



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 155

Debenture prospectuses

Related instruments [CO 00/173], [CO 00/174]

Chapter 6D — Fundraising

Issued 17/2/2000

From 5 July 2007, this document may be referred to as Regulatory Guide 155 (RG 155) or Policy Statement 155 (PS 155). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 155.1) or their policy statement number (e.g. PS 155.1).

What this guide is about

RG 155.1 This policy outlines:

- A prospectus relief for continuous debenture issuers to enable the updating of interest rate and term information

see RG 155.2–RG 155.5

Contents

What this guide is about	1
A Prospectus relief	2
Our policy	2
Underlying principles	3
Explanations	3
Key terms.....	5
Related information	6

A Prospectus relief

Our policy

Interest rates included on application forms

RG 155.2 If you are a continuous debenture issuer, you can offer debentures using a prospectus which does not include interest rate and term information, where the prospectus is accompanied by the most recent application form containing this information that has been lodged with us: see Class Order [CO 00/173].

RG 155.3 Under [CO 00/173], the prospectus must:

- (a) make it clear that the interest rate and/or term of the debentures may change from time to time;
- (b) state that the current interest rate and term for the debentures at any time will be as set out in the application form most recently lodged with ASIC; and
- (c) explain that the applicant may have rights to a refund if the application is made on an out-of-date application form.

Interest rates to be completed by the applicant

RG 155.4 If you are a continuous debenture issuer, you can also offer debentures using a prospectus and application form that is silent as to the interest rate and term of the debenture: see Class Order [CO 00/174]. In this case, the applicant will need to complete the application form by filling in the current interest rate and term of the debenture in the space provided on the application form.

RG 155.5 To be eligible for relief under [CO 00/174], you must meet the following conditions:

- (a) the term of the debenture must not be more than five years;
- (b) the prospectus must clearly and prominently:
 - (i) explain how a prospective applicant can find out the interest rate and term; and
 - (ii) advise the applicant to confirm the currency of any interest rate before completing an application;
- (c) the means by which a prospective applicant can find out the interest rate and term must be simple and involve no charge and

- little inconvenience, considering the nature of potential subscribers for the debentures;
- (d) upon any change in the interest rate or term of an available debenture, you must:
 - (i) advertise in any media in which interest rates and changes in interest rates have been regularly advertised; and
 - (ii) promptly notify each person from whom a copy of the prospectus is available who regularly processes applications for debentures under the prospectus;
 - (e) the application form must allow the applicant to specify the interest rate and term of the debenture; and
 - (f) the prospectus must clearly explain the applicant's rights to a refund if the application form incorrectly specifies the interest rate and term for the deposit.

When relief is not necessary

RG 155.6 You do not need relief for products where it is clearly disclosed that the interest rate will vary during the term. This is because it is clear from the nature of the product that an interest rate cannot be specified in advance. The prospectus should advise how the rate will be calculated and how subscribers can find out the interest rate from time to time.

Underlying principles

RG 155.7 It is the nature of the business of continuous debenture issuers that interest rates may change during the life of the prospectus. Given the volatility of interest rates, there are logistical burdens and costs involved in frequently changing application forms or amending prospectuses to facilitate these changes. Our relief is aimed at ensuring that both applicants and issuers can respond quickly to changes in the market without incurring excessive costs.

Explanations

Interest rates included on application forms

RG 155.8 Under s1024G (repealed by the CLERP Act effective 13 March 2000) information otherwise required to be contained in a prospectus could be set out in an application form. There is no such provision in the current Law.

RG 155.9 Section 712 of the Law allows the prospectus to incorporate by reference other documents or parts of documents which may be of interest to investors and these documents are lodged with us. However, that provision does not allow the incorporation by reference of information in documents lodged from time to time.

RG 155.10 Our relief will allow prospectuses to incorporate by reference interest rate and term information set out in application forms lodged with us from time to time.

Interest rates to be completed by the applicant

RG 155.11 Sections 710, 711 and 713 of the Law outline the prospectus content requirements. These provisions would generally require the issuer to state in the prospectus or the application form particulars of all the essential terms of the offer and of the resulting contract which would include the fixed interest rates offered and the term of the debenture.

RG 155.12 Relief from these sections is necessary to make it clear that debenture issuers to issue prospectuses and applications forms which are silent as to the interest rate and term of the debenture.

RG 155.13 Relief of this kind was available immediately prior to the commencement of the CLERP Act and was provided under [CO 95/887] in accordance with Superseded Policy Statement 97 [SPS 97].

Key terms

RG 155.14 In this guide, a reference to:

“CLERP Act” means the Corporate Law Economic Reform Program Act 1999

“continuous debenture issuers” means bodies which issue debentures in the ordinary course of their business

“Law” means the Corporations Law as amended by the CLERP Act

“s712” (for example) is to a section of the Law

Related information

RG 155.15

Headnotes

Debentures, prospectuses, continuous debenture issuers, application forms, interest rates, term of debentures, incorporation by reference, out of date application form, refund

Class orders

[CO 00/173], [CO 00/174]

Policy statements

Superseded Policy Statement 97 [SPS 97]

Legislation

s260FB, 260FA, 710, 711, 712, 713, 1024G, 1481, 1482

Consultation papers

Fundraising: Discretionary powers

Media releases

[MR 99/247], [MR 99/303]