

Forward-looking revenue statements in prospectuses

Early last year ASIC foreshadowed a very restrictive approach to the inclusion of forward-looking revenue statements in prospectuses by indicating, in IR 01/05, that 'best practice would be to refrain from including projections in a disclosure document in the following circumstances:

- Where the company is in the start up phase
- Where a company will substantially change its operations following the capital raising
- Where the company's present activities constitute research and development of products and the development is not significantly advanced so as to warrant a reasonable expectation that the products will be commercialised.

This was followed a month later by IR 01/112 in which ASIC indicated that, pending its review of PN 67 on financial forecasts, it would not be accepting forward-looking statements based on hypothetical assumptions because 'it has been one of the major problems with fundraising documents.'

In response to these releases, the Securities Institute advised ASIC that it recognised the obligation to protect the interests of investors by improving financial disclosure. The Institute also shared ASIC's concern to prevent investors from being 'burned' by investing in start-up operations whose disclosure documents include unrealistic forecasts or projections.

However, the Institute expressed concern that if start-up companies were prevented from including forward-

looking revenue statements in prospectuses, it would be very difficult for them to raise capital, and they could be forced into unregulated offerings or prevented from getting off the ground at all.

The Institute suggested that the solution to this problem lies in educating investors and market participants, rather than over-prescriptive regulation. ASIC's specific

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concerns could be addressed by the inclusion of a warning that a forward-looking revenue statement is based on speculative or hypothetical assumptions, rather than factual material, and that the actual results achieved in the period covered by the forecast may vary materially from the projected results.

The requirement for a warning is consistent with overseas practices, which require prospective financial information in takeover documentation to be identified as such and accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement. This approach would have the added value of achieving consistency in disclosure documentation for takeovers and fundraising.

The Institute believes Government policy, which provides a general contents test for disclosure documents

and an extensive liability regime where inadequate care is taken with their contents, allows the market to drive the contents of disclosure documents. As a result, the decision on whether or not to include a forward-looking statement should be left to the directors and promoters and their financial advisers, and the decision whether or not to invest on the basis of those disclosure documents should be left to investors

and their financial advisers.

ASIC has now released for comment Draft PS 170: Prospective financial information, which indicates a softer but firm approach to financial forecasts, in line with PS 67, by requiring issuers to have a reasonable basis for disclosing forward-looking revenue statements. The information should be accompanied by:

- full details of the assumptions used
- the time period covered
- the risks that the information disclosed will not be achieved
- an explanation of how the information was calculated and the reasons for any departure from accounting or industry standards that could be expected to be followed.

The Institute will reiterate its recommendation that the solution also lies in educating investors and market participants to ASIC in response to Draft PS 170, which, once it has been finalised, will replace PN 67.