

ASIC proposals may go too far

Institute in joint submission on analysts' briefings

In a submission to the Australian Securities and Investments Commission (ASIC), the Securities Institute of Australia has expressed concern that proposals outlined in the draft guidance and discussion paper "Heard it on the Grapevine . . .", which were intended as best-practice guidelines, were too prescriptive and amounted to a significant extension of the legislation.

The submission was made jointly with the Australian Institute of Company Directors, the Investment and Financial Services Association, the Business Council of Australia and the Securities and Derivatives Industry Association, representing key interests in Australia's capital markets.

While strongly supporting the principle of market integrity and investors being given relevant information in a timely manner, we noted that this is already achieved under the existing regime, which requires immediate disclosure of price-sensitive information to the Australian Stock Exchange (ASX).

We pointed out that the issue of appropriate and timely disclosure had been fully debated in parliament during the Corporate Law

Simplification Program (CLERP), the Corporate Law Economic Reform Program and review of the Company Law Review Act, culminating in the existing regime. We suggested that companies and analysts take their disclosure obligations very seriously, and that analysts' briefings generally provide a forum for clarification and improved understanding of information that is already available. If material price-sensitive information is disclosed inadvertently, the ASX is notified immediately.

We expressed concern that the discussion paper failed to give sufficient prominence to the primacy of price-sensitive information, often confusing the distinction between it and "significant information".

Moreover, the paper's use of the term "significant background information" could create confusion among those required to interpret it, resulting in an information overload. We pointed out that this would be contrary to both the Wallis Report and CLERP 6, both of which emphasised the need for effective disclosure, rather than the mere production of information. The Wallis Report noted that "it is the quality and

usefulness of information which is important, not its quantity. Excessive or complex information can be counterproductive as it may confuse consumers . . ."

We pointed out that the United States' Securities and Exchange Commission had only recently banned the selective disclosure of "material" information, bringing that jurisdiction closer to the high standard of disclosure already found in Australia. We expressed concern that demands for even greater disclosure than that already required would put Australia out of step with major overseas markets. It could also lessen the flow of quality information to the market, adversely affecting our cost of capital and undermining our efforts to become a global centre for financial services.

We made the point that ASIC plays an important role in providing guidance on complying with the Corporations Law and vigorously enforcing the law. We argued that careful consideration should therefore be given to deciding the body most appropriate to issue such guidelines, which, although not intended to be prescriptive, could easily be misinterpreted as mandatory.

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