

Inquiry	Parliamentary Joint Committee on Corporations and Financial Services, Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament
Agency	Australian Securities and Investments Commission
Question No.	013
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Committee member	Senator O'Neill

Question

Mr VAN MANEN: If we look at the Nuix example, a number of the allegations are around financial disclosures and the quality thereof. Is there a requirement in Australia, under the Corporations Act, for a prospectus to have a clean audit report as part of the financial information disclosed in that prospectus, or is that not the case?

Ms Armour: Yes, there are requirements to have financial information available and for that to meet certain standards.

Mr VAN MANEN: Is there a requirement for them to be audited financials, as would be required in the annual financial reports?

Ms Armour: I'm happy to give you a dot point, if you like, of what the requirements are on notice. But there are requirements

Mr VAN MANEN: Okay, thank you.

Answer

Prospectus content requirements are described in the general disclosure test contained in Section 710 of the Corporations Act 2001. In relation to financial information, this section requires that to the extent it is reasonable for investors and advisers to expect to find information, disclosure should be made of *'assets and liabilities, financial position and performance, profits and losses and prospectus of the body...'*. This section does not specifically require that information is audited or specify the duration of financial disclosures that are required.

Part F of *Regulatory Guide 228: Effective disclosure for retail investors* ([link](#)) describes our views on the financial information requirements for prospectuses. In summary, our view described in RG 228 is that issuers are generally required to provide 2.5 to 3 years of financial information, subject to certain exceptions, for example, where the issuer or the underlying business have not been existence for that duration. These requirements are aligned with the ASX listing rules.

RG 228 provides that full year accounts presented in a prospectus generally need to have been the subject of audit, with interim financials requiring a review by an auditor.. This reflects the normal statutory financial reporting requirements for listed companies. Certain modified audit opinions (such as disclaimer of opinions) suggest that the opinion is so materially compromised that it provides little independent assurance for investors. In such instances, we closely

scrutinise the nature of the modification and we may regard the financial information included in the prospectus as not sufficiently reliable. In these circumstances, it is likely that we would view the financial information as potentially misleading and pursue a stop order.