



28 June 2011

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Dear Ms Laidlaw

CP155 – Prospectus disclosure: Improving disclosure for retail investors

The Australian Financial Markets Association (AFMA) welcomes the opportunity to comment on ASIC's Consultation Paper 155 Prospectus disclosure: Improving disclosure for retail investors (CP 155).

In general, AFMA welcomes the guidance contained in CP 155 and agrees with the objectives of the proposed reform. The principle of "clear, concise and effective" disclosure is one which we generally support but which constantly challenges issuers because it sits alongside a number of other disclosure requirements in the Corporations Act 2001 (Cth) that may mitigate against it.

The core message in this submission is that a regulatory guide should provide understanding to industry on ASIC's views of compliance with the law, while also providing a level of flexibility so as not to impose (whether intentionally or unintentionally) a "one size fits all" approach to compliance.

Prospectuses, by their nature, will always be bespoke documents that reflect the particular circumstances of an issuer and its offer to investors. The selection and disclosure of risks and financial ratios should rest with the issuer to best reflect the key risks and ratios specific to it and its particular industry. The examples provided in CP 155 and the attached draft regulatory guide (Regulatory Guide) of key risks that should be disclosed may be helpful on the basis that it is made clear that an issuer (having performed the necessary assessment) makes the ultimate decision as to which risks it considers key and, ultimately, necessary to disclose.

If guidance is too prescriptive it could lead to a contradictory result of longer and less relevant disclosure. Sensible departure from generic content suggestion reflects considered understanding of the issuer, the law and potential investors. Based on the observations of ASIC officers at the recent Corporate Finance Liaison meeting concerning CP 155, AFMA believes that this approach is consistent with how ASIC would like to see the Regulatory Guide applied in practice. Subject to these general observations, the Regulatory Guide should prove helpful because it gives guidance on the form and content of an investment overview to replace repetitive introductions and will assist in addressing risk disclosure.

In this submission, AFMA has not responded to all of ASIC's specific consultation questions, but has selected key questions to respond to, and has provided some detailed comments on particular aspects of CP 155.

1. 'Clear, concise and effective' disclosure

B1Q1 Do you agree with our explanation of the term 'clear, concise and effective' and our guidance on when a prospectus will generally be 'clear, concise and effective'? If not, please explain why.

The guidance provided by ASIC is generally endorsed and AFMA supports ASIC's initiative to make prospectuses and other documents to which CP 155 relates more comprehensive for retail investors and to provide market participants with further guidance on the disclosure requirement of 'clear, concise and effective'.

We do however note that there is an inherent tension between the objective that prospectuses should be as "short as possible" and the requirement to "explain complex information". We consider that a short prospectus does not necessarily make it one that is qualitatively better for retail investors to assist their understanding of an offer enabling them to make an informed investment decision. In particular, explanations of complex information may require some exposition which should not be compromised to ensure prospectuses are of a certain length. It will continue to be the case that explanations will need to be of a length to accurately convey the content and where this may make a difference to a retail investor's ability to understand content this should prevail over the quest for brevity. Further, "short" disclosure does not necessarily mean "concise" disclosure on the basis that, in addition to brevity, the term "concise" also connotes that the relevant information is comprehensive in its scope and content. Accordingly, it is submitted that paragraph c of RG 000.21 should read "is succinct" instead of "is as short as possible."

In addition, ASIC's proposal to shorten prospectuses seems to be at odds with the extensive disclosure requirements proposed under the Regulatory Guide. For example, ASIC proposes that an entity disclose in its prospectus detailed information with respect to financing arrangements, different types of risks specific to the offer, the entity, the industry and in general the entity's business model. We consider these requirements will likely lengthen a prospectus.

1.1. Guidance on language

B2Q1 Do you agree with our suggested tools in Table 3 for how to word a prospectus so that it is 'clear, concise and effective'? Are these tools, the explanations and examples given useful? Are there other tools that should be included?

B2Q2 Do you agree with our suggested tools in Table 4 for how to present a prospectus so that it is 'clear, concise and effective'? Are these tools and the explanations given useful? Are there other tools that should be included?

The guidance on the use of language in Table 3 follows generally accepted plain English principles and is useful. However, AFMA encourages ASIC to ensure that these guidelines are suggestions only as to best practice for achieving "clear, concise and effective" disclosure, and does not ultimately become a checklist for compliance. Further, consistent with our comments in this submission, AFMA notes that ASIC should be mindful that the level of disclosure proposed for the purpose of achieving "clear, concise and effective" is likely to lead to more extensive disclosure, and consequently, lengthier prospectuses.

With regards to the guidelines provided in Table 4, AFMA considers that these guidelines are quite prescriptive and would require detailed disclosure in the proposed "Investment Overview". As the information to be disclosed at the beginning of the prospectus is an "overview" only, no doubt such information would require repetition and elaboration throughout the relevant sections of the prospectus. Accordingly, AFMA queries whether ASIC's desired effect to shorten prospectuses and provide investors with all relevant information up front is helpful to them. On a logistical note, certain prescriptive requirements, such as, for example, with the requirement to ensure "white space" may place a heavier financial burden on issuers. This is because generous use of white space and other graphic design is likely to have a direct impact on costs as it may require specialised lay-out advice and may also unnecessarily lengthen prospectuses and other affected documents.

1.2. Guidance on photographs

B3Q1 Do you agree with our proposed guidance that photographs (other than on the front cover) should only be included after the investment overview? Please explain your answer.

B3Q2 What other suggestions do you have to ensure that retail investors are given clear information about the issuer and the offer at the front of the prospectus and are not distracted by marketing images?

B3Q3 Do you agree with our proposed guidance that photographs should only be included where they are relevant to the issuer's business and should not be included where they are likely to misrepresent the nature, stage or scale of the issuer's business? If not, please explain why.

B3Q4 Should there be a restriction on the use of photographs of celebrities in prospectuses?

B3Q5 If photographs of celebrities are included in a prospectus, should the prospectus also be required to include any interests or benefits paid to those celebrities (in money, equity or other value) in connection with the offer or as a consequence of their image being included in the prospectus?

B3Q6 Does our proposed guidance strike the appropriate balance between disclosure and marketing in prospectuses?

AFMA agrees that photographs appearing in disclosure documents should be relevant and used appropriately. However, there are circumstances where a photograph may convey meaning and understanding more efficiently. Accordingly, an absolute prohibition on the use of photographs in the investment overview may be unduly restrictive. For example, a photograph may be useful to include in the investment overview to illustrate complex machinery or products which are relevant to the business. The old saying that a picture can be worth a thousand words applies to this point. As an alternative, it may better serve the needs of retail investors to include photographs that demonstrably assist with understanding content and have a caption explaining the photograph and its relevance, rather than having a blanket prohibition for the front sections.

AFMA agrees that photographs that are not relevant to the issuer's business should not be used as they may be potentially misleading to investors. However, relevance is subjective and it should be left to the issuer to determine whether the photograph in question assists the issuer with its disclosure narrative, keeping in mind its obligation not to mislead or deceive investors.

2. Prospectuses should be "as short as possible"

B4Q1 Do you agree with our suggestions for making prospectuses as short as possible? If not, please explain why. Do you have any other suggestions for how prospectuses can be as short as possible?

The suggestions are useful however please see our response in section 1 in terms of the difficulties for entities issuing capital in satisfying a requirement expressed this way.

B5Q1 Do you agree with our proposed guidance that issuers should consider incorporating by reference contracts, trust deeds, detailed corporate governance policies, secondary specialist expert reports and foreign offer documents? If not, please explain why. Are there practical difficulties in incorporating by reference the suggested documents?

B5Q2 Are there other documents that can be usefully incorporated by reference?

Incorporation by reference will not be appropriate for all documents to which it may relate as they have not been prepared with a view to satisfying the disclosure standards contained in Chapter 6D of the Corporations Act. For example, detailed contracts may contain commercially sensitive information, may be complex and require a detailed explanation. Further, there may be legal restrictions in disclosing such documents and undertaking disclosure may require obtaining formal consent from disclosing parties.

This subjects issuers to more onerous disclosure requirements and may have the inadvertent effect of significantly delaying the offer process. Further, it is not clear whether, as part of the pre-vetting process with respect to prospectuses or ASIC's general review of offer documents, ASIC would wish to review each document incorporated by reference to the prospectus or offer document. If this is ASIC's intention, then ASIC should explain how this affects (if at all) the prospectus 7 day exposure period, which ASIC may, at its discretion, extend to 14 days. In this regard, while we note ASIC's comments in RG 000.59 we consider that there are practical and legal issues for issuing entities with respect to this requirement which will need to be carefully considered.

Specifically, with respect to incorporating detailed corporate governance policies, AFMA notes that the Corporate Governance Principles and Recommendations are guidance as to best corporate governance practices and were consciously developed to overcome the difficulties with a 'black-letter' law approach in the area. The only exception to this is that an entity comprising the S&P/ASX All Ordinaries Index and the S&P/ASX 300 Index must have an audit committee, and the composition, operation and responsibility of the audit committee must comply with the Recommendations.

Australia has a flexible, principles-based approach to corporate governance. There is a high level of reporting against the Council's Principles and Recommendations by the more than 2,000 entities listed on the ASX which informs the public on aggregate adoption of recommended practices through an "if not, why not" approach. Good corporate governance practice is not restricted to adopting the Council's Recommendations. The arrangements of many entities differ from the Recommendations but amount equally to good practice. What matters is explaining the governance practices considered appropriate to an individual company's circumstance. Accordingly, by proposing that an issuer seeking listing discloses in its prospectus any departures from the Council's Recommendations suggests that these recommendations are more than guidelines. Further, if an issuer is made to disclose any departures from the guidelines, there is an inherent bias that the issuer's corporate governance structure is fundamentally wrong, even though the guidelines might not be appropriate for that issuer.

B5Q3 If reliance on s712 is problematic, do you think information that would otherwise be incorporated should be set out in an appendix to the prospectus with a cross-reference at the front of the prospectus? This would help to ensure the first sections of the prospectus are more concise, but there should be no concern that the information is not formally included in the prospectus.

B5Q4 Do you think we should encourage issuers to include on their website any documents incorporated by reference (as well as lodging that information with ASIC)?

AFMA considers that an appendix to a prospectus assists with reducing its length and may be a useful tool in many situations and welcomes the proposal.

However, AFMA notes that an appendix will not necessarily address all the issues we have raised above in terms of the legal implications of making the disclosure including

meeting the disclosure requirements under the Corporations Act as well as confidentiality agreements. There may be material cost, time and resourcing impacts that will be associated with using an appendix, for example, smaller issuers may face greater problems with going down this path because of the duplication of effort. Accordingly, ASIC should maintain the flexibility in the Regulatory Guide to ensure that issuers can adopt a more traditional approach where the circumstances warrant it.

B6Q1 Do you agree with our proposed guidance on the prudent course of action in these circumstances? Is this guidance useful? Are there any concerns or practical difficulties with this guidance?

AFMA considers this guidance is useful.

B7Q1 Do you agree with our proposed guidance on what constitutes 'sufficient information' for the purposes of s712(2)(b)?

B7Q2 Do you agree with our proposed guidance on what constitutes 'sufficient information' when incorporating trust deeds and secondary specialist expert reports by reference? Is this guidance helpful? Are there practical difficulties with following this guidance? Do you have other suggestions for what constitutes 'sufficient information'?

AFMA considers the guidance regarding what is "sufficient information" is helpful.

B8Q1 Do you agree that documents incorporated by reference should comply with these other requirements of the Corporations Act? If not, please explain why. Are there practical difficulties with following this guidance?

B8Q2 Do you agree the documents incorporated by reference should comply with s715A? If not, please explain why? Are there any practical difficulties with following this guidance?

As we have mentioned above, incorporation by reference is laudable on the basis that it will shorten a prospectus however it will require that any documents so incorporated must themselves meet the standards of disclosure required under the Corporations Act as well as being permissible pursuant to specific confidentiality arrangements. As also previously mentioned, there are circumstances when incorporation by reference will not be suitable. For example, on the basis of legal liability concerns, some experts may not consent to incorporation by reference. This may make relying on s712 a less attractive approach.

On this basis, the alternative of including a summary of documents that cannot be incorporated should remain a legitimate option for issuers.

3. Investment overview

3.1. Content of investment overview

C1Q1 Is an investment overview an effective way to help retail investors to identify and

understand the information that is key to their investment decision? If not, what would you suggest as an alternative?

C1Q2 Is an investment overview a meaningful replacement for the multiple levels of summaries currently included in many prospectuses (e.g. 'Investment highlights' and 'Frequently asked questions' sections)?

C1Q3 As an alternative to an investment overview, should ASIC encourage a two-part prospectus with one part aimed at retail investors and the other aimed at professional and sophisticated investors? What practical difficulties may arise with this approach?

An investment overview is an effective way to help retail investors to identify and understand the information that is key to their investment decision. We acknowledge that ASIC considers retail investors are most likely to read the first few pages of a prospectus and in this regard, the investment overview operates as a meaningful summary of the entire offer. It is designed to overcome duplication which AFMA endorses.

AFMA considers that a 'two-part' prospectus should be an option for issuers attempting to attract both the wholesale and retail market as it allows an issuer to focus the content of the information in each part, specifically to its target audience. AFMA considers, however, that this approach will not be applicable in each situation as having a 'two-part' prospectus may increase the administrative burden and logistical costs and complexities for issuers. However, similar to ASIC's class order relief for a two-part prospectus in respect of vanilla-bonds issuance, under which a bond issuer recently tested the usefulness of the separation of disclosure information into a base prospectus and second part prospectus, AFMA is of the opinion that a general two-part prospectus may also serve the market in this regard and assist an issuer in focusing on the type of information and level of disclosure required for each of its wholesale and retail investors.

C2Q1 Do you agree with the key categories of information we have suggested should generally be included in the investment overview? If not, please explain why. What other categories of information do you think should usually be included in an overview?

The proposed categories are sensible. However, AFMA does not consider that the expertise (i.e. experience and background) of directors and managers needs to be included in the investment overview section.

C3Q1 Do you agree that key financial information and key financial ratios should be included in the investment overview? Are there any practical difficulties or concerns with an issuer doing this?

C3Q2 Are the proposed key financial information and financial ratios appropriate? If not, what would you suggest?

C3Q3 Do you agree with our proposed methods for calculating these financial ratios?

The inclusion of key financial information and relevant financial ratios is useful. However, AFMA considers the guidelines here as being overly prescriptive with specific regard to key financial information and key financial ratios. AFMA does not think it is optimal for the proposed Regulatory Guide to adopt a prescriptive approach to content with respect to historical financial information and financial ratios. Financial ratios need to be relevant to the industry sector and these can vary widely. In AFMA's view, the guidelines regarding financial information are too prescriptive. Prescription of particular ratio formulae may result in inappropriate ratios being cited and investors being misled. For example, the ratios specified may not be relevant to all types of companies (such as a start up mining company). In the majority of cases directing readers' attention to historical financials "below" EBIDTA (e.g. NPAT) may not be relevant due to the change in capital structure upon an initial public offering (IPO). Financial ratios need to be relevant to the offer being made to investors. For instance -

- (i) The examples in the Appendix are based on historical financial information and other relevant ratios are not mentioned, for example, dividend yield.
- (ii) Financial ratios need to be viewed in context against benchmarks or against comparable businesses (not in isolation).
- (iii) The market into which an offer is made may require particular focus on certain financial information to the exclusion of other relevant information and to attempt to exhaustively and prescriptively pre-empt this may prove problematic for issuers.

AFMA is of the view that with respect to sections of the draft Regulatory Guide capturing financial information, ASIC should be more generic in its approach, such as making it clear that the financial ratios specified are simply examples and just ones which could be used with respect to an issuer (and are not intended to imply that they need to be incorporated into any prospectus).

C4Q1 Do you agree that ASIC should give guidance but that the onus is on the issuer to identify key information that needs to be included in the investment overview? Or do you think that ASIC should be prescriptive about the contents of an investment overview. Please give reasons.

AFMA considers that ASIC should not be prescriptive in this regard. Disclosure of key financial information in the "investment overview" section would be generally helpful provided the information being disclosed is relevant and meaningful. At the moment it is not clear whether the information prescribed is historic or forecast and use of EPS could cause confusion (where the number of shares to be issued is not known).

C5Q1 Is our proposed guidance on the concept of balanced disclosure useful and easy to apply in practice? Please explain your answer.

AFMA agrees that the concept of balanced disclosure is useful.

However, ASIC should recognise that there can be a tension in finding the right balance of detail as the description of the business model and key risks may be lengthy.

C6Q1 Do you agree that the investment overview should indicate if the investment is speculative or if the achievement of objectives is high risk?

The Regulatory Guide should not be prescriptive about content, particularly with respect to historical financial information and whether an investment is “high risk or speculative”. Introducing the subjective concepts of “high risk” and “speculative” would be very problematic around the question of whether an investment would fall under one of those descriptors as these questions go as much to the nature and intention of the investor.

C7Q1 Do you have any further suggestions for how an investment overview should be worded and presented?

C7Q2 Is our guidance on presenting benefits and risks in a balanced way useful and easy to apply in practice? Please explain your answer.

AFMA considers this guidance will be useful.

3.2. Presentation of investment overview

C8Q1 Do you agree that ASIC should not be prescriptive about the length of the investment overview? Alternatively, is there an ideal length for an investment overview?

AFMA considers that ASIC should not be prescriptive about the length of the investment overview, particularly given the content that is proposed in accordance with the draft Regulatory Guide. AFMA considers that ASIC may provide a guide to the market in terms of its expectations but it should not be tantamount to a direction that the market should adhere to, otherwise, the market may simply focus on meeting the length requirements rather than on ensuring meaningful disclosure is included.

4. Specific content issues

D1Q1 Is it useful for ASIC to give detailed guidance on some specific content issues?

D1Q2 Do you agree that s710 generally requires disclosure of the issues we have given guidance on? Are there any other key matters that should also generally be disclosed in a s710 prospectus?

AFMA considers that the guidance on specific content is useful, although, again it should be clear that this is guidance only and not mandatory.

5. Business model

D2Q1 Do you agree that a prospectus should explain the issuer’s business model—that is:

- (a) how the issuer plans to make money and generate income or capital growth for investors; or*
- (b) if the issuer does not intend to make money in the short term, their short term objectives and how they propose to meet those objectives?*

D2Q2 Are there any practical difficulties involved with an issuer explaining its business model?

D2Q3 Are there any other potential consequences of requiring an issuer to disclose this information? For example, might some issuers exit the market, change their business model or exclude retail investors from offers?

AFMA agrees that a prospectus should explain the issuer's business model.

However care needs to be exercised with regard to disclosure of commercially sensitive information such as new technology that is proposed to be brought to market or trade secrets. We invite ASIC to consider whether any additional guidance on this point should be provided in the draft Regulatory Guide.

D3Q1 Do you agree that we have identified the components that will be relevant to most business models? Should any be removed from or added to our proposed guidance?

D3Q2 Is the guidance that we have given on each component adequate and useful? If not, please explain why, giving examples.

D3Q3 For the dividend policy, if an issuer intends to pay dividends other than out of profits, do you agree that this should be stated in the prospectus together with any associated risks? Are there any practical difficulties in doing this?

D3Q4 Do you agree that a prospectus should include an explanation of how the components of a business model relate to each other and to the business model as a whole, rather than simply describing the components?

In terms of D3Q4, AFMA agrees.

6. Risks

D4Q1 Do you agree with our proposed guidance that a prospectus should help retail investors work out which risks are the key risks associated with the issuer's business model, the security and the offer?

The concept of "key risks" is defined as a "reasonable likelihood of occurring", however, an assessment of risk is likely to be more complex based on matters such as likelihood, impact and mitigating factors. While AFMA supports the view that issuers should be encouraged to consider risks on a bespoke basis and not merely repeat risks it has articulated in its most recent disclosure document nor copy risks articulated by a competitor, it is often quite difficult for an issuer to predict the reasonable likelihood of a risk materialising. There is a difficulty in having to disclose all potential risks and ascribe a level of likelihood to those risks occurring – it may be that issuers will adopt a conservative approach and the risks section could become very lengthy through over elaboration which may not represent the true risk of the investment.

D4Q2 Do you agree with our explanation of what the key risks are likely to be?

D4Q3 Are there any practical difficulties with following our guidance on key risks?

AFMA considers that the explanation of key risks is a good starting point. However we note that some issuers may be minded to adopt every key risk identified by ASIC without considering those risks on a bespoke basis. AFMA considers it may be helpful to market participants that ASIC make clear that not all risks identified will necessarily be relevant to the issuer or its offer.

D6Q1 Do you agree that a prospectus should explain the likelihood of a risk occurring and the consequences if it did occur? If not, please explain why.

D6Q2 Do you think that a sensitivity analysis is sometimes appropriate? Are there any practical difficulties in doing this?

Explanations of how a risk may impact an issuer's business model and undertaking a sensitivity analysis may require a level of forecasting that is not practicable (given the overriding requirement to ensure that forward looking statements are reasonable). Examples of this include, where the number of variables may make the risk difficult to assess with any degree of certainty (such as an analysis of losing market share, which could be expected to require an assessment of market segmentation, growth rates and margins).

D7Q1 Does our proposed guidance help issuers to make their risk disclosure more 'clear, concise and effective'?

D7Q2 Are there any practical difficulties with following this guidance on 'clear, concise and effective' risk disclosure?

D7Q3 Do you have any other suggestions for how to make risk disclosure 'clear, concise and effective'?

AFMA considers that ASIC's guidance in respect of this disclosure standard is very helpful and perhaps overdue. The market has not been particularly confident as to its understanding of exactly what this disclosure standard requires and the proposed guidance goes a considerable way in equipping market participants with a greater understanding of regulatory expectations.

D8Q1 Do you agree with our proposed guidance for issuers with an operating history? If not, please explain why.

AFMA considers the proposed guidance is generally helpful.

7. Financial statements

D9Q1 Do you agree with our proposed guidance for issuers with no operating history? If not, please explain why.

D9Q2 Is there other financial information that these issuers should include in their prospectus?

AFMA considers the proposed guidance is generally helpful.

8. Directors and key managers, interests, benefits and related party transactions

D10Q1 Do you agree with our proposed guidance on the information about directors and key managers that should be included in a prospectus? If not, please explain why.

D10Q2 Do you agree that details of any convictions, declarations under s1317E of the Corporations Act, personal bankruptcies, disqualifications or disciplinary action within Australia or other jurisdictions as described in proposal D10(c) should be included in the prospectus? If not, please explain why. Are there any practical difficulties with including this information?

D10Q3 Do you agree that a prospectus should disclose if a director or key manager has previously been an officer of a company that has gone into external administration because of insolvency? If not, please explain why. Are there any practical difficulties with including this information?

D10Q4 Do you think that a prospectus should only have to disclose relatively recent insolvencies that a director or key manager has been involved with? For example, should the disclosure only be required for insolvencies that have occurred over the previous seven years?

AFMA agrees that it is important for investors to be able to understand who is “running” the company.

However, there is a need to deal with care disclosures about a director’s role as an officer in a company that has entered into external administration because of insolvency. Such a connection does not necessarily imply that there has been improper or negligent conduct on the part of the officer and may deter highly qualified people from accepting roles for companies requiring restructuring. We note and endorse comments made by ASIC at its most recent Corporate Finance Liaison Meeting that disclosure may be placed into ‘context’ where applicable.

The concept of “disciplinary action” is unclear and could be potentially very broad. This needs to be more clearly specified. Only matters which have resulted in a final conclusive decision and are a matter of public record should be subject to disclosure. It would be prejudicial to include reference to ongoing matters. Further, it is unclear why ASIC has proposed a disclosure threshold of any “disciplinary action” that is less than 10 years old. We note that, of relevance to directors being able to serve in that capacity, under s206(B)(2) of the Corporations Act, a person may be disqualified from acting as a director for a period of 5 years and that under s206D(1) a court may disqualify a director for up to 20 years.

9. Corporate governance

D11Q1 Do you agree with our proposed guidance on the information about corporate governance that should be included in a prospectus? Are there practical difficulties with including this information?

D11Q2 Do you agree that issuers should consider incorporating detailed policies by reference?

Policies are suitable material for incorporation by reference. However, in the IPO context, certain corporate governance policies cannot be incorporated by reference as they require ratification by shareholders following listing.

D12Q1 Do you agree with this proposed guidance? Do you agree with our examples of indirect interests or benefits that should be disclosed?

D12Q2 Do you agree with our broad approach to the meaning of a ‘promoter’?

Disclosure should be made in accordance with general obligations under the Corporations Act.

10. Use of funds

D13Q1 Do you agree with our proposed guidance on the effect of the offer, including use of funds? Are there any practical difficulties in following our proposed guidance? Are there any other matters that you would like guidance on?

AFMA consider that the proposed guidance is generally helpful.

D14Q1 Do you agree with our proposed guidance on the terms and conditions of the offer? Are there any practical difficulties in following our proposed guidance? Are there any other matters that you would like guidance on?

D14Q2 Our proposed guidance requires disclosure about any process to set the final offer price for the securities (e.g. a book build process). Do you agree there should be disclosure about such a process and if so, what information is relevant for retail investors about the process?

D14Q3 If the offer price will not be finalised until after the deadline for acceptances, do you agree that the prospectus should warn that the final price may not accurately reflect the market value of the securities and may differ significantly from the market price when the securities are quoted (especially where retail investors are involved in the price-setting process)?

The Regulatory Guide provides (paragraph 128) that in a book build situation “the final price may not accurately reflect the market value of the securities”. However, we do not agree with this, given the final price in a book build reflects quantity and quality of demand at various prices (both from institutional investors and brokers, on behalf of their retail clients). The key point that we recommend ASIC focus on in the Regulatory Guide is that the final issue price may differ from the market price on listing.

The Regulatory Guide provides (paragraph 134) that the prospectus should discuss allocation policy. In general this is satisfactory, however, the details of individual allocations / group allocations should not need to be disclosed. It should be noted that in the case of a broker firm offer, allocations will be managed by the broker and substantial holding disclosure will apply. AFMA believes that this is adequate disclosure and to require additional disclosure would represent a change in the law.

The Regulatory Guide provides (paragraph 140) that the identity of sub-underwriters and method for choosing sub-underwriters should be disclosed. AFMA does not agree with this proposal (other than where sub-underwriters are related parties).

The disclosure of the identity of sub-underwriters (in the absence of the related party context):

- (i) is likely to have a material adverse impact on the ability to procure sub-underwriters (as participants are unlikely to agree to be named in a public document solely because they are a sub-underwriter) and this is likely to increase the cost of underwriting and, as a consequence, the cost of undertaking transactions for issuers;
- (ii) is of little relevance to retail investors. AFMA is of the view that, more relevant to retail investors, is focusing on related party disclosure; and
- (iii) would be required even though the substantial holding provisions may not require disclosure of the sub-underwriters' interest (because it is under the 5% threshold). Sub-underwriters would, by the fact of just agreeing to be a sub-underwriter, be in a worse position relative to other participants in the transaction.

Similarly, the method of choosing sub-underwriters is not material to a retail investor's decision about whether to participate in a transaction and is likely to restrict the ability of underwriters to procure sub-underwriters. AFMA has a particularly strong view on this point and would welcome further discussion.

11. Transaction specific prospectuses

E2Q1 Do you agree that our proposed guidance is relevant to s713 prospectuses as described in proposals E1 and E2?

E2Q2 Do you think that RG 66 together with our draft regulatory guide give adequate guidance on these prospectuses (including content)? If not, please explain why. What further guidance would you like from ASIC on s713 prospectuses?

AFMA agrees that the proposed guidance is relevant to s713 prospectuses.

E3Q1 Do you agree that our proposed guidance is relevant to 'offer documents' in the way described above?

E3Q2 Do you think that ASIC should give guidance on the content of 'offer documents'? If so, please explain in detail what you would like that guidance to cover.

E3Q3 Would it be useful for ASIC to give guidance that an 'offer document' should contain an investment overview as described in Section C of the attached draft regulatory guide with cross-references to where more detailed information can be found (either in the offer document or in continuous disclosure announcements)?

AFMA does not consider that guidance on the content of 'offer documents' is necessary.

E4Q1 Are there barriers to issuers using electronic prospectuses in the way they would like to? Do you consider any ASIC relief is required (either similar to [CO 00/44] or otherwise)?

E4Q2 Is there a need for ASIC guidance on electronic prospectuses? If so, please explain in detail what this guidance should cover.

E4Q3 Are there any other prospectus issues that have arisen as a result of other technological developments? Is ASIC relief or guidance required? If yes, please explain the nature of the relief or guidance required and why it is appropriate.

AFMA would welcome guidance on electronic distribution of prospectuses.

12. Other issues

E5Q1 Are there any other prospectus and/or disclosure issues that you would like guidance on? If so, please give a detailed explanation of the nature of the guidance sought and why it is necessary.

E5Q2 Other than the matters covered in the draft regulatory guide, what are the issues that issuers encounter when preparing a prospectus?

E5Q3 Other than the matters covered in the draft regulatory guide, what are the issues that retail investors encounter when reading a prospectus?

E5Q4 Other than the matters covered in the draft regulatory guide, what information do you think retail investors focus on in a prospectus or otherwise look for when making an investment decision?

AFMA gives support to ASIC to encourage investors to read the whole prospectus and not just the first pages. AFMA understands that ASIC is aware of retail investors' propensity not to read the whole document however the whole document has been issued to the market on the basis that it contains all information which investors and their advisers should require to make an informed decision about the offer. Investors have a personal responsibility to understand their investment decisions and ASIC needs to exercise care so not to encourage investors to abdicate this personal responsibility by focusing on: (1) upfront disclosure in a prospectus when at times, such upfront disclosure may not adequately outline all of the key information with respect to the offer; and (2) "shortening" a prospectus, which may have the effect of compromising the integrity of information disclosed in the prospectus. In accord with the earlier comments, AFMA supports ASIC's proposed guidance on "clear, concise and effective" disclosure, however, AFMA reiterates the need for maintaining flexibility with respect to disclosure so that an issuer may present its story in the best way possible while ensuring

compliance with the heavy disclosure regime applicable to prospectuses and then generally with respect to disclosure documents.

Please contact me at dlove@afma.com.au or (02) 9776 7995 if further clarification or elaboration is required.

Yours sincerely

A handwritten signature in cursive script, appearing to read "David Love".

David Love
Director – Policy & International Affairs