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ASX Compliance Pty Limited
20 Bridge Street
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Attention Mavis Tan mavis.tan@asx.com.au

Dear Ms Tan

Re: Consultation paper on proposed changes to Guidance Note 8 relating to analyst and investor briefings, analyst forecasts, consensus estimates and earnings surprises

The Group of 100 (**G100**) is an organization of chief financial officers from Australia's largest business enterprises with the purpose of advancing Australia's financial competitiveness.

The G100 welcomes the opportunity to provide comments on ASX's proposed changes to Guidance Note 8 (**Revised GN8**), and is supportive of ASX's general agenda to bring greater certainty and efficiency to Australia's already very robust continuous disclosure regime.

In this submission, we have set out some specific comments. By way of general observation, in the G100's view, Revised GN8 represents a further step in the creation of exceptionally detailed and specific guidance in respect of continuous disclosure. We see this as counterproductive as:

- it brings to bear rules that are not universally relevant to listed entities or which are unduly onerous – examples of which we raise below; and
- we now have an increasingly longer document (85 pages, including mark-ups) providing guidance on one aspect of a Listing Rule.

The G100 is mindful of the increasing activity of class action litigation proponents and activist shareholders. We recognise the positive role they can play at times to promote higher standards of corporate efficiency and governance. However, there is a risk that these groups may see specific guidance of the kind contemplated by Revised GN8 as strict standards against which listed entities are to be held to account. This in turn creates concern for us and we believe that it will lead to greater risk aversion and inefficiencies for participants in the ASX's equity market.

We make the following specific comments on Revised GN8:

1. **Increasing emphasis on two-tiered materiality test for earnings surprise**
   Section 7.3 of Revised GN8 places increasing emphasis on the more stringent accounting materiality threshold for determining whether disclosure is required for an earnings surprise, in the case of entities that have provided earnings guidance (**guidance entity**).

This is in contrast to the general materiality test (which is equated to anticipated share price movement test) for an entity that has not provided earnings guidance (**no-guidance entity**). The G100 feels this 'two-tiered' approach creates some undesirable outcomes:

- Listed entities will be decreasingly inclined to provide earnings guidance knowing they are voluntarily holding themselves to what is likely to be a more stringent test should earnings variations arise.

- Guidance entities with 'recovering' earnings (ie. low earnings compared to their asset base or future potential) are unduly penalised given the 5-10% materiality guidance on earnings points to very small variations in earnings.

- Guidance entities with cyclical earnings are similarly penalised, with the 5-10% materiality guidance on earnings being a more challenging level than for a non-cyclical entity.

Our preferred solution for identification of a possible earnings surprise is to place primary emphasis on the general materiality test for all entities. The 5-10% materiality variation test (against guidance or, against consensus or prior period in the absence of guidance) could then be described as an indicator of possible earnings surprise. This may require some consideration of the interaction of what constitutes misleading conduct in the context of section 1041H of the Corporations Act. We believe that there is a need for the ASX to clarify the application of the 5-10% materiality test for no-guidance entities.

As an alternative, at the very least, we consider that the existing drafting in Guidance Note 8 should be modified to specifically cite examples of possible exceptions to the accounting materiality test for entities with cyclical or recovering earnings, building on the existing references in the Guidance Note that for some entities a measure closer to 10% may be more appropriate[1].

2. Construing signalling from querying analyst forecast assumptions

Guidance Note 8 gives authoritative status to analyst forecasts, in particular where an entity has not itself provided guidance for the current period. With declining margins in the broking industry leading to reduced analyst resourcing and expanded coverage responsibilities of analysts, and with increasing investment bank governance measures, members have noted instances of declining accuracy or timeliness of earnings forecasting by some analysts. Consequently members are contemplating analysts' understanding of their business drivers and their approach to modelling their business, and the best ways to assist the analysts to use the right framework to develop their forecasts.

In this context, we have a concern with the drafting of section 7.5 of Revised GN8 and the statement that *'asking analysts to provide information about the assumptions underpinning their forecasts could, in some circumstances, be interpreted as a signal to the analysts that the entity considers their assumptions, and a fortiori their earnings forecasts, to be materially inaccurate'*.

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[1] See page 48 of the Revised GN8: "Smaller entities or those that have relatively variable earnings may consider that a materiality threshold of 10% or close to is appropriate. Very large entities or those that normally have very stable or predictable earnings may consider that a materiality threshold that is closer to 5% than to 10% is appropriate."

For many of our members, particularly those exposed to commodity prices and foreign exchange rates, understanding the assumptions analysts are using to reach their earnings estimates is essential to both:

- continually improve the basis for earnings guidance and information disclosure on business drivers, and
- have a rational basis for discussion, particularly with less informed analysts, on the framework and factors they are assessing in modelling the business.

Our members understand the principles of the continuous disclosure regime and aim to comply with its spirit in their dealings with the investment market. Therefore, while we recognise the drafting of the text quoted above includes the caveat *'in some circumstances'*, overall we feel this updated guidance will have the effect of discouraging necessary and useful interactions between entities and analysts.

3. Dealing with errors in analysts' forecasts

The last paragraph of section 7.4 addresses how to deal with analyst forecasts that vary widely from others. We agree it is appropriate to correct manifest analyst errors without disclosing any market sensitive information. However, the wording of the section implies that the entity will automatically know the nature of the error underlying an outlying forecast. In order to identify possible corrections to an analyst's work, an entity may need to discuss with the analyst the modelling logic and assumptions on which underlies the 'errant' forecast – that is, the specific error may not be apparent on the face of the analyst's report(s). However, in light of the matter discussed in point (2) above, in ASX's view the entity seems to be at risk of providing a signal to the analyst in seeking to discuss the analyst's assumptions.

4. Providing consensus information to the market

We are supportive of the guidance found in section 7.5 of Revised GN8 concerning the approach to publishing analyst forecast information (that is, provision of a range or all forecasts rather than a point estimate of consensus, and inclusion of a 'no endorsement' disclaimer). However, while section 7.5 only seems to address how a listed entity may go about 'publishing' analyst forecast information (interpreted to be a form of en-masse release given use of the word 'publishing'), it appears to be silent concerning the practice of providing analyst forecast information to a person that may contact a listed entity (eg by approaching an entity's investor relations officer).

For clarity we therefore seek inclusion of comments in section 7.5 that indicate that a listed entity can supply analyst forecast information to an enquiring party in the same manner as the section sets out for publishing such information (that is, provision of range or all forecasts and inclusion of a 'no endorsement' disclaimer).

We do not consider that providing analyst forecast information with an appropriate no-endorsement disclaimer to an enquiring party falls foul of the spirit or the letter of the continuous disclosure regime as:

- such information exists and is in the marketplace irrespective of whether the entity conveys the information in some way, and
- any person receiving that information from the entity would either already know that it is not information that the entity has prepared or endorses, or would subsequently understand it to be such once they received the no-endorsement disclaimer.

5. Promoting unnecessary lodgement of analyst and investor briefing material

We refer to proposed section 7.6 of Revised GN8. The continuous disclosure regime is founded on the principle that once market sensitive information has been released to the market via ASX it is thereafter taken to be public.

In addition, section 4.15 of the existing Guidance Note 8 provides that an entity should not use an announcement under Listing Rule 3.1 as a guise to publish material that is really promotional, political or tendentious in nature rather than being information that a reasonable person would expect to have a material effect on the price or value of its securities.

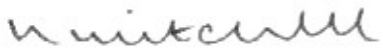
The proposed guidance in section 7.6 of Revised GN8 gives rise to some concern. That guidance is that an entity should ensure that "any new presentation to be given, or printed materials to be handed out, at an analyst or investor briefing are first given to ASX and published on the ASX Market Announcements platform before the briefing… This applies *even where the entity believes that the presentation and materials do not contain any market sensitive information that has not already been released to the market*."

This guidance:

- creates potential market inefficiencies with members of the investment community struggling to identify if a release contains any new material information; the follow-on from this is a risk that members of the investment community overlook the meaningful releases when they are made due to duplication of information,
- contradicts the foundational principle of continuous disclosure, and
- can be cumbersome for the listed entity, in particular where it is undertaking a series of investor presentations over a period of time.

Thank you for your consideration of our response.

Yours sincerely
Group of 100 Inc



Neville Mitchell
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