

12 December 2011

The Manager
Corporate Reporting and Accountability Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: frpdiscussionpaper@treasury.gov.au

Dear Sir/Madam

Discussion Paper - Financial Reporting Panel

Ernst & Young appreciates the opportunity to comment on the Discussion Paper on the Future of the Financial Reporting Panel (the Discussion Paper).

Overall, we support the retention of the Financial Reporting Panel (FRP) as it plays an essential role in providing an independent body to arbitrate disputes between companies and ASIC. While few disputes have been referred to the FRP since it has been operational, its existence plays an essential role. We do however believe that the FRP can be enhanced by:

- Expanding its role
- Reconsidering the constitution of the panel

Appendix A to this letter expands on the above matters, and includes the answers to the specific questions raised.

The Exposure Draft of the Corporations Legislation Amendment (Audit Enhancement) Bill 2011 released on 30 September 2011 proposes that ASIC be given the power to issue public reports on audit deficiencies by individual audit firms. ASIC would be able to issue a public audit deficiency report on an individual audit firm only after the audit firm had failed to take remedial action to address an audit defect identified by ASIC within a prescribed time frame.

Given that there are serious reputational issues at stake for auditors that are the subject of audit deficiency reports, the power to publish such reports must be accompanied by due process including the right of appeal to an independent and appropriately qualified arbitrator.

We consider that the FRP would be an appropriate body to arbitrate disputes between ASIC and audit firms with regard to audit deficiency reports under proposed Division 5A of the Corporations Legislation Amendment (Audit

Enhancement) Bill 2011. We note that if this is implemented, the FRP would require auditing competence as well as financial reporting expertise.

Should you have any questions on the matters discussed in this letter, please do not hesitate to contact Lynda Tomkins (on 02 9276 9605) or myself (on 03 9288 8647).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Johnson', with a large, stylized initial 'T'.

Tony Johnson
Oceania Managing Partner, Assurance

Appendix A - Detailed responses to the questions raised

Question 1:

Why do you believe the level of FRP referrals has been less than initially anticipated?

Without conducting detailed research, including interviews with ASIC and companies that have been subject to ASIC's financial reporting surveillance program, the exact reasons for there being few referrals to the FRP cannot be ascertained. We do however note the following additional factors that may have affected utilization of the Panel:

1. The FRP is still relatively young, and up until cases were first taken to the Panel last year, it was an unknown process. It is not surprising that many entities were reluctant to submit themselves to an untried process and to shy away from being the first to try out the new mechanism.
2. The members of the Panel are not regularly involved in the day-to-day interpretation and application of Australian accounting standards, nor connected or involved in the international IFRS community (such as similar panels in other countries, regulators and the IFRS Interpretations Committee) to facilitate their ability to reach conclusions that are consistent with internationally accepted positions.
3. Considerable time has usually passed from the date of issuance of the financial statements under dispute and the time at which final resolution of issues with ASIC is needed. Companies therefore prefer to resolve the dispute and move forward, rather than continue to disagree and seek independent arbitration.

Question 2:

What factors do you believe may need to be addressed in order for the FRP to function effectively?

We believe addressing the following factors will enhance the effectiveness of the FRP:

1. Referral of cases - The current process requires ASIC to either refer or agree to refer a case to the FRP. Therefore all the power effectively resides with ASIC. Allowing companies to refer a case without ASIC approval should be considered. However, to avoid nuisance cases being referred to the FRP consideration can be given to the following screening mechanisms:
 - a. Referrals may occur only a specified period of time after ASIC having conducted their review of the financial statements - e.g. 9 months. This should give sufficient time for the company and ASIC to have discussed the matters, to have identified where the difference in views are.,.

- b. Companies should advise ASIC of their intention to invoke the dispute resolution process and allow ASIC to respond with reasons as to why they believe there is as yet no dispute - e.g. information/answers to questions have not been provided by the company. If the company wishes to proceed with taking the matter to the FRP, panel members will also be provided with this letter, and their first action will be to consider if there is dispute to be resolved.
- 2. Automatic referral of cases - Imposing a time limit on the resolution of issues between ASIC and the company - e.g. 9 months. Delays in the resolution of matters between ASIC and companies does not enhance the effective operation of the capital markets. However, in such cases, the role of the FRP could be to assist with the resolution, rather than be purely an independent arbitrator to resolve 'disputes'. To assist with this, ASIC would prepare a status report of the discussions held and the reasons that a resolution has not been reached. The FRP would then play a consultative role to assist with addressing the reasons for the delay in resolution. It may be necessary to provide the FRP with more powers to request information, or for them to order the involvement of experts/other parties to resolve the matter.
- 3. Composition of the Panel - The members of the Panel are from the accounting profession with varied backgrounds. They are not currently involved in international accounting forums nor involved in the interpretation of current accounting issues on a regular basis. This means that the panel members may not necessarily be experienced enough or qualified to handle all of the issues.. This can be overcome with the use of experts to advise the panel, but would appear to defeat the purpose of having an expert panel. We therefore recommend expanding the Panel to include members of the profession who are currently engaged in the interpretation of standards on a regular basis.

The above also addresses questions 3 through 5.

Question 6:

Do you believe that the FRP's functions should be repealed and the Panel closed?

No. We do not believe that the FRP's functions should be repealed, as the Panel plays an important role both in ensuring the quality of financial reporting in Australia and providing an effective dispute resolution mechanism should it be needed. The usefulness of the Panel should not be evaluated solely based on the number of matters which have been referred to it - its existence serves as an important element of the process for resolving financial reporting disputes.