



**ASIC**

Australian Securities & Investments Commission

**REPORT 502**

# **Response to submissions on CP 257 Improving disclosure of historical financial information in prospectuses: Update to RG 228**

November 2016

## **About this report**

This report highlights the key issues that arose out of the submissions received on Consultation Paper 257 *Improving disclosure of historical financial information in prospectuses: Update to RG 228* (CP 257) and details our responses to those issues.

### 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.

### Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228).

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## A Overview of consultation

- 1 In [Consultation Paper 257](#) *Improving disclosure of historical financial information in prospectuses: Update to RG 228* (CP 257), we consulted on proposals to modify our guidance in Section F of [Regulatory Guide 228](#) *Prospectuses: Effective disclosure for retail investors* (RG 228) to clarify the quality and quantity of historical financial information that we expect issuers to disclose in prospectuses.
- 2 Specifically, we consulted on proposals to expand our guidance and provide additional clarification about our expectations, including that:
  - (a) issuers who own or propose to acquire 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 whether prior statutory financial reporting requirements existed;
  - (b) certain types of audit opinions may not be acceptable for the purposes of prospectus disclosures;
  - (c) disclosure expectations are different for asset acquisitions;
  - (d) financial disclosures will be considered 'current' where financial information is provided in alignment with statutory timelines for disclosing entities;
  - (e) cash flow statements should be included when disclosing financial history; and
  - (f) there may be select circumstances where disclosures of certain historical financial information may not be necessary on the basis of being irrelevant or unreasonable to expect.
- 3 This report highlights the key issues that arose out of the submissions received on CP 257 and our response to those issues.
- 4 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 257. We have limited this report to the key issues.
- 5 We received 14 non-confidential responses to CP 257 from accounting firms, industry associations and other interested parties. We are grateful to all the respondents for taking the time to send us their comments. We are also grateful to the individuals who provided feedback and discussed specific issues with us before and during the consultation process.
- 6 For a list of non-confidential respondents to CP 257, see the appendix. Copies of these submissions are available on the ASIC website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 257.

## Response to consultation

- 7 Respondents were overall generally supportive of our proposals to update and provide additional clarity about our expectations for the quality and quantity of historical financial information in prospectuses.
- 8 In summary, the key issues raised by respondents related to:
- (a) our proposal to require disclosures of audited historical financial information for two-and-a-half or three years for both the issuer and any business it acquires, given the practical and sometimes significant impediments associated with preparing and presenting such information. Notably, these impediments are heightened when there are complex financial histories—for example, where the business being acquired has been carved out of a larger entity or where there are numerous individually immaterial businesses being acquired (i.e. a ‘roll up’ listing);
  - (b) providing further clarity about some of the terms we have used, including ‘material’ and a ‘significant period’;
  - (c) expanding on our proposed guidance on what we consider to be acceptable modified audit opinions;
  - (d) our proposal to use [Australian Accounting Standard AASB 3 Business combinations](#) (PDF 1.13 MB) when assessing whether a business or a collection of assets is present, particularly given the potential for this standard to be revised and its potential limitations in industry application;
  - (e) ensuring consistency of our proposed guidance with ASX’s proposed revisions to its admission requirements under its listing rules; and
  - (f) a request for greater and continuing transparency from us about our disclosure expectations, through our use of illustrative case examples and ad hoc consultation for exceptional matters.
- 9 Other issues outside the scope of our proposed guidance were also raised. Although we have considered all of the issues raised in response to our consultation, we have limited our responses in this report to the issues raised that are within the scope of our policy review.

## B Changes to our guidance for historical financial information disclosures

### Key points

This section outlines the issues raised by respondents, and our response to those issues, about our proposals. The majority of respondents were generally supportive of our proposed guidance revisions.

In summary, our response to the main issues raised by respondents, include:

- *Practical difficulties associated with auditing acquisitions*—We are adopting a significance test for acquisitions made less than 12 months before lodgement of the disclosure document. We are also confirming that the ‘already consolidated’ exception generally applies to historical acquisitions made more than 12 months before the lodgement of the disclosure document.
- *Audit opinions*—We have confirmed that there may be other opinions that do not affect the reliability of the financial information in the prospectus.
- *Asset acquisitions*—We have confirmed that an issuer should use AASB 3 and any subsequent guidance as a reference to determine whether they have acquired or operate a business. We have also confirmed that a passive real estate investment trust will generally be considered an asset acquisition.
- *Updating financial disclosure*—We have adopted the ‘currency’ settings but modified the paragraph on post-balance-date events to focus on post-balance-date trading.
- *Cash flow statements*—We have confirmed that these are generally required when historical income statements are required to be disclosed.
- *Circumstances where historical financial information disclosure may not be required*—We have adopted two new circumstances: first, acquisitions made less than 12 months before lodgement of the disclosure document and, second, ‘roll up’ listings. For ‘roll up’ listings, we generally expect that 75% of the historical financial information is audited for at least one year.

### Corporate form and historical reporting requirements

- 10 In CP 257 (proposal B1), we proposed to clarify that an issuer should disclose audited historical financial statements for two-and-a-half years or three years for both the issuer and any business it acquires. This is regardless of whether the financial statements were previously required by law to be produced or whether the business was or is in a corporate form. In CP 257,

we provided Case Studies 1, 2 and 3 to demonstrate how this proposal would work in practice.

- 11 At a high level, most respondents generally supported our proposal that an issuer should disclose audited financial statements for both the issuer and any business it acquires. Broadly, respondents recognised and agreed that investors and their advisers require this information for their investment decision-making purposes. These respondents supported ASIC providing further clarity around what we consider acceptable in terms of both quality and quantity.
- 12 In response to our questions and the case studies on this proposal, respondents also raised various commercial and practical impediments for preparing and presenting audited financial information for businesses being acquired.
- 13 Some of the impediments raised included where:
- (a) the issuer does not have access to the necessary books and records of a business it acquires to facilitate an audit process. This may be due to the books and records being non-existent or of poor quality. Alternatively, it could be as a result of not being available to the issuer from the vendor for commercial reasons. Respondents highlighted that these practical concerns were particularly relevant where the acquisition represented a ‘carve-out’ for an existing larger entity or a roll up listing of numerous immaterial businesses;
  - (b) the auditor does not have access to key management and accounting personnel of the business being acquired for the entire period being audited; and
  - (c) an unmodified audit opinion cannot be provided for various legitimate reasons where the auditor is engaged retrospectively.
- 14 All respondents were generally of the view that our proposal will result in increased time and cost associated with preparing prospectuses for proposed fundraisings where issuers had complex financial histories. However, some respondents did note that the cost and time commitments were appropriate and would help ensure that an issuer will meet the ongoing requirements of being a disclosing entity.
- 15 Some respondents also raised various clarification points, including whether we:
- (a) remained of the view that the interim half-year financial information when disclosing two-and-a-half years of historical financial information can be reviewed as opposed to audited;

- (b) were suggesting that full financial statements should be disclosed, or whether our proposals merely reflected the existing market practice of disclosing abridged versions of the relevant financial statements;
- (c) expected issuers to prepare general purpose financial statements, given the requirements of the accounting standards and the ‘use case’ of the financial statements being prepared, or whether special purpose financial statements would suffice for the purposes of the information underlying the prospectus disclosures; and
- (d) expected financial statements to be prepared with comparatives as required by the accounting standards, given this may have the effect of requiring up to four years of financial information to be audited.

#### *ASIC’s response*

We have adopted our proposal that an issuer should disclose audited historical financial information for itself and any businesses that it acquires, but we have refined some aspects of the proposal.

In recognition of the practical obstacles raised in the submissions—and noting our existing guidance would expect audited historical financial information where any acquisition was ‘material’, which may be a relatively low threshold—we decided to set a new and higher threshold labelled ‘significant’.

As part of our consultation process we assessed the approaches taken in foreign markets to acquisitions of businesses and disclosure for the purposes of initial public offerings. Specifically, we considered the regimes operating in the United States, Canada and the United Kingdom. In each jurisdiction, we noted that they had a concept of ‘significant’ which was higher than material.

In liaising with ASX on these issues, they highlighted that they already had a ‘significant change’ concept in the context of business acquisitions in [ASX Guidance Note 12 Significant change to activities](#) (PDF 295 KB). Under the ASX’s existing guidance, a significant change to an issuer’s activities was determined to be where an issuer is proposing to acquire a business and the acquisition is likely to result in an increase of 25% or more in select financial measures.

To align with ASX, we have adopted ASX’s existing ‘significant change’ test with some minor variations to accommodate its use in the context of prospectus disclosures: see RG 228.104.

We consider this revised guidance will provide issuers with further latitude to make acquisitions shortly before an initial public offering and only require issuers to provide disclosures of audited historical financial information where those acquisitions represent a significant change to the issuer. Importantly, we consider this provides an appropriate balance between the practical impediments of preparing audited information and the information



needs of investors and their advisers to enable them to make an informed investment decision.

Our significance test operates in the same way as the ASX's, namely:

- An acquisition (or acquisitions) is significant where it will account for more than 25% of an issuer's consolidated annual revenue (or, in the case of a mining exploration entity, oil and gas exploration entity, or other entity that is not earning material revenues from operations, consolidated annual expenditure), annual income (i.e. net profit after tax (NPAT), earnings before interest and tax (EBIT) or earnings before interest, tax, depreciation and amortisation (EBITDA)), total assets or total equity. For clarity, an acquisition will be classified as significant if any of the aforementioned measures are triggered.
- Only an acquisition that is probable at the time of the prospectus or has occurred 12 months before the prospectus needs to be considered. This is because acquisitions older than 12 months will already be consolidated in the issuer's own historical financial information.
- Issuers will assess significance using the most recent 12 months of historical financial information derived from the pro-forma historical financial information presented in the prospectus. We note this may mean that an issuer will need to aggregate its most recent reviewed half-year financial information with its trading performance in the second half of the preceding full-year financial information. We consider this approach ensures that the information used to assess significance is both reliable and sufficiently current.
- Where an acquisition is classified as significant, the underlying financial statements for the acquisition that are used to compile the prospectus should be audited for at least the last two full financial years before the lodgement of the prospectus. Depending on the lodgement date of the prospectus, we note it may be appropriate to also prepare and review half-year financial information.
- Where an acquisition is not significant, we would still expect the underlying financial statements for the acquisition to be reviewed as part of the investigating accountant's review procedures.
- Finally, where multiple insignificant acquisitions in the 12 month period prior to the prospectus collectively exceed 25%, the issuer may choose the entities to have audited so that less than 25% of the issuer and businesses combined remain unaudited.

We recognise that in some exceptional circumstances issuers may have complex financial histories where the application of our guidance will be difficult. We have set out at RG 228.105 that, in those circumstances, issuers should approach ASIC to discuss

how their proposed disclosures will comply with the above principles.

In addition, given the queries of some respondents, we have clarified our guidance to explain that we would generally expect to see disclosures of comparative periods where half-years are presented: see RG 228.89. This is to ensure that where half-year financial information is presented, it is accompanied by the reviewed half-year information from the prior period for comparability purposes.

## Audited financial information

### Types of audit and review opinions

#### Reliability of financial information

- 16 In CP 257 (proposals B2, B3 and B4), we proposed to clarify that where an audit opinion or review conclusion included in a prospectus has a modification that indicates that the opinion provides limited independent assurance for investors, we are likely to treat the financial information as effectively unaudited.
- 17 To indicate what we considered was acceptable, we also proposed to provide guidance that we will generally accept audit reports containing:
- (a) emphasis of matter paragraphs (e.g. due to going concern issues where the successful fundraising will cure any such concerns); and
  - (b) opening balance qualifications and subject to materiality, inventory qualifications, recognising that there may be practical audit issues where up to three years of financial information is being audited for the first time.
- We explained that these forms of modified opinions do not necessarily indicate the auditor has significant concerns about the integrity of the financial information. To illustrate this proposal, we provided Case Studies 8 and 9 in CP 257.
- 18 All respondents broadly agreed with our proposals and acknowledged that ASIC recognised that certain modifications would not necessarily indicate that the audit opinion or review conclusion provides limited assurance. One respondent did, however, clarify that a modified opinion would not render the financial information ‘effectively unaudited’ because the information is still audited.

#### *ASIC’s response*

We have amended RG 228 to clarify that we consider that certain modifications to audit opinions and review conclusions provide

limited independent assurance, and that we are likely to treat such financial information as not sufficiently reliable: see RG 228.92.

To address the concern raised in certain responses, we have also endeavoured to ensure our amended guidance did not suggest a modified opinion would mean the financial information was effectively unaudited. We have changed this to reflect that we do not consider such information as sufficiently reliable.

### Examples of acceptable audit modifications

- 19 As also noted earlier in response to proposal B1, some respondents also explained that, in addition to those identified, there are numerous other practical impediments in conducting an audit or review retrospectively. These respondents suggested that ASIC include additional examples where such a modification would not materially compromise the audit opinion or review conclusion.
- 20 The examples provided primarily included modifications regarding:
- (a) physically inspecting property, plant and equipment;
  - (b) alignment and consistent application of accounting policies; and
  - (c) access to certain books and records and appropriate audit evidence.

#### *ASIC's response*

We recognise that there will be numerous instances where a modified audit opinion or review conclusion would not necessarily suggest that the integrity of the financial information presented in the prospectus is compromised.

In light of the feedback, instead of articulating a non-exhaustive list of such possible modifications, we have included additional guidance to reflect that generally there may be other modifications that do not suggest the integrity of the financial information is compromised: see RG 228.94. We consider this provides issuers and their advisers with sufficient scope to assess whether a modification indicates that the financial information is not sufficiently reliable.

### Pro-forma adjustments

- 21 One respondent also explained that there may be instances where the modification is acceptable where the basis for opinion includes a quantification of the financial impact of any such misstatement. The respondent articulated that in these instances, pro-forma adjustments can be made to reflect the misstatement and as such overall this should not impact on the integrity of the financial information.

*ASIC's response*

Although we recognise that in select circumstances this may be an appropriate way of dealing with particular modifications, this was only likely to be acceptable on a case-by-case basis in unique circumstances, as opposed to a general policy position. Broadly, we do not necessarily agree that issuers can make certain pro-forma adjustments to accommodate for certain misstatements within the financial information.

For this reason, we have decided not to include any general guidance to reflect that the quantification of a modification or possible misstatement sufficiently reduces the risks of investors being misled.

**Review of half-year financial information**

- 22 Some respondents queried whether half-year financial information could be reviewed (as opposed to audited).

*ASIC's response*

We have revised our guidance to clearly state that historical financial information should be for at least the three most recent financial years, or two years of audited information and a half year of reviewed information: see RG 228.87(b).

**Foreign issuers and overseas auditors**

- 23 In CP 257 (proposal B5), we proposed 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 of the *Corporations Act 2001* (Corporations Act) and, for business and entities from foreign countries, in substantial equivalence to Ch 2M.
- 24 Respondents all supported this proposal but one respondent did request that ASIC explain which non-Australian accounting and auditing standards were acceptable.

*ASIC's response*

We have proceeded with our proposal to amend our guidance to reflect that the audit or review of historical financial information should be conducted, for businesses in Australia, in compliance with Ch 2M, and for businesses from foreign countries, in substantial equivalence to Ch 2M: see RG 228.91.

Although we recognise that it may be useful for ASIC to explain which non-Australian accounting and auditing standards are acceptable, we have decided not to prescribe a list of acceptable foreign accounting regimes, given this may inadvertently restrict potential issuers.

## Asset acquisitions and development of assets

- 25 In CP 257 (proposals B6 and B7), we proposed 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. We also explained that to help us determine whether an issuer has in fact acquired or is operating a business rather than an asset or collection of assets, we proposed to use the guidance in Appendix B of AASB 3. In CP 257, we provided Case Studies 6 and 7 to give examples of this proposal.
- 26 Although most respondents were generally supportive of these proposals, some queried why we only specify historical income statements, and why we did not mention all historical financial information (i.e. to include cash flow statements, to be consistent with our other proposals).
- 27 Respondents also explained that, in some instances, not all of the assets and liabilities that were used to generate historical earnings are in fact acquired or assumed. In these cases, even where an acquirer has negotiated sufficient access to relevant books and records to facilitate an audit, the differing cost structures applicable to the proposed business moving forward would likely result in disclosures of historical income statements that may not be relevant.
- 28 Many respondents also noted that although Appendix B of AASB 3 was useful, it alone was not sufficient practical guidance for issuers and advisors. For this reason, these respondents suggested that we also refer to related AASB 3 guidance. These respondents also informed us that AASB 3 was currently subject to change.
- 29 To further assist ASIC in defining a business, one respondent explained that it would be useful for ASIC to provide some principles around how we would assess a business. This respondent suggested focusing on specific matters such as:
- (a) the establishment of a board of directors or governance body;
  - (b) the recruitment of an executive team;
  - (c) if applicable, the production and sales of goods and services on a commercial scale;
  - (d) the obtaining of necessary licenses and patents that facilitate the operation of the business; and
  - (e) the funding and capital structure that facilitates the operations of the business.

### *ASIC's response*

We have amended RG 228 to clarify that the historical financial information disclosure requirements are generally triggered where

there is an acquisition of businesses (or in substance a business): see RG 228.96.

We will also use Appendix B of AASB 3 to help us determine whether an issuer has acquired a business rather than a collection of assets.

In response to the submissions received, we have also sought to clarify our guidance by:

- further distinguishing between the requirements for assets acquisitions (i.e. generally a pro-forma balance sheet where the basis for the asset acquisition price (such as property valuation reports, and geological expert reports for mining tenements)) and businesses;
- including reference to all historical financial information (i.e. both income statements and cash flow statements); and
- specifically stating that we will also consider subsequent authoritative guidance to Appendix B of AASB 3.

Although we recognise the submissions made in relation to the appropriateness or relevance of historical income statements due to—for example, differing cost structures that may be applicable for the business moving forward—we consider that any such differences can generally be explained by the use of pro-forma financial information with reconciliation to statutory financial information.

Finally, although some issuers and their advisers may find it useful if we provide a principles framework for how we will define a business, we consider that this guidance is unnecessary given Appendix B of AASB 3, in addition to related authoritative guidance, is sufficiently understood by issuers, their advisers and is mandatory in the context of business combination accounting.

## Updating financial disclosure

### Currency of financial information

30 In CP 257 (proposal B8), we proposed to clarify that where the existing business that is the subject of the fundraising has not changed substantially and has an acceptable audit history, 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 financial year end); or
- (b) full-year audited financial statements (where the prospectus is lodged with ASIC less than 75 days after half-year end).

This proposal was illustrated with a practical example provided in Case Study 10 in CP 257.

- 31 All respondents were broadly supportive of this proposal but some identified that it was inconsistent with the requirements of the ASX and its ‘eight month’ rule. These respondents raised the concern that this inconsistency could result in circumstances where the currency of financial information is acceptable to ASIC, but not to the ASX for admission purposes.

*ASIC’s response*

We have amended RG 228 to clarify when we consider historical financial information is ‘current’ for the purposes of a prospectus: see RG 228.89.

As noted earlier, we have sought, where possible, to align our requirements for the requisite financial information disclosures for initial public offerings with those of ASX.

To ensure consistency, ASX has altered its requirements so that they now reflect the same ‘currency’ requirements as set out in RG 228.89.

### Refreshing time periods

- 32 One respondent also queried whether any of the aforementioned time periods would be ‘refreshed’ if an issuer includes more current interim financial information, such as the nine months to 31 March, as opposed to the six months to 31 December of the previous year. This respondent also queried whether the additional ‘refreshed’ time would differ or increase depending on whether the numbers were subject to an audit or review.

*ASIC’s response*

We encourage issuers to provide investors and their advisers with information that is as up-to-date as possible.

However, although we recognise that this practice may ‘refresh’ the numbers, we do not consider that it completely alleviates the requirements to provide, for example, 30 June numbers if the prospectus is dated more than three months after the financial year end.

In addition, where interim period disclosures are used, we would also generally expect to see equivalent comparatives provided so that investors and their advisers can consider periodic financial information on a like-for-like basis. That is, where ‘alternate’ interim periods are used, we would nonetheless generally expect to see an equivalent period comparative provided for the previous period.

### Unaudited post-balance-date disclosure

- 33 In CP 257 (proposal B9), we noted that in some instances the business that is the subject of the fundraising may have changed so substantially that, even if the issuer technically meets the currency requirements of proposal B8, any

unaudited post-balance-date material event disclosure would be of similar or greater significance for investors and their advisers as the disclosures in the most recent audited or reviewed financial statements. In such cases, we proposed that the financial information included in the prospectus should have a more current balance date. We provided a practical example of this situation in Case Study 11 in CP 257.

- 34 The majority of respondents submitted that this proposal was unclear in its intent and this was perhaps because there was a lack of guidance on what we meant by the phrases ‘changed so substantially’ and ‘more current’.
- 35 These respondents suggested that most material post-balance-date events can be adequately dealt with by the use of pro-forma adjustments to the financial position of the issuer (which is captured by the investigating accountant’s review conclusion). These respondents also affirmed that they considered that a review conclusion will suffice in these sorts of circumstances and that an audit requirement would impose on issuers a higher standard than already listed entities.
- 36 In defining the possible post-balance-date events, these respondents detailed corporate restructures, fundraising that takes place before an initial public offering, and business and asset acquisitions and disposals. For this reason, these respondents noted that where the business itself had changed substantially (e.g. by growing substantially), then perhaps more up-to-date financial information should be prepared and audited. This was consistent with responses received on Case Study 11
- 37 In response to whether an issuer that has only very recently commenced its business and seeks to raise funds using a prospectus in its first year of operations should be required to include audited rather than reviewed financial information, we received mixed responses. Some respondents affirmed an audit requirement was appropriate and that this would prepare such issuers for the financial reporting obligations of future periods as a listed entity, and others suggested such a proposal was too onerous, would stifle innovative businesses from accessing funding, and that reviewed financial information is sufficient.

*ASIC’s response*

We have amended RG 228 to clarify that in certain circumstances it may be appropriate to include more current financial information in a prospectus: see RG 228.90.

In recognition of the various comments made by respondents, we have sought to clarify our intent with this policy position. Specifically, we have revised our drafting to indicate that these circumstances are ‘rare’, and occur in situations where a business is growing at a rapid pace.



We recognise that many respondents were confused about our intent with this proposal and our use of the phrasing 'post-balance-date material event'.

Our intention was to highlight that in some instances the operations of the business may have changed after the balance date so materially that this later financial performance was of similar or greater significance for investors and their advisers than disclosures in the most recent audited or reviewed financial statements.

We note that respondents did agree that if the post-balance-date event related to trading, that more up-to-date financial information should be prepared audited and disclosed.

## Inclusion of cash flow statements

- 38 In CP 257 (proposal B10), we proposed to clarify that historical cash flow statements may need to be included in a prospectus where historical financial performance disclosures are required.
- 39 All respondents agreed with this proposal. However, two respondents noted the proposed drafting of RG 228 merely required disclosures of cash flow statements where they were 'material' and suggested that ASIC should only allow a departure from the disclosures of cash flow statements in exceptional circumstances.
- 40 Some respondents also sought additional clarity on select aspects, including whether we expected:
- (a) disclosures of the actual historical statements of cash flows on a standalone basis, or instead would accept disclosures of pro-forma cash flow statements reconciled to the statutory figures (which they considered was already market practice); and
  - (b) disclosures of full cash flow statements (i.e. from operating, investing and financing activities), or instead would accept disclosures of those relating to the ongoing operations of the issuer or business in its post-listing structure (i.e. generally the operating and select investing cash flows).

### *ASIC's response*

We have amended RG 228 to clarify that historical cash flow statements should be included when disclosing the financial history of a business: see RG 228.87(b)(ii).

In direct response to certain submissions, we have also provided further clarity by stating that we consider cash flow statements should always be disclosed where there is a historical business, as opposed to being subject to materiality, and have also

indicated that, at a minimum, we would expect to see disclosures of operating and investing cash flows: see the note to RG 228.87(b)(ii). We recognise that in some instances financing cash flows may be irrelevant where the cost structure of the issuer after the initial public offering will differ.

For completeness, we will still generally expect to see these 'statutory' historical cash flows reconciled to the pro-forma cash flow statements (which we acknowledge is existing market practice).

## Circumstances where historical financial information disclosure may not be necessary

### Information that is irrelevant or unreasonable to expect

- 41 In CP 257 (proposals B11, B12 and B13), we proposed to clarify that there may be circumstances where disclosures of 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 advisers to expect.
- 42 We proposed to clarify that we would not generally expect financial information to be disclosed where it is of little or no relevance to the investment decision being made.
- We provided two examples, namely where:
- (a) the issuer's main business undertaking has changed significantly in the historical period and has no relationship to the current business activities. In this example, the historical financial disclosures of a business that will not be part of the issuer post-floatation is unlikely to be relevant; and
  - (b) the issuer is a vehicle for a 'backdoor listing' and is effectively a shell without material assets or liabilities. In this example, if the listed company is in fact a shell, then other than an opening balance sheet, only the incoming business' trading history is likely to be relevant for prospectus disclosures.
- 43 Respondents were broadly supportive of our proposals but identified various issues that could benefit from further guidance. For example, some respondents explained that there was concern the exceptions may be applied more liberally than we intended if additional clarification was not provided. These respondents specifically identified that there was insufficient clarity around what we meant by a main business undertaking having changed so significantly, and therefore differing interpretations would have differing results.

- 44 One respondent also queried whether these examples were the only situations in which the exemptions would apply and, if not, asked that ASIC outline guiding principles for what we would consider to be acceptable conditions for an issuer to depart from the audit requirements on the grounds of relevance.

*ASIC's response*

We have amended RG 228 to clarify that there may be circumstances where the disclosures of audited financial information for the past two-and-a-half years or three years would include information that is either irrelevant or unreasonable for investors to expect, and on this basis represents circumstances in which certain historical financial information may not be required: see RG 228.102.

To accommodate for the feedback and the introduction of a 'significance' definition, we have slightly revised the wording of our guidance to reflect that the relevance exception explained in Example 1 is triggered where the main business undertaking the issuers operates has had a major change in the historical period and where the historical financial information for what was previously the main business undertaking has no relevance to the current business activity. We still consider this example is sufficiently clear and aided by the reference to what we mean by a major change (i.e. where a business undertaking was divested in the first year of a three-year history).

For clarity, in Example 1 our intention is to deal with the circumstances where there has been legitimate change to a business that means the financial information before this change is completely irrelevant (i.e. relates to a different business). Generally, we will not accept issuers suggesting a corporate restructure or significant business growth or transformation would render prior periods irrelevant, this is because the underlying business is still likely to be the same and, accordingly, narrative disclosures can sufficiently explain any of these changes.

In view of the above clarification, we do not consider it is necessary to provide further principles around when financial information is irrelevant in our guidance.

### **Less than two-and-a-half or three years of audited financial information**

- 45 We also proposed to clarify that we consider there may be 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.

- 46 We provided three examples, namely where:
- (a) the issuer acquired a business before the prospectus fundraising, and has already consolidated the acquisition for a substantial part of its disclosed financial history. In this example, where the information is not already available to the issuer, we considered it may be unreasonable to provide audited financial information about the acquired business before acquisition. Case study 11 in CP 257 set out how this example would operate in practice;
  - (b) the issuer has provided adequate financial information about the first year of a three-year disclosed financial history, and obtaining a clean audit opinion for the first financial year presented may be both difficult for some issuers and not reasonable when considered as part of the totality of the financial information disclosed; and
  - (c) some part of a business of the issuer or a business the issuer has acquired is not material to understating the issuer's financial history as a whole.
- 47 Again, respondents were broadly supportive of our proposals but noted that these examples were drafted with broad implications and it was uncertain whether this was our intention. For example, it appeared that many issuers could depart from the year one audit requirements on the basis of difficulty, however trivial.
- 48 In recognition of our principles-based disclosure regime, some respondents encouraged ASIC to be open to communication and discussion with potential issuers and their advisers where there are other criteria outside of these examples that were unreasonable.

#### *ASIC's response*

In relation to when we consider that historical financial information may be unreasonable to expect, we acknowledge that the examples may each have broad implications for potential issuers. Other than the 'already consolidated' exception, we have retained all of these circumstances.

To accommodate and align with our new significant acquisition framework, explained earlier, we have revised the 'already consolidated' example so that if issuers prepare audited consolidated financial information that already incorporates an acquisition made more than 12 months before the lodgement of the prospectus, then it may not be reasonable for investors and their advisers to expect this information (if the issuers does not already have it). We have also confirmed that if an issuer wishes to include income and cash flow statements as a pro-forma adjustment before the acquisition, this can be based on reviewed rather than audited financial information.

We recognise that this means that, in some rare instances, the actual quantity of audited or reviewed financial information about a business that has been acquired may only be for approximately six months (as part of the issuer's consolidated reviewed half-year financial information). However, in these instances we note and are reassured by the fact that the issuer has owned and operated this business acquisition for at least 12 months. For these reasons, many of the risks associated with integration would have been observed and material would likely be considered as part of both the narrative and any forecast financial information disclosures.

We have also revised our guidance to include two new examples—Example 6, on acquisitions made less than 12 months before the lodgement of the prospectus (as explained earlier), and Example 7, on 'roll up' listings.

Regarding 'roll up' listings, we do not consider the absence of audited historical financial information about the combined group of individually immaterial businesses appropriate. However, we note that there are numerous practical difficulties associated with preparing for such listings.

Taking into account all of the submissions received, we have provided guidance that we consider that at least 75% of the historical financial information for the whole business to be listed (measured using the significance test metrics) must be based on audited financial information of no less than one year in duration. To provide a framework around when this exception will apply to issuers, we have included some general guidance that we consider a roll up listing involves the acquisition of many immaterial businesses in the same industry sector.

We consider this is an appropriate setting given that, although we acknowledge the various practical difficulties associated with auditing the historical financial information of the individual entities, we still consider that investors and their advisers require historical financial information about the investment proposition that is reliable.

## Case studies

- 49 We included 11 worked case studies in CP 257 to provide practical and illustrative examples of how our proposals would actually apply in practice. The worked case studies do not necessarily have any regulatory policy status, given they are purely hypothetical examples to help communicate our various proposals.
- 50 Some respondents requested in their submissions that we updated and add to our case studies.

*ASIC's response*

We do not intend to update these case studies to reflect the new guidance that we have published.

We used the useful feedback we received on the 11 case studies to understand the submissions made on our policy, and to revise our policy in light of those submissions.

## Appendix: List of non-confidential respondents

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- Association of Securities & Derivatives Advisers of Australia
  - Australian Institute of Company Directors
  - Australian Private Equity & Venture Capital Association Limited
  - Australian Shareholders' Association Limited
  - BDO Corporate Finance (WA) Pty Ltd
  - Business Law Section of Law Council of Australia
  - Chartered Accountants Australia and New Zealand
  - CPA Australia Limited
  - Deloitte
  - Ernst & Young
  - Grant Thornton Australia Limited
  - KPMG
  - PricewaterhouseCoopers
  - Professor Anne Wyatt
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