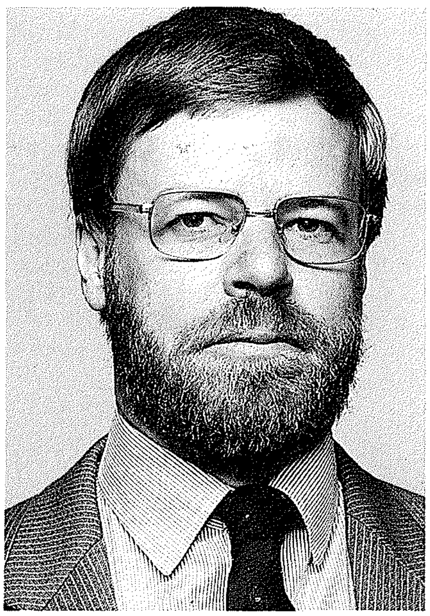
GETTING THE TRUTH TO SHAREHOLDERS

THE EVOLUTION OF THE RULES FOR IERs



By *WAYNE LONERGAN*

Over the past decade, independent experts' reports have undergone scrutiny and change. Their quality is higher—and so are the risks and responsibilities of the experts.

Until 1980, when the Companies (Acquisition of Shares) Code (the Code) was introduced, shareholders had little help in deciding whether to sell or to continue holding securities that they were being asked to sell, or in deciding whether to approve certain transactions affecting the value of their securities. The introduction of the Code, and its requirement that in certain circumstances "experts" should assess whether securities transactions are "fair" or "fair and reasonable", has ensured that shareholders are better informed and, as a result, better protected against the risk of inequitable (for them) transactions.

In fact, the onus for making sure the shareholders have adequate information on all aspects of a transaction is firmly on the independent preparers of expert reports, according to various policy statements issued by the National Companies and Securities Commission (NCSC). A number of independent expert reports (IERs) have recently come under the scrutiny of the courts following concerns about the independence of experts, an expert's responsibility for the accuracy of information contained in an IER and the overall quality of expert reports.

The recent $175 million negligence case filed by the liquidators of the collapsed Duke Group against Ernst and Young, the experts engaged to prepare an IER on the reverse takeover of Duke by Kia Ora Gold Corp NL in 1988, illustrates the risks and liability preparers of IERs are now required to bear.

Why an IER?

The basic purpose of an IER is to provide shareholders with objective information and opinions about securities they are being asked to sell so that they can make a fully informed investment decision. In his report, the expert is required to give his opinion of whether or not a proposed transaction is "fair and reasonable" (as defined below) or, under the ASX rules, whether the transaction is "fair". The expert must take into account the interests of each of the relevant groups of shareholders. This will be dictated by the type of IER required by the Code and policy statements issued by the NCSC.

Section 23 of the Code applies to takeover offers where:

- an offerer is entitled to not less than 30 per cent of the voting shares in the target company;

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- there are two or more classes of voting shares in the target company and the offerer is entitled to not less than 30 per cent of a class;
- the offerer is or includes a director of the target company; or
- a director of the offerer is a director of the target company.

Where Section 23 applies, the Part B Statement issued by the target company in response to the offer must be accompanied by at least one report prepared by an independent expert stating whether in his opinion the takeover offer is fair and reasonable to all shareholders, and setting out his reasons for forming that opinion.

Under Section 43 of the Code, a person who becomes entitled to not less than 90 per cent of the voting shares in a company must give notice of that fact to the holders of any non-voting shares, convertible notes and renounceable options of the company. Those holders may, within three months, require that person to acquire their securities. Such a notice may not propose terms for the acquisition of the securities unless it is accompanied by a report by an independent expert stating whether, in his opinion, the terms are fair and reasonable to all shareholders.

NCSC Policy Statement 102

NCSC Policy Statement 102 (Issue 5 of which was released on 24 January 1990) sets out the matters to be considered by an expert reporting on transactions under Sections 23 and 43 of the Code. Generally, an expert must consider two questions in assessing a takeover offer: whether the offer is fair and whether it is reasonable. The policy statement specifically defines "fair" and "reasonable". It says:Fairness is assessed by undertaking a comparison of the value of the offer price or consideration and the value that may be attributed to the securities subject to the offer. In concluding on the fairness of an offer, the percentage holding of the offerer and its associates in the target company should not be considered by the expert.

Reasonableness is determined against the background of other significant factors which shareholders might consider before accepting the takeover offer, after referring to the range of values determined in the expert's assessment of the fairness of the offer, such as:
- the offerer's pre-existing entitlement to shares in the target company;
- advantages that might accrue to the offerer through access to the target company's cashflows and/or taxation losses;
- other significant blocks of shareholdings in the company;
- the liquidity of the market in the target company's shares or the probability of an alternative offer.

As well as requiring an expert to give an opinion about the fairness and reasonableness of an offer, Policy Statement 102 also gives him discretion to recommend to the shareholders whether they should, in his opinion, accept or reject the offer. However, the absence of recommendations from most recent IERs (only 15 per cent of IERs issued in 1989 made recommendations) suggests that experts are reluctant to recommend a course of action to the shareholders, largely because of increased concerns about liability.

Section 12(g) and Listing Rule 3J(3) Reports

Section 11 of the Code restricts investors from acquiring 20 per cent or more of a company's voting shares. However, under Section 12(g) of the Code, Section 11 does not apply where the allotment or purchase of shares has been approved by the shareholders of the company at a general meeting. Neither the acquirer nor the vendor (or their associates) are entitled to vote on the matter.

While Section 12(g) itself does not require an expert's report to be prepared, NCSC Policy Statement 116 (discussed further in this article) requires a report to shareholders by an expert stating whether the purchase or allotment of shares is fair and reasonable, having regard to the interests of the non-participating shareholders.

Listing Rule 3J(3)

Australian Stock Exchange (ASX) Listing Rule 3J(3) applies to acquisitions or disposals by listed companies or their "satellites" where the amount of the assets acquired or disposed of is more than 5 per cent of the total issued capital and reserves of the listed company at the date to which the last audited accounts were made up, if the vendor or purchaser of such assets is:
- a director or officer of the listed company or any of its satellites;
- any person or company who is or was at any time in the preceding six months a substantial (10 per cent or more) shareholder of the listed company;
- any person or company who (for the purposes of Section 9 of the Code) would be regarded as being associated with the listed company or its related corporation; or
- any other person or company whose association with any of the persons or companies referred to above is such that, in the opinion of the ASX, the proposed acquisition or disposal should be referred to the shareholders of the listed company in a general meeting.

In these circumstances, Listing Rule 3J(3) forbids any such acquisition or disposal without the prior approval of the listed company's shareholders in a general meeting. As with Section 12(g) general meetings, neither the acquirer nor the vendor (or their associates) are entitled to vote on the matter. Notice of any such meeting is to be accompanied by reports, valuations or other material from independent qualified persons showing that the transaction is fair (there is no "reasonableness" test) to all shareholders apart from those who, because of their involvement or association, are not entitled to vote. (In practice, transactions which the independent expert deems are "not fair" cannot be submitted to shareholders.)

NCSC Policy Statement 116

NCSC Policy Statement 116 (of which Issue 3 was released on 31 August 1989) gives the NCSC view of the protection of shareholders' rights in proposals affected by Section 12(g) of the Code. Although the ASX gives no guidance about the content of expert reports prepared under Listing Rule 3J(3), it is common for experts to follow the guidance set out in NCSC Policy Statements 116 and 102. However, the requirements for Listing Rule 3J(3) and Section 12(g) reports are not identical; it is important that a report prepared for both purposes does in fact meet the requirements of both.

Basically, Policy Statement 116 requires the expert to decide whether the transaction is fair and reason-

> ***The policies and guidelines were quite general, allowing experts a fair degree of latitude in considering what to disclose in their IERs.***

able to shareholders not associated with the transaction. It also discusses criteria to be taken into account when judging fairness and reasonableness in the context of Section 12(g). The expert is required to take into account the overall advantages which will occur if the transaction is approved and the overall disadvantages which will be suffered if it is not.

Evolution of IER requirements

While the requirement for IERs is dictated by the Code, the content and disclosure requirements in IERs are driven by the NCSC's underlying objective: that shareholdersshould have an independent assessment of an offer or transaction, and that they should have enough information to be able to make their own assessment.

The NCSC has issued numerous Policy Statements to "encourage and secure compliance with the spiritand intent of the law and promote high standards of professional competence and integrity". Although these statements do not carry the force of law, they should be regarded as persuasive statements of desirable commercial and financial practice.

NCSC Policy Statement 102, dealing with takeover offers, represents the core of the NCSC's policies and guidelines for experts preparing IERs. While other NCSC policy statement releases and practice notes such as Policy Statement 116, dealing with Section 12(g) and Listing Rule 3J(3) Reports, Policy Statement 149 (Expert Reports on Mining and Petroleum Securities and Other Assets), Policy Statement 103 (Profit Forecasts), Policy Statement 104 (Asset Valuations) and Practice Note 351 (Independence of Experts' Reports) must be considered by experts in preparing IERs, they are all more or less an extension of Policy Statement 102.

A number of major changes have been made in Policy Statement 102 since the first release (Issue 2) was publicly issued on 27 August 1981 (Issue 1 was released within the NCSC and was not available to the public). Since then, three further revisions have been made.

Issue 2 (27 August 1981):

Issue 2 was developed out of the NCSC's recognition that it must communicate its expectations to preparers of IERs. The policies and guidelines were quite general, allowing experts a fair degree of latitude in considering what to disclose in their IERs, what matters to assess in arriving at their opinions and what were their responsibilities and liabilities to users of the IERs.

The major principle behind this issue is that the NCSC, while setting out minimum disclosure levels, expects maximum standards of disclosures in IERs. The NCSC, in fact, forewarned in Issue 2 that, should public expectations of corporate accountability diminish as a result of less-than-maximum standards of disclosure, it could recommend further legislation or regulation and less flexibility in relation to IERs. (The NCSC appears to have been true to its word, judged by the subsequent revisions and the issue of numerous other policy statements.)

Issue 2 provided the following major guidelines:

- the expert must be properly qualified;
- the expert must be independent and, where relationships exist with the offerer or target, the onus is on the expert to ensure that the IER is unbiased;
- the expert is responsible for reports prepared by specialists in connection with the IER;
- in addition to providing his opinion as to whether a takeover offer is fair and reasonable, the expert may wish to make a recommendation to the shareholders whether to accept or reject the offer;
- in forming his opinion, the expert should consider the following bases of assessing the value of the target:
  . the value based upon the capitalised future maintainable earnings plus the estimated realisable value of any surplus assets;
  . the amount an alternative acquirer would be willing to pay;
  . the amount that would be distributed to shareholders assuming an orderly realisation of assets;
- the expert must fully disclose his basis of assessment as set out in the foregoing points.

Issue 3 (19 February 1983)

The changes in Issue 3 of Policy Statement 102 focused on the expert's liability in preparing an IER and his responsibility for the information on which his opinion is based. Issue 3 provided that:

- an expert cannot discharge responsibility for the accuracy of the information on which his opinion is based on the grounds that it was provided by the directors of the target company—he cannot simply restate the information in the ER and say, "If all of that is true, I think the offer is fair and reasonable";
- while the expert is not expected or required to perform an audit, he must base his opinion on data which on reasonable grounds he believes to be true, not misleading and complete; and
- an expert's statutory liability cannot be over-ridden by any disclaimer in the IER.

Clearly, the NCSC viewed any attempt by experts to disclaim responsibility and shift it to the directors of the target company as defeating the purpose of IERs; that is, to provide shareholders with accurate, objective information and opinions.

Issue 4 (12 July 1989)

Issue 3 remained in force for more than six years. The significant changes and refinements in Issue 4 were largely triggered by two court cases in connection with IERs, the Phosphate Co-operative Co of Australia Ltd vs Shears and Anor (14 ACLR [1988], the "Pivot Case") and ANZ Nominees Pty Limited vs Wormald International Ltd (13 ACLR [1988], the "Wormald International Case"), in which the contents of the IERs were found to have been affected by pressures for or on behalf of the commissioning party. The Issue 4 revisions centred on the standards of experts' independence and objectivity.

The most significant change, arising directly from the Pivot and Wormald International cases, was the provision that the expert and target company avoid any communication that may undermine or appear to undermine the expert's independence. NCSC Practice Note 351 (Independence of Experts' Reports and Investigating Accountants' Reports), which provides guidance to persons who commission or provide IERs, and which refers specifically to the Pivot and Wormald International cases, requires that:

- an expert be independent of a commissioning party in providing an assessment of the commissioning party's proposal (or offer);
- an expert remain independent of the commissioning party and its advisers from the time of the first approach until the final version of the report is issued; and
- the quality of assessment provided in an IER is at the highest possible level.

Practice Note 351 also makes it clear that an expert's independence is jeopardised if he is appointed after other experts have been rejected on the basis of their probable opinions. Any conduct leading to an inference that "shopping around" has occurred should be avoided, and under no circumstances should the expert's fees be tied to the outcome of the proposal.

The NCSC recognises that the factual accuracy of a draft IER should be reviewed by the commissioning party before its release to shareholders, but concludes that any significant changes made following discussions with the commissioning party must be disclosed in the IER. In my view, the NCSC over-reacted to the Pivot and Wormald International cases: a strict interpretation of Practice Note 351 would make the preparation of IERs very difficult.

Other changes in Issue 4 which reflect the NCSC's concern about independence include requirement that:

- the expert ensure that his ability to provide an IER is in no way compromised by his appointment brief or any subsequent instructions;
- the expert's fees, which are not to be related to or contingent upon the success of the offer, be disclosed in the IER; and
- the expert disclose whether he is entitled to any interest in the securities which are the subject of the IER.

Other revisions in Issue 4 relate to the quality of assessment in an IER, particularly to increased disclosure, and include:

- the suggestion by the NCSC that the expert "give serious consideration" to providing a recommendation to the shareholders, a stronger form of words than in Issue 2, which said that an expert "may wish" to make a recommendation;
- an expanded definition of "fairness" and "reasonableness", with examples of additional matters that experts should consider in assessing whether an offer is fair and reasonable;
- a requirement that the expert disclose in the report all material information on which he bases his opinion;
- a view that the expert should assess the value of the target's shares to an alternative purchaser, despite experts' tendency in the past not to do so, on the basis that an alternative offer would probably be unsuccessful;
- a requirement that experts form a view that any profit forecasts, cashflow predictions and unaudited profit figures referred to in the IER are reasonable;
- provisions that IERs containing forecasts or market values of assets different from book values are referred to NCSC Policy Statements 103 (Profit Forecasts) and 104 (Asset Valuations), which detail the matters the NCSC will consider before consenting to the inclusion of the forecasts or asset valuations (responsibility for this information remains with the expert, despite this consent). These matters include increased disclosure requirements with respect to the forecasts and asset valuations; and
- reference to NCSC Policy Statement 149 (Expert Reports on Mining and Petroleum Securities, Properties and Other Assets). This policy statement gives details of matters peculiar to mining and petroleum companies and assets, including the inspection of property or leases, IER content requirements—such as a summary of key assumptions and data, geological data about mineral or petroleum sites (including maps), finance for the exploration or development of sites, obstacles (legal or otherwise) to future exploration, development or production, and an explanation of technical terms—and increased consideration and disclosure about valuation methods.

Any conduct leading to an inference that "shopping around" has occurred should be avoided.

The changes and revisions in Issue 4, while attempting to improve the independence, objectivity and quality of ERs, has also increased the levels of responsibility and liability experts bear in preparing IERs. This has been the focus of much debate among experts who believe they now perform a level of work similar to that required of auditors (despite the NCSC's recognition that the task of the expert is not to perform an audit). Experts have warned that the costs of preparing IERs will increase. The NCSC appears to have addressed these concerns to some extent in Issue 5.

Issue 5 (24 January 19)

The most significant of several additional changes is the clarification of the rights of an expert preparing an IER. This change appears to be in response to the view expressed by experts after the release of Issue 4 that they were required to bear too much responsibility for the management information in an ER and that, to satisfy the NCSC requirements, they would virtually have to perform an audit.

The NCSC's objective of clarifying the rights of the expert is reflected in the following changes in Issue 5:

- written instructions to the expert from the commissioning party should acknowledge the expert's independence as set out in NCSC Practice Note 351, recognise the expert's right to refuse an opinion or report if he is not provided with appropriate information and, and give the expert the same access to the company's records as the company's auditors;
- the expert should disclose in the IER, as necessary, any time constraints, information quality problems or information access problems encountered, to assist readers to assess the value of the report;
- where the expert withholds information from the IER because it is commercially sensitive, he should indicate; and if the expert is unable

to provide a definite answer with respect to an IER, he should decline to provide any report at all.

These changes appear to be intended to provide experts with some protection if pertinent information is unavailable or its quality suspect and, in such cases, an avenue to decline issuing an IER.

However, the NCSC continues to make it clear in Issue 5 that the onus is on the expert to ensure that information in the IER on which he bases his opinion is reasonably true, not misleading and complete.

It is interesting that Issue 5 no longer refers to the fact that the NCSC recognises that the task of the expert is "not to perform an audit". Instead, it sets out broadly what the expert should do to assess and check the information and ultimately concludes that it is up to the expert to determine whether it is reasonable to base his appraisal on the information provided by the board of the target company. While not implying that the expert must perform an audit, Issue 5 could leave the impression with some readers that he should undertake a "quasi-audit".

Issue 5 also requires increased disclosure about valuation methodologies in the IER. For instance, the expert is required to consider the value of the target based on the discounted cashflow method in addition to other methods, reflecting the apparent increasing acceptance of discounted cashflow as an appropriate valuation methodology.

More important, however, the expert is now required to justify his choice of valuation method in the IER and provide a sufficient account of the method to enable another expert to replicate the procedure and assess the valuation. This is a significant additional disclosure requirement as it requires experts to disclose in the IER certain subjective matters which may be open to argument, such as the calculation of future maintainable earnings and price-earnings ratios. While theoretically this requirement may be seen as improving the standard of IERs (a constant aim of the NCSC), it potentially exposes experts to criticism over matters where expert judgment is required. Debate on this issue is likely for some time.

The final major revision to Issue 5 concerns indemnities. The inclusion of this section was prompted by an attempt by some experts to obtain protection from clients against false and misleading information upon which experts have reported in their IER and based their opinions. While Issue 5 does not prohibit the use of indemnities by experts, it provides that they do not diminish the experts' liability.

Special care needs to be taken over the question of independence by auditors commissioned to act as experts.

Issue 5 also emphasises in paragraph 11 that special care needs to be taken over the question of independence by auditors commissioned to act as experts. This also applies to a prospective expert, usually an accountant, who has provided accounting services, taxation advisory services or management consultancy services.

While this puts accountants on notice, paragraph 13 takes a stronger stance towards relationships that are "so close as to create the perception that an IER is not disinterested and the credibility of the report is therefore undermined". It further advises an expert to consider refusing an assignment if he has participated in recent strategic planning work for the offerer or target company, acted as tax adviser or accountant to the offerer or its associates, or was retained by the offerer to advise on other aspects of takeover offers.

Effects on expert reports

Before embarking on an IER, the expert should carefully set out in writing the terms and scope of his engagement. Policy Statement 102 recommends that the terms should, among other things, recognise his independence and his right to refuse to provide an opinion if adequate information and explanations are not provided.

A probable result of this need for increased verification will be an incease in fees.

The policy statement requires the expert to evaluate the information provided by the target company and any other person, note any grounds he has for questioning the truth, accuracy and completeness of the information, and undertake whatever checks, inquiries, analyses and other verification procedures necessary to provide reasonable ground for the statements in the IER. He is expected to make a positive statement about the quality of the information based on his own assessment or that of a specialist commissioned for the purpose.

A probable result of this need for increased verification by experts of information provided by directors, specialists and other parties will be an increase in their fees. There is also likely to be a greater use of indemnities and, as has already been the case, the exit of some experts who consider that the risk-reward ratio of IERs is becoming too high.

The NCSC has been quick to respond to the use of indemnities by emphasising that they in no way diminish the liability of the expert for false and misleading information contained in an IER. This is reasonable, given that the propriety of a director associated with the offerer indemnifying an expert out of the assets which the expert is valuing is, at best, questionable. Policy Statement 102 recommends that the details of indemnities be disclosed in the IER.

The NCSC's new requirements relating to the valuation methodology used are now fundamental to the conduct and presentation of IERs. In the past, experts have not attempted to explain their choice of methods in detail, having taken the view that they are sufficiently skilled to make an appropriate choice (which is why they were chosen for their role in the first place). However, the detail in which the NCSC now expects experts to defend their selection of valuation method, and the requirement that they provide data with which other experts can replicate the procedures, threatens one of the few remaining discretionary powers of the expert.

While this course was chosen by the NCSC in an attempt to upgrade the quality of IERs, it remains to be seen whether this objective will be accepted by experts and achieved in practice. It is also unclear why the NCSC is pushing for so much detailed disclosure when the vast majority of investors will not read, let alone understand, the information.

The objective of an IER is, as already defined, to provide shareholders with unbiased, factual and skilfully prepared information to enable those investors to make an informed and sensible investment decision. Experts will often need to rely on the work of specialists, for example in the valuation of real-estate or mining and petroleum assets. It is the expert's responsibility to satisfy himself of the specialist's competence and independence. In particular, the expert should ensure that:

- there is a clear understanding between himself and the specialist of the nature of the specialist's work; and
- the specialist has used reasonable assumptions and drawn on appropriate source data in preparing his report.

In addition, the expert's liability for false and misleading statements extends to the work of specialists. Accordingly, the use of a specialist does not relieve the expert of his responsibility to ensure the information contained in his report is accurate.

Experts' liability for IERs

Section 44 of the Code covers the statutory liability of experts preparing IERs arising from takeover offers (ie, Section 23 and 43 reports). The section applies when an IER provided for a Part B or Part D Statement contains matter which is false in a material particular or is materially misleading in the form and context in which it appears, or when material matter is omitted from the report. The maximum penalty is a fine of $1,000 or six months in prison. In addition, the expert may be liable to compensate any person for any loss sustained by reliance on the false or misleading matter.

Of much greater concern to experts, however, is the possibility of liability for negligence under common law. Although there is no direct contractual relationship between the shareholders and the expert, it is reasonable to assume that there may be a duty of care owed by the expert to the shareholder. Further, where an expert disclaims responsibility for the information provided, he can still be negligent because of a failure to be sufficiently diligent in seeking the information.

The new Corporations Act under the Australian Corporation and Securities Legislation calls for the further expansion of the expert's liability. Section 995 of the Act prohibits misleading or deceptive conduct or conduct that is likely to mislead or deceive in any dealing in securities. Breaches of Section 995 will give rise to civil liability to any person who suffers loss or damage as a result.

The significance of Section 995 for experts is that it is based on Section 52 of the Trade Practices Act, under which courts have found it is not necessary for parties claiming damages to prove negligence. Plaintiffs are only required to prove reliance on misleading or deceptive conduct to win a favourable judgment. Accordingly, the expert's exposure to liability will widen considerably under the Act.

NCSC Practice Note 351 refers to qualifications in IERs. Generally, the NCSC will not accept qualified IERs except where the qualification relates to information that cannot be objectively assessed. The objective of the NCSC is to ensure that experts produce meaningful reports which can be put to practical use by shareholders. However, this should not prevent experts from qualifying certain information that they have relied upon (such as forecasts), notwithstanding their exhaustive review of this information. This is a reasonable and sensible approach which does not diminish either the quality or the usefulness of the IER.

Dilution factor

An area that the NCSC has not yet addressed in significant detail in its policy statement releases is the assessment by experts of share (and not cash) offers and the dilution effect on the value of the offerer's shares should the share offer be accepted. The likely reason is that relatively few share or combined cash/share offers have been made (they accounted for 29% of all takeover offers in 1989).

The dilution factor arises because the value of the shares being offered does not generally reflect any premium for control whereas the value of the target company normally does. Accordingly, should the offer be accepted by the target, the inherent value of the shares issued (equal to the value of the assets acquired divided by the number of shares issued) will be less than the market value of the shares held by the other shareholders of the offerer, thus diluting the value per share of the offerer.

The expert must take this dilution factor into account in assessing the value of the consideration being offered. This is particularly important when a large number of listed companies are being placed in receivership, resulting in increased risks to investors. Given this environment, investors will be demanding cash or a significant premium on shares offered—and, the greater the premium provided, the greater the dilution effect on the value of the shares and the consideration being offered.

While prudent experts would be expected to take the dilution factor into account, tec NCSC should, in keeping with its objective of improving the quality of IERs, address this issue further in future policy statements. It should also address the

It [the authorities] should also address the very real practical problem that offerers generally refuse to give the expert any access.

BOOK REVIEW

International Corporate Finance—a Handbook for Australian Business

By Michael Skully

Butterworths, $59.50

Reviewed by ANDREW DYER

This is the first general text to be compiled on the avenues of international corporate finance that have become available to Australian companies and government business enterprises over the past decade. It is important not only because it is the first synthesis of the plethora of material written about international corporate finance but also because it examines some of the reasons for corporate Australia turning to international markets to finance its operations.

In addition to reviewing the international corporate financial markets and products, the text examines the underlying economic, political and other processes that directed the focus of Australian entities to international markets, where they became some of the largest borrowers.

International Corporate Finance is an adjunct to the successful *Handbook of Australian Corporate Finance*, now in its third edition, and it also fills a gap in the literature on the avenues and forms of corporate finance available to Australian companies.

The text draws on market professionals, actual transactions and market experiences to present the readers with a realistic overview of the workings of the markets and the relevant products.

Like the *Handbook of Australian Corporate Finance*, the text is broken down into a number of distinct areas. The first section comprises an overview of the subject, puts the relevance of the international financial markets in context for Australian entities and discusses why Australian entities sought to use the international financial markets. The second section examines the various financial instruments which they have successfully used in these markets.

The third section considers more specialist areas such as cross-border transactions, cross-border mergers and acquisitions and the financing of international trade. The fourth section examines the role and application of the interest-rate and currency risk management techniques that were developed over the period to enable borrowers to separate the currency, interest-rate and financing decisions. The final section is a discussion of the future role of international financial markets in the corporate financing decisions of Australian entities.

International Corporate Finance will have a wide appeal. It provides information which is relevant both to practising professionals and those in academic institutions seeking to broaden their understanding of the international financial markets.

For the seasoned market participant, or those looking for a more rigorous understanding of the economic principles and underlying financial principles, the text could be improved by a more detailed examination of the relationships between markets. Perhaps a later edition could examine more closely the economic principles that link financial markets and their precise mathematical relationships.

No doubt, given the unpopular reputation that corporate Australian is currently experiencing internationally, and the pace of change in international financial markets, many of the issues discussed in the text will date. Despite this, the author has resisted the temptation to explain all the "bells and whistles" and has concentrated on the key issues, which will ensure the book's immediate usefulness. □

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very real practical problem that offerers generally refuse to give the expert any access.

Conclusion

The NCSC has taken significant (some would say excessive) steps in the past year to lift the standard of IERs. These steps have focused on the independence and objectivity of experts engaged to prepare IERs and increasing the level of disclosure and matters to be considered by experts in preparing IERs.

These steps, while clarifying the expert's role, have evidently increased the expert's risks, responsibility and liability in the preparation of IERs. Experts may in fact complain that they now carry too much liability. But if the experts were not responsible for the information contained in the IER or used by the expert, then the whole IER process—which is to provide shareholders with unbiased, factual and skilfully prepared information, including an independent assessment, to enable them to make an informed and sensible investment decision—could be rendered ineffective.

The other inherent benefit of the NCSC's drive to increase the quality of IERs is that it places pressure on offerers in assessing the value of transactions—they now find it much more difficult to acquire companies or assets at discounted prices. Clearly, the NCSC aims to coerce offerers into paying closer to the full value of the assets they are acquiring than in the past.

While the immediate beneficiary of the new NCSC guidelines is, theoretically, the shareholder, it remains to be seen how willing experts will be to prepare IERs, and at what costs, given the increased risks and public exposure. To put this into perspective, fees generated by experts engaged to prepare Section 23 IERs in 1989 totalled about $3 million ($6.5 million in 1988); an insignificant amount compared with the recent $175 million lawsuit filed against Ernst and Young over the Duke Group IER. This will inevitably cause experts to reconsider carefully the risks and rewards of preparing IERs under the new NCSC guidelines. While this may well push up the price of the average IER, a much more than commensurate increase in quality should be achieved. □