

5 December 2011

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

frpdiscussionpaper@treasury.gov.au

Dear Sir/Madam

Future of Financial Reporting Panel

The Group of 100 (G100), an organization of chief financial officers from Australia's largest business enterprises with the purpose of advancing Australia's financial competitiveness, is pleased to offer comment on the Future of the Financial Reporting Panel (FRP).

The G100 was a strong supporter of the formation of the FRP as an important component of the financial regulatory structure in Australia. This is outlined in our submissions on the CLERP 9 proposals dated 10 November and 22 December 2003 respectively. The G100 believes that the FRP, with some changes in arrangements, should be retained as a feature of the Australia regulatory environment.

POSSIBLE REASONS FOR UNDER UTILIZATION OF THE FRP

Q1. Why do you believe the level of FRP referrals has been less than initially anticipated?

The G100 believes that the process of referring matters to the FRP is a major impediment to its use. Relying on ASIC to essentially agree to refer a matter to the FRP means that the process is effectively one-sided and operates at the behest of ASIC. In our CLERP submissions the G100 strongly opposed the power of referral residing with ASIC, and supported proposals that a company could also refer a matter to the FRP. We believe that there should not be any restriction on the companies making references to the FRP.

Q2. What factors do you believe may need to be addressed in order for the FRP to function more effectively?

See response to Q1.

OPTIONS FOR THE FUTURE OF THE FRP

Q3. Do you believe that the current process and powers of the FRP are effective and appropriate, and do not require any significant reform?

The G100 believes that the current process and powers of the FRP would be appropriate if it could accept referrals from companies who are in disagreement with ASIC.

MODIFICATION OF THE REFERRAL PROCESS

Q4. Do you believe that disputes should be automatically referred to the FRP after a specified time period?

Specifying a time period before an issue is referred to the FRP would hopefully ensure that ASIC would not act to prolong an issue and negotiations/discussions with a company would be useful. Under the present arrangements, ASIC controls the process including timing of actions. For example, ASIC is able to prolong the process and exert pressure on companies to accept its position without involving the FRP. The G100 believes that the process should be better balanced with the regulator and the company having equality of access. The G100 believes that a company should be able to make a referral to the FRP. If companies had this power available to them the behavior of ASIC is likely to be more responsive to seeking a timely outcome.

However, there needs to be some clarity about what constitutes a dispute between ASIC and the company. For example, if an issue is not resolved within, say, six months of the initial correspondence from ASIC, a dispute would be deemed to exist giving either party the right to make a reference to the FRP. The existence of such a timeframe would ensure that neither party can prolong proceedings.

Q5. If so, what is an appropriate point for the period to commence, and how long, should ASIC and the entity have to resolve the issue directly?

See response to Q4.

ALLOWING COMPANIES TO REFER MATTERS WITHOUT ASIC CONSENT

Q6. Do you believe that companies should be allowed to refer cases to the FRP without ASIC's consent?

Yes. Companies should be able to make a reference to the FRP as indicated in Q4.

Q7. Do you believe that such a change would have a material impact on the number of referrals coming forward?

The G100 does not believe that the success of the FRP should be measured by the number of referrals made to it. Rather, it should be viewed as a dispute resolution process and its existence provides some comfort/assurance to companies and their auditors in their dealings with ASIC.

REPEALING THE FRP FUNCTIONS AND CLOSING THE PANEL

Q8. Do you believe that the FRP's functions should be repealed and the Panel closed?
No. The G100 believes that the FRP can, and does, play an important role and we do not accept that the FRP is costly to operate in view of its part-time membership and co-ordination by the Treasury. We consider that, if arrangements are amended as outlined above, the FRP provides a low cost alternative to resolving disputes between a company and the regulator rather than undergoing court action.

The G100 strongly believes that although currently dependent on ASIC for referral, the current structure is appropriate as it operates independently of ASIC.

Should you have any questions about this submission please contact me (02 9606 9661). The G100 is also keen to meet with the Minister to explain its support for the continuation of the FRP.

Yours sincerely
Group of 100 Inc

Peter Meehan
Chief Executive Officer