



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

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***Consultation paper 150:
Disclosing financial information other than in accordance with
accounting standards***

Chartered Secretaries Australia (CSA) is the independent leader in governance, risk and compliance. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are focused on improving organisational performance and transparency. Members of CSA deal on a day-to-day basis with the Australian Securities and Investments Commission (ASIC) and have a thorough working knowledge of the operations of the financial markets, the needs of investors and the Corporations Act.

General comments

CSA strongly supports the current regulatory regime that requires:

- entities to disclose financial information in accordance with the Corporations Act, which in turn provides that such information must be reported in accordance with the accounting standards
- any information disclosed to the market to present a true and fair view of the entity and not be misleading.

CSA also notes that the Corporations Act provides that the financial report is the directors' declaration, the financial statements and notes to the financial statements, which notes may include other information that is necessary to give a fair and true view.

The consultation paper defines non-conforming financial information as:

financial information that is required to be prepared and presented in accordance with the accounting standards when it appears in a financial report prepared under the requirements of the Corporations Act, whether that information appears in the financial report or another document, but is presented on a basis that is not in accordance with all relevant accounting standards.

CSA Members note that they cannot agree with or support the definition of non-conforming financial information put forward in Consultation paper 150: *Disclosing financial information other than in accordance with accounting standards* (consultation paper).

CSA Members could not agree on a common interpretation of the definition suggested by the Australian and Securities Investments Commission (ASIC), with Members from accounting and legal backgrounds arriving at very different interpretations of the definition. This alone suggests to us that the definition is confusing and unclear and reinforces our lack of support.

Given that CSA does not agree with or support the definition put forward in the consultation paper, we have chosen not to comment in detail in this submission on the various proposals set out in the paper, as the definition underpins all of the proposals ASIC has issued.

Legitimate reasons for disclosing financial information not in accordance with the accounting standards

CSA notes that there are legitimate reasons for disclosing financial information other than in accordance with the Australian accounting standards, as performance can be measured in a number of different ways. For example, other measures than the International Financial Reporting Standards (IFRS) are used in the United States — US companies are not yet required to report against IFRS and the results of convergence may not be fully reflected in the accounts for some years — and international organisations will legitimately report against other measures such as US GAAP or measures typically used by the companies in their industry overseas. For example, Australian property entities that are international in scope may report against Funds from Operation (FFO), a measure which is understood in the market, and against which their US competitors will also report. Also, the intention is to achieve convergence of accounting standards rather than identical standards.

CSA recommends that ASIC should not issue any regulatory guidance that precludes Australian entities from reporting against legitimate measures for the disclosure of financial information that are widely accepted within particular industries or the market generally.

CSA also recommends that reporting against such legitimate measures should include a reconciliation to the audited financial figures, to ensure that all relevant stakeholders can take comfort that the information provided is not misleading. Further, such reconciliations should provide consistency of reporting over time. Consistency could be achieved by utilising an approach similar to the 'if not, why not' regime of the ASX Corporate Governance Council guidelines. That is, entities should not reconcile the reporting against other measures using one approach one year and another approach in the following year, unless they provide an explanation as to why the approach has changed. Such consistency will provide for comparability and assist investors and the market generally.

Shareholder engagement

One of the key barriers to effective shareholder engagement, particularly for retail shareholders, is information overload. It is not unusual for the statutory annual reports of large listed companies to run to 300 pages or more of detailed financial and accounting disclosures which are largely impenetrable to the lay reader. This has a particular impact on the retail shareholder. Mandating volumes of highly technical information makes it virtually impossible for unsophisticated shareholders to ever get 'up to speed' on making sense of what is put before them. For example, the introduction of IFRS has rendered the financial information so technical that a significant degree of financial expertise is required to comprehend the financial accounts.

Companies are keen to engage their shareholders and have sought to provide both financial and non-financial information in non-statutory, short form to meet the information needs of their investors, particularly their retail investors. For example, large listed companies now regularly publish non-statutory, short-form shareholder reviews simultaneously with the annual report. There has been a very strong take-up by shareholders of these reviews (with a concomitant dramatic decline in the number of shareholders wishing to receive the annual report — currently

less than 10 per cent of shareholders on average wish to receive the full annual report). The take-up by shareholders of these non-statutory, short-form reviews is proof that they are meeting the information needs of investors, particularly retail investors.

Moreover, analysts have models for the examination of financial information that differ from those provided under the accounting standards. If companies do not provide financial information that suits analysts' needs in their presentations to analysts, there is a very real risk that the analysts will seek to rework the financial information issued by the entity to the requirements of their models, with the attendant further risk of the financial information being misunderstood and/or misrepresented.

Entities are well aware of their legal obligations, including under the continuous disclosure regime. They are also keen to meet the expectations of shareholders and analysts for financial information that meets their needs, provided, of course, that such information is not misleading. CSA would be very concerned if ASIC were to issue a Regulatory Guide which in any way hindered or constrained the ability of companies to engage with their shareholders by providing them with the information that best meets investor needs.

CSA recommends that ASIC should not issue any regulatory guidance that constrains Australian entities from disclosing financial information to investors, analysts and the market generally in the form most suited to investor or analysts' needs.

CSA also recommends that additional disclosure not in accordance with Australian accounting standards be subdivided into two categories: namely self-explanatory and others. Where the description is self-explanatory no further explanation is necessary. If, however, the items could potentially be ambiguous or misleading, a reconciliation to the statutory information would be necessary to satisfy existing requirements that information not be misleading, particularly where statutory expressions are used with a different meaning to their statutory interpretations.

CSA further recommends that ASIC encourage and support the efforts of entities to meet the information needs of their investors and the analyst community. On this basis, **CSA strongly recommends** that ASIC issue a series of principles in relation to the disclosure of non-conforming financial information, supporting the current regulatory regime and legal obligations, rather than issuing a Regulatory Guide which will constrain the disclosure of financial information that may be reported legitimately and which is intended to provide investors and the analyst community with the information they seek. CSA notes that ASIC has defined Regulatory Guides as 'explaining how ASIC interprets the law'. CSA has concerns that, under this banner, the Regulatory Guide has the potential to be interpreted as the sole approach to the disclosure of financial information. For example, ASIC does not clarify if the purpose of the Regulatory Guide is to determine whether or not it would bring an action against a party.

To this end, CSA strongly encourages ASIC to look to the AICD/FINSIA joint guidance, *Underlying Profit: Principles for Reporting Non-Statutory Profit Information*, which was released in 2010 and which is generally in use by the market.

Current ASIC tools to take action against entities disclosing financial information that is misleading

CSA strongly supports the use by ASIC of the suite of tools already available to it should entities report financial information that is not in accordance with the law.

Conclusion

In preparing this submission, CSA has sought input from its members through its national policy committees, the Legislation Review Committee and the Corporate and Legal Issues Committee.

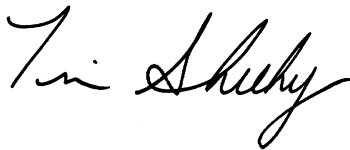
Our key recommendations are that ASIC should not issue any regulatory guidance that:

- precludes Australian entities from reporting against legitimate measures for the disclosure of financial information that are widely accepted within industries or the market generally
- constrains Australian entities from disclosing financial information to investors, analysts and the market generally in the form most suited to investor or analysts' needs.

CSA strongly recommends that ASIC issue a series of principles in relation to the disclosure of non-conforming financial information, supporting the current regulatory regime and legal obligations. CSA does not support the release of a Regulatory Guide that will constrain the disclosure of financial information that may be reported legitimately and which is intended to provide investors and the analyst community with the information they seek.

CSA would be more than happy to arrange for ASIC to meet with our members to discuss the issues canvassed in this submission.

Yours sincerely

A handwritten signature in black ink that reads "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy
CHIEF EXECUTIVE