



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 257

Improving disclosure of historical financial information in prospectuses: Update to RG 228

May 2016

About this paper

This consultation paper sets out our proposals to update our guidance in Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228). The updated guidance aims to improve the disclosure of historical financial information in prospectuses and assist companies and their advisers to better understand their disclosure obligations.

We have attached a draft updated version of Section F of RG 228 and are seeking feedback on the proposed amendments from companies and advisers who are involved in the preparation of prospectuses.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 12 May 2016 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 historical financial information disclosure. 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 D, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

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

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 7 July 2016 to:

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What will happen next?

Stage 1	12 May 2016	ASIC consultation paper released
Stage 2	7 July 2016	Comments due on the consultation paper
	July 2016	Drafting of regulatory guide
Stage 3	Second half of 2016	Regulatory guide released

A Background to the proposals

Key points

The disclosure of financial information about an issuer is an important component of a prospectus and plays a key role in assisting investors to make informed investment decisions.

Active capital markets in 2014 and 2015 have allowed us to observe the operation of current [Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors*](#) (RG 228) in many recent fundraisings. We have noted continuing issues with the disclosure of historical financial information in prospectuses and we are concerned that some prospectuses lodged with ASIC contained poor and incomplete historical financial disclosure.

To assist issuers and their advisers, we are proposing to modify the guidance in RG 228 to clarify our expectations for the quality and quantity of historical financial information that should be disclosed in prospectuses.

In Section B of the consultation paper, we seek your feedback on the proposed changes to Section F of RG 228.

In Section C of the consultation paper, we set out a number of case studies to illustrate the proposed policy settings in practice.

Disclosure of historical financial information

- 1 The disclosure of financial information about an issuer is an important component of a prospectus and plays a key role in assisting investors to make informed investment decisions.
- 2 Following industry consultation in 2011, we released RG 228 to provide guidance to issuers and their advisers on how to satisfy the content requirements set out in the *Corporations Act 2001* (Corporations Act) for prospectuses.
- 3 We have observed varying levels of compliance with Section F of RG 228, which sets out our guidance on financial information disclosure requirements. Issues relating to financial information disclosure have become more prevalent in recent times due to active capital markets and an increasing number of foreign issuers from emerging markets and backdoor listings.
- 4 Under current policy settings set out in RG 228.87, issuers should *generally* provide two-and-a-half or three years of *audited* historical financial information in prospectuses. However, our policy contemplates that an entity may, on an exceptional basis, disclose less financial information if the

reasons for doing so are disclosed. RG 228 currently provides no further guidance on the circumstances in which such a departure from the settings may be justified.

- 5 While the general disclosure test in s710 of the Corporations Act (s710 test) is a principles-based test that is inherently flexible, we consider the standard of historical financial disclosures by some issuers falls below legal requirements.
- 6 We recognise that the financial and structural history of an issuer can be complex and that judgement is required to determine the appropriate level of information that must be disclosed in the particular circumstances of the issuer. Currently, Section F of RG 228 does to some extent deal with certain aspects of these complexities—for example, it:
- (a) provides guidance in relation to start ups; and
 - (b) specifies that the guidance applies not only to the issuer but the business being acquired.
- 7 Given some of the complexities faced by issuers, we have been regularly consulted to clarify our disclosure expectations as set out in Section F of RG 228. Given this, and the financial disclosure issues we routinely identify when reviewing prospectuses, we consider that it is desirable to provide further clarification of our guidance in Section F of RG 228.
- 8 We have kept ASX informed of our concerns about financial information in prospectuses and of our proposals. We note the release by ASX of its consultation paper [*Updating ASX's admission requirements for listed entities*](#) on 12 May 2016, which is designed to enhance listing standards and also includes proposals on financial information to be included in applications for admission under the assets test. We have worked with ASX to ensure that the changes proposed concerning financial information by ASX and in this paper are consistent.

Our observations of historical financial information disclosure

- 9 We are concerned that some companies lodge prospectuses with poor and incomplete historical financial disclosure. In many cases, it is clear to us that the issuer has not undertaken adequate preparation for operation as a company with a large public investment base before lodging the prospectus. Many issuers believe, or are advised, that risk disclosure in a prospectus can be used as a substitute for adequate financial (and other) disclosures. We do not accept that risk disclosure can be used to avoid disclosing material information.

- 10 We have also observed that there appears to be a link between poor financial disclosure in prospectuses and subsequent poor performance of issuers. This extends to problems with the company's corporate governance and compliance with ongoing legal obligations. We empirically tested these observations by examining the performance of the securities of 41 entities that conducted an initial public offering (IPO) in 2012–14 and raised between \$10 million and \$100 million in connection with an exchange listing. Of the 41 prospectuses selected, 44% provided full audited financial accounts, 61% had at least two-and-a-half years of financial accounts history and 34% contained both audited accounts and two-and-a-half or three years of financial information.
- 11 Within this sample group, firms that provided good-quality financial reporting in their prospectuses (i.e. both audited and two-and-a-half or three years of accounts) appeared to perform better than those firms that did not. The average one-year adjusted return by reference to share price performance was 4.9 percentage points higher (at 42.5%) and the median one-year adjusted price return was 43.5 percentage points higher (at 42.9%). However, the sample size of data used was too limited to confirm statistically whether there is any relationship between good-quality financial reporting in prospectuses and post-IPO performance.

Poor financial disclosure

- 12 We have observed some issuers do not follow the guidance in Section F of RG 228 on the quantity and quality of historical financial information that should be disclosed in a prospectus. In a number of these cases, we consider that the disclosures have fallen below those required by the s710 test.
- 13 Some issuers provide historical financial information of less than two-and-a-half or three years, even in the case where they, or the business they are acquiring, have traded for longer than this period of time. This can create a 'disclosure mismatch', where the narrative in the prospectus may describe the history of a business without supporting financial disclosures that have been subject to independent scrutiny.
- 14 We have also seen problems with the quality of disclosure when financial statements have not been audited. We have observed prospectuses where historical financial information disclosure at the time of lodgement is based on reviewed, rather than audited, financial statements. In some cases, financial information is based solely on management accounts (i.e. unaudited and unreviewed). In the case of financial information in prospectuses based on audited financial statements, we have observed instances of these accounts:
- (a) containing material qualifications and disclaimers of opinion; and
 - (b) having been prepared by overseas-based auditors who have not complied with international auditing standards.

Complex financial histories

- 15 Many issuers have complex financial histories that may not reflect operations that the issuer currently controls (or will control). We understand that this can present legitimate disclosure challenges for issuers in terms of both the quantity and quality of information presented.
- 16 There are many circumstances where the financial statements of the legal issuer do not provide a comprehensive picture of the operations that the issuer controlled or will control. These include, but are not limited to:
- (a) where the issuer is a newly formed holding entity;
 - (b) changed business activities or ‘businesses’ not in a corporate form in the historical period; or
 - (c) where there are historical or impending acquisitions or divestments of a business or assets.
- 17 The non-prescriptive nature of the s710 test and the limited guidance in RG 228, combined with an issuer’s complex financial history, have often resulted in a variety of approaches being taken by issuers relating to the quantity and quality of financial information. Some of the approaches taken by issuers, in our view, fall below the standard set out in the s710 test. The case studies in Section C of this consultation paper reflect the types of issues that we have encountered recently and outline our views about the appropriate level of disclosure in different scenarios.

Acquisition of entities using IPO funding

- 18 It is often the case that funds raised from the IPO will be used to fund known acquisitions. RG 228 currently indicates that we expect historical financial disclosures for not only the issuer but also the entities being acquired. However, we have noted that, notwithstanding the materiality of some of these acquisitions, some issuers provide poor financial disclosure in relation to the acquired entities.

ASIC action

- 19 We have intervened, including by imposing stop orders, in relation to a number of prospectuses with poor financial disclosure. This intervention has resulted in offers being delayed or abandoned. Providing guidance on our expectations for financial information in prospectuses allows prospective issuers to plan their offers with a clear understanding of our approach. This is particularly important for financial information, which can take some time to properly prepare.

Other financial information disclosure issues

- 20 This consultation paper also contains proposals on three other prospectus-related issues, including:
- (a) asset acquisitions and the development of assets;
 - (b) when financial information should be updated in a prospectus; and
 - (c) the inclusion of cash flow statements.

Asset acquisitions and the development of assets

- 21 Corporate acquisitions can be legitimately structured as an acquisition of assets. In many cases, these individual assets may not have financial histories but collectively operate as a business. We consider that it is useful for ASIC to clarify the circumstances where historical financial disclosure is necessary because the assets being acquired are, in reality, a business. We are also proposing to clarify that we will use guidance contained within Australian Accounting Standard AASB 3 *Business combinations* to help determine whether a business, or a collection of assets, is present.

When financial information should be updated in a prospectus

- 22 RG 228 currently provides that a company should disclose information in its prospectus that is current. RG 228 also provides that where a company's most recent financial statements relate to a half year, this should be disclosed. However, RG 228 does not specify when financial information needs to be updated before lodgement. We consider that it is useful to provide guidance on our view of the circumstances in which financial information becomes out of date.

Inclusion of historical cash flow statements

- 23 RG 228 does not currently advise that we expect the inclusion of historical cash flow statements in prospectuses. Cash flow statements provide important financial information to allow investors to assess the cash-generating ability of an issuer. Cash flow statements have long been required for statutory financial reporting purposes. We are therefore seeking to clarify that, for a prospectus where historical trading is disclosed, a cash flow statement should also be disclosed.

B Our proposals

Key points

We are proposing to modify our guidance in Section F of RG 228 to clarify the quality and quantity of historical financial information that we expect should be disclosed in prospectuses.

Key points of clarification include:

- issuers who own or are acquiring a business should provide audited historical financial information of two-and-a-half or three years, regardless of the corporate form used previously for the issuer's business or historical financial reporting requirements (see proposal B1);
- the types of audit opinions that may not be acceptable (see proposals B2–B5);
- appropriate disclosure of asset acquisitions (see proposals B6–B7);
- when financial disclosure is considered 'current' (see proposals B8–B9);
- disclosure of cash flow statements (see proposal B10); and
- the circumstances when historical financial disclosures may not be necessary (see proposals B11–B13).

Corporate form and historical reporting requirements

Proposal

- B1** We propose to clarify that, subject to the circumstances described in proposals B11–B13, an issuer should disclose audited historical financial statements for two-and-a-half or three years for both the issuer and any business it acquires. This is regardless of whether the financial statements were required by law to be produced (apart from being in the prospectus) or whether the business is in a corporate form: see draft RG 228.88.

Your feedback

- B1Q1 Do you have any comments on this proposed clarification?
- B1Q2 Is it unduly onerous to for an issuer to obtain audited financial information about the business being acquired?
- B1Q3 Are there potential impediments to issuers providing audited rather than reviewed or unaudited historical financial information? If so, under what conditions would these arise?
- B1Q4 Do you have any feedback on the related examples in Case Studies 1–7 and 11 in Section C?

Rationale

- 24 We consider that, for prospectuses seeking to comply with the s710 test, audited historical financial information of two-and-a-half or three years in duration should generally be included in prospectuses, regardless of the corporate form in which the business was carried out in the past or historical financial reporting requirements.
- 25 It is common for ‘businesses’ that have not previously been regulated by ASIC to seek to raise funds by issuing a prospectus in the context of a listing. These businesses are usually in the process of restructuring as an Australian public holding company. Some issuers believe or are advised that as they were not previously required to comply with financial reporting and audit requirements, this allows them to disclose limited or no historical financial information in the prospectus, although they may present a forecast. This causes a disclosure mismatch, where the issuer describes a business in operation, yet does not provide audited historical financial information to support the narrative.
- 26 Some issuers do not have historical statutory financial reporting requirements because they are small proprietary companies or are not regulated by the Corporations Act. This includes trusts and unregistered foreign entities. We are of the view that the s710 test is directed at the information requirements of investors and their advisers, which is independent of the corporate form of the business or historical financial reporting requirements of the issuer. It should also be noted that under s286(1)(b) all companies regulated by ASIC must keep adequate financial records to enable financial statements to be prepared and audited.
- 27 As noted in Section A, we recognise that many issuers have complex financial histories. These issuers can face legitimate difficulties in providing financial information that is compliant with the guidance in RG 228. We have therefore outlined the circumstances in proposals B11–B13 where a reduced level of disclosure is, in our view, consistent with the s710 test.
- 28 We consider that proposal B1 has a number of advantages, including:
- (a) improved quality and quantity of financial information provided to potential investors;
 - (b) consistent disclosure expectations for all issuers; and
 - (c) greater transparency of expectations for issuers with complex financial histories, and their advisers, to assist in the planning of transactions.

Audits

- 29 The majority of issuers choose to include audited financial information in their prospectuses so that investors can have the highest level of assurance about the historical financial information presented. There are also many

provisions in the Corporations Act that give contextual support to the argument that a minimum audit requirement should properly be read into the section for most offers. That is, the audit requirements should be read into the 'reasonably require to make an informed assessment' element of the s710 test.

- 30 For example, under Ch 2M of the Corporations Act, large proprietary and public companies are generally required to compile and lodge audited financial statements. Those public companies that are disclosing entities (whether listed or unlisted) are also required to have half-year financial statements audited or reviewed. Given these requirements, and the assumption that for listed companies audited financial information is required for continuous disclosure purposes, we consider it inconsistent that when an issuer is seeking a listing and raising funds from the public (a key point in time for investor accountability and transparency) there should be reduced requirements for audited financial information.
- 31 Further, we also note that reduced disclosure for continuously quoted prospectuses under s713 nonetheless requires the inclusion or availability of audited financial information. It would be incongruous for full prospectuses prepared under s710 to provide less financial information.
- 32 Finally, we note the requirements for offer information statements under s715. This regime was introduced in 2000 and provides a reduced disclosure regime for entities raising smaller quantities of funds, up to a maximum cap of \$10 million. An offer information statement is subject to a limited number of disclosure requirements, which include the obligation to provide one year of audited accounts with a balance date not more than six months old. This suggests that Parliament did not consider the preparation of audited accounts as unduly onerous even for very small entities.

Using funds raised to acquire known businesses

- 33 It is often the case that funds raised from an IPO will be used to fund known acquisitions. Prospectuses will generally provide detailed disclosure of the acquisitions when they are a material part of the business going forward. RG 228 currently notes that historical financial disclosures should be included for both the issuer and the entities being acquired. Often the financial trading history of the entities to be acquired will be included using a pro-forma adjustment to incorporate the trading information as if the issuer had owned the entities throughout the disclosed historical period.
- 34 We have observed that issuers may seek to include unaudited historical financial information for the entities to be acquired. Some issuers believe that, as they have not negotiated full access to the financial records of the entity to be acquired before the acquisition, this should allow them to depart from our financial disclosure guidance. We consider the fact that an

acquisition is being made should not affect the quality of the financial disclosures contained in a prospectus.

Two-and-a-half or three years of financial disclosure

35 The disclosure of two-and-a-half or three years of financial information is consistent with:

- (a) existing practice for many issuers;
- (b) admission rules for ASX listings (e.g. the ASX Listing Rules profit test¹ requires three years of audited financial statements); and
- (c) international practice. Many of the major international markets have similar prospectus requirements, including Singapore,² European Union member states³ and Canada.⁴

Audited financial information

Proposal

B2 We propose to clarify that where an audit or review opinion (for half-year financial information) included in a prospectus has a qualification or modification that indicates that the audit opinion provides limited independent assurance for investors, we are likely to treat the financial information as effectively unaudited. In the event we treat the information as unaudited, it is likely that we will view the prospectus as not complying with the s710 test: see draft RG 228.92

Your feedback

- B2Q1 Do you have any comments on this proposed clarification?
- B2Q2 Do you believe that risk disclosure can remedy issues related to the disclosure of financial statements that contain, for example, disclaimer opinions where the auditor could not access appropriate accounting records for material areas of the financial statements? If so, why?
- B2Q3 Do you have any feedback on the related examples in Case Studies 8–9 in Section C?

B3 We propose to clarify that we will generally accept that audit reports including emphasis of matter paragraphs (e.g. due to uncertainty about whether the company can continue as a going concern in circumstances where a successful fundraising will enable the company

¹ ASX, *ASX Listing Rules*, April 2014, at Chapter 1: Admission, paragraph 1.2.3(a).

² Monetary Authority of Singapore, Securities and Futures (Offers of Investments)(Shares and Debentures) Regulations 2005, at the Fifth Schedule, Part IX.

³ European Commission, Commission Regulation (EC) No 809/2004, which implements Directive 2003/71/EC of the European Parliament (and amending regulation Commission Regulation (EC) No 211/2007).

⁴ The Ontario Securities Commission, National Instrument 41-101 *General prospectus requirements* (and the accompanying Form 41-101F1 *Information required in a prospectus*, Item 32).

to continue its operations) will not result in us regarding the financial information as unaudited: see draft RG 228.93.

Your feedback

B3Q1 Do you have any comments on this proposed clarification?

B3Q2 Do you have any feedback on the related examples in Case Studies 8–9 in Section C?

- B4** We propose to provide guidance recognising that there may be practical audit issues where up to three years of financial statements are being audited for the first time. In these circumstances, we propose to note that it is generally acceptable for the audit or review opinion to contain opening balance qualifications and, subject to materiality, issues related to inventory inspections: see draft RG 228.94.

Your feedback

B4Q1 Do you have any comments on this proposed clarification?

B4Q2 Are there audit issues other than those relating to ‘opening balance’ qualifications and inventory inspection procedures that may arise where financial statements for prior years are audited for the first time?

B4Q3 Do you have any feedback on the related examples in Case Studies 8–9 in Section C?

- B5** We propose to clarify that the audit or review of historical financial information included in the prospectus should be conducted, for businesses and entities in Australia, in compliance with Ch 2M and, for businesses and entities from foreign countries, in substantial equivalence to Ch 2M: see draft RG 228.91.

Your feedback

B5Q1 Do you have any comments on this proposed clarification?

B5Q2 Do you have any feedback on the related examples in Case Studies 8–9 in Section C?

Rationale

Current guidance

- 36 Currently, RG 228.87(b)(iii) notes that issuers should disclose any modified opinion by the auditor about the financial statements used in a prospectus. The guidance therefore may suggest that, in all cases, compliance with s710 only requires disclosure of the modified opinion. We have concerns about this interpretation.
- 37 This can lead to a situation where financial information about an issuer is disclosed in a prospectus even though the auditor has significant concerns about the integrity of that information.

Types of audit and review opinions

- 38 We are concerned primarily with the integrity of the financial information presented in prospectuses. Some audit modifications indicate that the auditor's opinion is materially compromised. The auditor may therefore not be able to provide a true and fair opinion on all or parts of the financial statements. This description necessarily excludes emphasis of matter paragraphs, the most common of which is about whether the entity is a going concern. In circumstances where the fundraising will resolve the going concern issue, this can be properly rectified with disclosure.
- 39 Where the financial statements are being audited for the first time, it is possible that qualifications will be required for:
- (a) opening balances, where the auditor has not audited the prior year and cannot verify the opening balances. This generally occurs when a company has never previously been audited or has had a different auditor in prior periods. This type of modification does not detract from the auditor's assurance concerning movements reported during the year and a company's closing balances. For this reason, the information presented for the current financial year is generally accepted in the same manner as though the modification was not reported; and
 - (b) inventory, as the auditor cannot be physically present at stocktakes for financial periods that have already occurred. If the inventory qualification is material, it may be possible for an auditor to perform an 'inventory roll back'. The requirement for such procedures is subject to materiality.

Foreign issuers and overseas auditors

- 40 We have also observed that some issuers, who are substantively based overseas or are acquiring overseas entities, may provide financial statements and audit reports in a prospectus that are not compiled using Australian accounting and auditing standards. While we are not seeking to mandate such a requirement, we consider that the financial statements and the audit should otherwise substantially comply with the requirements in Ch 2M—to ensure that investors receive financial information that is consistent with our reporting frameworks, given the fundraising is targeting Australian investors.

Asset acquisitions and development of assets

Proposal

- B6 We propose to clarify that if assets acquired by an issuer are in substance the acquisition of a business, the issuer should generally disclose historical income statements: see draft RG 228.95.

Your feedback

B6Q1 Do you have any comments on this proposed clarification?

B6Q2 Do you have any feedback on the related examples in Case Studies 6–7 in Section C?

B7 We will use the guidance in Appendix B of AASB 3 to assist us in determining whether an issuer has in fact acquired or is operating a business rather than an asset or a collection of assets: see draft RG 228.96.

Your feedback

B7Q1 Do you have any comments on our proposal to use Appendix B of AASB 3?

B7Q2 Do you have any feedback on the related examples in Case Studies 6–7 in Section C?

Rationale

- 41 Structuring corporate transactions as asset acquisitions can be done for legitimate commercial reasons, such as avoiding the acquisition of liabilities of a corporate entity from which the assets are being acquired. Issuers acquiring assets such as property assets or mining tenements will generally only include balance sheet disclosure and the relevant expert reports from property valuers or geological experts. We consider that this practice is acceptable.
- 42 However, we are aware that companies will sometimes structure business acquisition transactions as asset acquisitions, rather than business combinations. They then provide limited disclosure of historical financial information as the assets do not have an ‘operating history’ when considered in isolation. In substance, if the asset acquisition is the continuation of the same or similar business—although as part of a different corporate entity—we would still seek financial disclosures consistent with s710.
- 43 We therefore consider that it is appropriate to include clarification in guidance that if it appears that the asset acquisition transaction is in fact a business combination, the historical financial disclosure guidance will still apply. We will use the guidance provided in Appendix B of AASB 3 to assist us in identifying whether a business is present.

Updating financial disclosure**Proposal**

B8 We propose to clarify our guidance on when financial information is considered current in a prospectus. RG 228.89 already states that issuers should include current financial information in their prospectus.

This extends to requiring the inclusion of half-year financial information. Where the existing business that is the subject of the fundraising has not changed substantially and has an acceptable audit history (as described in draft RG 228.91–RG 228.94), the financial information will generally be considered current if the prospectus includes the most recent:

- (a) half-year audited or reviewed financial statements (where the prospectus is lodged with ASIC less than three months after year end); or
- (b) full-year audited financial statements (where the prospectus is lodged with ASIC less than 75 days after half-year end).

Your feedback

B8Q1 Do you have any comments on this proposed clarification?

B8Q2 Do you have any feedback on the related examples in Case Studies 10–11 in Section C?

- B9** In some instances the business that is the subject of the fundraising may have changed so substantially that any unaudited post-balance-date material event disclosure would be of similar or greater significance for investors as the disclosure in the most recent audited or reviewed financial statements. We propose that in such cases the audited financial information included in the prospectus should have a more current balance date: see draft RG 228.90.

Your feedback

B9Q1 Do you have any comments on this proposed clarification?

B9Q2 Do you agree that the issuer should provide audited rather than reviewed disclosure in the circumstances described above?

B9Q3 Where an issuer has commenced operations and seeks to raise funds using a prospectus in its first year of operation, should the issuer be required to include audited rather than reviewed accounts?

B9Q4 Do you have any feedback on the related example in Case Study 11 in Section C?

Rationale

- 44 RG 228 provides that issuers should include their most current reviewed or audited financial information in a prospectus. The audited or reviewed balance sheet is then pro-forma adjusted for the impact of the offer and any acquisitions being funded by the capital raising to provide an ‘illustration’ of the balance sheet position of the entity.
- 45 The general practice of including the latest half-year (generally reviewed) or full-year audited balance sheet is a practical compromise between the following competing issues:
- (a) the integrity of the financial information—audited or reviewed (for half year) financial information is preferable;

- (b) the age of the financial information—including half-year financial information means that the information is no more than nine months old (six months plus the three-month lodgement deadline, rather than up to 15 months old if the last full-year balance date was used); and
 - (c) the practicalities of the fundraising process—issuers cannot realistically be expected to constantly update financial information and have it audited (or reviewed) as timetables slip. These settings give them a ‘window’ in which to successfully fundraise.
- 46 Proposal B8 clarifies that we generally apply an ‘already listed’ test, to formally allow issuers the same statutory lodgement timeframes provided to ‘already listed’ entities before updates are expected. We expect an issuer to include in their prospectus document the most recent full-year audited accounts up until the time that half-year accounts are due—that is, 75 days after half-year end. An entity issuing a prospectus after this date should include the half-year interim financials up until the date that full-year accounts are due, three months after year end. We consider that this guidance should also be generally applied to issuers who are not seeking a listing.
- 47 The proposal largely reflects existing market practice and has the advantage of aligning new issuers with the financial reporting obligations they would be subject to if they achieve listing. However, we note that a prospectus can be based on financial information with an *audited* balance date up to 15 months before the lodgement of the document with ASIC. There may be some circumstances where there has been significant change to the entity in the interim period since the last financial statements or where the more recent reports are the subject of material qualifications. As noted in proposal B9, in these circumstances we may assess that disclosure of financial information based on audited (rather than reviewed) accounts with a balance date closer to the date of prospectus lodgement is necessary to comply with s710.
- 48 Further, where an issuer seeks to raise funds using a prospectus in its first year of operation we do not consider that the issuer should necessarily receive the benefit of using reviewed rather than audited accounts, if the most recent reporting period is a half year.

Inclusion of cash flow statements

Proposal

B10 We propose to provide guidance that historical cash flow statements may need to be included in a prospectus where the financial history otherwise requires disclosure: see draft RG 228.87(b)(ii).

Your feedback

B10Q1 Do you have any comments on this proposed clarification?

Rationale

49 RG 228 currently specifies the inclusion of historical financial information in prospectuses, but does not specifically refer to the inclusion of cash flow statements. We note that all entities that prepare general purpose financial statements under the accounting standards (Australian Accounting Standard AASB 107 *Statement of cash flows*) are generally required for financial reporting purposes to provide cash flow statements. As described in the objective section of AASB 107:

Information about the cash flows of an entity is useful in providing users of financial statements with a basis to assess the ability of the entity to generate cash and cash equivalents and the needs of the entity to utilise those cash flows. The economic decisions that are taken by users require an evaluation of the ability of an entity to generate cash and cash equivalents and the timing and certainty of their generation.

50 Given the importance of this information, we are therefore seeking to clarify that for a prospectus where historical trading is disclosed, a cash flow statement should generally be included.

Circumstances where historical financial information disclosure may not be necessary

Proposal

B11 We propose to provide guidance describing the circumstances where audited financial information for the past two-and-a-half or three years would include information not relevant to an informed assessment of the issuer's financial position, performance or prospects, or which would not be reasonable for investors and their professional advisers to expect. In such circumstances, the provision of either unaudited information, audited information with a modified audit opinion, or financial information of less than two-and-a-half or three years duration may be consistent with investors receiving sufficient information for the purposes of the s710 test. Issuers may therefore justify departure from the two-and-a-half or three year audited guideline in two broad sets of circumstances, outlined in proposals B12–B13: see draft RG 228.97

Your feedback

B11Q1 Do you have any comments on this proposed clarification?

B11Q2 Do you have any feedback on the related examples in Case Studies 2–3 and 9 in Section C?

B12 We propose to provide guidance that historical financial information disclosure may not be necessary where two-and-a-half or three years of

audited financial information, or some part of it, is not relevant: see Table 10 in draft RG 228 and Table 1 below for some examples where this may apply.

Your feedback

B12Q1 Does the list of examples provide sufficient clarification as to the exceptional cases in which we may accept departure from the two-and-a-half or three year guideline on the grounds of relevance? If not, what are other examples or scenarios that should be included?

B12Q2 Is there a need to define relevance? We would generally consider that an operating history is relevant if it relates to the same sphere of economic activity as those the issuer intends to engage in after the issuance.

B12Q3 Do you have any feedback on the related examples in Case Studies 2–5 and 9 in Section C?

B13 We propose to clarify that historical financial information disclosure may not be necessary if it is not reasonable for investors and their advisers to expect two-and-a-half or three years of audited financial information: see Table 10 at draft RG 228 and Table 2 below for some examples where this may apply.

Your feedback

B13Q1 Does the list of examples provide sufficient clarification as to the exceptional cases where it is not reasonable to expect compliance with the two-and-a-half or three year guideline? If not, what are other examples or scenarios that should be included?

B13Q2 Do you have any feedback on the related examples in Case Studies 2–3 and 9 in Section C?

Rationale

51 The circumstances outlined in the proposals B12–B13 recognise that under the s710 test, information only needs to be disclosed to the extent that it is reasonable for investors and their advisers to expect to find it in the prospectus. We consider that it is therefore appropriate that financial information in a prospectus may depart from our general settings in current RG 228.87, where:

- (a) disclosure is not relevant to the investment decision being made; or
- (b) it is not reasonable to expect the information to be provided.

Reduced financial disclosure based on relevance

52 As described in proposal B12, we would not generally expect financial information to be disclosed where it is not readily to hand and is of little or no relevance to the investment decision being made. The two examples

focus on scenarios where, if the historical financial information in question is disclosed, it would be about a business that will not be part of the issuer post flotation. It is therefore unlikely that this information would have any relevance to an investor and would not need to be disclosed.

Table 1: Examples where disclosure may not be relevant

Example	Explanation	Relevant proposal
<p><i>Example 1: Main business change</i></p> <p>The issuer's main business undertaking has changed significantly in the historical period and has no relationship to the current business activities.</p>	<p>As the historical financial disclosure would focus on a business which will not be part of the issuer post-flotation, it is unlikely to be relevant.</p>	<p>Proposal B12</p>
<p><i>Example 2: Backdoor listing</i></p> <p>The company is a vehicle for a 'backdoor listing', where the company is effectively a shell without material assets or liabilities.</p>	<p>If the listed company is in fact a shell, then only the incoming business's trading history, along with opening balance sheet, are likely to be relevant for prospectus disclosure. However, historical audited accounts for the listed company may still be required for listing rule purposes.</p>	<p>Proposal B12</p>

Source: Table 10 of draft RG 228.

Reduced disclosure where it would not be reasonable

53 We recognise that our guidance needs to be sufficiently flexible to ensure not only that the interests of investors are adequately protected through the provision of sufficient and appropriate financial disclosures, but also that our guidance aligns with the information expectation of investors and their advisers. We therefore consider that there are select circumstances where, after taking into account the totality of information provided, it may be reasonable to provide less than two-and-a-half or three years of audited financial information. Examples, and associated explanations, are provided in Table 2.

Table 2: Examples where it may not be reasonable to expect full disclosure

Example	Explanation	Relevant proposal
<p><i>Example 3: Already consolidated</i></p> <p>The issuer acquired a business before the prospectus fundraising, and has already consolidated the acquisition for a substantial part of its disclosed financial history.</p>	<p>We do not consider that it would be reasonable to expect an issuer to have accounts audited for the acquired entity before the acquisition.</p> <p>This would most likely impose an unreasonable burden on the issuer where the business was purchased before the issuer was considering a public fundraising and, in any event, a substantial track record is already disclosed. However, it should be noted that our view would be different if the prospectus fundraising was being used to acquire the entity.</p>	<p>Proposal B13</p>
<p><i>Example 4: Year-one audit</i></p> <p>Certain information is not currently available to the issuer.</p>	<p>We recognise that disclosure of forecasts, and the historical period immediately preceding it, are of the highest priority to investors.</p> <p>Obtaining a clean audit opinion for the oldest or first financial year presented may be both difficult for some issuers and not reasonable when considered as part of the total financial information disclosed. However, where less than three years of financial history is presented, we are less likely to accept that some part of the financial history should not be audited.</p>	<p>Proposal B13</p>
<p><i>Example 5: Materiality</i></p> <p>An acquisition or some part of a business of the issuer is not material to understanding the issuer's financial history.</p>	<p>We do not expect disclosure unless the information is readily available. However, the materiality should be measured against the existing operations of the issuer rather than more generally. Small historical operations are not necessarily immaterial if the issuer is indeed small.</p>	<p>Proposal B13</p>

Source: Table 10 of draft RG 228.

C Worked case studies

Key points

In the following section we set out our views on the operation of these revised guidelines through some worked case studies. We invite comment on the case studies as part of your response to our proposed updates.

Case Study 1: Acquisitions using IPO funding

Scenario

- 54 Company X will acquire Companies Y and Z using funds raised from the proposed IPO. Companies Y and Z are material acquisitions. Company X has performed due diligence over Companies Y and Z, but these companies have never been audited (and have never been subject to a statutory requirement to be audited) and the financial information they compile is for tax and internal management purposes and to comply with the financial record-keeping requirements. Company X, before the IPO, has not negotiated access to the underlying financial records of Companies Y and Z as part of the heads of agreements and therefore is unable to have them audited. Company X proposes to include historical information about Company X and only proposes to include financial information for Companies Y and Z in the forecast, which will be reviewed by the investigating accountant.

Our view

- 55 We consider that the historical financial disclosure is likely to be deficient. Regardless of the presence of forecast financial disclosure, audited historical financial disclosure should be provided for Companies Y and Z as they are material. If Company Y or Company Z were themselves raising funds via a prospectus, they would be expected to provide RG 228 compliant historical financial disclosure. The fact that they are being acquired as part of a fundraising should not alter this analysis.

Relevant proposals and feedback questions

- 56 This case study demonstrates the effect of the proposed policy discussed at:
- (a) proposal B1; and
 - (b) questions B1Q1–B1Q3.

Case Study 2: Multiple immaterial acquisitions using IPO funding

Scenario

- 57 Company X will acquire 50 individual businesses in the same sector (known as a ‘roll up’ listing) using funds raised from the proposed IPO. None of these business are individually material. These businesses have been mostly run as sole traders that have not historically compiled financial statements for statutory purposes (beyond income tax and goods and services tax (GST) compliance). Many of the businesses have been accounted for on a cash basis. Company X is proposing to include a forecast for 12 months reviewed by an independent accountant, but cannot provide historical consolidated pro-forma financials. The issuer is proposing to include unaudited and unreviewed key historical metrics compiled from the due diligence process.

Our view

- 58 The issuer may argue that obtaining up to 50 individual ‘clean’ audits may not be possible as the businesses were accounted for on a cash basis. However, as the historical financial information is relevant, and in totality material, it is necessarily difficult to show that an investor and their professional advisers would not reasonably require it. We therefore consider that issuers should review their disclosure obligations long before lodgement of a prospectus with ASIC, so that financial information can be compiled and audited. We have reservations about whether providing historical metrics is necessarily a suitable substitute for full income statements.

Relevant proposals and feedback questions

- 59 This case study demonstrates the effect of the proposed policy discussed at:
- (a) proposals B1 and B11–B13; and
 - (b) questions B1Q1–B1Q3, B11Q1, B12Q1–B12Q2 and B13Q1.

Case Study 3: Carve out acquisition using IPO funding

Scenario

- 60 Company X is raising funds to acquire a business from Company Y. This business will be a significant part of Company X’s operations going forward. Company Y is a large listed company and is happy to divest this non-core and otherwise immaterial business. This business has been audited but only to the group materiality levels of Company Y. Company X intends to rely on the audit performed by Company Y’s auditor and only include the investigating accountant’s review opinion in the IPO document.

Our view

- 61 We would have reservations about accepting Company Y's financials as audited for inclusion in Company X's prospectus. This is because if an auditor were auditing the business for Company X, they would likely apply much lower materiality levels, which would increase the likelihood that the financials are free from material misstatement.

Relevant proposals and feedback questions

- 62 This case study demonstrates the effect of the proposed policy discussed at:
- (a) proposals B1 and B11–B13; and
 - (b) questions B1Q1–B1Q3, B11Q1, B12Q1–B12Q2 and B13Q1.

Case Study 4: Major acquisition in financial history, not funded by IPO**Scenario**

- 63 Company X acquires Company Y 18 months before a proposed IPO and well before any IPO is considered. Company X has always been audited and Company Y has only been audited as part of the Company X group since acquisition. Company Y is a material part of Company X's business. Company X plans to disclose a three-year financial history including Company Y as if it was acquired at the beginning of the three-year period; that is, the first 18 months of financial information will be pro-forma adjusted to include Company Y's financials. The full three-year financial history will be reviewed by the independent accountant.

Our view

- 64 We consider that the historical financial disclosure is acceptable. Given that Company Y's trading is incorporated for 18 months of the financial history, it is a substantial portion of the consolidated audited results of Company X. The issuer can decide whether they wish to pro forma Company Y's results from the beginning of the three year financial period.

Relevant proposals and feedback questions

- 65 This case study demonstrates the effect of the proposed policy discussed at:
- (a) proposals B1 and B12; and
 - (b) questions B1Q1–B1Q3 and B12Q1–B12Q2.

Case Study 5: Backdoor listing

Scenario

- 66 Company X is a listed shell company without any operations of its own and enters into an agreement to buy Company Y. The transaction is contingent on the prospectus fundraising. Shareholders of Company Y will end up with control of Company X. Company Y has been in existence for two years and has traded profitably.

Our view

- 67 We consider that Company X should provide a pro-forma balance sheet showing the effect of the acquisition and the contemporaneous fundraising. This should be based on the audited full year or more recent reviewed half year, depending on the timing of the fundraising. Audited financial statements for the prior two years should be disclosed for Company Y. As Company X is a listed shell, its historical trading is unlikely to be relevant, though the ASX Listing Rules may require disclosure of its financial statements.

Relevant proposals and feedback questions

- 68 This case study demonstrates the effect of the proposed policy discussed at:
- (a) proposals B1 and B12; and
 - (b) questions B1Q1–B1Q3 and B12Q1–B12Q2.

Case Study 6: Development of assets

Scenario

- 69 Company X has been developing a medical device for a long period of time. In the last three years, significant expenditure has been incurred testing and proving the safety of the product to the satisfaction of the relevant authorities. No revenue has been generated from sale of the product. The planned fundraising is to be used to commercialise the product and build the facilities in which to manufacture the product. Significant sales are expected in the forecast year. Company X does not plan to disclose the full two-and-a-half or three years of audited historical income statements.

Our view

- 70 As described in draft Section F of RG 228, we would generally expect disclosure of the audited historical income statements unless they are not relevant or it is not reasonable for them to be provided.

- 71 Company X is moving out of the research and development phase into the commercialisation and production phase. We do not accept the argument that the financial information is not material—as its financial statements account for all of Company X’s operations in the historical period—or that the business is a ‘start up’. We note that it could be argued that the financial information is not ‘relevant’ as the business will be in a different part of its lifecycle or, alternatively, that the company is not yet ‘in business’.
- 72 While the focus of investor interest is likely to be on the pro-forma balance sheet (assuming the development expenditure has been capitalised), we do not consider that historical trading information is irrelevant. There may be many circumstances where the historical trading information is relevant; for example, it may be useful to be able to determine the level of government funding received in the past and the amount expended on research. Further, using the guidance in Appendix B of AASB 3, we do not necessarily accept that Company X is not in business, as it appears to be well advanced in its production plans.

Relevant proposals and feedback questions

- 73 This case study demonstrates the effect of the proposed policy discussed at:
- (a) proposals B1 and B6–B7; and
 - (b) questions B1Q1–B1Q3, B6Q1 and B7Q1.

Case Study 7: Acquisition of assets

Scenario

- 74 Company X currently operates and receives income for managing a series of caravan parks and shares in profits obtained by developing low-cost accommodation on these sites. Company X will raise funds from a public offering to acquire the caravan parks. In the future, it intends to convert some of the acquired caravan parks to low-cost accommodation. Company X intends to disclose the acquisitions of the property at cost on the pro-forma balance sheet, without historical trading information. The acquisition costs are supported by independent property valuation reports.

Our view

- 75 Company X is acquiring a series of property-related assets. Ordinarily, we would expect balance sheet valuation of the recently acquired assets at cost, with supporting independent valuations. However, historically it has been operating a business that generates management and development fees. Given these activities, we would still generally expect audited historical

trading information that complies with current RG 228.87. The company can also include narrative disclosure and forecasts to provide disclosure about Company X's prospects and the change in business activities.

Relevant proposals and feedback questions

- 76 This case study demonstrates the effect of the proposed policy discussed at:
- (a) proposals B1 and B6–B7; and
 - (b) questions B1Q1–B1Q3, B6Q1 and B7Q1.

Case Study 8: Disclaimer of opinion in audit of a foreign issuer

Scenario

- 77 Company X is a foreign issuer seeking a listing. It has a profitable trading history and is proposing to include three years of audited financial history in the prospectus. The auditor's report contains a 'disclaimer of opinion' modification for revenue. The auditors have not been able to obtain necessary audit evidence for cash sales and are therefore not satisfied that revenue is free from material error. That is, the disclosed revenue could be understated as there are insufficient controls over cash sales. The issuer intends to highlight the risk to investors and the controls they will put in place (post listing) to mitigate the risks going forward.

Our view

- 78 We have reservations about a prospectus containing financial statements with this type of qualification. Even though revenue being understated could be considered to be less of a disclosure risk, we nonetheless consider that investors and their advisers require material financial information to be free from material error.

Relevant proposals and feedback questions

- 79 This case study demonstrates the effect of the proposed policy discussed at:
- (a) proposals B2–B5; and
 - (b) questions B2Q1–B2Q2, B3Q1, B4Q1 and B5Q1.

Case Study 9: Disclaimer of opinion in audit of a listed issuer

Scenario

80 Company X was in severe financial difficulties three years ago and entered administration. All the directors resigned. The administrators determined that the Company has not been keeping adequate accounting records for at least a year. Eventually, the administrators negotiated a deed of company arrangement (DOCA) and the company was re-listed with a new business. The company is seeking to raise funds and needs to lodge the outstanding financial statements. The auditor disclaims their opinion for the earliest period in light of the fact that inadequate records were kept. However, the most recent financial statements for Company X are not modified. Company X does not intend to include in the prospectus the qualified financials for the earliest period.

Our view

81 We consider it likely that the financial history of Company X, before the execution of the DOCA, is not relevant to the investment proposition going forward. The focus of investor interest is likely to be on the opening pro-forma balance sheet and the prospects of Company X with the new business going forward.

Relevant proposals and feedback questions

82 This case study demonstrates the effect of the proposed policy discussed at:

- (a) proposals B2–B5 and B11–B13; and
- (b) questions B2Q1–B2Q2, B3Q1, B4Q1, B5Q1, B11Q1, B12Q1–B12Q2 and B13Q1.

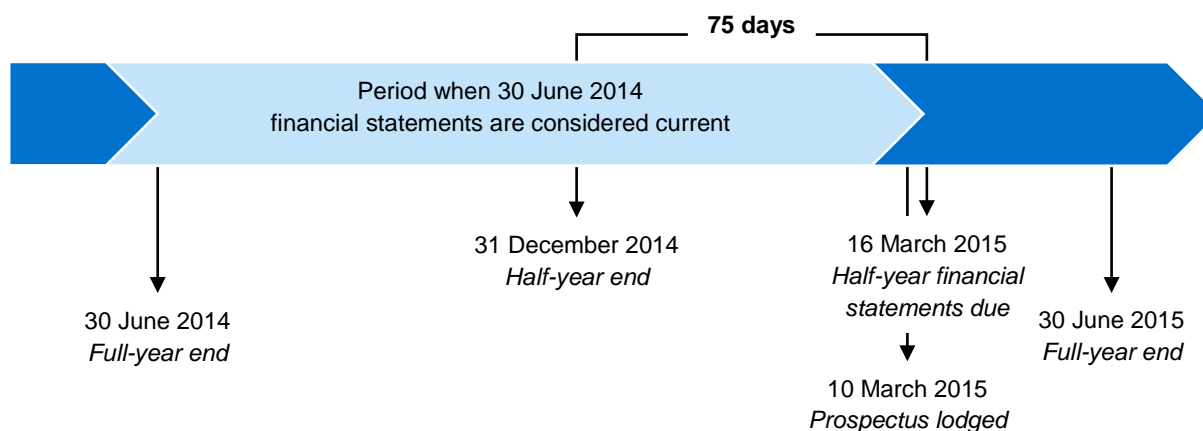
Case Study 10: Out-of-date financial statements

Scenario

83 Company X lodges a prospectus with ASIC on 10 March 2015. Company X has recently changed from a proprietary to a public company and has not previously had statutory reporting obligations. Its year end is 30 June. The company has audited financial statements for the two years ended 30 June 2014. Company X intends to include half-year trading results for the half year ended 31 December 2014 and a pro-forma balance sheet as part of the disclosure in its prospectus.

84 Figure 1 illustrates the scenario.

Figure 1: Company X reporting requirements



Our view

85 We would encourage the issuer to include the half-year audited or reviewed results in the financial information and to use the half-year balance sheet for the pro-forma balance sheet analysis. We would not expect the inclusion of the half-year financial information until 75 days after the half-year end (by 16 March 2015), the same time afforded to listed companies.

Relevant proposals and feedback questions

86 This case study demonstrates the effect of the proposed policy discussed at:

- (a) proposal B8; and
- (b) question B8Q1.

Case Study 11: Out-of-date financial statements—Intervening circumstances

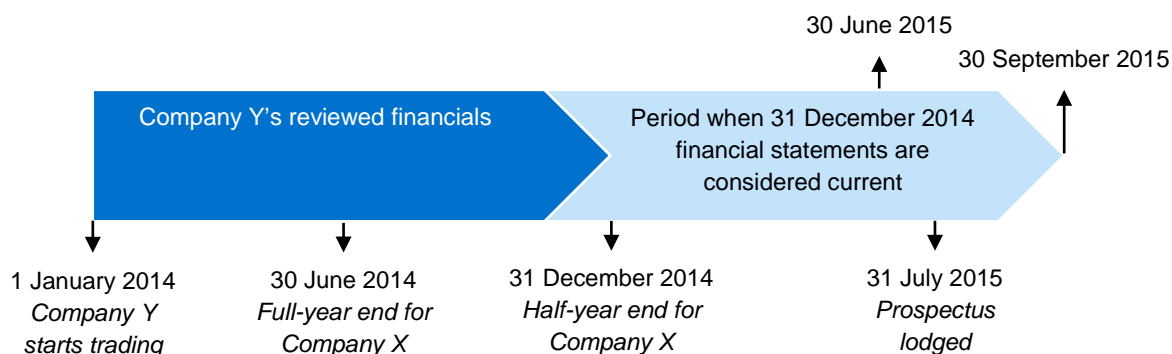
Scenario

87 Company X lodges a prospectus with ASIC on 31 July 2015. Company X is a listed shell company with no operations of its own and enters into an agreement to buy Company Y, using funds to be raised under the prospectus. Both Company X and Company Y have 30 June year ends. Company X has previously been audited. Company Y's operations started 1 January 2014 and have been expanding rapidly. Company Y will be a material acquisition for Company X. Company Y has no statutory obligations to have its financial statements audited. Company X therefore proposes to only provide Company Y's financial statements reviewed by the independent accountant (but not audited)

for the calendar year ended 31 December 2014 in the prospectus, along with Company X's reviewed balance sheet at 31 December 2014.

88 Figure 2 illustrates the scenario.

Figure 2: Companies X and Y financial reporting



Our view

89 While Company Y's financial statements are technically current, they are deficient because they have not been audited. Given the early stage of Company Y's development and the fact that they have not been audited previously, we may expect that these are audited up until 31 December 2014 or, preferably, a date much closer to the prospectus lodgement date (such as 30 June 2015). In some circumstances—for example, where there is a significant change in business activity after 31 December 2014—we would expect audited financials for Companies X and Y to 30 June 2015.

Relevant proposals and feedback questions

90 This case study demonstrates the effect of the proposed policy discussed at:

- proposals B1 and B8–B9; and
- questions B1Q1–B1Q3, B8Q1 and B9Q1–B9Q2.

D Regulatory and financial impact

- 91 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) investor protection; and
 - (b) the fundraising needs of corporate Australia.
- 92 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).
- 93 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.
- 94 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
ASX	ASX Limited or the exchange market operated by ASX Limited
AASB 3 (for example)	An Australian accounting standard (in this example numbered 3)
Ch 2M (for example)	A Chapter of the Corporations Act (in this example numbered 2M)
Corporations Act	<i>Corporations Act 2001</i> , including all regulations made for the purposes of that Act
DOCA	Deed of company arrangement
GST	Goods and services tax
IPO	Initial public offering
RG 228 (for example)	An ASIC regulatory guide (in this example numbered 228)
s710 test	The general disclosure test in s710 of the Corporations Act
s713 (for example)	A section of the Corporations Act (in this example numbered 713)

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to clarify that, subject to the circumstances described in proposals B11–B13, an issuer should disclose audited historical financial statements for two-and-a-half or three years for both the issuer and any business it acquires. This is regardless of whether the financial statements were required by law to be produced (apart from being in the prospectus) or whether the business is in a corporate form: see draft RG 228.88.</p>	<p>B1Q1 Do you have any comments on this proposed clarification?</p> <p>B1Q2 Is it unduly onerous to for an issuer to obtain audited financial information about the business being acquired?</p> <p>B1Q3 Are there potential impediments to issuers providing audited rather than reviewed or unaudited historical financial information? If so, under what conditions would these arise?</p> <p>B1Q4 Do you have any feedback on the related examples in Case Studies 1–7 and 11 in Section C?</p>
<p>B2 We propose to clarify that where an audit or review opinion (for half-year financial information) included in a prospectus has a qualification or modification that indicates that the audit opinion provides limited independent assurance for investors, we are likely to treat the financial information as effectively unaudited. In the event we treat the information as unaudited, it is likely that we will view the prospectus as not complying with the s710 test: see draft RG 228.92</p>	<p>B2Q1 Do you have any comments on this proposed clarification?</p> <p>B2Q2 Do you believe that risk disclosure can remedy issues related to the disclosure of financial statements that contain, for example, disclaimer opinions where the auditor could not access appropriate accounting records for material areas of the financial statements? If so, why?</p> <p>B2Q3 Do you have any feedback on the related examples in Case Studies 8–9 in Section C?</p>
<p>B3 We propose to clarify that we will generally accept that audit reports including emphasis of matter paragraphs (e.g. due to uncertainty about whether the company can continue as a going concern in circumstances where a successful fundraising will enable the company to continue its operations) will not result in us regarding the financial information as unaudited: see draft RG 228.93.</p>	<p>B3Q1 Do you have any comments on this proposed clarification?</p> <p>B3Q2 Do you have any feedback on the related examples in Case Studies 8–9 in Section C?</p>
<p>B4 We propose to provide guidance recognising that there may be practical audit issues where up to three years of financial statements are being audited for the first time. In these circumstances, we propose to note that it is generally acceptable for the audit or review opinion to contain opening balance qualifications and, subject to materiality, issues related to inventory inspections: see draft RG 228.94.</p>	<p>B4Q1 Do you have any comments on this proposed clarification?</p> <p>B4Q2 Are there audit issues other than those relating to 'opening balance' qualifications and inventory inspection procedures that may arise where financial statements for prior years are audited for the first time?</p> <p>B4Q3 Do you have any feedback on the related examples in Case Studies 8–9 in Section C?</p>

Proposal	Your feedback
<p>B5 We propose to clarify that the audit or review of historical financial information included in the prospectus should be conducted, for businesses and entities in Australia, in compliance with Ch 2M and, for businesses and entities from foreign countries, in substantial equivalence to Ch 2M: see draft RG 228.91.</p>	<p>B5Q1 Do you have any comments on this proposed clarification?</p> <p>B5Q2 Do you have any feedback on the related examples in Case Studies 8–9 in Section C?</p>
<p>B6 We propose to clarify that if assets acquired by an issuer are in substance the acquisition of a business, the issuer should generally disclose historical income statements: see draft RG 228.95.</p>	<p>B6Q1 Do you have any comments on this proposed clarification?</p> <p>B6Q2 Do you have any feedback on the related examples in Case Studies 6–7 in Section C?</p>
<p>B7 We will use the guidance in Appendix B of AASB 3 to assist us in determining whether an issuer has in fact acquired or is operating a business rather than an asset or a collection of assets: see draft RG 228.96.</p>	<p>B7Q1 Do you have any comments on our proposal to use Appendix B of AASB 3?</p> <p>B7Q2 Do you have any feedback on the related examples in Case Studies 6–7 in Section C?</p>
<p>B8 We propose to clarify our guidance on when financial information is considered current in a prospectus. RG 228.89 already states that issuers should include current financial information in their prospectus. This extends to requiring the inclusion of half-year financial information. Where the existing business that is the subject of the fundraising has not changed substantially and has an acceptable audit history (as described in draft RG 228.91–RG 228.94), the financial information will generally be considered current if the prospectus includes the most recent:</p> <p>(a) half-year audited or reviewed financial statements (where the prospectus is lodged with ASIC less than three months after year end); or</p> <p>(b) full-year audited financial statements (where the prospectus is lodged with ASIC less than 75 days after half-year end).</p>	<p>B8Q1 Do you have any comments on this proposed clarification?</p> <p>B8Q2 Do you have any feedback on the related examples in Case Studies 10–11 in Section C?</p>

Proposal	Your feedback
<p>B9 In some instances the business that is the subject of the fundraising may have changed so substantially that any unaudited post-balance-date material event disclosure would be of similar or greater significance for investors as the disclosure in the most recent audited or reviewed financial statements. We propose that in such cases the audited financial information included in the prospectus should have a more current balance date: see draft RG 228.90.</p>	<p>B9Q1 Do you have any comments on this proposed clarification?</p> <p>B9Q2 Do you agree that the issuer should provide audited rather than reviewed disclosure in the circumstances described above?</p> <p>B9Q3 Where an issuer has commenced operations and seeks to raise funds using a prospectus in its first year of operation, should the issuer be required to include audited rather than reviewed accounts?</p> <p>B9Q4 Do you have any feedback on the related example in Case Study 11 in Section C?</p>
<p>B10 We propose to provide guidance that historical cash flow statements may need to be included in a prospectus where the financial history otherwise requires disclosure: see draft RG 228.87(b)(ii).</p>	<p>B10Q1 Do you have any comments on this proposed clarification?</p>
<p>B11 We propose to provide guidance describing the circumstances where audited financial information for the past two-and-a-half or three years would include information not relevant to an informed assessment of the issuer's financial position, performance or prospects, or which would not be reasonable for investors and their professional advisers to expect. In such circumstances, the provision of either unaudited information, audited information with a modified audit opinion, or financial information of less than two-and-a-half or three years duration may be consistent with investors receiving sufficient information for the purposes of the s710 test. Issuers may therefore justify departure from the two-and-a-half or three year audited guideline in two broad sets of circumstances, outlined in proposals B12–B13: see draft RG 228.97</p>	<p>B11Q1 Do you have any comments on this proposed clarification?</p> <p>B11Q2 Do you have any feedback on the related examples in Case Studies 2–3 and 9 in Section C?</p>

Proposal	Your feedback
<p>B12 We propose to provide guidance that historical financial information disclosure may not be necessary where two-and-a-half or three years of audited financial information, or some part of it, is not relevant: see Table 10 in draft RG 228 and Table 1 below for some examples where this may apply.</p>	<p>B12Q1 Does the list of examples provide sufficient clarification as to the exceptional cases in which we may accept departure from the two-and-a-half or three year guideline on the grounds of relevance? If not, what are other examples or scenarios that should be included?</p> <p>B12Q2 Is there a need to define relevance? We would generally consider that an operating history is relevant if it relates to the same sphere of economic activity as those the issuer intends to engage in after the issuance.</p> <p>B12Q3 Do you have any feedback on the related examples in Case Studies 2–5 and 9 in Section C?</p>
<p>B13 We propose to clarify that historical financial information disclosure may not be necessary if it is not reasonable for investors and their advisers to expect two-and-a-half or three years of audited financial information: see Table 10 at draft RG 228 and Table 2 below for some examples where this may apply.</p>	<p>B13Q1 Does the list of examples provide sufficient clarification as to the exceptional cases where it is not reasonable to expect compliance with the two-and-a-half or three year guideline? If not, what are other examples or scenarios that should be included?</p> <p>B13Q2 Do you have any feedback on the related examples in Case Studies 2–3 and 9 in Section C?</p>