

8 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

Consultation document – Future of the Financial Reporting Panel

CPA Australia, the Institute of Chartered Accountants in Australia and the Institute of Public Accountants (the Joint Accounting Bodies) are pleased to respond to the Treasury Consultation document – *Future of the Financial Reporting Panel*.

The Joint Accounting Bodies represent over 190,000 professional accountants. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

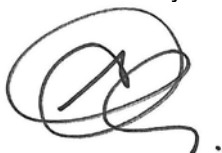
The Joint Accounting Bodies are strongly supportive of maintaining the Financial Reporting Panel (FRP). As an arbiter in technical accounting disputes between ASIC and companies it has the capacity to be an important part of the process to maintain integrity in our financial reporting system. We consider the current process and powers of the FRP could be materially enhanced by the following recommendations:

- clarity around the current role
- the public nature of such a process and its appropriateness in certain contexts
- consider allowing company referrals to the FRP and improved timeliness of the ASIC review and referral process.

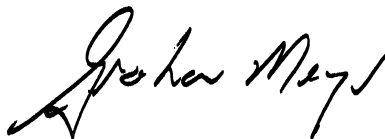
Furthermore we envisage a more extended role for the FRP than that as arbiter on technical matters and referee. This is in the field of audit and has previously been identified by the Joint Accounting Bodies. Current legislative proposals are for ASIC to have the capacity to issue reports on audit firms both to audit committees and the public. We suggest that before such public reports are issued FRP could have a role as referee. We elaborate on this further in the attached appendix.

If you require further information on any of our views, please contact Mark Shying, CPA Australia by email mark.shying@cpaaustralia.com, Kerry Hicks, the Institute of Chartered Accountants by email kerry.hicks@charteredaccountants.com.au or Tom Ravlic, the Institute of Public Accountants by email tom.ravlic@publicaccountants.org.au.

Yours sincerely



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Appendix

Please find below our comments on the Treasury Consultation document – *Future of the Financial Reporting Panel*.

Why do you believe the level of FRP referrals has been less than initially anticipated? What factors do you believe may need to be addressed in order for the FRP to function more effectively?

In respect of its current role

We consider that FRP referrals are less than initially anticipated, as companies will often accept the ASIC interpretation on a matter as a way of settling the dispute without giving it any publicity.

Further the use of the FRP has only really become apparent publicly since October 2010 when the four cases reviewed have been made public. Prior to this there was clearly a lack of clarity regarding the role of the panel which contributed to its lack of use.

The Joint Accounting Bodies note that the discussion paper seems to measure success of the FRP with reference to the number of cases reviewed. We do not consider this is an appropriate measure of success.

Any revitalising of the panel that is done should be linked to an increased communication on the benefits to using the panel.

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

The function and role of the FRP should be clarified in order for the FRP to operate more effectively in the future.

The current role is as an independent arbitrator to referee disputes between ASIC and companies on accounting treatments in financial statements. This role is valuable as it is in the public interest that there is a speedy path to resolution of significant accounting issues as an alternative to the Court system.

It is important that to do this effectively the operations of FRP are so constructed that they minimise the regulatory risk that can be occasioned by the public airing of such a dispute which can have an impact more harmful than might flow from the matter in dispute. To achieve this it is important the consideration is given to guidance on;

- the seriousness of the matters brought before the FRP; and
- the balance between a level of confidentiality to allow effective resolution of the matter without undue market disruption and the requirements for continuing market information through the continuous disclosure regime.

In pursuit of these objectives we have recommended some further changes in process and powers in response to the questions below. These include proposals to allow referral by companies directly without ASIC approval and in respect of the timeframe for referrals.

It is also important that the consequences of referral to the FRP are understood by all parties. It is our view that the matters coming before the FRP should be those where all parties have, what in the context of taxation disputes, are referred to as 'reasonably arguable positions'. In this context the consequence of referral is the proper accounting treatment of the matter in dispute, which may or may not result in restatement. Prima facie referral should not lead to audit disciplinary or criminal action.

Possible expansion of the FRP's role

The FRP's present role as an arbiter on technical accounting matters lends itself to extension to become an arbiter in auditing technical matters. The Exposure Draft for the Corporations Legislation Amendment (Audit Enhancement) Bill 2011 proposes that ASIC be given the power to issue public reports on audit deficiencies by individual audit firms. These public reports would be issued by ASIC 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. The Joint Accounting Bodies submission to Treasury made a number of comments on this proposal, including that the FRP role

could be expanded to act as a 'neutral umpire' prior to the publication of audit deficiency reports with a consequent change in the composition of the Panel for consideration of such matters.

Membership of the Panel

Membership of the FRP should be reviewed from time to time to ensure fresh perspectives on financial reporting and corporate finance matters are available to the committee. We also consider it appropriate to broaden the panel member skills. Currently the ASIC Act refers to the members qualifications based on knowledge or experience. We consider that both knowledge and experience are essential, and direct practical commercial experience most relevant.

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

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?

We support of automatic referral of disputes that meet certain defined characteristics that determine the seriousness of the matter after a specified time period. This is seen as critical especially when the case involves a listed entity that needs to consider continuous disclosure requirements.

The financial market's need for speedy resolution of accounting disputes needs to be balanced against the interests of natural justice. It is important that both ASIC and the company have appropriate time to gather any appropriate evidence required to support a position. Any amended time frame that is set needs to be cognisant of the time period involved in the ASIC Surveillance program, as well as the time that a company needs to respond to ASIC enquiries.

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

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

We believe that companies should be allowed to refer cases to the FRP without ASIC's consent. This would provide the process with a sense of natural justice as both the regulator and a company could take a matter to the panel for deliberation. Both parties, however, should be given time to prepare their cases for hearing by the Panel.

Appropriately set criteria for matters that can be brought before the FRP will ensure that its use is not frivolous.

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

The FRP provides a valuable mechanism for companies and ASIC to resolve disputes without the need of taking matters to Court. The option to close the FRP is opposed by the Joint Accounting bodies on these grounds.

We consider that the FRP has a significant role in determining the application of accounting standards to specific circumstances. It is not appropriate for it to be a vehicle for more extended interpretation of accounting standards and most importantly it should in no circumstances extend the interpretation of accounting standards.

The appropriate avenue for interpretation of accounting standards of a generic nature is the IFRS Interpretations Committee which operates under the auspices of the International Accounting Standards Board. Outcomes of cases put before the panel need to be carefully monitored over time to ensure that specific circumstances continue to be addressed.