

CONSULTATION PAPER

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Draft Guidelines On Disclosure Of Financial Information In Prospectuses

MAS

Monetary Authority of Singapore

INTRODUCTION

Part XIII of the Securities and Futures Act (“SFA”) on public offers of investments and the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2002 (“SFR”) came into effect on 1 Jul 2002. These provisions set out, among others, the disclosure requirements for prospectuses for public offers of shares and debentures.

2 To enhance regulatory transparency, MAS proposes to issue guidelines on the objectives and application of certain provisions in the SFR concerning the disclosure of financial information in prospectuses. The guidelines also provide interim guidance to issuers and their advisers on compliance issues that have emerged since the SFR came into force, pending a review by MAS of the SFA and SFR in 2004.

MAS seeks your views on the draft guidelines at Annex 1.

EXPERT’S OPINION ON PROFIT FORECASTS OR ESTIMATES

3 The SFR requires any profit forecast or estimate included in a prospectus to be accompanied by a statement from an *expert* that:

- (a) the assumptions provide reasonable grounds for the profit forecast/estimate; or
- (b) no matter has come to his attention which gives him reason to believe that the assumptions do not provide reasonable grounds for the profit forecast/estimate; or
- (c) the assumptions do not provide reasonable grounds for the profit forecast/estimate and the reasons for such conclusion.

4 The requirement is intended to serve as an independent check to provide assurance to the investing public that profit forecasts and estimates are made on reasonable bases.

5 MAS notes that both the UK Listing Authority and the Stock Exchange of Hong Kong require the *sponsor* of the listing to give an opinion on whether any profit forecast included in the prospectus has been made by the directors after due and careful enquiry. In the UK, such requirement extends to profit estimates. It is not clear whether the Hong Kong requirement applies to profit estimates.

6 Given that a profit estimate relates to an expired or historical financial period, it may be argued that:

- (a) the uncertainty surrounding a profit estimate is significantly lower than that surrounding a profit forecast. Consequently, the assumptions underlying a profit estimate should be relatively more straightforward and less subjective by nature; and
- (b) an issuer would have less room to inflate estimated profit figures and hence the likelihood of it doing so could be lower, unlike in the case of profit forecasts.

This would in turn suggest less need for an expert opinion on the reasonableness of the assumptions underlying a profit estimate.

7 In light of the above, MAS is considering whether to amend the SFR to dispense with the requirement for an *expert's* opinion on the reasonableness of the assumptions underlying a *profit estimate* provided that the *issuer's directors* give a similar confirmation.

MAS seeks your views on the proposal to abolish the requirement for an expert's opinion on the reasonableness of the assumptions underlying a profit estimate subject to the issuer's directors giving a similar confirmation.

8 Separately, taking into account feedback on the need for greater clarity on who would qualify as an expert to give the expert's opinion on **profit forecasts**, MAS is considering the following options:

- (a) Retain the status quo of allowing any person within the SFA definition of "expert" to give the expert's opinion¹, but provide the following guidance in the guidelines on who would qualify as an expert:

"The definition of 'expert' in the SFA includes:

- (i) an engineer;
- (ii) a valuer;
- (iii) an accountant; and
- (iv) any other person whose profession or reputation gives authority to a statement made by him.

MAS would normally consider the issue manager of the offer or invitation to be a person who falls within the scope of subparagraph (iv) and therefore an expert for the purposes of such offer or invitation. The auditors, being accountants [subparagraph (iii)], would also qualify as experts."

- (b) Amend the SFR to require the issue manager of the offer or invitation (instead of any person falling within the SFA definition of "expert") to provide the expert's opinion.
- (c) Amend the SFR to require the issue manager of the offer or invitation, an auditor, or any other person whose profession or reputation gives authority to a statement made by such person, to provide the expert's opinion.

MAS seeks your views on the above options and other suggestions that you may have.

¹ MAS opted for this previously so as not to preclude any professional from providing the required opinion

REQUEST FOR COMMENTS

9 MAS invites interested parties to forward their comments on the draft guidelines, and on the matters set out in paragraphs 3 to 8. Written comments may be submitted to:

Corporate Finance Division
Securities and Futures Supervision Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Email: sdg3@mas.gov.sg
Fax: (65) 6225-1350

MAS would request that all comments and feedback be submitted by 1 July 2003.

10 Please note that all submissions received may be made public unless confidentiality is specifically requested for whole or part of the submission.

Shares and Debentures Guideline 3

Guidelines on Disclosure of Financial Information in Prospectuses

OFFERS OF INVESTMENTS (SHARES AND DEBENTURES)

Guidelines on Disclosure of Financial Information in Prospectuses

I Purpose

1 These Guidelines are issued by the Monetary Authority of Singapore (the "Authority") pursuant to section 321 of the Securities and Futures Act (Cap. 289) ["SFA"]. They aim to clarify the Authority's regulatory objectives in respect of certain provisions in the Securities and Futures (Offers of Investments)(Shares and Debentures) Regulations 2002 ["SFR"] relating to the disclosure of financial information in prospectuses. They also provide interim guidance to issuers and their advisers on compliance issues that have emerged since the SFR came into force in July 2002, pending the Authority's review of the SFA and SFR in 2004.

2 Specifically, these Guidelines provide guidance on:

Audited Financial Information

- a) the presentation of audited financial information in tabular form;
- b) when exemption from the requirement to provide the audited financial information of a previous holding company may be granted;
- c) the provision of audited financial information of the previous holding company of corporations, business divisions, or assets and undertakings that were acquired by the pro forma group prior to the offer of securities;
- d) when financial statements prepared in accordance with accounting standards other than those prescribed in the SFR may be included in a prospectus; and
- e) how to deal with a change in the name of a body of accounting standards prescribed in the SFR;

Pro Forma Financial Information

- f) the auditors' opinion to be provided in respect of pro forma financial information where there have been changes in accounting policies;
- g) how the requirement to disclose the quantitative impact of a material change in accounting policies may be complied with;

- h) the inclusion in a prospectus of pro forma balance sheets as at dates that are earlier than the end of the most recent financial year;

Interim Financial Information

- i) when and for which period interim financial statements should be included in a prospectus;
- j) the review by auditors of interim financial statements and the interim comparative figures to be provided when such financial information is included in a prospectus; and

Trend Information and Profit Forecast or Estimate

- k) the disclosure of the scope of engagement and work by an expert who has been engaged to provide an opinion on the reasonableness of the assumptions underlying a profit forecast or estimate;
- l) the minimum period that should be covered by a discussion on trends and prospects;
- m) what would constitute a profit forecast or estimate; and
- n) the period to be covered by a profit forecast or estimate.

II Interpretation

3 In these guidelines:

- a) a reference to a particular Schedule is a reference to that Schedule of the SFR;
- b) a reference to the sub-section on “*Audited Financial Information*”, “*Pro forma Financial Information*” or “*Change in Accounting Policies*” is a reference to that sub-section in the Fifth to Eighth Schedules unless otherwise stated; and
- c) a reference to the sub-section on “*Interim Financial Information*” or “*Trend Information and Profit Forecast or Profit Estimate*” is a reference to that sub-section in the Fifth and Seventh Schedules unless otherwise stated.

III Statutory Requirements

4 Section 243(1)(a) of the SFA requires a prospectus to contain all the information that investors and their professional advisers would reasonably require to make an informed assessment of, among other things, the financial position, performance, and prospects of the corporation that is to issue or has issued the securities.

5 Section 243(1)(a) is supplemented by section 243(1)(b), which requires the prospectus to contain all the matters prescribed by the Authority. The Authority has prescribed specific disclosure requirements in the Fifth to Eighth Schedules. In particular, the disclosure requirements pertaining to financial information are contained mainly in the sub-sections on "*Audited Financial Information*", "*Pro forma Financial Information*", "*Interim Financial Information*", "*Change in Accounting Policies*" and "*Trend Information and Profit Forecast or Profit Estimate*".

IV Audited Financial Information

Presentation of audited financial information in tabular form

6 The sub-section on "*Audited Financial Information*" does not prescribe how the audited financial statements provided in a prospectus should be presented. The Authority has received requests to present such audited financial information in tabular form on the ground that this would facilitate comparison of the financial information between financial years.

7 The Authority agrees with this view. However, such method of presentation is appropriate only if the financial information in the table is extracted from the underlying audited financial statements without material adjustments.¹

8 Since the underlying financial statements have been audited, the table containing the audited financial information need not be reported on by the auditors provided that the auditors' reports on all the underlying financial statements are included in the prospectus as required under the sub-section on "*Audited Financial Information*".

¹ When judging the materiality of an adjustment, issuers and their advisers may wish to consider the guidance provided in Statement of Auditing Practice 2: "The Interpretation of 'Material' in Relation to Accounts", issued by the Institute of Certified Public Accountants of Singapore.

Audited consolidated financial statements of previous holding company

9 The sub-section on “*Audited Financial Information*” requires a prospectus of a corporation (the “Relevant Corporation”), which is the holding company of a group, to include the annual audited consolidated financial statements of the previous holding company² (“PHC”) of the group if—

- a) the Relevant Corporation has been incorporated for less than 3 completed financial years; and
- b) the absolute amount of the net assets (liabilities) or profit (loss) before tax stated in the annual audited consolidated financial statements of the PHC accounted for 75% or more of the absolute amount of the net assets (liabilities) or profit (loss) before tax of the pro forma group.

The Authority has received requests to clarify the objective and application of this requirement.

10 The purpose of providing in a prospectus financial information which has been audited is to give investors reasonable assurance that the financial information is free from material mis-statement. Where an issuer is a recently incorporated listing vehicle and therefore does not have audited financial statements, the Authority requires to be included in a prospectus other audited financial statements (eg. those of the PHC) that are reasonably representative of the financial position and results of the pro forma group.

11 Applying this principle, where:

- a) a subsidiary (the “First Subsidiary”) of the Relevant Corporation was a holding company of some or all of the other subsidiaries of the Relevant Corporation; and
- b) the absolute amount of the net assets (liabilities) or profit (loss) before tax stated in the annual audited consolidated financial statements of the First Subsidiary accounted for 75% or more of the absolute amount of the net assets (liabilities) or profit (loss) before tax of the pro forma group,

the Authority would normally regard the First Subsidiary as the PHC.

12 Where the annual audited consolidated financial statements of the PHC are not reasonably representative of the financial position and/or results of the pro forma group (eg. where only some of the subsidiaries of the PHC are or will be part of the pro forma group), the Authority would normally grant an exemption from the requirement at

² PHC is defined in the Schedules as “a company which was the holding company of the group immediately before the Relevant Corporation became the holding company”

paragraph 9 subject to such conditions as the Authority may determine. In cases where there are annual audited consolidated financial statements of a corporation (other than the PHC) that are reasonably representative of the financial position and results of the pro forma group, the Authority would usually require such audited financial statements to be provided in the prospectus as a condition to the exemption.

13 Although the requirement at paragraph 9 does not expressly refer to a situation where the Relevant Corporation has acquired business divisions or assets and undertakings (rather than shares in corporations), the annual audited financial statements of the corporation whose business divisions or assets and undertakings were acquired should still be included in a prospectus if:

- (a) the annual audited financial statements of the corporation whose assets and undertakings are acquired are reasonably representative of the financial position and results of the pro forma group and it is not unduly burdensome for the issuer to include such financial statements in the prospectus; or
- (b) the entire or almost all the assets and undertakings of the corporation are transferred to the pro forma group.

This is to comply with the spirit of the requirement at paragraph 9 and with section 243(1)(a) of the SFA.

Financial statements prepared in accordance with accounting standards other than those specified in the Fifth to Eighth Schedules

14 The sub-section on “*Audited Financial Information*” requires the annual audited financial statements to be prepared, or otherwise re-stated, in accordance with Singapore Statements of Accounting Standards (“SAS”), International Accounting Standards (“IAS”) or US Generally Accepted Accounting Principles (“US GAAP”) or such other accounting standards as may be approved in any particular case by the Authority. The Authority has received queries regarding the circumstances under which financial statements prepared in accordance with accounting standards other than those prescribed may be included in a prospectus without re-statement.

15 The Authority would normally approve the inclusion of financial statements prepared in accordance with accounting standards other than those prescribed if they are accompanied by a statement from the auditors that no material adjustments³ would be required to re-state the financial statements in accordance with SAS, IAS or US GAAP. In considering an application for approval, the Authority will also take into account, among other things, the views of the securities exchange on which the securities being offered will be listed for quotation or quoted.

³ Please refer to footnote 1.

Change in name of accounting standards

16 The Authority recognises that from time to time, there may be a change in the name of a particular body of accounting standards (e.g. where a new accounting standard-setting authority assumes the standard-setting responsibilities of its predecessor and adopts a new name for the body of accounting standards that it issues). Where there is a change in the name of those accounting standards specified in the SFR, any reference made in the SFR to the old name should be deemed as a reference to the new name. Accordingly, when complying with the SFR, the Authority would expect reference to be made to the new name.

V Pro forma Financial Information

Change in accounting policies

17 The sub-section on “*Pro forma Financial Information*” requires the prospectus to include an opinion from the auditors as to whether the pro forma financial statements have been properly prepared in a manner consistent with the accounting policies of the relevant corporation. Queries have been raised as to how this provision should apply where the relevant corporation has not yet adopted any accounting policies or has changed its accounting policies during the period under review.

18 Where the relevant corporation has not yet adopted any accounting policies (e.g. because the relevant corporation has not previously prepared any annual financial statements), the opinion mentioned in paragraph 17 should be given with reference to the accounting policies that the relevant corporation intends to adopt.

19 Where the relevant corporation has switched or intends to switch to another body of accounting standards for preparing its annual financial statements, the opinion mentioned in paragraph 17 should be given with reference to the new body of accounting standards that the relevant corporation has adopted or intends to adopt.

20 Where the relevant corporation has changed its accounting policies⁴, the opinion mentioned in paragraph 17 should be given with reference to the new accounting policies. Further, adjustments should be made retrospectively to reflect the new accounting policies in the pro forma financial statements unless the amount of adjustment is not reasonably determinable or the relevant corporation has adopted a new accounting standard that does not allow retrospective application of the standard. If it is impracticable to apply the new accounting policies retrospectively for preparing the pro forma financial statements, this fact should be disclosed.

⁴ In addition to the situation described in paragraph 19, other circumstances that may give rise to a change in accounting policies include:

21 Separately, the sub-section on “*Change in Accounting Policies*” requires the prospectus to disclose the quantitative impact of a material change in accounting policies on the financial results of the pro forma group for the last 3 financial years. Some issuers and advisers have sought guidance on how to comply with this requirement.

22 The Authority would normally consider this provision to have been complied with if the financial position and net profit and loss of the pro forma group based on the old accounting policies are disclosed against the corresponding information based on the new accounting policies. Further, the Authority is of the view that this requirement extends to an **intended** change in accounting policies, including where the relevant corporation intends to adopt a new accounting standard that has been issued but has not come into effect. In the event that the quantitative impact of a material change or intended change in accounting policies is not reasonably determinable, this fact should be disclosed.

Pro forma balance sheet

23 The sub-section on “*Pro forma Financial Information*” requires the pro forma balance sheet to be as of the date to which the latest annual pro forma profit and loss statement was made up. For example, if the latest annual pro forma profit and loss statement covers the financial year ended 31 December 2002, the pro forma balance sheet must be as of 31 December 2002. Some issuers and advisers have asked whether pro forma balance sheets for earlier years can be provided.

24 The provision does not preclude the inclusion of pro forma balance sheets for earlier years in a particular case as long as this would not result in the information presented in the prospectus being false or misleading.

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- a) where the relevant corporation has changed its accounting policies pursuant to a critical re-examination of such policies by its directors and auditors or other advisers; or
 - b) where the relevant corporation has adopted any new or revised standards that have been issued under that body of accounting standards adopted by the relevant corporation for preparing its annual financial statements.

VI Interim Financial Information

When and for which period interim financial statements should be included in the prospectus

25 The sub-section on “*Interim Financial Information*” requires the prospectus to include interim financial statements (which need not be audited) covering at least the first 6 months of the current financial year if the prospectus is lodged more than 9 months after the last financial year for which audited or pro forma financial statements were prepared (the “Last Financial Year”). The Authority has received requests to clarify how the provision should apply.

26 The requirement mentioned in paragraph 25 applies where the prospectus is lodged more than 9 months **but within 12 months** after the Last Financial Year.

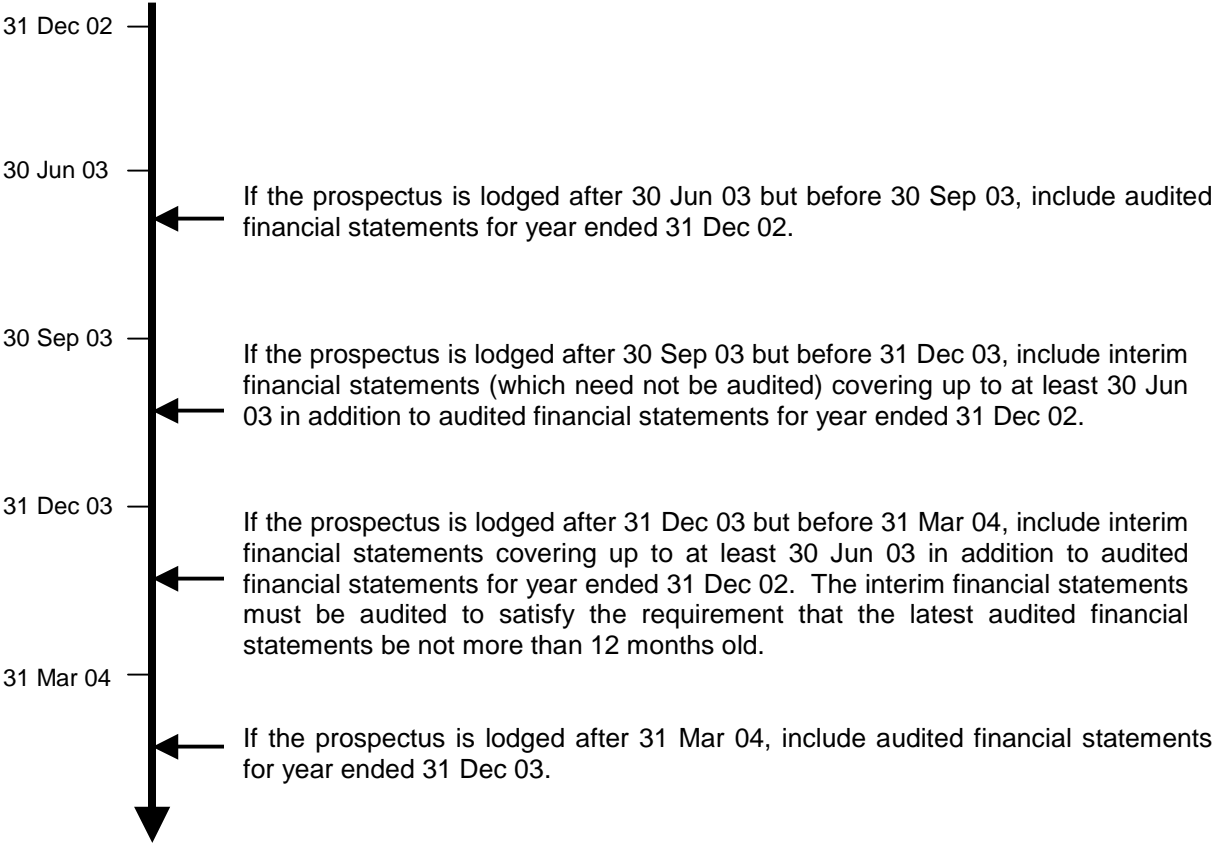
27 Where the prospectus is lodged more **than 12 months** after the Last Financial Year, the Authority would expect the prospectus to include interim financial statements covering at least the 6 months immediately following the Last Financial Year.

28 Separately, the sub-section on “*Audited Financial Information*” requires the most recent audited financial statements to cover a period ending not more than 12 months before the prospectus is lodged. Some issuers and advisers have asked whether they can comply with this requirement by providing audited interim financial statements.

29 The requirement mentioned in paragraph 28 may be satisfied by providing audited interim financial statements covering a period ending not more than 12 months before the prospectus is lodged. However, where the prospectus is lodged more than 3 months after the end of the most recent completed financial year, the Authority would expect the audited financial statements for the most recent completed financial year to be included.

30 Figure 1 below illustrates how the requirements mentioned in paragraphs 25 to 29 may be applied, assuming that the financial year-end is 31 December.

Figure 1



Auditors’ review of interim financial statements

31 The sub-section on “*Interim Financial Information*” requires a review by the auditors of the interim financial statements provided in the prospectus. The Authority has received queries as to whether the requirement applies to all interim financial statements, whether or not they are provided pursuant to the requirement mentioned in paragraph 25.

32 Interim financial statements provide updated information on an issuer’s financial position and results either on an actual or on a pro forma basis. Like for annual financial statements, a review by the auditors provide assurance to investors that the interim financial statements have been properly prepared.

33 Therefore, whenever interim financial statements are included in a prospectus, whether pursuant to the sub-section on “*Interim Financial Information*” or otherwise, the Authority would expect the prospectus to include a review by the auditors of the interim financial statements as well as the comparative figures for the same period in the previous financial year in such interim financial statements. If the interim financial statements are pro forma financial statements, the guidance in paragraph 34 would apply.

34 Where pro forma financial statements for an interim period are included in a prospectus, the Authority is of the view that paragraphs 16, 19 and 20 in the sub-section on “*Pro forma Financial Information*” in the Fifth Schedule and paragraphs 17, 20 and 21 in the sub-section on “*Pro forma Financial Information*” in the Seventh Schedule concerning annual pro forma financial statements would apply to the interim pro forma financial statements as well as the comparative figures for the same period in the previous financial year in such financial statements.

VII Trend Information and Profit Forecast or Profit Estimate

Expert’s opinion on reasonableness of underlying assumptions of a profit forecast or estimate

35 Where a profit estimate which relates to the most recent completed financial year or a profit forecast is included in a prospectus, the sub-section on “*Trend Information and Profit Forecast or Profit Estimate*” requires the prospectus to include, among other things, a statement by an expert that:

- a) the assumptions provide reasonable grounds for the profit estimate/forecast;
- b) no matter has come to his attention which gives him reason to believe that the assumptions do not provide reasonable grounds for the profit estimate/forecast; or
- c) the assumptions do not provide reasonable grounds for the profit estimate/forecast and the reasons for such a conclusion.

36 Experts giving the opinion mentioned in paragraph 35 should disclose the scope of their engagement and the extent and nature of their enquiries.

37 For auditors who are engaged as experts, guidance on the required opinion mentioned in paragraph 35 is provided in Singapore Standard On Auditing 27: “The Examination of Prospective Financial Information” (“SSA 27”) issued by the Institute of Certified Public Accountants of Singapore. The Authority would normally accept a statement by the auditors that the examination of the profit forecast/estimate has been carried out in accordance with Singapore Standards on Auditing applicable to the examination of prospective financial information as appropriate disclosure of the scope of their engagement and the extent and nature of their enquiries.

Discussion of trends and prospects

38 The sub-section on “*Trend Information and Profit Forecast or Profit Estimate*” requires a prospectus to include a discussion of:

- a) the business and financial prospects of the relevant corporation;
- b) the most significant recent trends in production, in sales and inventory, and in the costs and selling prices of products and services, and the state of the order book, since the most recent financial year; and
- c) any other known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on net sales or revenues, profitability, liquidity or capital resources, or that would cause financial information disclosed in the prospectus to be not necessarily indicative of future operating results or financial condition.

39 Some issuers and advisers have sought guidance on the period that such discussion must cover and whether it would be regarded as a profit estimate or forecast.

40 The required discussion mentioned in paragraph 38 does not constitute a requirement for a profit forecast or estimate to be included in the prospectus. In order not to be regarded as a profit forecast or estimate, the discussion should be in qualitative terms only and should avoid a form of words which (taken together with the rest of the prospectus) would provide sufficient information for a person to calculate an approximate figure for future profits, such as:

- a) a statement that “profits for the second half of the current financial year are expected to be similar to those earned in the first half” when the interim results for the first half of the current financial year are included in the prospectus;
- b) a revenue forecast together with a statement that “profit margins for the past financial year or years are expected to be maintained in the current financial year”; and

- c) a dividend forecast together with an estimate as to dividend cover.

Separately, a form of words which explicitly puts a floor on profits (e.g. "Profit will be better than last year") would also constitute a profit forecast or estimate.

41 The required discussion mentioned in paragraph 38 must cover at least the whole of the current financial year including the period after the date to which any interim financial statements were made up. A review of interim financial performance, where interim financial statements are included in the prospectus, is not sufficient for the purposes of complying with the requirement mentioned in paragraph 38.

Period to be covered by a profit forecast or estimate

42 Where a profit forecast or estimate is included in a prospectus, the Authority would normally expect the period covered by such forecast or estimate to be a period for which the financial results of the relevant corporation will be publicly announced.

43 In exceptional cases, where it is necessary to include in the prospectus a profit forecast or estimate covering a period affected by cyclical or seasonal factors or income support guarantees that will expire after such period, the prospectus should not mislead readers about how representative the period is likely to be.

44 If there are specific considerations that affect a selected period, the prospectus should disclose those considerations and why the particular period was selected. In exceptional cases where the selected period is not a period for which the financial results of the relevant corporation will be publicly announced, the Authority would expect the prospectus to include a statement that the results covering the selected period will be announced in due course.