



23 November 2007

By email: policy.submissions@asic.gov.au

Rhys Bollen
Regulatory Policy
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001

Dear Mr Bollen

Consultation Paper 94 – Debenture Advertising

Consumer Action welcomes the opportunity to comment on the Australian Security and Investment Commission's (**ASIC**) *Consultation Paper 94: Debenture advertising* and the draft Regulatory Guide on Debenture advertising (**the Guide**).

Consumer Action is very supportive of the Guide, and in particular, its clear articulation of the obligations on debenture issuers who advertise. It is our view that the guidance regarding obligations relating to advertising responds appropriately to much of the problem that has caused many consumers to lose money in recent collapses of debenture issuers. While we acknowledge the work ASIC has undertaken in improving disclosure requirements for unlisted, unrated debentures, regulation of advertising should protect those consumers who do not understand complex disclosure documents, and instead choose investment products based on advertising.

We note, as explained in the Guide, that the law imposes obligations on publishers and the media. We support such obligations being articulated in the Guide.

The requirements ASIC has outlined in Part B of the Guide appear to provide the most protection for retail investors that is possible under the current legal regime. However, Consumer Action would like to make the following recommendations in relation to the text of the Guide:

- (i) We strongly support the proposal that particular words (those listed on page 13) of the Guide not be used in advertising. We are concerned, however, about the

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language of the guidance – that such words ‘should be avoided’. It is our view that the Guide should make it clear that these words should not be used.

- (ii) Under the title ‘Suitability statements’ of page 14 of the Guide, an explanation should be included that explains why suitability statements should not be made. The explanation may be that it is misleading for the issuer to suggest that they have assessed the suitability of the product to a particular class of investors. Consumer Action takes the view that prohibitions are more likely to be complied with where those whose actions are being curtailed understand the reason for the prohibition.
- (iii) There should be special provision for warnings in relation to unlisted, unrated debentures. In particular, any advertisements for unlisted, unrated debentures should carry a warning similar to the model warning set-out on page 2 of Consumer Action’s submission to Consultation Paper 89. That model warning is as follows:

‘Debentures are not like bank deposits, and carry a higher risk that you will lose your investment. This product is an unlisted, unrated debenture. Unlisted, unrated debentures are the highest-risk category of debentures.’

The biggest losses by retail investors investing in debentures in recent years have been in relation to unlisted, unrated debentures. It appears that many consumers did not fully appreciate the risk of loss in their investment decisions, and this identifies that there is a particular problem in relation to consumers’ perception of risk in relation to unlisted, unrated debentures. Consumer Action takes the view that, because of this, there needs to be a specific warning in relation to these products. Merely requiring unrated debenture issuers to explain why the product is unrated is not, in our view, sufficient to fully protect consumers.

Consumer Action believes that the success of the Guide relies not only on its existence, but in ASIC ensuring it is appropriately complied with and adequately enforced. We would welcome ASIC publicly acknowledging its intention to enforce the Guide when the Guide is released and prioritising publicity for any enforcement action subsequently taken. Such publicity would help ensure consumers have confidence in not only the regulation but the regulator.

Should you have any questions about this submission, please contact us on 03 9670 5088.

Yours sincerely

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