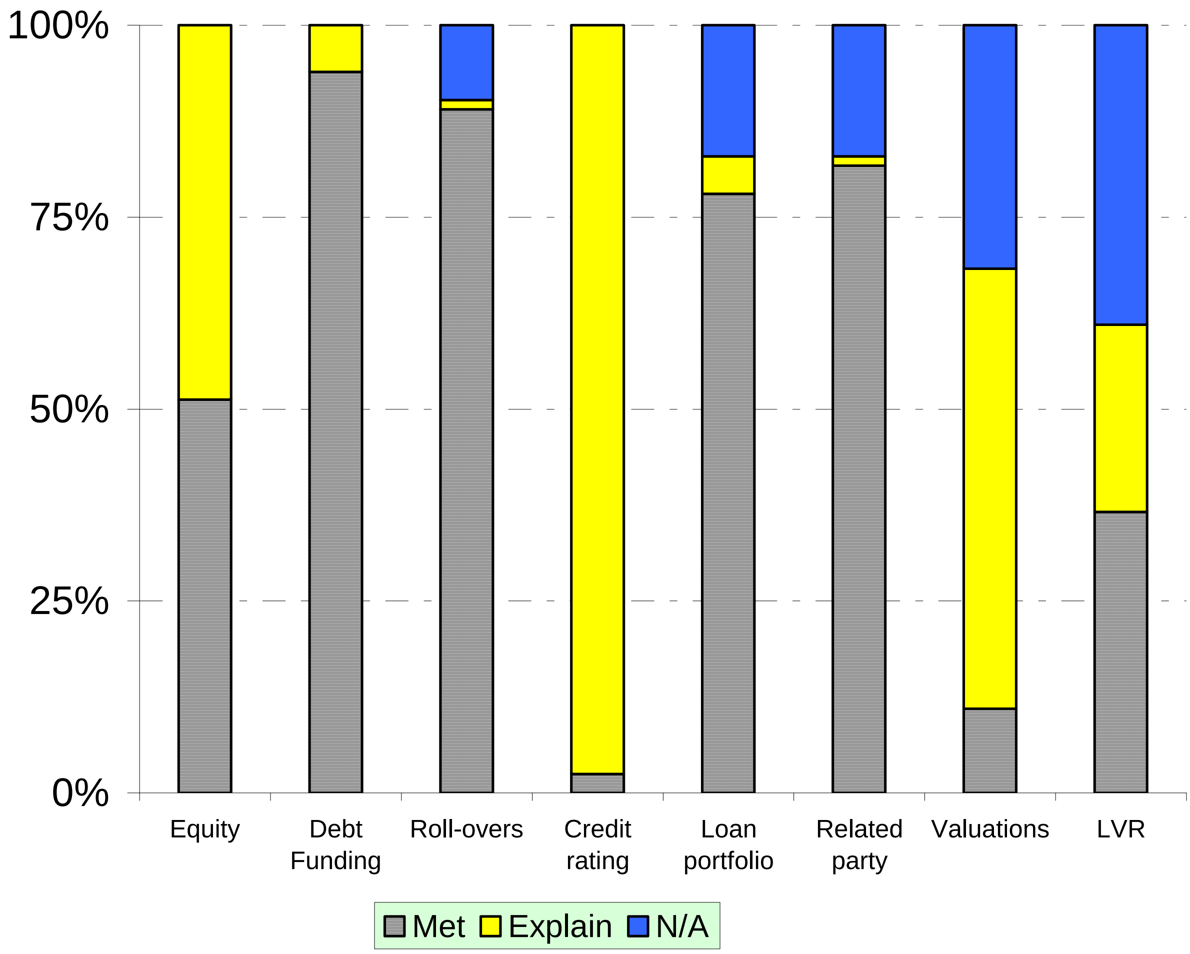
Disclosures against each of the 8 benchmarks

13 Figure 3 gives an overall summary of the disclosure against each benchmark, noting those issues that:

- stated they met each benchmark; and
- included further disclosure and explanation against each benchmark.

14 For an analysis of disclosures against each benchmark see Section B of this report.

Figure 3: Disclosures against ASIC's benchmarks by UUD issues, as per disclosures required by 1 March 2008.



A Our approach to improving disclosure

15 In August 2007, we released Consultation Paper 89 *Unlisted unrated debentures—improving disclosure for retail investors*. The consultation paper set out our proposals for change in the unlisted unrated debenture sector as part of a 12 month plan. The overall objective was to improve disclosure for retail investors to help them understand and assess these debentures, while maintaining the flexibility of the public fundraising process.

16 At that stage we outlined the market for deposits and debt securities in Australia. We indicated that retail debenture investors accounted for approximately 7% of the total retail market or approximately $34 billion and that $8 billion of this was represented by unlisted, unrated debentures.

17 We also stressed that not all unlisted, unrated debentures posed the same level of risk for retail investors, but that they presented challenges due to the lack of a price discovery mechanism and effective exit strategies.

ASIC's 3 point plan on unlisted, unrated debentures

18 We therefore undertook to implement a 3 point plan, over 12 months addressing:

(a) existing debenture issuers in the retail sector;

(b) new debenture issues to retail investors; and

(c) investor education.

19 On 31 October 2007, we released Regulatory Guide 69 *Debentures – Improving Disclosure for Retail Investors*. As part of the four guiding principles for improved disclosure by issuers of unlisted, unrated debentures, we developed 8 disclosure benchmarks that would provide additional information against which retail investors would be able to make better risk assessments of their investments.

Table 2: Benchmarks for unlisted debentures

General benchmarks for all issuers of unlisted debentures	**1 Equity capital**	Benchmarks 1 and 2 address the issuer's financial structure and ability to meet loan obligations on time.
	2 Liquidity	
	3 Rollovers	Benchmark 3 addresses the transparency of the issuer's approach to 'rollovers' and early redemptions of investments.

	4 Credit ratings	Benchmark 4 creates incentives for ratings provided by experts in assessing credit risk.
Additional benchmarks for lenders	**5 Loan portfolio**	Benchmark 5 addresses the issuer's lending practices.
	6 Related party transactions	Benchmark 6 addresses a specific area of lending risk.
Additional benchmarks for property-related debentures	**7 Valuations**	Benchmarks 7 and 8 address the issuer's property-related practices.
	8 Lending principles—loan-to-value ratios	

20 Issuers of unlisted, unrated debentures were asked to disclose against the benchmarks:

(a) stating that they either met the benchmark or did not meet the benchmark; and

(b) explaining how and why the issuer deals with the business factors or issues underlying the benchmark in another way ('if not – why not' disclosure).

21 'If not – why not' disclosure means explaining how an issuer deals with the business factor or issue underlying the benchmark (including the alternative systems and controls the issuer has in place to deal with the issue underlying the benchmark).

22 New issuers were required to disclose against the benchmarks in their new prospectuses from 1 December 2007, while existing issuers had until 1 March 2008 to report to their existing investors.

23 In addition to providing additional disclosure for investors, in December 2007 we released Regulatory Guide 156 *Debenture advertising*, being a guide to our expectations for issuers of debentures and publishers of debenture advertising.

24 *RG 156* sets out the standards we expect when debenture issuers are advertising their debenture offerings to retail investors. It also sets out our expectations of those people handling telephone inquiries about debenture products (including rollover discussions).

Investor education

25 The third element of our approach to debentures has been with investor education. We have undertaken significant research into the motivation of investors when seeking to invest in debenture products as well as their reaction to a specific investor education guide on debentures that we produced. This research is the subject of a separate report entitled

"Understanding investors in the unlisted, unrated debentures (UUD) market" and a specific investor guide entitled "Investing in Debentures? Investor Guide for reading a prospectus for unlisted debentures" both of which are available on ASIC's websites [www.asic.gov.au/uud or www.fido.gov.au/uud].

26 Given the importance of this material to investors and their investment decisions, ASIC highly encourages debenture issuers to distribute the investor guide to investors at the same time that they provide them with their disclosure documents.

Investor communication

27 The most important element however is to bring this additional information to the attention of investors. ASIC expects debenture issuers to bring their first ongoing disclosure document that specifically refers to the issuer's performance against the benchmarks to the attention of their existing debenture holders.

28 In March 2008, ASIC sought confirmation from all debenture issuers that they had communicated their disclosures with their investors, and the method by which they chose to do this. Within RG 69, ASIC suggested that this communication could take place by way of:

- Sending their report to existing investors; or
- Publishing their report on their website and notifying investors that it is available and how to access it.

Table 3: Benchmarks for unlisted debentures

Method of Communication with Investors	Number of Issuers
Letter sent to investors providing them with an internet link to the document, and an offer to send them a hard copy of the document	23
Sent the entire disclosure document to investors	17
Letter sent to investors advising of the internet link to their disclosure document	15
Letter sent to investors with an offer to send them a hard copy of the document	3
Other	4
In the process of providing disclosure to investors	6
No reply	14
Total	82

29 ASIC is presently following up with those debenture issuers that are yet to provide their disclosures to their investors and with those that have not as yet responded to ASIC's request for confirmation.

Future review reports

30 Section C of this report, outlines how we plan to follow through on the introduction of the disclosure standards set out in RG 69 and RG 156. We are anticipating producing a follow up report on the impact of this work by April 2009.

B Analysis of benchmark disclosures

31 This section gives:

- details of the disclosures against the benchmarks across the categories of debenture issuer; and
- examples of the additional disclosure or explanation from issuers.

A number of issuers were not required to disclose against all benchmarks, because they were not relevant to their business model. This was in line with the ‘scaled’ approach of the benchmark disclosure, as outlined the Summary of findings [Refer section A, table 2].

Table 4: Summary of disclosures made by debenture issues, as required by 1 March 2008

Benchmark	Debentures meet ASIC'sbenchmarks	Further disclosure & explanations given	Not applicable
1 Equity capital	42	40	0
2 Liquidity	77	5	0
3 Rollovers	73	1	8
4 Credit ratings	2	80	0
5 Loan portfolio	64	4	14
6 Related party transactions	67	1	14
7 Valuations	9	47	26
8 Lending principles	30	20	32

32 Appendix 1 lists all entities that were required to make disclosures in accordance with Regulatory Guide 69. A copy of their actual disclosures is at www.asic.gov.au/uudlist.

Benchmark 1: Equity capital

33 The benchmark details that all issuers should use the following equity capital benchmarks:

(a) when more than a minor part of the issuer's activities is property development or lending funds directly or indirectly for property development, the issuer should maintain a minimum of 20% equity;

(b) in all other cases, the issuer should maintain a minimum of 8% equity; and

(c) the debenture issuer's equity ratio should be calculated as follows:

$$\frac{\text{equity capital}}{\text{total debt + equity capital}}$$

34 52% of the issuers met this benchmark with 48% of the issuers providing additional disclosure or explanation against the benchmark.

Figure 4: Equity capital – disclosure by categories (as required by 1 March 2008)

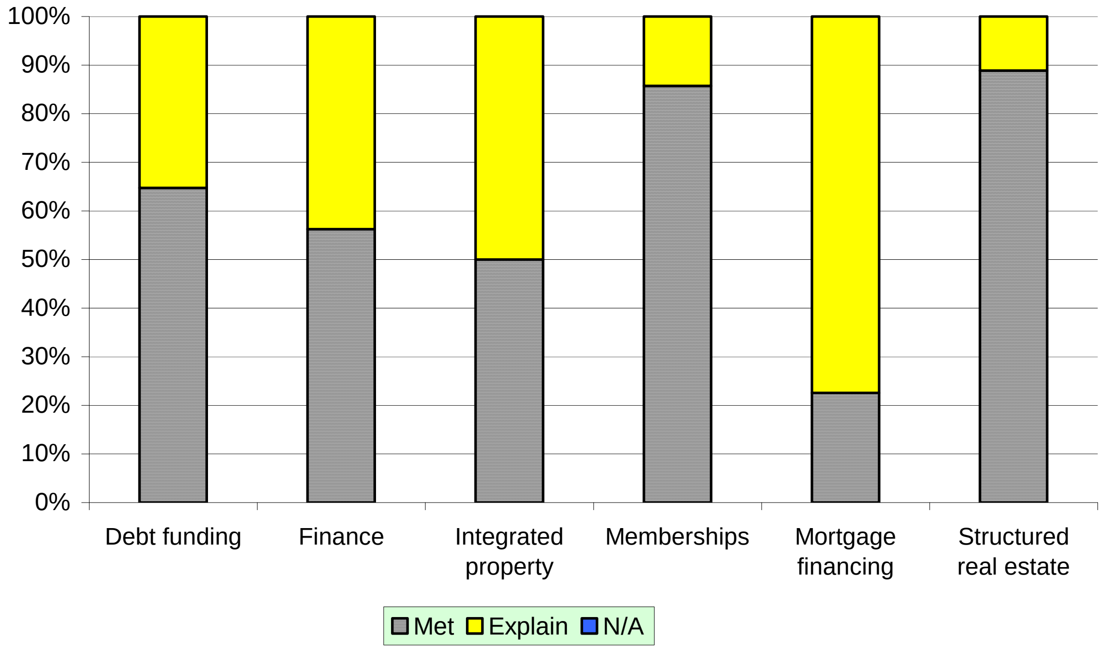


Table 5: Equity capital – disclosure by categories (as required by 1 March 2008)

	Debt capital funding	Finance	Integrated property	Member-ship	Mortgage financing	Structured real estate	Total
Not applicable	0	0	0	0	0	0	0
Further disclosure & explanations given	6	7	1	1	24	1	40
Debentures meet ASIC's benchmarks	11	9	1	6	7	8	42

35 Investors should appreciate that this benchmark is calculated on figures as at a particular point in time, and the calculation may have changed since the lodgement of the entity's disclosure document. Investors should make inquiries with the entity to obtain any updated disclosures against this benchmark.

36 Here is an indication of the range of dates when entities have performed this calculation:

(a) 31 January 2008—9 entities
(b) 31 December 2007—37 entities
(c) 30 June 2007—12 entities
(d) Other dates—24 entities

37 The additional disclosures can be summarised into the following general statements:

- The entity stated that the equity capital calculation for the entity showed sufficient capital for the business model of the entity.
- The entity stated that the internal policies and procedures with which they undertook their business gave sufficient protection to investors, including references to other benchmarks to evidence this.
- The entity stated that they had appropriate management experience in operating their business to mitigate risks to investors.

38 A specific example of the additional disclosures follows:

> *At 31 December 2007, the Company's equity ratio was 7.1% which does not satisfy the ASIC benchmark of 8% ... The Company considers that its level of equity capital is appropriate to operate the business and cover any losses that may arise, particularly in light of:*
>
> - *The Company's record of low credit losses;*
> - *The Company's management of past due loans;*
> - *The Company's loan to valuation ratio restrictions; and*
> - *The Company's business parameters and risks;*
>
> *details of which are set out in the original prospectus.*

[Appendix 1.56 – Provident Capital Ltd]

39 Appendix 1 lists all entities that were required to make disclosures in accordance with Regulatory Guide 69. A copy of their actual disclosures is at www.asic.gov.au/uudlist.

Benchmark 2: Liquidity

40 The benchmark details that all issuers should:

(a) have cash flow estimates for the next 3 months; and

(b) ensure that at all times they have on hand cash or cash equivalents sufficient to meet their projected cash needs over the next 3 months.

Issuers should also disclose their policy on balancing the maturity of their assets and maturity of their liabilities.

41 94% of the issuers met this benchmark with 6% providing additional disclosure and explanation against the benchmark.

Figure 5: Liquidity – disclosure by categories (as required by 1 March 2008)

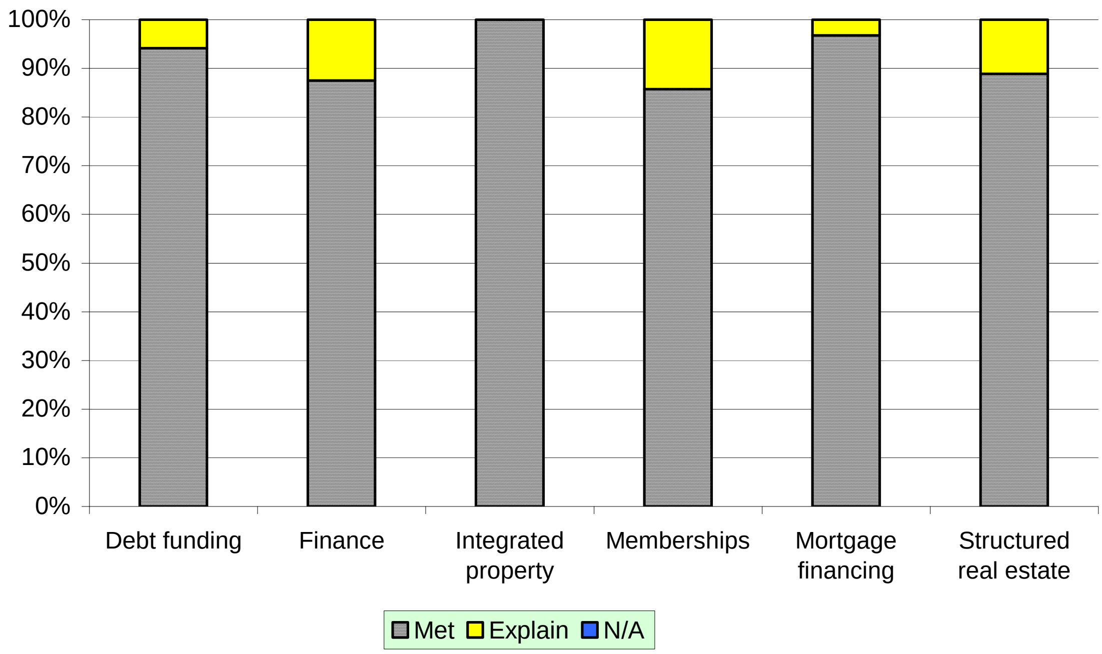


Table 6: Liquidity – disclosure by categories (as required by 1 March 2008)

	Debt capital funding	Finance	Integrated property	Member -ship	Mortgage financing	Structured real estate	Total
Not applicable	0	0	0	0	0	0	0
Further disclosure & explanations given	1	2	0	1	1	1	6
Debentures meet ASIC's benchmarks	16	14	2	6	30	8	76

42 The additional disclosures can be summarised into the following general statements:

- There may be short-term cash deficiencies in relation to the entity's cash flow forecast.
- The entity does not exclude new 'incoming' funds from their cash flow forecasts.
- The entity does not prepare cash-flow estimates on a 3 month basis but on an annual basis.

43 Specific examples of the additional disclosures follow:

> *Despite preparing cash flow forecasts and managing its business to ensure it meets all its obligations on an ongoing basis, LKM Capital does not always satisfy the Benchmark because there may be unforeseen circumstances such as the delayed repayment of a loan which may result in there being a short term cash deficiency in terms of the forecast, but which does not effect the ability to meet the financial obligations when they fall due.*
>
> [Appendix 1.43—LKM Capital Ltd]

> *Generally, there is sufficient cash and facilities to meet the benchmark, however due to timing of cash inflows and outflows there are periods where the benchmark is not met. The Elderslie Board has formed the view that the current liquidity measures and monitoring are appropriate.*
>
> [Appendix 1.23—Elderslie Finance Corporation Ltd]

> *The Company does not prepare ongoing cash flow estimates in this manner as it prepares an annual cash flow budget for operating expenditure, which outlines anticipated funding requirements for the Company and anticipated funds to be received through the issue of Debentures.*
>
> [Appendix 1.60—Retravision (WA) Ltd]

44 Issuers have disclosed a range of assumptions, as part of their stress testing for their liquidity models. The assumptions disclosed have included:

- Percentage of debentures that "roll over" each period,
- Percentage of debentures that are "redeemed" by investors each period,
- Whether or not "new" debenture funds are included in their liquidity models, and
- Where the entity is also subject to AFSL liquidity requirements or where they are subject to liquidity requirements under their Trust Deed.

Benchmark 3: Rollovers

45 The benchmark details that all issuers should clearly disclose their approach to rollovers, including whether the 'default' is that debenture investments with them are automatically rolled over.

46 91% of issuers provided disclosure against this benchmark. Of these:98% met the benchmark and 2% provided additional disclosure.

47 9% did not report against this benchmark, because their product did not contain a 'rollover' feature, and hence this benchmark is not relevant to their business model.

Figure 6: Rollovers – disclosure by categories (as required by 1 March 2008)

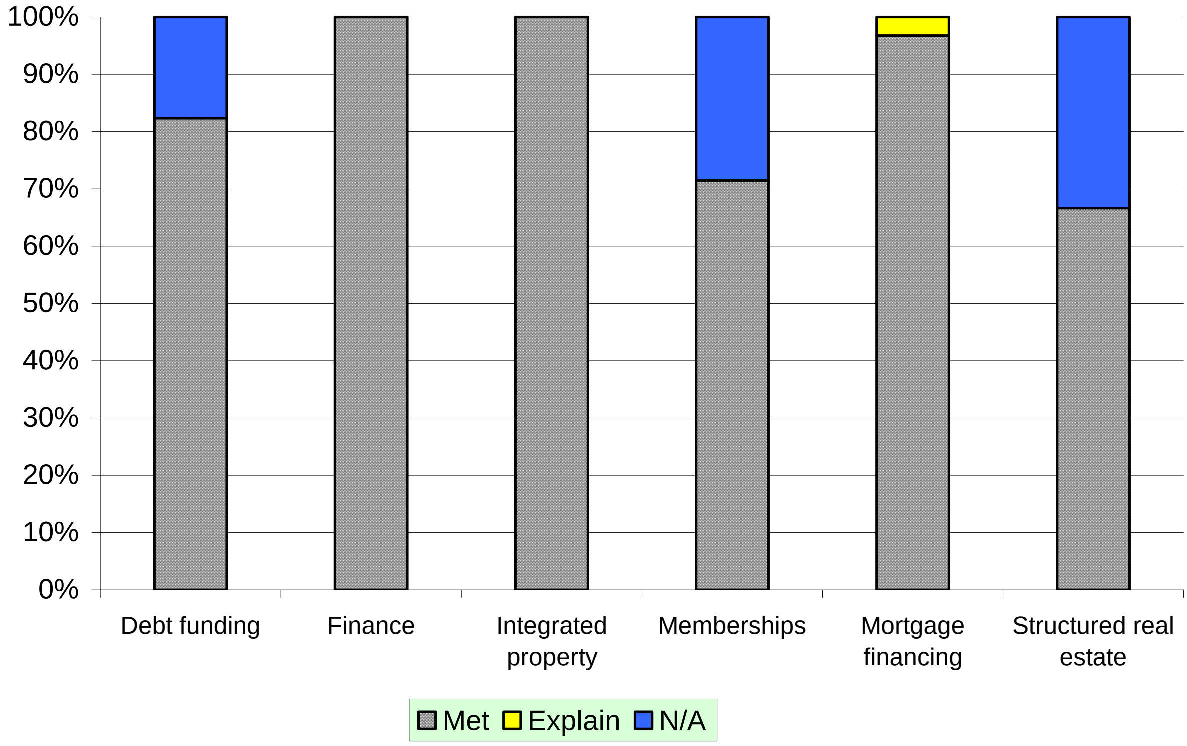


Table 7: Rollovers – disclosure by categories (as required by 1 March 2008)

	Debt capital funding	Finance	Integrated property	Member -ship	Mortgage financing	Structured real estate	Total
Not applicable	3	0	0	2	0	3	8
Further disclosure & explanations given	0	0	0	0	1	0	1
Debentures meet ASIC's benchmarks	14	16	2	5	30	6	73

48 The additional disclosure detailed that:

> *The procedure adopted by LKM Capital is that the Company notifies the Debenture holder in writing of the rates and terms upon which funds may be reinvested for a further period.*
>
> *LKM Capital proposes to adopt procedures to comply with this Benchmark in that the pre-maturity letter will also state that either a current prospectus, together with any relevant ongoing disclosure documents, are available from the Company website … or where investors do not have access to the website that they may request a hard copy of these documents free of charge, by contacting the Company's registered office directly.*
>
> [Appendix 1.43 LKM Capital Ltd]

Benchmark 4: Credit ratings

49 The benchmark details that all issuers should:

(a) have their debentures rated for credit risk (i.e. the risk that the principal and interest will not be repaid at the end of the relevant period);

(b) use a recognised credit rating agency for this purpose;

(c) state the rating in their prospectus, who it is from and briefly explain the rating (i.e. what it says about the risk of the investor not getting their money back);

(d) take reasonable steps to ensure the rating remains current; and

(e) if the debentures are not rated as to credit risk, state in the issuer's prospectus that they are not rated and the reasons for this.

50 2% of the issuers met this benchmark and 98% provided additional disclosure and explanation.

Figure 7: Credit ratings – disclosure by categories (as required by 1 March 2008)

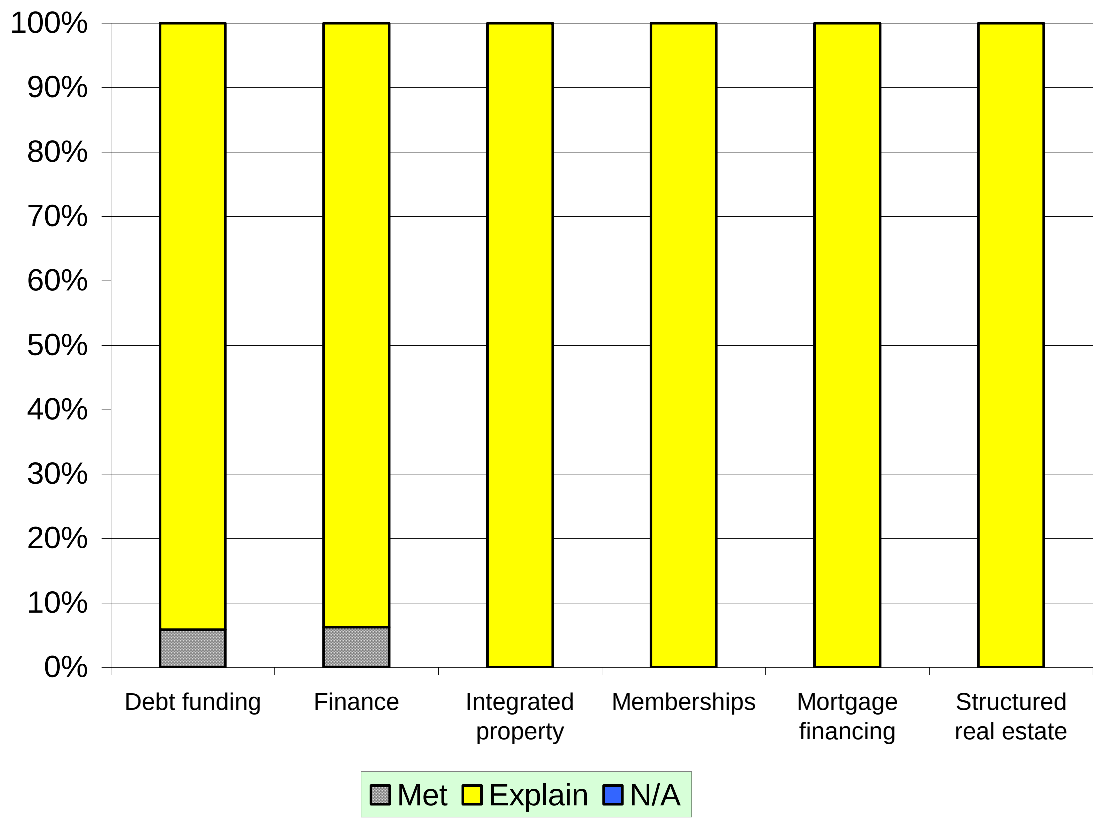


Table 8: Credit ratings – disclosure by categories (as required by 1 March 2008)

	Debt capital funding	Finance	Integrated property	Member -ship	Mortgage financing	Structured real estate	Total
Not applicable	0	0	0	0	0	0	0

	Debt capital funding	Finance	Integrated property	Member -ship	Mortgage financing	Structured real estate	Total
Further disclosure & explanations given	16	15	2	7	31	9	80
Debentures meet ASIC's benchmarks	1	1	0	0	0	0	2

51 The additional disclosures can be summarised into the following general statements:

- The credit rating process assesses the likelihood of default but does not assess the prospects of repayment if a default happens.
- The entities are too small to warrant the cost associated with obtaining and maintaining a credit rating for their debentures.
- The rating process would view the relatively small scale of the offerings, or limited geographical spread as being negative factors.
- The entities state that their prudent lending practices and other policies and procedures, mitigate the credit risk to debenture holders.

52 Examples of the additional disclosure provided follow:

> *the Company believes that the credit rating process would be likely to treat the relatively small (by the standards of large financial institutions) level of funds under management by the Company and the limited geographical spread of its mortgage lending as negative factors. It believes that a credit rating agency may view the limited geographical spread of its loan portfolio as vulnerable to local events outside the Company's control and that as the Company holds a relatively small level of funds it may not be able to withstand financial distress as readily as larger financial institutions.*
>
> [Appendix 1.76 Webster Dolita Finance Ltd]

> *[The Company] also offers its clients a AAA rated Cash Management Trust (which is the subject of a separate Product Disclosure Statement) for clients who prefer a rated product, albeit at a lower interest rate.*
>
> [Appendix 1.07 – Bell Potter Capital Ltd]

> *The Board of Directors has not made a final decision whether a rating will be obtained but is concerned about the appropriateness and relevance of ratings for many retail investors and misinterpretations or misunderstandings of the descriptive jargon attached to a rating … Investment decisions should not be based on one benchmark but on the entire Prospectus and, in particular, on all of the ASIC Benchmarks.*
>
> [Appendix 1.51—North State Finance Limited]

Benchmark 5: Loan portfolio

53 The benchmark details that issuers who on-lend funds should disclose the current nature of their loan portfolio, including:

(a) how many loans they have and the value of those loans;

(b) by number and value, loans they have by class of activity and geographic region:

(c) by number and value, what proportion of loans are in default or arrears;

(d) by number and value, what proportion of the total loan monies are lent on a 'secured' basis and what is the nature of the security; and

(e) by number and value, what proportion of the total loan monies they have lent to their largest borrower and 10 largest borrowers.

Disclosure should also cover their policy on these issuers.

Disclosure should also contain clear explanations about the issuer's approach to taking security in relation to its lending (e.g. what types of security it takes and in what circumstances).

54 83% of issuers disclosed against this benchmark. Of these: 94% met the benchmark and 6% provided additional disclosure and explanation.

Figure 8: Loan Portfolio – disclosure by categories (as required by 1 March 2008)

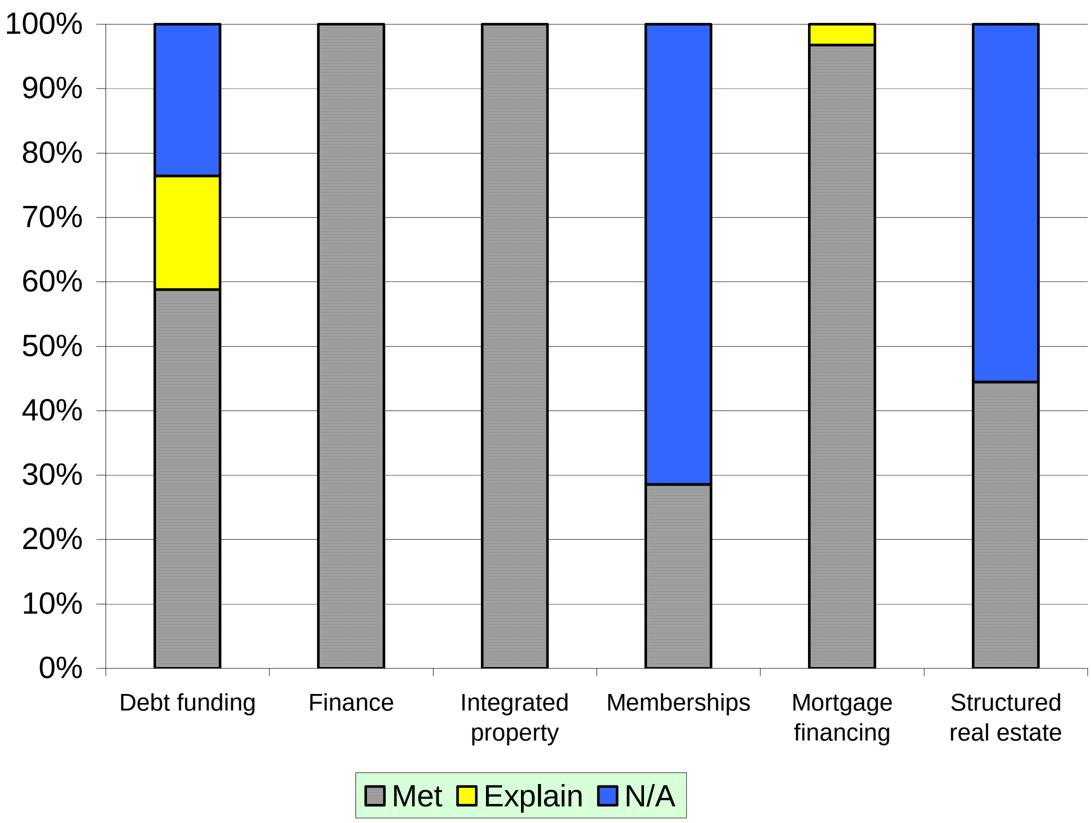


Table 9: Loan Portfolio – disclosure by categories (as required by 1 March 2008)

	Debt capital funding	Finance	Integrated property	Member -ship	Mortgage financing	Structured real estate	Total
Not applicable	4	0	0	5	0	5	14
Further disclosure & explanations given	3	0	0	0	1	0	4
Debentures meet ASIC's benchmarks	10	16	2	2	30	4	64

55 Specifically, additional explanation was provided against the elements of the benchmark as follows:

(a) number of loans and value of loans—4 entities

(b) number and value of loans by activity and region—4 entities

(c) number and value of loans in default or arrears—3 entities

(d) number and value of secured loans—3 entities

(e) largest borrower and 10 largest borrowers—3 entities

56 The entities did not outline the information nor provide further explanation against the elements of the benchmark.

57 Some specific examples of the disclosure follow:

> *insofar as the lending policy of Charles Stewart & Company Pty Ltd ... is concerned, for all extended terms of trade, Charles Stewart & Company Pty Ltd requires security by way of a registered stock mortgage or a farm mortgage.*
>
> [Appendix 1.17—Charles Stewart Finance Ltd]

> *Roberts considers that the disclosure of detailed information regarding its seasonal finance portfolio is commercially sensitive to its operations and to the clients to whom it provides finance facilities.*
>
> [Appendix 1.62—Roberts Ltd]

Benchmark 6: Related party transactions

58 The benchmark details that issuers who on-lend funds should disclose their approach to related party transactions, including:

(a) how many loans they have made to related parties and the value of those loans; and

(b) what assessment and approval process they follow with related party loans (e.g. are they subject to approval of the trustee).

The issuer should also disclose any policy it has regarding related party lending.

59 83% of issuers disclosed against this benchmark. Of these: 98% met the benchmark and 2% provided additional disclosure and explanation.

Figure 9: Related party transactions – disclosure by categories (as required by 1 March 2008)

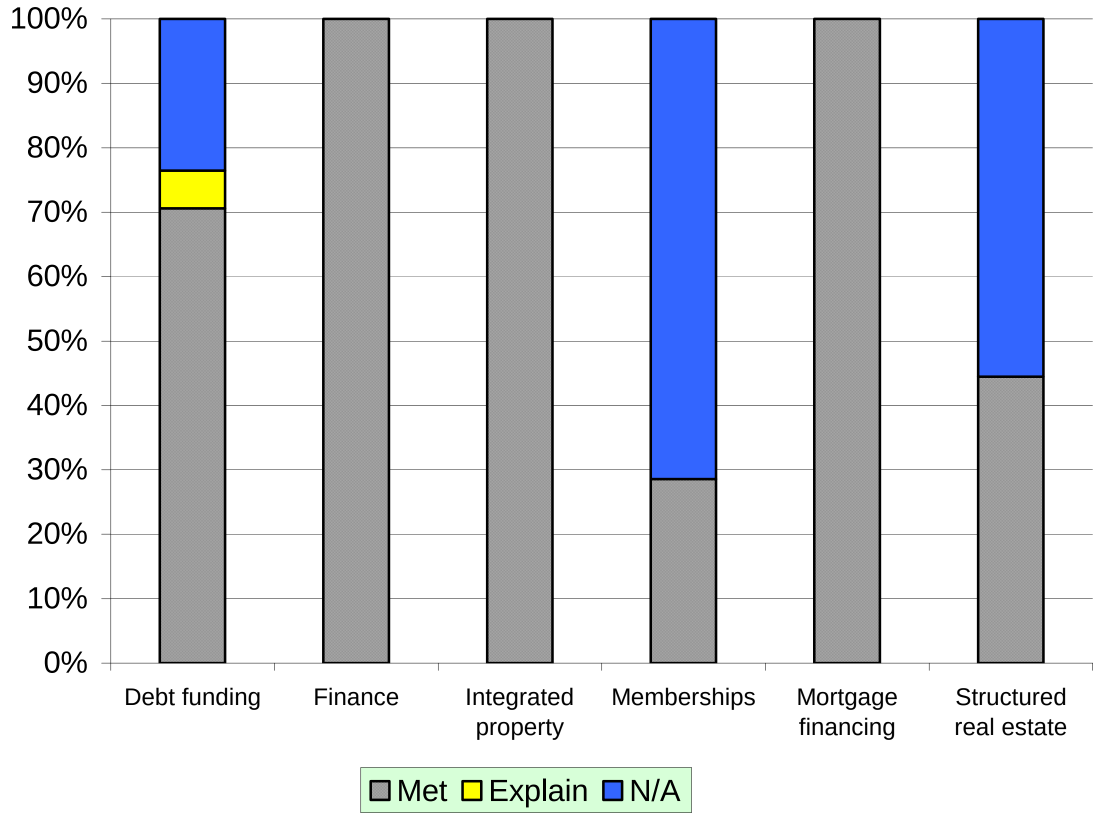


Table 10: Related party transactions – disclosure by categories (as required by 1 March 2008)

	Debt capital funding	Finance	Integrated property	Member -ship	Mortgage financing	Structured real estate	Total
Not applicable	4	0	0	5	0	5	14

	Debt capital funding	Finance	Integrated property	Member-ship	Mortgage financing	Structured real estate	Total
Further disclosure & explanations given	1	0	0	0	0	0	1
Debentures meet ASIC's benchmarks	12	16	2	2	31	4	67

60 The disclosure provided by the entity against this benchmark is:

> *The company operates as a finance company. The Company will use the funds raised for its working capital requirements. It is the policy of the Company that from time to time, the Company will lend monies to the Holding Company to assist in funding the Holding Company's working capital requirements. Generally, loans to the Holding Company are at call, will be unsecured and will bear interest at commercial interest rates agreed by the Company with the Holding Company from time to time. The Holding Company will be obliged to repay the loans according to agreed loan terms (if any) or upon demand by the Company. The Holding Company guarantees the repayment of Notes to the Trustee (please refer to Part 2.4 of the Prospectus) in the event that the Trustee elects to enforce the Company's obligation to repay all monies owing to holders of the Notes.*

[Appendix 1.17—Charles Stewart Finance Ltd]

Benchmark 7: Valuations

61 The benchmark details that when the issuer is involved in or lends money for property-related activities, they should take the following approach to valuations:

(a) properties (i.e. real estate) should be valued on an 'as is' and (for development property) 'as if complete' basis:

(b) issuers should have a clear policy on how often they obtain valuations, including how recent a valuation has to be when they make a new loan;

(c) issuers should establish a panel of valuers and ensure that no one valuer conducts more than 1/3 of the issuer's valuation work; and

(d) appointment of valuers should be with the trustee's consent.

Issuers should also include information about the valuation of a particular property in the issuer's prospectus when:

(e) the property accounts for 5% or more of the total value of property assets of the issuer; or

(f) a loan secured against the property accounts for 5% or more of the total value of the issuer's loan book.

62 68% of issuers disclosed against this benchmark. Of these: 16% met the benchmark and 84% provided additional disclosure and explanation.

Figure 10: Valuations – disclosure by categories (as required by 1 March 2008)

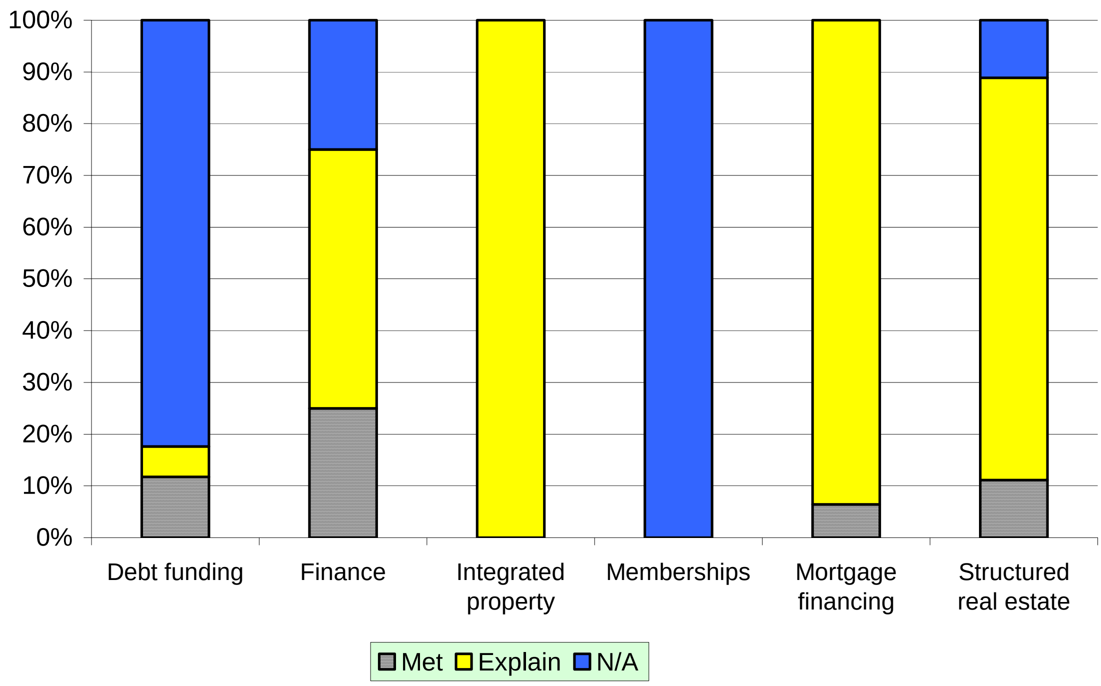


Table 11: Valuations – disclosure by categories (as required by 1 March 2008)

	Debt capital funding	Finance	Integrated property	Member -ship	Mortgage financing	Structured real estate	Total
Not applicable	14	4	0	7	0	1	26
Further disclosure and explanations given	1	8	2	0	29	7	47
Debentures meet ASIC's benchmarks	2	4	0	0	2	1	9

63 Specifically, additional explanation was provided against the elements of the benchmark as follows:

(a) ‘as is’ and ‘as if complete’ basis of valuation—20 entities

(b) policy on how valuations are obtained and recency—7 entities

(c) establishment of panel of valuers—26 entities

(d) appointment of valuers to be with trustee consent—37 entities

64 The additional disclosures can be summarised into the following general statements:

- The entity undertakes valuations on a "gross realisable value" basis;
- The entity utilises municipal rates notices for valuation purposes;
- The entity does not have a panel of valuers nor does it have a policy restricting the amount of work undertaken by one valuer;
- The entity has not sought Trustee approval of their valuers or consent has been requested but as yet not received from the Trustee; and
- The entity has not been able to disclose "cost" in relation to valuations, as the entity does not necessarily have this information.

65 Examples of the additional disclosure provided follow:

> *The Company will lend to 70% of a municipal valuation where the property is known to a director or where it is supported by an arms length purchase the Company will lend to 70% of the lesser of the valuation or purchase price.*
>
> [Appendix 1.76 – Webster Dolita Finance Ltd]
>
> *As disclosed in our unsecured notes prospectus the company policy is to obtain an independent appraisal for all security assessments at the time a loan application is being processed. The appraisal value represents the lower expected selling price of the security in the current market using a 30-60 day auction marketing campaign. Appraisals are obtained from independent real estate agents operating in the area that the underlying security is located.*

[Appendix 1.01—Asset Loans Limited]

The Company does not intend to establish a panel of valuers nor does it have a policy of ensuring no one valuer conducts more than one-third of the Company's valuation work for the following reasons:

(a) the small number of loans made by the Company.

(b) the location of the properties means there are only a limited number of qualified valuers available.

(c) some of the property types require specialist valuers and there is often only a limited number of these valuers available.

[Appendix 1.80—Wickham Securities Limited]

In relation to obtaining the Trustee's consent to the appointment of valuers, the Debenture Trust Deed does not require such consent and as such the appointment of Momentum's existing panel of valuers has not involved the Trustee. From 1 March 2008 appointment to Momentum's valuation panel will only be with the consent of the Trustee. The Trustee has not consented to the appointment of a valuer at this stage.

[Appendix 1. 50—Momentum Mortgages Limited]

Benchmark 8: Lending principles—loan to valuation ratios

66 The benchmark details that when an issuer on-lends money in relation to property related activities, it should maintain the following loan to valuation ratios:

(a) when the loan relates to property development—70% on the basis of the latest 'as if complete' valuation; and

(b) in all other cases—80% on the basis of the latest market valuation.

When the loan relates to property development by a second person (even related to the issuer), issuers should ensure that funds raised by the issue of debentures are only provided to the developer in stages, based on external evidence of the progress of the development.

67 60% of issuers disclosed against this benchmark. Of these: 61% met the benchmark and 39% provided additional disclosure and explanation.

Figure 11: Loan to valuation ratios – disclosure by categories (as required by 1 March 2008)

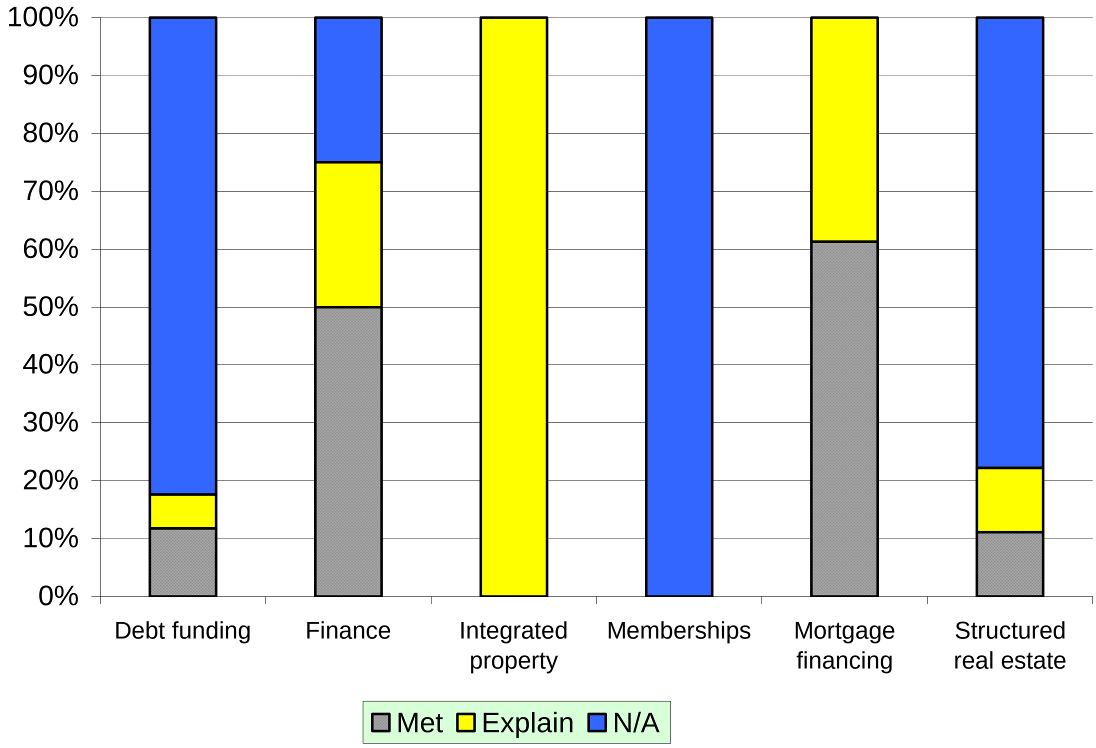


Table 12: Loan to valuation ratios – disclosure by categories (as required by 1 March 2008)

	Debt capital funding	Finance	Integrated property	Member -ship	Mortgage financing	Structured real estate	Total
Not applicable	14	4	0	7	0	7	32

	Debt capital funding	Finance	Integrated property	Member -ship	Mortgage financing	Structured real estate	Total
Further disclosure and explanations given	1	4	2	0	12	1	20
Debentures meet ASIC's benchmarks	2	8	0	0	19	1	30

68 Specifically, additional explanation was provided against the elements of the benchmark as follows:

(a) property development—70% on 'as if complete'—16 entities

(b) other—80% on latest market valuation—8 entities

69 The additional disclosures can be summarised into the following general statements:

– LVR may exceed benchmarks where the entity has obtained additional security or collateral security;

– LVR may exceed benchmark where the loans provided are covered by Mortgage Indemnity Insurance; and

– LVR's may be higher for residential property as it is perceived to be "less risky" than commercial or industrial property.

70 Examples of the additional disclosure provided follow:

The Company does not meet this benchmark. The Company complies with the requirement of the Trust deed that the maximum amount that may be advanced in respect of any loan is 85 percent of the independent valuation of the real property held to secure the loan."'

[Appendix 1.80 Wickham Securities Limited]

The LVR for Debenture Stock is limited to a maximum of 75% of the value of the mortgaged property as determined by a valuation of a registered valuer. The Debenture Stock would not meet this Benchmark, as a consequence collectively the Benchmark is not satisfied.

[Appendix 1.20—Cymbis Finance Australia Limited]

The Company may engage in underwriting and deposit financing that effectively leads to the borrower having a loan to valuation ratio that exceeds 80%. The Board of the Company is nonetheless satisfied that these facilities should not create undue risk for the following reasons:

- as noted in item 7—Valuations, all facilities are established in accordance with the Company's investment guidelines and risk management methodology described in the Prospectus for the Notes;

- the risk management methodology involves the review by the Company of third party 'as is' valuations commissioned by the borrower; and

- if as at June 30 of a particular, [sic] a particular property remains on the balance sheet of the borrower due to market conditions and has a valuation

that is more than six months old, a new third party 'as is' valuation will be obtained.

[Appendix 1.47—Mariner Treasury Ltd]

C Future actions

71 In addition to the disclosures required as of 1 March 2008, an issuer's quarterly reports to their trustees should, at least twice a year, specifically explain any material changes to the issuer's performance against the benchmarks, including against the issuer's alternative approach to meeting the benchmarks.

72 We will continue to monitor issuer's disclosure through the quarterly trustee reports and any new prospectuses issued by them. We anticipate that we will conduct another series of visits and reviews with the unlisted, unrated debenture issuers in October 2008, to follow up on their on-going disclosures to their trustees and investors.

73 In order to assess the ongoing impact of the additional disclosures to investors, we will publish a follow up report our 3 point plan in relation to debentures, in April 2009.

Appendix 1: Benchmark disclosures for each issuer

Direct links through to the disclosure documents for these entities are available from www.asic.gov.au/uudlist

1.1 Asset Loans Ltd

1.2 Assist Finance Corporation Ltd

1.3 Australian Finance and Leasing Ltd

1.4 Australian Unity Finance Ltd

1.5 Balanced Securities Ltd

1.6 Banksia Securities Ltd

1.7 Bell Potter Capital Ltd

1.8 Bell Potter Capital Ltd

1.9 Bidgee Finance Ltd

1.10 Caliva Finance Ltd

1.11 Capilano Honey Ltd

1.12 Cash Converters Finance Corporation Ltd

1.13 Central Victorian Investments Ltd

1.14 Centro Watt America REIT 11, Inc

1.15 Centro Watt America REIT 2, Inc

1.16 Centro Watt America REIT IV, Inc

1.17 Charles Stewart Finance Ltd

1.18 Cherry Fund Ltd

1.19 Cromwell Finance Ltd

1.20 Cymbis Finance Australia Ltd

1.21 Diverseport Fixed Income Ltd

1.22 Driscoll McIllree & Dickinson Finance Company Ltd

1.23 Elderslie Finance Corporation Ltd

1.24 Elderslie Finance Corporation Ltd

1.25 Elderslie Financial Services Ltd

1.26 Eurofinance Capital Ltd

1.27 Fairway Investments Ltd

1.28 Financial Resources Securities Ltd

1.29 First Capital Securities Ltd

1.30 Flight Centre Ltd

1.31 GR Finance Ltd

1.32 G2 Finance Ltd

1.33 Gippsland Secured Investments Ltd

1.34 Goldman Sachs JBWere Capital Markets Ltd

1.35 Graincorp AG Finance Ltd

1.36 Grenfell Securities Ltd

1.37 HD&C Securities Ltd

1.38 Hargraves Secured Investments Ltd

1.39 Hastings Capital Ltd

1.40 Indian Pacific Ltd

1.41 Investments Nominees Ltd

1.42 Landmark Operations Ltd

1.43 LKM Capital Ltd

1.44 MAB American Property REIT Inc

1.45 Mackay Community Credit Ltd

1.46 Mariner Credit Corporation Ltd

1.47 Mariner Treasury Ltd

1.48 Millbrook Finance Ltd (Formerly St Andrews Finance Ltd)

1.49 Milton Corporation Ltd

1.50 Momentum Mortgages Ltd

1.51 North State Finance Ltd

1.52 Plantation Land Ltd

1.53 Powton Land Holdings Ltd

1.54 Profinance Ltd

1.55 Progressive Mortgage Company Ltd

1.56 Provident Capital Ltd

1.57 Questus Mortgage Funds Ltd

1.58 RAC Finance Ltd

1.59 RACV Finance Ltd

1.60 Retravision Finance (WA) Ltd

1.61 Rivwest Finance Ltd

1.62 Roberts Ltd

1.63 Roberts Ltd

1.64 SAI Group Capital Ltd

1.65 Santuary Cove Golf and Country Club Holdings Ltd

1.66 Sewells Finance Ltd

1.67 South Eastern Secured Investments Ltd

1.68 Southern Finance Ltd

1.69 Statewide Secured Investments Ltd

1.70 Terrey Hills Golf and Country Club Holdings Ltd

1.71 The Kew Golf Club

1.72 Timbercorp Properties Ltd

1.73 Turner Securities Ltd

1.74 Vicstate Savings and Loans Ltd

1.75 Victorian Securities Corporation Ltd

1.76 Webster Dolita Finance Ltd (formerly Dolita Investments Ltd)

1.77 Webster Investments Ltd

1.78 Webster Ltd

1.79 Westlawn Finance Ltd

1.80 Wickham Securities Ltd

1.81 Win Securities Ltd

1.82 Windsor Farm Food Group Ltd

Appendix 2: Categories of debentures

74 As highlighted in our work on CP 89 there is a diverse range of debenture issuers and investments in this market. There is no publicly available or commonly accepted analysis or framework available to classify the different business models used by debenture issuers.

75 Accordingly we defined six categories on the basis of their principal business and the purpose and application of funds as follows:

(a) *debt capital funding*—money raised and applied as working capital or transaction specific funding to further the issuer or group's business operations;

(b) *finance*—lending for personal and commercial purposes;

(c) *integrated property*—funding of property transactions and development within a group or with related parties where that amount of funds applied is greater than 10% of total assets of the debenture issuer;

(d) *memberships*—debentures issued to facilitate membership of clubs, groups, or franchise operations;

(e) *mortgage financing*—secured mortgage lending for residential and commercial property ownership and improvement with security over real property; and

(f) *structured real estate investments*—participation in ownership of commercial and residential real estate as part of a wider ownership structure.

76 For more information about these categories, refer to ASIC Consultation Paper 89 *Unlisted , unrated debentures—improving disclosure for retail investors.*

Key terms

Term	Meaning in this document
ASIC	The Australian Securities and Investments Commission
Corporations Act	The *Corporations Act 2001* (Cth)
CP 94	An ASIC consultation paper (in this example, numbered 94)
RG 94	An ASIC regulatory guide (in this example, numbered 94)
rollovers	when an existing investor keeps their money in the existing debenture investment for an additional term (whether on the same or slightly different terms)
s710 (for example)	A section of the Corporations Act (in this example, numbered 710)

Related information

Headnotes

Debentures, listed, rated, advertising, issuers, benchmarks

Regulatory guides

RG 69 *Debentures – Improving disclosure for retail investors*

RG 156 *Debenture advertising*

Legislation

Ch 2L, 2M, 6D Corporations Act 2001

Consultation papers and reports

CP 89 *Unlisted, unrated debentures—improving disclosure for retail investors*

CP 94 *Debenture advertising*

REP 38 *High-yield debentures*

REP 108 *Report on submissions for CP 89 Unlisted, unrated debentures*

REP 113 *Report on submissions for CP 94 Debenture advertising*

Other

The following statements were made to the Senate Standing Committee on Economics Committee by Tony D'Aloisio, Chairman of ASIC on 30 May 2007: Opening statement; Statement on Fincorp; Statement on Westpoint; Statement on Australian Capital Reserve and are available at http://www.asic.gov.au/asic/asic.nsf/byheadline/2007+Senate+Estimates?openDocument

Information for Westpoint Group investors at www.asic.gov.au/westpoint