Tel: +61 3 9603 1700
Fax: +61 3 9602 3870
www.bdo.com.au

Collins Square, Tower Four
Level 18, 727 Collins Street
Melbourne VIC 3008
GPO Box 5099 Melbourne VIC 3001
Australia

Claire LaBouchardiere
Senior Executive Leader
Companies & Small Business
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001
email: sustainable.finance@asic.gov.au

19 December 2024

Dear Madam,

CONSULTATION PAPER 380 *SUSTAINABILITY REPORTING*

Thank you for the opportunity to comment on ASIC's Consultation Paper 380 *Sustainability reporting* and proposed Draft Regulatory Guide of same name.

Please refer to Appendix 1 for our detailed comments on your specific matters for comment.

We generally support the proposed guidance but have elaborated on matters such as guidance for determining revenue, assets and employees for the purposes of the size test in section 292A(3), the connection between exemptions from financial reporting and sustainability reporting, and audit relief for sustainability reports where an entity already has audit relief for its financial report.

If you have any comments regarding this request, please do not hesitate to contact me.

Yours faithfully

[redacted]

Aletta Boshoff
National Lead Partner, IFRS & Corporate Reporting
National Lead Partner, ESG & Sustainability

APPENDIX 1

Our feedback on Proposal B1

B1Q1 Do you agree with our proposed guidance?

BDO comments:

Yes, we agree.

B1Q2 What further guidance could we provide to help entities determine whether they are required to prepare a sustainability report?

BDO comments:

It would be useful if the Regulatory Guide, section B, can include additional guidance on the following:

- Country-by-country reporting entities do not have financial reporting obligations under Chapter 2M, and prepare general purpose financial statements for submission to the Australian Taxation Office (ATO). The ATO gives these financial statements to ASIC, and made available for public use. Preparers seek confirmation that no sustainability report is required if the entity is a country-by-country reporting entity and has no Chapter 2M financial reporting obligations. In our view, we don't believe the sustainability report is required in this instance.
- S292A(2) relieves an Australian subsidiary from having to prepare a sustainability report if its Australian parent entity prepares a consolidated sustainability report. While we can see that there is a difference between climate-related risks and opportunities (i.e. other aspects of AASB S2 *Climate-Related Disclosures*) of the parent and the consolidated entity, we do not see a difference between the carbon footprint of the parent entity and that of the consolidated group. This is because the GHG Protocol requires inclusion of an entity's carbon footprint across its whole value chain, including its subsidiaries and investments. We recommend that the Regulatory Guide include guidance to explain the difference, if any, between the parent entity and the consolidated entity sustainability report. If they are different, we recommend further guidance about how the GHG Protocol applies to a parent entity-only carbon footprint calculation.
- Small proprietary companies with no Chapter 2M financial reporting obligations are not required to prepare a sustainability report. We are concerned that some groups could avoid the measurement of the carbon footprint of certain small subsidiaries (if material) by preparing a parent entity-only sustainability report and carbon footprint, and then preparing separate sustainability reports for its large proprietary company subsidiaries. We recommend that the Regulatory Guide be expanded to clarify how section 292A(2) should be applied in practice, including examples for different group structures.

B1Q3 What additional guidance should we provide to clarify how the s292A thresholds apply to RSEs, registered schemes and retail CCIVs?

BDO comments:

No further guidance needed.

Our feedback on Proposal B2

B2Q1 Does our proposed guidance help you understand the sustainability records that must be kept?

BDO comments:

Yes. RG000.46 includes a comprehensive list of examples of sustainability records.

B2Q2 What further guidance should we provide on keeping sustainability records?

BDO comments:

We recommend that the guidance in RG000.47(a) be expanded to emphasise that sustainability records include support for <u>each element</u> of the entity's climate-related financial disclosures relating to governance, strategy, risk management and metrics and targets.

We are pleased to see guidance in RG000.48 which highlights the need for a sustainability reporting eligibility assessment at the end of each reporting period.

B2Q3 Does our proposed guidance help you understand our expectations for directors in complying with their sustainability reporting requirements?

BDO comments:

Yes.

B2Q4 Are there any aspects of the sustainability reporting requirements where further ASIC guidance would be helpful for directors?

BDO comments:

No.

B2Q5 Does our proposed guidance on the modified liability settings clarify how these settings apply to statements made in sustainability reports and other documents or communications?

BDO comments:

Yes.

B2Q6 What further guidance should we provide about the modified liability settings?

BDO comments:

None required.

Our feedback on Proposal C1

C1Q1 Are there other issues relevant to reporting entities' assessment of whether there are no material financial risks or opportunities?

BDO comments:

No.

Our feedback on Proposal C2

C2Q1 Do you agree with our proposed guidance? If not, why not?

BDO comments:

Yes.

Our feedback on Proposal C3

C3Q1 Do you agree with our proposed guidance?

BDO comments:

Yes. We also recommend including in the Regulatory Guide, the examples from Appendix D to AASB S2, paragraphs D24, D15, D23, D12 and D13 contained in paragraphs 30 to 33 of CP 380.

C3Q2 Should we issue more guidance about the facts or circumstances that are more likely to constitute reasonable grounds for forward-looking information in climate statements? If you consider that we should issue more guidance, please explain:

a) what it should cover beyond the application guidance in Appendix D of AASB S2;

b) how you consider that guidance would impact information disclosed under the sustainability standards in Australia, compared to information disclosed under the comparable international standards; and

c) if there is any resultant inconsistency, how this can be reconciled with the context and purpose of the reforms, which cite international alignment of sustainability reporting to be a key priority.

BDO comments:

No.

Our feedback on Proposal C4

C4Q1 Do you agree with our proposal? If not, why not?

BDO comments:

Yes, we agree.

Our feedback on Proposal C5

C5Q1 Do you agree with our proposal to encourage specific labelling for sustainability-related financial disclosures?

BDO comments:

Yes, we agree.

C5Q2 If not, what guidance (if any) should we provide to:

a) ensure that users of sustainability-related financial information are not misled by unhelpful or inappropriate labels; and

b) support investor comprehension and the consistency of information provided across the market?

BDO comments:

N/A.

C5Q3 If you currently prepare voluntary reports covering sustainability, are there other ways to achieve the outcomes our guidance seeks to achieve?

BDO comments:

No.

Our feedback on Proposal C6

C6Q1 Do you agree with our proposed guidance? If not, why not?

BDO comments:

Yes, we agree that currently, the notes to AASB S2 will suffice, and the climate statements do not need to be included in the sustainability report until such time in future when the Minister requires additional notes by legislative instrument.

Our feedback on Proposal C7

C7Q1 Do you agree with our proposed guidance? If not, why not?

BDO comments:

Yes, we agree with the proposed guidance.

Our feedback on Proposal D1

D1Q1 Do you agree with our proposed guidance? If not, why not?

BDO comments:

Yes, we agree.

D1Q2 Does our proposed guidance strike the right balance between facilitating other sustainability-related disclosures, especially while sustainability reporting requirements are being phased in for reporting entities?

BDO comments:

Yes.

Our feedback on Proposal D2

D2Q1 Do you agree with our interpretation of s299A(1)? If not, why not?

BDO comments:

Yes. We agree.

D2Q2 Do you agree with our proposed regulatory guidance? If not, why not?

BDO comments:

Yes, we agree. While the sustainability report contains detailed climate-related financial disclosures, these may or may not be the most critical factors relevant to the listed entity's overall prospects, when balanced against other strategies, risks and opportunities for disclosures under section 299A (see RG000.119). Therefore, the OFR must include a discussion of climate-related financial risks and opportunities but should explain their significance in the broader context of the listed entity's overall corporate strategy and prospects (see RG000.120).

Our feedback on Proposal D3

D3Q1 Do you agree with our proposal? If not, why not?

BDO comments:

Yes, we agree.

D3Q2 Are there any practical problems associated with our proposal? If so, please provide details.

BDO comments:

N/A.

D3Q3 What reasonable expectation are investors and other professional advisers likely to have about the disclosure of climate-related financial information if required by s710?

BDO comments:

No comments.

Our feedback on Proposal D4

D4Q1 Do you agree with our guidance? If not, why not?

BDO comments:

Yes, we agree.

D4Q2 Are there any practical problems associated with our proposal? If so, please provide details.

BDO comments:

No comments.

D4Q3 What reasonable expectation are retail investors likely have about the disclosure of climate-related financial information if required by s1013D and s1013E?

BDO comments:

No comments.

Our feedback on Proposal E1

E1Q1 Does our proposed guidance help you understand how we will approach and assess an application for relief from the sustainability reporting and audit requirements?

BDO comments:

Yes.

E1Q2 Do you have any feedback about any aspect of our proposed guidance on relief?

BDO comments:

Yes. RG000.149 says the following:

"However, we will not necessarily grant sustainability reporting relief merely because an entity has been granted, or has the benefit of, comparable financial reporting relief: see RG000.184-RG000.185. Applicants seeking sustainability reporting relief should specifically address why it is appropriate for ASIC to grant sustainability reporting relief sought."

This paragraph is confusing as a literal reading could be interpreted as meaning that an entity with financial reporting relief from the ASIC Legislative Instruments would not automatically be exempt from the requirement to prepare a sustainability report:

- ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204
- ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.

This contradicts RG000.1(a), which notes that the entity is required to prepare an annual financial report under Chapter 2M before sustainability reporting is considered. When cross-referencing to

RG00.184, this issue is clarified. We recommend that RG000.149 be reworded to clarify this. We also recommend that the text of RG000.185 be incorporated into RG000.149.

E1Q3 Are there additional policy considerations that we should address in our guidance to help entities understand when we are likely to exercise or not exercise ASIC's power to grant relief?

BDO comments:

No.

E1Q4 Are there any specific areas or kinds of relief that you anticipate will be commonly sought from the sustainability reporting and audit requirements? If so, please inform us what, if any, relief topics or types of applications we should provide further guidance on?

BDO comments:

Particularly in the early years, we envisage entities applying for extensions to submit the sustainability report later than the deadline for the financial report. We also envisage entities applying for audit relief of the sustainability report.

E1Q5 What additional guidance, if any, would help you:

a) **consider whether to apply for relief from the sustainability reporting and audit requirements;**

b) **prepare applications for relief; and**

c) **understand how to lodge an application for relief?**

BDO comments:

No comments.

Our feedback on Proposal E2

E2Q1 Do you agree with our proposal that, for a stapled entity to rely on ASIC Instrument 2023/673, a sustainability report must be prepared on behalf of all members of the stapled group, even if one or more of the stapled entities in the stapled group is not required to prepare a sustainability report under s292A?

BDO comments:

Yes, we agree.

E2Q2 We are proposing that relief is available only where the sustainability report is prepared as if all members of the stapled group were a single entity. Do you agree with this proposal?

BDO comments:

Yes, we agree.

Does this proposal for preparation and presentation raise any issues?

BDO comments:

Not that we are aware of.

E2Q3 If you consider that an alternative basis for the preparation or presentation of sustainability reports for stapled groups is more appropriate, please explain how. Please also explain why this would be more decision useful for users of the sustainability report.

BDO comments:

N/A

E2Q4 If relief for stapled entities should be provided on an alternate basis, please explain:

a) **how the relief should apply; and**

b) **the basis for that relief, considering:**

   i. **the statutory preconditions for relief in s342; and**

   ii. **the policy objectives of the sustainability reporting regime.**

BDO comments:

N/A

Our feedback on Proposal E3

E3Q1 What issues or challenges should ASIC be cognisant of, in relation to the intersection between the sustainability reporting requirements and ASIC Instrument 216/785?

BDO comments:

ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 provides financial reporting relief for certain wholly-owned subsidiaries subject to a deed of cross guarantee provided that these entities are included in consolidated financial statements lodged with ASIC. In our view, these entities are not required to prepare a sustainability report because they are not required to prepare an annual report under Chapter 2M (refer RG000.1(a)).

Therefore, no amendments are required to ASIC Corporations (Wholly-owned Companies) Instrument 2016/785. In such cases, the parent entity would simply elect to apply section 292A(2) and prepare a consolidated sustainability report for the group which aligns to the consolidated financial report.

Our feedback on Proposal E4

E4Q1 Do you consider that we should extend the relief in any of the instruments listed in proposal E4 so that it applies to sustainability reporting or the audit requirements for a sustainability report? Please provide submissions about:

a) **why the relief is necessary;**

b) **how one of the statutory preconditions for providing relief in s342 would be satisfied in relation to the relevant sustainability reporting requirements;**

c) **any relevant aspects of the relief, or relevant conditions—for example, if we extended the relief in ASIC Instrument 2015/839, how should climate statements of the related schemes be presented in the sustainability report?**

BDO comments:

Refer RG000.182 which says *"Applications for relief from the audit requirements for a sustainability report must address the criteria in s342(1). We will not grant relief for a sustainability report merely because audit relief has been granted in relation to the entity's financial report."*.

We believe the audit relief in ASIC Instrument 2016/784 be extended to the sustainability report on the basis of unreasonable burdens placed on the entity to appoint and have an audit conducted on the sustainability report without having an audit on the financial report. In practice, we foresee complications for an auditor trying to obtain audit evidence for the sustainability report which involves underlying data from the financial report (which has not been audited). This could occur, for example, when auditing an entity's GHG emissions.

E4Q2 Are there any other legislative instruments that should be amended to extend relief so that it applies to sustainability reporting requirements? If so, please provide details, including:

a) **which of the statutory preconditions for providing relief in s342 would be satisfied in relation to the relevant sustainability reporting requirements, and why; and**

b) **why there is a current need for the relief to be extended to those requirements.**

BDO comments:

We don't believe so.

Our feedback on Proposal E5

E5Q1 Does our proposed guidance clarify how we may exercise ASIC's directions power under s296E? If not, why not?

BDO comments:

Yes, we agree that it clarifies how ASIC may exercise its directions power under section 296E.

Our feedback on Proposal F1

F1Q1 Do you require guidance on how to determine revenue, employees and assets, for the purposes of applying the sustainability thresholds?

BDO comments:

Yes. Refer F1Q2 below.

F1Q2 Do you consider that there are uncertainties or potential inconsistencies in how these tests might be applied in practice? What are they and how could they be addressed through guidance?

BDO comments:

Yes. Further guidance is required. Currently, section 292A refers to revenue, assets and employees for the purposes of meeting the size threshold (section 292A(3)) and the asset owners test (section 292A(6) as follows:

- Section 292A(4) - In counting employees for the purposes of section 292A(3), entities must take part-time employees into account as an appropriate fraction of a full-time equivalent
- Section 292A(7)(b) - consolidated revenue, the 'value of consolidated gross assets' and the 'value of assets' are to be calculated in accordance with accounting standards in force at the relevant time.

These terms drive whether a proprietary company is required to prepare financial reports under Part 2M (section 45A) and therefore whether a sustainability report is required under s292A. If a sustainability report is required, these terms also determine the timing of the first sustainability report as Group 1, 2 or 3, and if Group 3, whether it can apply the 'immaterial climate-related financial risk and opportunity' exemption in section 296B.

Specifically, we seek clarification on:

- **Employees**

  Section 292A(4) only assists in taking part-time employees into account as an appropriate fraction of a full-time equivalent employee. What about casual employees and contractors? What if an entity employs seasonal workers and there are none at the end of the financial year? Guidance is required on if, and how, these instances are incorporated into the calculation of employees at the end of the financial year.

- **Revenue**

  Section 292A(7)(b) requires that 'revenue' is to be calculated in accordance with accounting standards in force at the relevant time. The only accounting standard that specifically deals with 'revenue' is AASB 15 *Revenue from Contracts with Customers*, therefore all revenue determined in accordance with AASB 15 would be included.

  However, there are different views as to whether other income items are included in 'revenue' for the purposes of the size tests in section 45A and s292A. Examples of these income items include realised net gains on disposal of PPE and investment properties, fair value gains and losses recognised in profit or loss on both financial assets and investments non-financial assets such as investment properties, and an entity's share of profit of equity accounted investments. We seek ASIC's clarification (including examples) of how to determine 'revenue' for entities operating in different industries. For example:

  - Should a financial institution classify interest received as revenue?
  - Should a manufacturing industry earning interest on surplus cash classify interest as revenue?
  - Should an investment fund classify unrealised fair value movements on its investments recognised in profit or loss as revenue?
  - Etc.

- **Assets**

  Section 292A(7)(b) also requires that 'the value of consolidated gross assets' (for the purposes of section 292A(3)(b)) and 'the value of assets' (for the purposes of section 292A(6)) is to be calculated in accordance with accounting standards in force at the relevant time. There are various accounting standards which deal with the accounting for asset types such as PPE, intangible assets, investment properties etc. Therefore, entities should be able to determine the 'value of consolidated gross assets'.

  However, we note the inconsistency in language in respect of the 'asset owners' threshold. Section 292A(6) specifically refers to the 'value of assets' at the end of the financial year of the entity and the entities it controls (if any). However, there are various places in the Explanatory Memorandum for the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024* and the draft Regulatory Guide which have substituted this term with the term 'assets under management'. The term 'assets under management' is not used in the legislation, nor is it a defined term in Australian Accounting Standards. Further, its generally accepted meaning, being assets managed for the purpose of earning fees, is not consistent with the legislation. We request ASIC provide guidance on the meaning of 'assets under management'.

We understand that the IASB and the AASB are responsible for interpretating the meaning of these terms, and therefore, we encourage ASIC to provide guidance on the interpretation of these terms solely for the purposes of determining Group 1, 2 and 3 status for sustainability reporting.

Our feedback on Proposal F2

F2Q1 Are there any other areas of concern or uncertainty about complying with the sustainability reporting requirements that you consider ASIC could address through regulatory guidance? If so, please provide details.

BDO comments:

Yes. Our understanding of RG000.1(a) is that a sustainability report is only required if the entity is required to prepare a financial report under Chapter 2M. That is, whether an entity is required to prepare a financial report under Chapter 2M is the first question. If none is required, the entity has no further sustainability reporting obligations. Following from this, we recommend the guidance clarify that entities applying financial reporting relief in the following circumstances are automatically exempt from preparing a sustainability report:

- ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204
- ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.

We also recommend that the guidance clarify that country-by-country reporting entities with no Chapter 2M financial reporting obligations are not required to prepare a sustainability report.

F2Q2 Are there any other issues or additional information that you consider should be explained in draft RG 000 or future guidance? If so, please provide details.

BDO comments:

No.

F2Q3 Are there any other areas where we could help reporting entities develop their capabilities to meet the sustainability reporting requirements?

BDO comments:

No comments.

Other comments

We also noted the following inconsistencies in the drafting of Regulatory Guide 000: Sustainability Reporting:

- RG000.7(a) refers to ‘registered scheme’ twice.
- RG000.78 notes that reporting entities that are not disclosing entities should also provide an update to the market when these relevant facts or circumstances changes (i.e. for continuous disclosures, including forward-looking information in climate statements). The regulatory guide

does not explain what mechanism ASIC envisages to achieve this, noting that these entities would have no obligation to inform the market if circumstances change involving the financial report.

- RG000.29 includes a footnote as follows:

  “Note: However, a reporting entity’s auditor should not provide this advice. The auditor must be independent from the reporting entity it audits, see Div 3, 4 and 5 of Pt 2M.4.”

  The international Ethics Standards Board for Accountants (IESBA) will amend its Code of Ethics to address sustainability matters. We therefore recommend that the regulatory guide does not address independence issues relating to sustainability reporting and that the above footnote be removed from the final guidance.