



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 157

Financial reports for offer information statements

Related instruments [CO 00/172]

Chapter 6D — Fundraising

Issued 17/2/2000

From 5 July 2007, this document may be referred to as Regulatory Guide 157 (RG 157) or Policy Statement 157 (PS 157). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 157.1) or their policy statement number (e.g. PS 157.1).

What this guide is about

RG 157.1 This guide discusses:

- A** the form and content of financial reports required to be included in offer information statements (OIS)
see RG 157.3–RG 157.11
- B** the relief we will give in respect of these reports
see RG 157.13–RG 157.28

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A Form and content of a s715 financial report

Our policy

RG 157.2 A financial report required to be included in an OIS should meet the form and content requirements set out in Chapter 2M of the Corporations Law (Law) as well as those in s715(2).

RG 157.3 The audit required by s715(2)(c) is also to be carried out in accordance with Chapter 2M.

Underlying principles

RG 157.4 A financial report included in an OIS should be prepared in the same way and subject to the same audit requirements as annual financial reports for companies.

Explanations

RG 157.5 Under s715(1)(i), an offer information statement (OIS) for the issue of a body's securities must "include a copy of a financial report for the body". Section 715(2) sets out further requirements for these financial reports including that they be prepared in accordance with accounting standards and be audited.

RG 157.6 The Explanatory Memorandum to the Corporate Law Economic Reform Program Bill (Explanatory Memorandum) indicates that the report is to be "prepared in accordance with Chapter 2M of the Law" (para 8.57).

RG 157.7 We consider that a financial report included in an OIS must comply with the requirements of Chapter 2M and be prepared on the basis that the body is a reporting entity for the purposes of complying with accounting standards. These requirements apply to all bodies issuing an OIS irrespective of whether they otherwise prepare reports under that chapter.

RG 157.8 Under Chapter 2M, a financial report includes the directors' declaration but not the directors' report and auditor's report: see s295(1).

RG 157.9 Section 715(2)(c) requires the financial report included in an OIS to be audited. Such an audit must be conducted in accordance with the requirements of Chapter 2M by a registered company auditor. Where the body is a company, registered scheme or disclosing entity, the

auditor must be the body's auditor appointed in accordance with the provisions of Chapter 2M. An auditor's report prepared in accordance with that chapter should be included in the OIS.

RG 157.10 Where comparative information is required by an accounting standard, that information should be included for the last financial year which ended prior to the start of the 12 month period referred to in s715(2)(a). Where the period referred to in s715(2)(a) is not a financial year of the body, there may be a gap between the end of the period covered by the comparative information and the commencement of the period referred to in s715(2)(a). The two periods covered should be clearly disclosed in the OIS.

B Relief for financial reports prepared for an OIS

Our policy

Report for a 12 month period

RG 157.11 We have given relief [CO 00/172] for a body to include in an OIS a financial report for a period longer or shorter than 12 months by no more than seven days.

Comparative information

RG 157.12 We have also given relief [CO 00/172] to allow a body to show audited comparative information for the 12 month period which ends on the first day of the 12 month period referred to in s715(2)(a).

Substantive relief

RG 157.13 We will generally not give relief from the requirements that:

- (a) the financial statement cover a period that is not longer or shorter than 12 months by more than seven days;
- (b) the financial report be prepared in accordance with Australian accounting standards and the other requirements of Chapter 2M;
or
- (c) the financial report have a balance date within the last six months before securities are first offered under the OIS.

Underlying principles

RG 157.14 The requirements in Chapter 2M and s715(2) of the Law are important safeguards for investors.

Explanations

Report for a 12 month period

RG 157.15 Section 323D(2), contained in Chapter 2M, permits directors to determine a financial year which is longer or short than 12 months by up to seven days. We have granted relief which allows the

financial report in an OIS to cover a period which is longer or shorter than 12 months by up to seven days.

RG 157.16 We consider that the requirement for the financial report to cover 12 months reflects a policy that entities seeking to use an OIS should have some operational record. Bodies which have not been in existence for at least that period (less seven days) will not be able to use an OIS.

Comparative information

RG 157.17 Where comparative information is required by an accounting standard, that information should be included for the last financial year which ended prior to the start of the 12 month period referred to in s715(2)(a). Where the period referred to in s715(2)(a) is not a financial year of the body, there may be a gap between the end of the period covered by the comparative information and the commencement of the period referred to in s715(2)(a).

RG 157.18 We have granted relief to allow a body to show audited comparative information for the 12 month period which ends on the first day of the period referred to in s715(2)(a).

Substantive relief

RG 157.19 The OIS is a specific measure aimed at facilitating fundraising by small and medium size enterprises (SME): see Explanatory Memorandum, para 8.55. The disclosure and related liability provisions represent a concession on that which is required in relation to prospectuses.

RG 157.20 The nature and extent of that concession has been determined by the Parliament, reflecting a balance between facilitating SME fundraising and ensuring an adequate level of investor protection.

RG 157.21 We consider that the requirements for financial reports provide important safeguards for investors. In particular:

- (a) the application of Chapter 2M and the accounting standards ensures that the financial information contained in OIS is of the same quality as that generally expected by the investing public; and
- (b) the requirement for a financial report with a balance date within the last six months before securities are first offered under the OIS ensures currency of financial information for investors to assess the offer.

RG 157.22 In the absence of experience with the operation of the OIS provisions which would allow an assessment of how the objectives of the Parliament are being met, we do not consider that it would be appropriate to generally provide substantive relief from the financial reporting requirements.

RG 157.23 However, we will keep the matter under review having regard to the experience with the operation of the provisions.

Key terms

RG 157.24 In this guide, a reference to:

“ASIC” means the Australian Securities and Investments Commission

“body” has the meaning set out in s9 of the Law

“Law” means the Corporations Law as amended by the Corporate Law Economic Reform Program Act 1999

“OIS” means an offer information statement as that term is used in the Law

“s715” (for example) is to a section of the Law

Related information

RG 157.25

Headnotes

Offer information statement, financial reports, relief, prospectus, small and medium size enterprises, audit, accounting standards, financial year, report for a 12 month period, comparative information

Class orders and pro formas

[CO 00/172]

Legislation

Chapter 2M, Chapter 6D, s295, 715

Media releases

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