

7 July 2016

Mr Terence Kouts
Corporations
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2001

via email: policy.submissions@asic.gov.au

Dear Mr Kouts

Consultation paper 257 Improving disclosure of historical financial information in prospectuses: Updated to RG 228

The Australian Institute of Company Directors (AICD) is pleased to provide comments on *Improving disclosure of historical financial information in prospectuses: Update to RG 228 Consultation Paper May 2016* ('Consultation Paper').

The AICD is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 38,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

The AICD supports the objective of ASIC to 'clarify our expectations for the quality and quantity of historical financial information that should be disclosed in prospectuses'. We note that the need for this clarification is based on ASIC's analysis, albeit limited due to sample size, that there is a link between poor financial disclosures in prospectuses and subsequent poor performance of issuers over the 2012 – 2014 period. We consider the proposed changes to the guidance, taken as a whole, to be consistent with this objective.

The AICD is generally supportive of the Consultation Paper proposals and we welcome the efforts of ASIC to provide general guidance when exercising its discretion. However, we encourage ASIC to continue to apply discretion along with the ASX, even if not covered in the general guidance outlined in this Consultation Paper, to ensure they do not impede the growth of innovative businesses in Australia.

Our further comments on specific questions in the Consultation Paper are included below.

- **B1: Clarification that issuers to disclose audited historical financial statements for two-and-a-half or three years for both the issuer and any business it acquires**

The AICD supports the proposal for issuer entities to provide three years' (or two-and-a-half years if applicable) of audited financial accounts, unless circumstances permit otherwise.

AICD members have emphasised the importance of ASIC maintaining appropriate flexibility in this area. This is particularly relevant to start-up and early stage enterprises, and in situations where historical information is no longer relevant (for example, where the profile of a business has changed or the information is not material to the potential issuer). However, the wording of the proposed paragraph 88 of the marked up version of RG228 does not indicate this flexibility and should cross reference to paragraph 97.

The AICD would also like ASIC to clarify the linkage between paragraph 87 and 88 of the marked up version of RG 228. Paragraph 88 refers to businesses or entities that are being acquired, as does paragraph 87 and the proposed requirements do not seem to be consistent.

See also our response to B11, 12 and 13.

- **B3: Clarification in accepting audit reports with going concern emphasis of matter paragraphs where fundraising will enable the company to continue its operations**

The AICD supports including this clarification. We note that this is consistent with past practice and can be properly rectified with disclosure.

However, while the going concern emphasis of matter is one example, another common emphasis of matter relates the preparation of a special purpose financial report. We consider the ASIC guidance should specifically refer to such emphasis of matters, and provide a view as to whether they would be acceptable and if so, in what circumstances.

The AICD believes ASIC should consider circumstances where it is clear that the guidance in RG 85 *Reporting requirements for non-reporting entities* has been followed and also where a special purpose financial report relates to the first year of audited financial statements where it may not have been envisaged at the time that a listing would be undertaken.

- **B4: Guidance recognising that there may be practical audit issues where up to three years of financial statements are being audited for the first time**

The AICD supports the Consultation Paper proposals. However, we consider that ASIC should not be restrictive in its language in paragraph 39 of the marked up RG 228, and should maintain flexibility in this regard.

AICD considers that there could be other modifications in respect of the application of judgements or estimates. Further, it is possible that such modifications may not simply exist for the first year, but may roll over into the second year (particularly in regards to inventory or estimates) and that roll back procedures may not be practical.

- **B5: Clarification that the audit or review of historical financial information should be conducted in compliance with Chapter 2M**

With the possible exception of foreign issuers (as noted by ASIC), the AICD supports the clarification that the financial statements and the audit should substantially comply

with Chapter 2M of the *Corporations Law 2001*. We note that this will provide investors, which are predominantly based in Australia, a consistent framework of which they are familiar with.

- **B10: Guidance that cash flow statements may need to be included in the prospectus where the financial history requires disclosure**

The AICD supports the clarification to provide a cash flow where historical trading is disclosed. The inclusion of a cash flow statement is advantageous in helping an investor and their advisors in assessing the financial health of a business. This will enable a user to assess how the cash is being generated and being spent and whether it is being generated from operations, investing or finance activities.

- **B11: Guidance describing circumstances where audited financial information for the past two-and-a-half or three years would include information not relevant;**
- **B12: Guidance on when historical financial information may not be necessary; and**
- **B13: Guidance where disclosure of historical financial information may not be necessary for investors and their advisers**

The AICD does not consider that it would be relevant or reasonable for an issuing entity to provide three years of audited financial information in all circumstances. ASIC has recognised this by providing some examples in Table 10 of circumstances where historical financial information disclosure may not be required. These examples are provided in situations where the financial information is 'not relevant' or 'not reasonable'.

The AICD considers there would be benefit in noting, within paragraph 97 of RG228, the discretion that exists by ASIC in approving such circumstances, noting that such examples are not the only considerations. Clear definitions should be provided of 'relevant' and 'reasonable' and a clear materiality framework outlined. A materiality framework is particularly relevant when considering whether 'a business or entity you propose to acquire' requires additional financial information disclosures.

We also note here that some of these examples relate to the audit of such information and therefore the heading may be correctly entitled as 'Circumstances where audited historical financial information disclosure may not be required'.

If you would like to discuss any aspect of our views please contact Kerry Hicks, Senior Policy Adviser, on khicks@aicd.com.au or 02 8248 6635.

Yours sincerely



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