



ASIC

Australian Securities & Investments Commission

REGULATION IMPACT STATEMENT

Disclosing non-IFRS financial information

December 2011

About this Regulation Impact Statement

This Regulation Impact Statement (RIS) addresses ASIC's proposals for guidance on the use of financial information in financial reports and other corporate documents, such as transaction documents and market announcements, where that information is presented other than in accordance with accounting standards (non-IFRS financial information).

What this Regulation Impact Statement is about

- 1 This Regulation Impact Statement (RIS) addresses ASIC's proposals for disclosing financial information other than in accordance with accounting standards (non-IFRS financial information).
- 2 In developing our final position, we have considered the regulatory and financial impact of our proposals. We are aiming to strike an appropriate balance between:
 - on a general level:
 - maintaining, facilitating and improving the performance of the financial system and entities in it;
 - promoting confident and informed participation by investors and consumers in the financial system; and
 - administering the law effectively and with minimal procedural requirements; and
 - more specifically:
 - the disclosure of non-IFRS financial information which provides useful information to investors; and
 - the possibility of investors being misled by such information.
- 3 This RIS sets out our assessment of the regulatory and financial impacts of our proposed policy and our achievement of this balance. It deals with:
 - the likely compliance costs;
 - the likely effect on competition; and
 - other impacts, costs and benefits.

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A Introduction

Background

- 4 Chapter 2M of the *Corporations Act 2001* (Corporations Act) requires most public entities regulated by ASIC to prepare financial reports that are lodged with ASIC and thereby become publicly available. The Corporations Act requires these financial reports to comply with Australian accounting standards (accounting standards), which mirror International Financial Reporting Standards (IFRS). Compliance with accounting standards is considered important because:
- (a) it assists in ensuring that the financial information is unbiased;
 - (b) it enables an entity's performance to be compared to that of other entities on a consistent basis; and
 - (c) it enables a company's performance over time to be reliably tracked.
- 5 There are approximately 2,300 entities listed on a stock exchange in Australia, and ASIC's financial reporting surveillance program focuses primarily on the financial reports of these entities, as this is where there is most public interest. The financial reporting surveillance program is mostly concerned with ensuring the financial reports comply with the Corporations Act, and especially the accounting standards.
- 6 Some entities provide additional financial information that is presented other than in accordance with all relevant accounting standards, which we define in our finalised regulatory guide as 'non-IFRS financial information': see Section C. We also define two of the most common forms of non-IFRS financial information as 'non-IFRS profit information' and 'pro forma financial information', which are discussed further below.
- 7 It has become increasingly common for entities to disclose non-IFRS profit information in addition to their IFRS profit. This non-IFRS profit information may be included within their financial report (most commonly, in the statement of comprehensive income and, less commonly, in the notes to the financial statements) and in other public documents including market announcements. Entities state that they publish this non-IFRS profit information because it may be requested by analysts for use in their valuation models and it allows entities to provide a better understanding of aspects of their performance. While ASIC agrees that non-IFRS profit information can be useful to users of financial reports, it also has the potential to be misleading if it is not presented clearly and appropriately. Investors may become confused or misled if more than one profit figure is presented. Inappropriately used, it can provide a distorted view of the actual performance of an entity—for example, by omitting 'bad news'.

- 8 Over the previous three main reporting periods (ending 30 June 2010, 31 December 2010 and 30 June 2011), we have reviewed almost 250 financial reports and related documents to assess the prevalence and quality of non-IFRS profit disclosures. Two-thirds of the documents reviewed included non-IFRS profit measures such as ‘underlying profit’, ‘normalised profit’ and ‘profit before significant items’.

Why non-IFRS financial information?

Financial reports and accompanying documents

- 9 Australian accounting standards adopted IFRS in 2006. While profit information presented other than in accordance with accounting standards has been provided by entities for many years, it has become more prevalent since the introduction of IFRS. This is partly because one of the impacts of IFRS has been the requirement for more fair value adjustments to assets and liabilities to go through the statement of comprehensive income. Some entities consider that such adjustments are not appropriate (e.g. because they have no intention of disposing of an asset that has lost value) and should be excluded to show the entity’s ‘true’ performance (sometimes called ‘underlying performance’ or similar). These entities show two profit figures—the one calculated in accordance with accounting standards and the non-IFRS profit figure. The disclosure of two profit figures potentially creates confusion for investors.
- 10 Other reasons for disclosing non-IFRS profit information may include:
- (a) a tendency for entities to want to show the best possible results during challenging economic times; and
 - (b) some entities considering it appropriate to adjust for non-recurring items, as this provides useful information to investors.

While some entities genuinely wish to disclose meaningful non-IFRS profit information to the market to assist investors and other users in understanding the entity’s performance, other entities tend to use non-IFRS profit information to hide ‘bad news’ or otherwise mislead investors about the entity’s true financial performance.

Transaction documents

- 11 A related area of concern is the disclosure of pro forma financial information in ‘transaction documents’—being prospectuses, takeover documents and other similar documents (which seek to raise funds or change an investor’s financial situation in some way). Pro forma financial information is non-IFRS financial information that is intended to show the effects of proposed

or completed transactions for illustrative purposes, and can be very useful for investors. A common scenario would be a transaction document for a business combination, where pro forma financial information is presented to show how the business would appear for the combining entities, had the transaction occurred at the start of the previous financial year. The reason it is called ‘pro forma’ is because that financial information is not specifically required to be prepared by the Corporations Act or accounting standards, and presents a hypothetical position, based on assumptions. Such information can assist investors in deciding whether or not to approve the proposed transaction.

- 12 If this information is inappropriately presented, there is potential for investors to be misled. There is no formal guidance in the market on how to present pro forma financial information.
- 13 While the use of pro forma financial information in transaction documents is different to non-IFRS profit information in financial reports and accompanying documents, we consider it important to address all types of non-IFRS financial information, as there is potential for users to be misled by such information.

Assessing the problem

Inclusion of non-IFRS information in financial reports

- 14 The Corporations Act and accounting standards specifically require IFRS information in financial reports, but do not explicitly state whether non-IFRS profit information may also be included. This has led to two competing interpretations of the law:
- (a) that non-IFRS information is not permitted to be included in a financial report; or
 - (b) that non-IFRS information is permitted to be included in a financial report, but it must be accompanied by the required IFRS information.
- 15 ASIC’s regulatory view is that the first interpretation is correct. We have adopted this approach when undertaking surveillance, compliance and enforcement. We have conveyed our view to individual entities when we identify particular concerns, but we have not formally conveyed our view on the correct interpretation of the law to industry as a whole.
- 16 However, we acknowledge that some entities have adopted the second interpretation and elected to include non-IFRS information in their financial reports. It is likely that, with no intervention from ASIC, entities will continue to publish non-IFRS profit information in financial reports.

Documents accompanying financial reports—Misleading or deceptive conduct

- 17 There is no prohibition in the Corporations Act or accounting standards on non-IFRS profit information being presented in documents accompanying a financial report. However, a number of provisions in the Corporations Act prohibit it being presented in a manner that is misleading. Whether something is misleading or not will depend on the facts of the case. The Corporations Act or accounting standards do not provide any detailed guidance on when non-IFRS profit information may be misleading.
- 18 We have noticed a number of concerning practices regarding the use of non-IFRS profit information in documents accompanying financial reports, such as:
- (a) presenting it with greater prominence compared to the IFRS financial information;
 - (b) presenting it in a biased manner or in a manner to hide ‘bad news’;
 - (c) not explaining how it is calculated or why it is needed;
 - (d) not reconciling it with the audited IFRS financial information;
 - (e) adopting an inconsistent calculation approach from period to period; and
 - (f) describing items that have occurred in the past, or are likely to occur in a future period, as ‘one-off’ or ‘non-recurring’ items.
- 19 The Corporations Act contains prohibitions against misleading and deceptive conduct, and we believe that conducting one or more of the practices outlined above could potentially breach those provisions of the Act.
- 20 The only current guidance in Australia on non-IFRS profit information comprises an ASIC draft guide *Disclosing pro forma financial information*, published in 2005, and an industry guide published by AICD/Finsia (the Australian Institute of Company Directors and Financial Services Institute of Australasia) in 2009. The AICD/Finsia guide is merely ‘best practice’ guidance, and there are no direct consequences for non-compliance with that guide. That guide cross-refers to the ASIC 2005 draft guide in relation to financial reporting and is silent in relation to transaction documents.
- 21 Because there is currently no detailed guidance, entities are not sure how to interpret the relevant provisions of the Corporations Act. Enforcing the law through the courts is time-consuming and costly and is only done in the more extreme cases.
- 22 Based on our review of the 250 financial reports mentioned in paragraph 8 (which included a mixture of Australian Securities Exchange (ASX) top 100 companies and others), we believe that a large number of companies need to make significant improvements to disclosures in the interests of better informed investors. The results of our reviews are shown in Table 1.

Table 1: Review of non-IFRS profit disclosures in financial reports and related documents

Type of disclosures	Percentage
Disclosures that substantially comply with the guidelines in the draft regulatory guide attached to CP 150 (including 80 companies that have not disclosed a non-IFRS profit figure)	40%
Disclosures that do not substantially comply with the guidelines in the draft regulatory guide attached to CP 150	58%
Disclosures where we have taken action, or are considering taking action	2%

- 23 The current market guidance does not seem to have discouraged entities from the practices outlined in paragraph 18. Because ASIC's current guidance is in draft form, it does not carry the authority of finalised guidance. In addition, market conditions have changed since 2005 (primarily the introduction of IFRS mentioned above, and the global financial crisis). A number of significant organisations have indicated that ASIC should provide updated and finalised guidance in this area.

Transaction documents

- 24 Pro forma financial information has been shown in transaction documents for many years. However, there is no current guidance in the market on the manner in which such information should be prepared and presented. The format of this information has evolved ad hoc. Due to this lack of clear guidance, we have noted that the consistency, quality and clarity of information published can vary significantly between documents and thereby adversely affect investor decisions.
- 25 All transaction documents contain some form of pro forma financial information. Even a simple prospectus for a straightforward equity raising will contain a pro forma statement of financial position showing the financial effects of that equity raising. More often than not, it is necessary for ASIC to raise concerns with issuers of transaction documents regarding the pro forma financial information disclosed. With prospectuses, for example, ASIC has powers to issue a 'stop order', which prevents the prospectus being marketed and securities being issued to investors. However, we consider it more appropriate for guidelines to be issued to encourage better practice and thereby reduce the need for ASIC's stop order powers to be used.
- 26 The Corporations Act requirements for financial information in transaction documents are very high level. With prospectuses, for example, the Corporations Act states that the prospectus should contain, 'all the information that investors and their professional advisers would reasonably require to make an informed assessment of ... the assets and liabilities,

financial position and performance, profits and losses and prospects of the body...'. There is no further detail about the financial information required or how to present it.

- 27 Transaction documents usually encourage investors to invest significant amounts of money or to agree to a significant change in their investment. Accordingly, it is important that clear pro forma financial information is included to enable investors to understand how the financial position and performance will change. It is possible that investors do not always realise that they have been provided with inappropriately prepared pro forma financial information. Investors are not usually in a position to be able to carry out their own investigation of the accuracy of information presented in a transaction document, so they have to trust that the entity has done the right thing. It will only become apparent at a later point in time if something goes wrong.

Summary of the problem

- 28 In summary, while we agree that non-IFRS financial information can be very useful to the market when appropriately calculated and presented, our concerns are that:
- (a) non-IFRS profit information is being included in financial reports when it is our view that this is not permitted by the Corporations Act;
 - (b) non-IFRS profit information is being included in documents accompanying financial reports in ways that do not clearly explain why and how it is calculated—sometimes with greater emphasis than information calculated in accordance with accounting standards, and sometimes with the apparent intention of providing a more positive picture of the entity's financial performance; and
 - (c) pro forma financial information is being included in transaction documents in manners that may be unclear or misleading.

Objectives of government action

- 29 In seeking a more efficient market and protection of investors, ASIC is trying to achieve three main objectives:
- (a) to promote more meaningful communication of financial information to investors;
 - (b) to assist directors in ensuring that the financial information disclosed is not misleading; and
 - (c) to provide greater certainty in the market about our views on disclosure of non-IFRS financial information.

B Options and impact analysis

- 30 Possible options for ASIC to assist in ensuring that non-IFRS financial information released to the market is not misleading are:
- Option 1:** ASIC provides finalised guidance on when non-IFRS financial information may be misleading (preferred option);
- Option 2:** ASIC continues to use existing powers in relation to non-IFRS financial information that may be misleading (status quo);
- Option 3:** ASIC recommends that the Government undertake law reform to clarify the law relating to non-IFRS financial information in documents accompanying financial reports and transaction documents (law reform).
- 31 Under all options, we would continue taking action in cases where we consider it can be proved that the disclosures are clearly misleading.
- 32 Option 1 (our preferred option) sets out our guidance on the appropriateness of providing non-IFRS financial information, and how to present it in a manner that will minimise the possibility of users of the information being misled by it.

Option 1: ASIC provides finalised guidance on when non-IFRS financial information may be misleading (preferred option)

Description of option

- 33 Under this option, we would provide finalised guidance in the form of a new ASIC regulatory guide on the appropriateness of providing non-IFRS financial information, and how to present it in a manner that will minimise the possibility of users of the information being misled by it.
- 34 We intend to provide guidance covering:
- (a) presenting non-IFRS financial information to reduce the possibility of it being misleading;
 - (b) determining whether greater prominence has been given to non-IFRS financial information over IFRS information;
 - (c) examples of potentially misleading disclosures;
 - (d) interpretation of the Corporations Act and relevant accounting standards; and
 - (e) presentation of pro forma financial information in transaction documents.

Impact on industry—Financial reports and accompanying documents

35 The impact on industry of this option will depend on how many entities elect to provide non-IFRS financial information, and the manner in which they provide it. We are primarily concerned with ASX-listed entities, as these are the entities that most commonly issue non-IFRS financial information, and are subject to the most public interest. Studies by a large independent accounting firm indicate that, in 2009 and 2010, approximately 85% of the top 100 ASX-listed companies in Australia have released non-IFRS financial information in the form of non-IFRS profit information. It is our experience that the percentage of smaller listed entities likely to issue such information is lower.

36 The cost impact of the proposed guidance on entities that publish non-IFRS financial information is likely to be minimal. Accountants or other advisers will need to familiarise themselves with the regulatory guide, and make any changes to the information currently provided to ensure it complies. If they currently publish such information within their financial statements or notes, the guide will make them aware that it is no longer appropriate to do so. However, they will still be able to publish non-IFRS financial information in documents accompanying the financial report. If they currently emphasise non-IFRS profit information over IFRS profit information in documents accompanying the financial report (e.g. in media releases and results announcements), they will be made aware that they should cease doing so, but can still disclose the non-IFRS profit information in these documents. They may be required to provide a reconciliation, or other disclosures that they do not currently provide, but the impact of these will be minimal. It is likely that the cost of receiving professional advice will reduce, as there will be more certainty about what is required.

Impact on industry—Transaction documents

37 The impact on industry for this option will depend on the manner in which entities are currently providing pro forma financial information in their transaction documents, but it is expected to be minimal in most cases. As discussed in relation to financial reports and accompanying documents, there may be some cost in changing current reporting formats, but there will also be more certainty about what is required, which will be likely to reduce the cost of obtaining professional advice.

Impact on consumers—Financial reports and accompanying documents

38 The main parties that are affected by the problem, and are likely to be affected by the solution, are shareholders and analysts. There will be no detriment or cost to these parties, but they should benefit from the reduced possibility of being misled about the performance of an entity, and they will be able to better compare financial information across different entities. They will still have access to non-IFRS profit information that complies with our regulatory guide, and to the improved disclosures forming part of that information.

Impact on consumers—Transaction documents

- 39 The main parties that are affected by the problem, and are likely to be affected by the solution, are investors and their professional advisers. ASIC argues that there will be no detriment or cost to these parties, but they should benefit from the reduced possibility of being misled in an important investment decision. The pro forma financial information included in transaction documents should be presented more consistently and clearly than previously.

Impact on government

- 40 The impact on ASIC is unlikely to be significant. There is likely to be a small benefit to ASIC, as there will be fewer entities inappropriately disclosing non-IFRS financial information, requiring follow-up from ASIC. We can then put those resources into other activities—for example, taking more enforcement action against those entities who do not comply. This will flow on as a benefit to consumers and to the market as a whole. No additional staff will be required, and only minimal training will be required to ensure that staff understand the new regulatory guide. No additional funding will be required, and no other government agencies will be affected in any way.

Option 2: ASIC continues to use existing powers in relation to non-IFRS financial information that may be misleading (status quo)**Description of option**

- 41 Under this option, we would continue to use existing mechanisms to enforce compliance with the Corporations Act. This includes examining financial reports, the documents that accompany financial reports and transaction documents and, if the documents contain misleading information, contacting the entity and/or taking enforcement action. We would rely on entities to decide for themselves when and how such financial information should be presented, with reliance on any industry guidance.

Impact on industry—Financial reports and accompanying documents

- 42 If there is no regulatory intervention, the problem is likely to continue as it is now. Should there be a further economic recession, it is likely that the problem will increase, as entities attempt to hide worsening statutory results through the emphasis of inappropriate non-IFRS profit information. There has been some industry guidance for a couple of years now, but problems still exist in the market.
- 43 In the absence of an ASIC regulatory guide, directors and preparers of financial reports and other documents would have less certainty about what is required.

Impact on industry—Transaction documents

- 44 If there is no regulatory intervention, the problem is likely to continue as it is now. There is no formal industry guidance at present.

Impact on consumers—Financial reports and accompanying documents

- 45 Shareholders and analysts would continue to receive non-IFRS financial information in whatever format entities choose to disclose it, including such information being included within financial reports (particularly in the statement of comprehensive income). The possibility would remain that shareholders could be misled about an entity's financial performance by entities inappropriately emphasising the non-IFRS financial information, and not providing suitable disclosures, including a reconciliation to the IFRS financial information.

Impact on consumers—Transaction documents

- 46 Investors and their professional advisers would continue to receive transaction documents with pro forma financial information prepared in different manners—at the discretion of the preparer. The possibility would remain that investors could make inappropriate investment decisions based on unclear or misleading pro forma financial information.

Impact on government

- 47 ASIC would not be required to issue a new regulatory guide.
- 48 We do not believe that this option would provide significant savings to ASIC when compared with Option 1. In fact, more staff time may be consumed in taking action against entities that are providing misleading non-IFRS financial information.

Option 3: ASIC recommends that the Government undertake law reform to clarify the law relating to non-IFRS financial information in documents accompanying financial reports and transaction documents (law reform)

Description of option

- 49 Under this option, we would recommend that the Government undertake law reform to clarify the rules about when and how non-IFRS financial information may be used in documents accompanying financial reports and in transaction documents. Financial reports would not be covered by this option, as the content of these reports is governed primarily by the accounting standards, which are approved by the Australian Accounting Standards Board to be consistent with IFRS.

Impact on industry

- 50 Industry would be required to comply, as the requirements would form part of the Corporations Act. The requirements in the Corporations Act would be drafted largely on a principles basis, so it is likely that guidance outside the Corporations Act would still be required to implement the principles. For example, to implement a requirement in the Corporations Act that equal or greater prominence shall be given to IFRS financial information compared to non-IFRS financial information, guidance, including examples, would need to be provided on what constitutes equal or greater prominence. As a result, industry would still be required to consult both the Corporations Act and ASIC guidance in order to comply with the Corporations Act. There would be more certainty than currently but, given that guidance would still need to be provided, we consider that industry would not prefer this option over Option 1.

Impact on consumers

- 51 Investors and other professional advisers would be likely to receive documents accompanying financial reports and transaction documents containing more informative non-IFRS financial information, as the format of that information would be mandated by law. The disclosures should more clearly distinguish the IFRS from the non-IFRS financial information, and provide reconciliations and other disclosures which should better analyse the financial performance of an entity.

Impact on government

- 52 Changes to the Corporations Act would be required to introduce new provisions covering pro forma financial information. As discussed above, because the requirements in the Corporations Act would need to be drafted largely on a principles basis, guidance outside the Corporations Act would still be required to implement the principles.
- 53 This option would put Australia out of step with overseas jurisdictions (particularly the United States and the European Union), as overseas guidance is not contained in legislation, but issued by the relevant regulator.
- 54 For the above reasons, this is not considered to be the preferred option.

C Consultation

CP 150

- 55 On 24 March 2011, ASIC issued Consultation Paper 150 *Disclosing financial information other than in accordance with accounting standards* (CP 150) to consult on our proposed approach to regulating the use of non-IFRS financial information. Our proposed guidance was set out in a draft regulatory guide, attached to CP 150.
- 56 We asked for feedback in relation to financial reports and documents related to the financial report and whether:
- (a) there was agreement with our proposed definitions;
 - (b) there was agreement that we should provide guidelines; and
 - (c) the proposed guidelines were appropriate and practicable.
- 57 We also asked for feedback on transaction documents and whether:
- (a) there was agreement that it is often necessary to include pro forma financial information in transaction documents;
 - (b) accounting standards should be followed;
 - (c) ASIC should provide guidelines; and
 - (d) the proposed guidelines were appropriate, and on other miscellaneous matters.

Overview of responses to CP 150

- 58 We received 33 written responses to CP 150 from a variety of stakeholders, including responses from accounting firms, accounting standard setters, entities and professional bodies. Meetings were also held with a number of parties, including some that did not provide a written response.

Feedback on CP 150 and ASIC's response

- 59 We have set out below a brief summary of ASIC's response to the feedback received in submissions on CP 150. For further detail, please see our report *Response to submissions on CP 150 Disclosing financial information other than in accordance with accounting standards* (REP 269).

Title of guide and definitions

60 In CP 150, we called financial information prepared and presented other than in accordance with accounting standards ‘non-conforming financial information’.

61 We received significant feedback outlining concerns with both the term ‘non-conforming’ and the associated definition. Feedback received included that the proposed term (and the proposed title of the regulatory guide) could have negative connotations and imply that the associated information was illegitimate in some way, and that the definition was difficult to understand and may capture information not intended to be captured (e.g. information required by other regulators).

62 We also defined two other terms—‘alternative profit information’ and ‘pro forma financial information’. Most respondents expressed no concerns with those definitions, with some providing suggestions for improvements.

ASIC’s response

63 We have replaced the term ‘non-conforming’ with ‘non-IFRS’ and reworded the associated definition. We have also provided examples of what is and what is not intended to be captured by the definition.

64 We have changed the term ‘alternative profit information’ to ‘non-IFRS profit information’, and reworded the definition of both this term and the term ‘pro forma financial information’ to clarify and incorporate some of the suggestions made by respondents.

Prescriptiveness of the guide

65 While there was overall support for the need for guidance from ASIC, we received significant feedback that the draft regulatory guide was too prescriptive in a number of areas, and should be more principles based.

ASIC’s response

66 We have reduced much of the proposed detailed guidance, and reduced repetitiveness wherever possible. However, we needed to balance our changes with requests from a number of respondents seeking further guidance in particular areas (e.g. ‘prominence’—see paragraphs 77–81).

Consistency with accounting standards

67 In CP 150, we provided our interpretation of key paragraphs in Australian Accounting Standard AASB 101 *Presentation of financial statements*, which in our view prohibit non-IFRS profit information being included within a statement of comprehensive income.

- 68 Feedback received included that:
- (a) it was not appropriate for ASIC to interpret accounting standards; and
 - (b) our interpretation of AASB 101 was incorrect.

ASIC's response

- 69 As a regulator, it is necessary for ASIC to interpret accounting standards to an extent. Since issuing CP 150, we consulted further on our interpretation of AASB 101 with relevant and informed parties who confirmed our interpretation. The finalised regulatory guide reflects what we consider to be the appropriate interpretation of AASB 101, and sets out that interpretation in more detail.

Transaction documents

- 70 A number of respondents thought that our proposals on transaction documents in CP 150 were more closely aligned with, and would be better considered in the context of, Consultation Paper 155 *Prospectus disclosure: Improving disclosure for retail investors* (CP 155).
- 71 Concerns were also expressed that the proposed guidelines for transaction documents in the draft regulatory guide were too prescriptive, and there was disagreement with our proposal that a pro forma statement of comprehensive income should not stop at EBIT (earnings before interest and tax) or EBITDA (earnings before interest, tax, depreciation and amortisation), but continue down to NPAT (net profit after tax).
- 72 We stated that, where a statement of financial position is presented, as a minimum, the most recent half year (if applicable) and full year should be presented. A number of respondents indicated that the most recent statement of financial position alone would be sufficient.

ASIC's response

- 73 We consider that the most appropriate place for guidance on pro forma financial information is in the regulatory guide based on our proposals in CP 150, as CP 155 (and associated regulatory guide) covers prospectuses only, whereas CP 150 covers all types of transaction documents.
- 74 We have changed our guidelines to say that preparers of transaction documents should carefully consider whether a pro forma statement of comprehensive income should stop at EBIT or EBITDA, or continue to NPAT.
- 75 We have outlined the factors that should be considered in deciding whether to take the statement of comprehensive income to NPAT, and we state that, where the pro forma statement of comprehensive income does not extend to

NPAT, an explanation should be provided, as well as narrative explanations to explain likely funding, tax and amortisation impacts of the transaction.

76 We have indicated that the most recent statement of financial position would be sufficient as the basis for pro forma financial information.

Prominence

77 At a number of points in CP 150, we referred to the prominence of non-IFRS financial information compared to IFRS financial information.

78 Concerns were expressed about:

- (a) whether it was appropriate to require equal prominence of IFRS financial information;
- (b) that more practical guidance should be provided on what is meant by prominence; and
- (c) that our references to prominence were inconsistent (e.g. sometimes we referred to 'greater prominence' and sometimes 'undue prominence').

ASIC's response

79 Consistent with overseas guidance, we consider it is appropriate that IFRS financial information should be presented with equal or greater prominence than non-IFRS financial information.

80 We now consistently refer to 'equal or greater prominence'.

81 We have outlined guiding principles on the meaning of greater prominence, rather than detailed guidance, given the number of documents and contexts in which non-IFRS financial information can appear. We have also provided some examples of appropriate and inappropriate disclosure.

D Conclusion and recommended option

- 82 We recommend Option 1. The requirements set out in the finalised regulatory guide under this option will help in ensuring that the market is not misled by the publication of non-IFRS financial information. Option 1 achieves our regulatory objectives without imposing an unreasonable burden on entities publishing non-IFRS financial information.
- 83 We believe that Option 2 is not supportable because it presents an unsatisfactory risk to users of financial information and does not address the problems identified and discussed in Section A.
- 84 We believe that Option 3 is not supportable because it would still involve issuing detailed guidance, and is out of step with overseas regulators.

E Implementation and review

- 85 Our recommendation will be implemented by the publication of a new regulatory guide providing industry with guidance on our expectations on the use of non-IFRS financial information.
- 86 We intend to issue the new regulatory guide in December 2011. The associated consultation paper (CP 150) was issued in March 2011 and, while we have made changes in drafting the finalised regulatory guide, we have not introduced any new principles. As a result, we consider entities will have sufficient time to implement the new guide for their financial reporting for periods ended 31 December 2011.
- 87 We will know whether the regulatory guide has been successful, if there are significantly fewer instances of inappropriate disclosure of non-IFRS financial information. We will monitor this through our ongoing financial reporting surveillance program and through our transaction document surveillance program.