

Private & Confidential

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Dear Terrence,

**CP 257 IMPROVING DISCLOSURE OF HISTORICAL FINANCIAL INFORMATION IN PROSPECTUSES
UPDATE TO RG 228-RESPONSE**

This paper is submitted in response to ASIC in response to the ASIC consultation paper released in May 2016 titled Improving disclosure of historical financial information in prospectuses: Update to RG 228.

In preparing these submissions we have had regard to our experience in preparing Investigating Accountants Reports for prospectuses and also to conversations and queries with clients and other advisers who required further information on RG 228.

We note that despite RG 228 being in place for some time there is still significant uncertainty as to its operation in the general market and we welcome ASIC seeking to update the RG to provide clarity to participants who are not exposed to prospectuses and the operation of RG 228 on a regular basis.

In general we support the intention of ASIC to provide further clarity as well as pursuing an objective of providing a higher quality of financial information.

Responses to questions in the CP

Set out below in grey are our responses to the questions in the consultation paper.

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

B1Q1 Do you have any comments on this proposed clarification?

We support that the proposal increases the quality of financial information that will be provided in disclosure documents, however we believe the guidance should clarify if for an existing listed entity it is acceptable for reviewed financial information for a half year period to be included as opposed to audited. We believe it would be onerous for a listed entity to be required to have half year financials audited due to a disclosure document being audited when it is acceptable for shareholders to trade on reviewed information.

B1Q2 Is it unduly onerous to for an issuer to obtain audited financial information about the business being acquired?

As the previous RG 228 set out that reviewed or audited half year financials were required (in the case of a two and a half year financial history, we do not consider it onerous for the half year period to be audited. We believe it would be appropriate to amend RG 228.87(a) below to distinguish between an already listed entity and an incoming entity.

“a consolidated audited statement of financial position for the most recent financial year (or audited or reviewed half-year depending on the date of your prospectus: see RG 228.89) showing the major asset, liability and equity groups and a corresponding pro-forma statement of financial position showing the effect of the offer;”

This would enable an already listed entity with a sufficient audit track record to rely on reviewed half yearly accounts in a prospectus which appears consistent with paragraph 46 of the consultation paper.

We note that circumstances may exist where an entity acquires a business from an entity who will not provide audited history. This can often occur in a competitive sales process where the vendor is a private party and for a number of valid reasons do not want information in the public domain due to family matters for example. Normalised unaudited financial information may be provided as part of the due diligence process which enables non business related transactions to be removed. In our view this may provide a situation where a lack of three years audited information is acceptable when considered with other factors. It would not be feasible to demand the historical financial records for such a business acquisition as the records are the property of the company and accordingly may not be available to the buyer.

For example the transaction may be settled with cash pre IPO, funds may be raised pre IPO as part of this process where investors and their advisors are satisfied with the unaudited information, bank funding has been provided and the bulk of the assets of the business comprise of real property which can be reliably valued by an independent third party. In this type of scenario we would question whether s710 would extend the need to provide an audited 3 year history. We have the view that a recently audited balance sheet of the combined entity in conjunction with a property valuation report is likely to satisfy the needs of investors. If this was found to be unacceptable we interpret the guidance to mean that once an 18 month combined entity audit history is established the group would be able to list. This may prevent some quality assets/entities from being listed or delay them significantly. We would recommend this situation is considered and an up front consultation process is adopted so that an entity can get certainty (provided they disclose all facts and these do not change) as to ASIC’s view prior to incurring significant costs in progressing to listing.

Where there are pre IPO funds raised from investors on limited information which enables an unaudited business to be acquired pre IPO and those shareholders are to be escrowed also provides further benefit to IPO investors.

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?

We consider that these impediments, such as qualifications etc are covered by the other proposals. Particularly in relation to a business acquisition as discussed above.

An impediment may exist due to the application of the ASX listing rules, whereby entities are suspended following an announcement of a backdoor listing. Due to an entity that is carved out per the example in Case Study 3. This suspension may impact the shell adversely if they need to raise funds to continue operations until the audit of the carved out entity can be completed. An extract of a submission to the ASX by a group of advisers is set out below that may assist in removing this impediment if followed.

- 1.1 As an alternative to the new approach detailed in section 5.4 of Guidance Note 12, the Group submits that entities announcing a transaction requiring re-compliance with Chapters 1 and 2 of the Listing Rules (pursuant to the application of Listing Rule 11.1.3) should not be required to request a voluntary suspension of quotation of their securities from trading until they satisfy ASX's requirements for re-quotation, nor should ASX suspend quotation in such circumstances, rather such entities should be permitted to have their securities remain quoted if:
 - 1.1.1 no securities have been issued and granted quotation in the six month period immediately prior to the relevant announcement (excluding securities issued on conversion of convertible securities or issued pursuant to pro rata entitlement offers (together, **Excluded Offers**)) as evidenced by Appendices 3B; or
 - 1.1.2 where securities (other than Excluded Offers) have been issued and granted quotation during the above six month period and the entity can demonstrate to ASX that those securities have not traded and are subject to a voluntary holding lock.
- 1.2 In circumstances where securities have been issued within the prior six month period and the non-trading / holding lock requirements are not satisfied, it is appropriate for the issuer to request that quotation of its securities be suspended from quotation as provided for in paragraph 5.4 of the amended Guidance Note 12, in order to ensure that, during the re-compliance period, the market trades on a fully informed basis.
- 1.3 ASX may also wish to consider requiring that the initial announcement of the backdoor listing transaction contains more fulsome prescribed information concerning the new venture (including, but not limited to, disclosure of risk factors) so as to ensure that the market trades on a fully informed basis.
- 1.4 The Group considers that such an alternative approach (or a derivation of such) will address the underlying issues that ASX is seeking to address, whilst also (subject to the requirements being met):
 - 1.4.1 ensuring shareholders are not deprived of the ability to trade their securities (which may be for up to three months or more); and

- 1.4.2 assisting in the pricing of capital raisings accompanying Chapter 11 transactions by permitting the market to form a view on the proposed change in nature and/or scale of the business.
- 1.5 This approach is consistent with the default position for M&A transactions where shares are permitted to continue to trade once a transaction has been disclosed to the market.
- 1.6 The Group further submits that ASX may wish to consider a 12 month trial of the above approach.

Another impediment that may be encountered is where a business is purchased from another entity and records do not exist historically for that business in a manner that would provide the ability for an audit sign off to be provided. We recommend that ASIC engages with auditors to determine what the audit framework actually enables them to sign off and the resulting opinions that they may issue if engaged to audit a business that forms only part of an entity.

B1Q4 Do you have any feedback on the related examples in Case Studies 1-7 and 11 in Section C?

Case Study 1 We believe that market practice will adapt to this requirement

Case Study 2 - We concur with ASIC's view on the case study, we would expect that in practice a "roll up" would typically involve entities of varying sizes enabling audits to be performed on a number of entities that cover the material results of the combined group. We believe this is the standard that would be expected by investors and their advisers.

Case Study 3 - We agree with ASIC's views, but note the potential impediment in response to B1Q3.

Case Study 4 - We believe that ASIC's view that as the substantial portion of the history has been audited this is an appropriate view to take, however we would seek further clarity on what form of "review" the investigating accountant would undertake on the pro forma results for the 3 years given that 18 months of this history is unaudited. Can ASIC clarify what their intention is in this respect of what assurance the investigating accountant would provide? For example is the intention that a review opinion is issued on the 18 months of earlier history that was not subject to an audit?

Case Study 5 - We agree with ASIC's view however we would expect that the reporting requirements under the ASX listing rules with the shell's reporting requirements are referenced by RG228, this would be consistent with the approach taken by proposal B8.

Case Study 6 - We do not necessarily disagree with ASIC's conclusion in this respect however we believe the case study is not appropriate for the conclusion due to the level of detail included. For example it would be arguable that until the production facility is commissioned the entity lacks the appropriate processes and resulting outputs that comprise a business. We are aware of examples of successful prototypes for which substantial sales were expected however these were not achieved due to production issues that took significant amounts of time to overcome and it would be feasible for such an entity to argue that they did not have a business until the significant commercial production issues were overcome. We would suggest that a range of more detailed examples are included in the guidance to enable ASIC's conclusions to be supported.

Case Study 7 - We believe this case study does not provide adequate guidance, we would recommend that ASIC should expand on this case study to ensure the intention of the guidance achieves its purpose.

For example it is not clear what the audited accounts referred to would cover, is this;

- In respect of the historical management business of Company X alone?; or
- Or the historical operations of Company X and the audited accounts of the businesses from which the caravan parks were acquired?

Would a caravan park which was to be redeveloped in it's entirety and not operated going forward need an audited history?

We recommend that ASIC liaise with the IFRS technical teams in various accounting firms to develop another or a few scenarios that may better convey the intention of the proposal.

Case Study 11- We agree with ASIC's views in the case study in respect of having Company Y's financial statements audited. However we view the following conclusion as one which may cause concern in the market *"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."* The specified timeframes are impractical, a company seeking to lodge in July as set out in the example would have significant difficulty in closing their books at 30 June, have them audited and incorporated in a prospectus in such a time frame. We believe that the case study should specify that other dates may be appropriate ie 31 March, 30 April or May if this shows a track record of the significant change that occurred after 31 December and allows a practical timeframe for an audit to be completed prior to lodgement.

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

B2Q1 Do you have any comments on this proposed clarification?

Where the qualification or modification is not identified by the other proposals as being acceptable we believe the view that the information is effectively unaudited is correct.

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?

In limited circumstances it may be possible for risk disclosure to remedy the issues, our view would be that this would generally be covered by the situations covered in Table 10, or if you are able to quantify the risks (eg qualification over the existence or carrying value of an asset). If the risk is in relation to a matter relating to an item such as unrecorded liabilities we would not consider this to be appropriate.

B2Q3 Do you have any feedback on the related examples in Case Studies 8-9 in Section C?

Case Study 8 - We understand ASIC's view and note the comment about the understatement of revenue and question if this would be of relevance to an investor and their advisors. The process of undertaking an IPO is a costly exercise and under current practice a company would only have certainty of ASIC's final view once their prospectus is lodged.

We would recommend that ASIC considers adopting an approach similar to a tax ruling to consider the situation where there is a modified opinion in the audit report. A process whereby a company could make a submission of facts, including providing the audited accounts that contain the opinion, proposed remedial action the company will undertake and other relevant information. ASIC could then provide a view on the acceptance of the opinion in respect of financial information to be included in a prospectus at the outset of the process thereby assisting entities in avoiding incurring expenses. This would be particularly useful in relation to foreign entities to ensure that the international view of Australian markets as being transparent, well regulated and cost effective are maintained.

Case Study 9 - We agree with ASIC's views and expect that a DOCA is the most likely scenario in which this would be encountered, we would recommend that for other scenario's that are encountered a process as detailed above is put in place.

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.

B3Q1 Do you have any comments on this proposed clarification?

We believe this clarification is appropriate and is consistent with market expectations and that given a clean opinion can be provided in the more recent periods this does not materially detract from the information provided to investors. The successful capital raising also alleviates the going concern issue in most cases. We note ASX determining that Guvera was inappropriate to list and they were not raising the required capital for the next 12 months which further safeguards investors.

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

Case Study 8 - Per comments above for matters other than going concern

Case Study 9 - Per comments above for matters other than going concern

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.

B4Q1 Do you have any comments on this proposed clarification?

We believe this clarification is appropriate and is consistent with market expectations and that given a clean opinion can be provided in the more recent periods this does not materially detract from the information provided to potential investors.

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?

In our view other potential qualifications are likely to be able to be addressed by alternative procedures, for matters that do arise that are not contemplated we recommend a process as detailed in our response to B2Q3.

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

Refer to previous responses

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

B5Q1 Do you have any comments on this proposed clarification?

We support this clarification

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

Refer to previous responses

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

B6Q1 Do you have any comments on this proposed clarification?

We support this clarification and consider that this was incorporated in the current version of RG228.

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.

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

We note that Appendix B of AASB 3 does not provide significant practical guidance, for example refer to the following link in respect of extractive industries.

<https://www.bdo.com.au/getattachment/3afa4f1d-1b03-4081-9e65-10f1f8f0d25f/attachment.aspx>

Further guidance may be required in practice to ensure that ASIC’s views are consistent with views signed off in financial reports as complying with AASB3.

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

Refer to previous responses in B1Q4

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).

B8Q1 Do you have any comments on this proposed clarification?

We agree with this clarification. However, comment on the use of balance dates in between these dates may be useful for market participants. We often receive queries as to when accounts are out of date for ASX purposes which has been a long established benchmark. Accordingly, it would be beneficial in our view to expand on the disclosure of ASIC's views such as if we use March to freshen up the accounts. How long would they be current for? Longer if they are audited than if they are reviewed?

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

Refer to previous response in relation to Case Study 11

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.

B9Q1 Do you have any comments on this proposed clarification?

Further detail could be provided to distinguish between a material transaction versus material changes in trading. In our view, a material post-balance date event or a limited number of event(s) can be dealt with adequately by the opinion expressed by the investigating accountant. For example, post-balance date and pre-lodgement

Shares may be issued

Loan agreements are entered into

These events are able to be substantiated efficiently without incurring all of the obligations that are required by an audit, i.e. a bank confirmation, stocktake attendance etc.

Where the business has changed substantially, we would agree that audited financials that demonstrate the track record post the change to the business would be appropriate.

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

Based on the requirements of RG 228, we believe audited is appropriate to ensure consistency with other proposals.

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?

We would take the view that an audited history would be required to be consistent with the other proposals.

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

Refer previous responses

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).

B10Q1 Do you have any comments on this proposed clarification?

We do not believe that this is an onerous requirement and despite not forming market practice in the past may provide more relevant information for some entities.

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

B11Q1 Do you have any comments on this proposed clarification?

We believe the guidance in Table 10 is appropriate, similar to our proposed process in relation to modified audit opinions a similar process in respect of this issue would in our view be beneficial for efficient market operation.

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

Refer previous responses

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

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?

We believe the list is sufficient in terms of being limited to specific circumstances that we would not expect to occur.

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.

We believe that expressing a view on relevance would be of benefit to ensure that Example 1 in Table 10 is not extended by issuers to lead them to exclude a loss making period in year 1 and only disclose profitable periods by virtue of considering the business operation to have "changed significantly" Whilst ASIC's view on relevance is consistent with what many would expect the needs

of an investor and their advisor to be the explanation referred to above would make the RG more robust.

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

Case study 9 is the most common circumstance we would expect to observe.

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.

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?

We believe the list of examples is sufficient other than potentially adding the scenario discussed in B1Q2

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

Refer previous responses

Should you wish to clarify these matters further Sherif Andrawes and Adam Myers would be more than happy to discuss as appropriate. We thank you again for the opportunity to assist in providing our views to achieve enhanced clarity as to the operation of the updated RG 228.

Yours faithfully

BDO CORPORATE FINANCE (WA) PTY LTD



Adam Myers

Director



Sherif Andrawes

Director