Grant Thornton

Compliance Monitoring
Financial Markets Authority
Level 8, 56 The Terrace
PO Box 1179
Wellington

Submission via: Consultation @fma.govt.nz

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Audit

Grant Thornton New Zealand Audit Partnership
L4, Grant Thornton House
152 Fanshawe Street
PO Box 1961
Auckland 1140

T +64 (0)9 308 2570
F +64 (0)9 309 4892
www.grantthornton.co.nz

Dear Sir/Madam

Submission on Effective Disclosure

Thank you for the opportunity to provide comments on the consultation paper that was recently issued by the Financial Markets Authority (FMA) explaining what it would like to see disclosed in prospectuses and investment statements.

Grant Thornton now employs more than 30,000 partners and staff and our global revenue is approximately US$4 billion. Grant Thornton has a vast amount of prospectus and investment statement preparation experience as a result of working with clients in more than 100 countries around the world. In New Zealand we have worked alongside every major law firm in reviewing prospectuses and investment statements to ensure that the documents required by legislation not only reflect the required legal form, but also fairly reflect all the risks and rewards associated with the investment product(s) on offer.

Prior to sending this comment letter we were given the opportunity to review a final draft of the New Zealand Institute of Chartered Accountants (NZICA) submission to the FMA on the consultation paper. Generally speaking we support all the views, opinions and go-forward suggestions they have made.

However, there are some aspects of preparing a prospectus that NZICA, as a professional body, is simply not in a position to comment on. In this submission we have provided comments and insight from a predominantly operational perspective to provide the FMA with an appreciation of what we think is reasonable.

Our view on audit is that every potential investor in New Zealand should be presented with a document that is not only clear, concise and effective, but also be complete, consistent and comparable to other documents that have been put into the market.

We are not promoting, and never have, a “tick in the box” approach to the preparation and presentation of investment documents because every business in New Zealand is unique. However, we do see some merit in potential investors seeing investment documents that follow a similar structure. We therefore commend the FMA for signalling what they will be expecting from issuers as we believe it will bring more consistency..

Who is the intended reader?

One of the first rules of writing is to put oneself in the position of the intended reader. The terms of reference appear to be that the documents should be understandable by a prudent but non-expert investor.

But what exactly are the needs of a prudent but non-expert investor? Are the matters and descriptions being sought by the FMA actually what potential investors want and need, or are they in fact what the FMA thinks people will need? Our concern here is preventing information overload and also the unnecessary overlap (if any) of information in the investment statement and the prospectus. Going forward this overlap situation will be made more complex when the proposed "no more than 2 page" product disclosure statement is added into the mix.

Comparability

Our view is that it would be very helpful if the FMA could provide its final release a side-by-side analysis of its requirements alongside those that are currently required by the Australia Securities and Investment Commission (ASIC). We have not had the time to undertake this research ourselves, but in light of the Single Economic Market protocols that exist between New Zealand and Australia to harmonise business and financial reporting requirements to the greatest possible extent, providing this analysis would be very helpful – particularly to preparers of the investment documents.

The implied role of the auditor

We believe that the issuer's directors are solely responsible for the contents of the prospectus and investment statement. Yes, the work and report of the auditor on the financial information required by the Securities Act1978 and its accompanying regulations are included in the investment documents, but our view is that the role of the auditor is completely separate and unrelated to the decision of going to the market to raise funding capital. The independent auditor has absolutely no say in the decision to go to market to raise funds and because of this should not be required to make the same disclosures as the directors and senior management.

We are particularly concerned by the requirements of paragraph 38 which states:

> *For auditors, you need to consider disclosing the matters set out in table VI above to the extent material to a potential investor. This will include, at least, their expertise, independence, honesty and legal and disciplinary history.*

Our view, in light of the Auditor Regulation Act 2011 (the Act) which was specifically designed to oversee the regulation of auditors and audit firms in respect of issuers, is that requiring all this information on the auditor and audit firm is quite unnecessary. We acknowledge that for some potential investors, this information might fall into the "nice to know" category, but in light of the Act and what it has been designed to do we cannot see a decision to invest or not invest would ever hinge on the disclosure of information about the auditor.

Reacting to dynamic markets

New and emerging market and investment issues arise every year. What we have observed overseas, particularly in the last decade, is that various regulators are regularly presenting to

public audiences their expectations of what should be included in investment documents. We are therefore pleased to see the topic of future consultation being addressed in paragraph 92. While we agree with all the feedback channels of communication you have identified, we believe also the FMA should also host a six monthly conference to allow the FMA's Chief Executive and his senior management team to outline their thoughts, concerns, views and aspirations to those involved in pulling together investment documents.

The FMA is still a young organisation and as such it is still creating policy. We believe that a critical success factor for the FMA is to efficiently and effectively share with all interested parties its observations of past practice and its reporting expectation from issuers, at least for the coming 12 months. Yes, there will always be the possibility that disclosure expectations ultimately prove to be no longer relevant given the volatile capital markets that exist in New Zealand and overseas, but in the spirit of cooperation and mutual support, issues and concerns can be tabled at these forums. We see the main benefit that stems from hosting such events is that the costs associated with authoring investment documents continues to remain reasonable. Our experience from having to rework the content of a prospectus or an investment statement is that it can prove to be very expensive exercise for issuers.

Integrated reporting

While today's legislation and this consultation paper makes no reference to integrated reporting, in other capital markets, the concept of integrated reporting is growing in significance. In our opinion, adopting an integrated reporting approach will provide a lot of the information the FMA is wanting issuers to provide in their prospectuses and investment statements. The epicentre of integrated reporting is identical to what the FMA also wants: namely clear, concise and effective reporting.

Integrated reporting offers four key benefits to potential investors:

- **Greater clarity** – enabling directors and/or managers to coherently describe the relationships between financial and non-financial (ie business model) information, and to perceive the role sustainability that is within the reporting organisation.
- **Better decision making** – provision of better information leads to better-informed decisions. Decision-makers will possess greater understanding of an organisation's activities and its relationship with the wider environment (both financial and natural).
- **Deeper engagement** – moving away from simple paper reporting, integrated reporting seeks to utilise a range of mediums to keep stakeholders better informed, including websites, social media and podcasts.
- **Lower reputational risk** – as social and environmental sustainability becomes of greater importance integrated reporting allows better risk management in those areas and provides interested parties with a record of the organisation's efforts to behave responsibly.

In France, the Grenalles II legislation will require all companies, listed and private, with more than 500 employees to provide a form of integrated report later this year. The legislation is part of a government-driven initiative to position France as a leader in

sustainability, promoting sustainable energy use, carbon emissions reductions and other socially and environmentally sustainable practices.

Argentina and Denmark both require companies with more than 300 and 1000 employees respectively to report on the sustainability of their operations and activities.

And since 2007 all companies listed on the Malaysian stock exchange are required to provide integrated reports. South Africa introduced integrated reporting measures for the Johannesburg Stock Exchange in 2010.

We believe it would be helpful for the FMA to acknowledge the presence of integrated reporting in its final guidance as we believe many of the policy principles behind the development and deployment of integrated reporting align very closely with what the FMA is seeking from issuers.

Pre-vetting facility

We are very disappointed to see the decision reflected in paragraph 93 that states the FMA will stop providing a pre-vetting facility. We would like to see this decision reversed. Our thinking here is best reflected in the often cited proverb: *that an ounce of prevention is worth a pound of cure.*

We accept that the FMA might have to make a significant investment in providing this type of service to issuers, but from the soundings we have made with some of our clients, all have said they would be more than be happy to pay a fee for this.

We accept there are a wide range of prospectuses and investment statements currently on issue, so we believe the fairest billing arrangement would be for the FMA to charge the issuer for this optional service on an hourly basis.

Use of photos

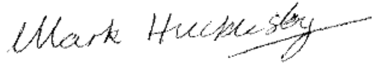
Citing another proverb, our view is that: *a picture is often worth a thousand words.* While we appreciate that investment documents should be clear, concise and effective, in today's digital world, it does seem a retrograde step to now severely restrict their inclusion. Our view is that the value of the brand does play a very important part in whether people decide to invest or not in an issuer. Our view is that photos should not be relegated to the back pages of the investment documents. Reflecting on the past, we doubt whether severely restricting the inclusion of photos in the investment documents issued by Feltex or Skellerup would have changed the decision of investors to seek out these shares in these two extremely well known New Zealand companies.

Closing remarks

In today's volatile capital markets, the need to create and promote trust in investment documents is essential. Many of proposals put forward by the FMA are sensible and should work well in the New Zealand market – particularly if there are forums that allow the FMA to demonstrate first-hand what its views as best practice and what is unacceptable.

Should you have any questions on this submission, please do not hesitate to contact the writer.

Yours sincerely



Mark Hucklesby
National Technical Director