



Grant Thornton

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Dear Terry

IMPROVING DISCLOSURE OF HISTORICAL FINANCIAL INFORMATION IN PROSPECTUSES: UPDATE TO RG 228

Grant Thornton Australia Limited (Grant Thornton) is pleased to provide the Australian Securities and Investments Commission (ASIC) with its comments on Consultation Paper 257 – Improving disclosure of historical financial information in prospectuses: Update to Regulatory Guide 228.

We support ASIC's decision to improve the disclosures relating to historical financial information in relation to prospectuses in combination with the proposed changes to the ASX listing rules.

We would also encourage ASIC to have a more proactive role in assessing the adequacy of due diligence as it relates to Issuers' disclosure documents. In addition, we note that the proposed changes to the ASX listing rules Guidance Note 1 refers to the appropriateness and expertise of the auditor of historical financial information and we would like to see this expanded to include the appropriateness and expertise of the Investigating Accountant.

We would like to see ASIC be open to more dialog with potential Issuers and the suitability of historical financial information at an early stage in the IPO process.

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Our Ref: L - 160707 RG 228 Improving Disclosure Of Historical Financial Information In Prospectuses (NC).Docx

Our responses to the questions raised in the Consultation Paper are detailed in the attached Appendix.

If you require any further information or comment, please do not hesitate to contact me.

Yours faithfully
GRANT THORNTON AUSTRALIA LIMITED



Neil Cooke
Partner - Corporate Finance

Appendix 1

Questions

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.

1. Do you have any comments on this proposed clarification?

We agree with the proposed clarification but however note that if the Issuer is proposing to include pro forma income statements reflecting the historical financial performance of acquired entities obtaining pre-acquisition audited financial information may not be possible.

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

In a lot of circumstances the acquired business would not be required to be audited under the Corporations Act and it is not possible to audit pre-acquisition periods. As noted above this is particularly relevant if an Issuer is proposing to include pro forma historical income statements in the Prospectus as noted in Case Study 3. We recommend a more definitive position be adopted as to an acceptable audited period from acquisition if in fact an Issuer intends to include a pro forma income statement for the full three financial years.

3. Are there potential impediments to issuers providing audited rather than reviewed or unaudited historical financial information? If so, under what conditions would these arise?

Please refer to Question 2 above.

4. Do you have any feedback on the related examples in Case Studies 1–7 and 11 in Section C?

Case Study 5 only requires two years audited history of Company Y which is a departure from the general three year or two and half year requirements. We would like to understand the basis of this adopted position.

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

1. Do you have any comments on this proposed clarification?

This is a reasonable position to adopt and we concur.

2. 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?

However prominent we do not believe disclosure in the risk factors is an appropriate remedy particularly if a material element of the Issuers business is effectively unaudited. Issuers should ensure adequate evidence is obtained through due diligence if at the time of acquisition an IPO was considered. Please refer to our position on B1 Question 2.

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

We agree with the adopted position in both case studies.

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.

1. Do you have any comments on this proposed clarification?

We encourage ASIC to continue to accept emphasis of matter paragraphs relating to going concern. In line with ASA 706 an emphasis of matter does not provide a modified opinion, merely drawing attention to an area of concern for investors and shareholders.

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

We do not provide any further comments on the case studies.

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.

1. Do you have any comments on this proposed clarification?

We agree with the proposed approach, we would also consider these qualifications on inventory may be relevant for all three reporting periods depending on the date of appointment of the auditor.

2. 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?

We do not envisage any other issues that have not already been addressed in the relevant case study examples in the proposed regulatory guide.

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

Case study 8 could benefit from clarification on disclaiming on the financial statements as a whole rather than a specific line item. Otherwise we agree with the responses indicated in the proposed regulatory guide.

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.

1. Do you have any comments on this proposed clarification?

We encourage the audit or review of historical financial information to be in the conducted as described in accordance with Ch 2M of the Corporations Act.

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

Disclaimer of Opinions, Adverse Opinions and certain qualifications should be considered not appropriate for prospectus financial information. We therefore agree with the proposed response in Case Study 8 and 9.

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.

1. Do you have any comments on this proposed clarification?

We agree this is a reasonable position, as it is the substance of the transaction which is more relevant than necessarily the legal form.

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

We concur with the position adopted in Case Study 6.

In relation to Case Study 7, we also agree that historical trading information is important for an investor to assess the reasonableness of the acquisition however we do note that depending on the size of acquisition the historical financial information may not be audited, refer to our position on B1 Question 2.

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.

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

We would encourage ASIC to utilise the guidance currently in existence in relation to AASB 3 Appendix B. We would also encourage ASIC to ensure any updated interpretations in the technical community are considered in light of this determination.

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

We do not provide any further comments on the case studies.

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).

1. Do you have any comments on this proposed clarification?

We support the clarification and from a practical view point would also encourage our clients to provide current financial information in line with Case Study 10.

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

We support the position adopted in both Case Studies and in particular Case Study 11 which has been a significant issue with back door listings and in our view inadequate disclosure (or due diligence).

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.

1. Do you have any comments on this proposed clarification?

The determination as to whether a more current audited or reviewed balance date should be dependent upon the balance sheet of the acquiring entity. The Investigating Accountant provides a limited assurance report on the pro forma transactions applied to the balance sheet if at the date of the Prospectus the transaction has not occurred. We would like to see more specific guidance and definition of what constitutes a more “current” balance date.

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

We consider in these circumstances, where the prior balance sheet was audited a review would be appropriate, however this would not be the case if only the prior balance sheet was reviewed.

3. 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 consider audited financial information would be appropriate in these circumstances. A review is too narrow in scope irrespective of the period of trading from commencement of operations. In addition, by requiring audited financial information this prepares the Issuer for financial reporting in future periods as a listed company.

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

We concur with the adopted position in Case Study 11 as we consider the audit of Company Y’s historical financial performance important for incoming investors. We are also of the view that whilst technically in line with the ASX listing rules (being 8 months) more up to date financial disclosures would be appropriate.

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).

1. Do you have any comments on this proposed clarification?

We support this position but there will be circumstances where a full cash flow statement is not appropriate and in particular if there are pro forma adjustments made to the historical income statement therefore in these circumstances pro forma operating cash flows and the component parts should be disclosed.

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

1. Do you have any comments on this proposed clarification?

We support the clarification.

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

Case Study 2 should allow for a consolidated audit of the group formed by the 50 individual businesses and a group materiality adopted rather than seek to obtain individual audits. We do not support a shorter historical financial period being disclosed in the absence of audited financial information. If the disclosure of the basis of the preparation of the pro forma historical financial information is comprehensive and is clear as to audited compared to unaudited historical financial information and consistent with our position on B1 Question 2. We do seek clarity on what is an adequate period to be audited as a group if pro forma income statements are included in the Prospectus for the full historical period.

Case Study 3 should ensure that there is adequate disclosure on the basis of preparation and the procedures adopted by the Investigating Accountant to arrive at the Limited Assurance conclusion in the absence of the requirement for a reaudit

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.

1. 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?

The examples provided in Table 1 indicate where disclosures may not be relevant and appear to provide specific sets of circumstances which we agree would determine that disclosures would not be relevant to investors.

2. 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.

Relevance is a term described in auditing standards to highlight the suitability of information given a set of facts and circumstances. We would therefore consider that ASIC does not need to define relevance given the prospective audience.

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

Case Study 2 would benefit from considering a consolidated approach in line with ASA 600 to provide a pro forma consolidated opinion on the overall proposed business. In addition, we would encourage all material pro forma information to be audited in line with an ASA 600 approach.

Case Study 3 could be more precise in requiring a re-audit of the underlying information to be included in the prospectus.

We do not provide any further comments on the other case studies.

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.

1. 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?

The list of examples illustrated in Table 10 of the draft RG228 provides 5 examples where the above requirement would not be considered appropriate. The examples appear comprehensive and illustrate the guidelines of these criteria. We would also encourage ASIC to be open to communication and discussion with potential Issuers and their advisors where there are other criteria outside these examples to ensure the financial information is appropriate to the investors.

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

The examples provided are clear and relevant to the current market circumstances.