

ASIC relaxes on briefings

The Securities Institute continues to consolidate its role as an influencer of policy, promoting the interests of the investment industry.

The Securities Institute welcomes the Australian Securities and Investments Commission's decision to adopt a more flexible approach to analysts' briefings than previously proposed in the discussion paper "Heard it on the Grapevine . . ."

When that paper was released for comment late last year, the Institute, together with several other key business and financial services organisations, expressed concern that while intended as a guideline for best practice, it was too prescriptive and would effectively become de facto legislation. It was also seen as likely to reduce the availability of valuable information by reducing the effectiveness of analysts.

We advised ASIC that we strongly support the principle of market integrity and investors being given relevant information in a timely manner, but believed this was already being achieved under the existing continuous disclosure regime, which requires immediate disclosure of price-sensitive information to the Australian Stock Exchange.

We pointed out that the issue of appropriate and timely disclosure had been fully debated in parliament under the Corporate Law Simplification Program, the Corporate Law Economic Reform Program (CLERP) and the Company Law Review Act, culminating in the current regime. We suggested that companies and analysts generally take their disclosure obligations very seriously and if

price-sensitive material is disclosed inadvertently during an analysts' briefing, 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 failing to note the distinction between it and ASIC's new concept of "significant background information".

The release of the ASIC paper "Better Disclosure for Investors" represents a sensible and flexible approach in providing better guidance to companies to ensure they comply with the continuous disclosure requirements under the Corporations Law and minimise the risk of breaching the law.

The principles also aim to ensure that the widest audience of investors has access to company information released under the continuous disclosure rules. The objective of these principles is to outline what ASIC considers to be good disclosure practice rather than to impose regulatory requirements. The Institute supports this approach, particularly given that Australia is a leader in continuous disclosure requirements.

Key elements of the guidance principles are for companies to:

- have written policies and procedures on information disclosure that focus on continuous disclosure and improving access to information for all investors;

- have a website on which information is disclosed as soon as it is disclosed to the market; and
- nominate a senior officer to have responsibility for ensuring compliance with continuous disclosure and overseeing and coordinating information disclosure to the stock exchange, analysts, brokers, shareholders, the media and the public.

The principles are not mandatory and are intended to act as guide to what ASIC believes is good disclosure practice.

The Institute applauds ASIC for adopting a flexible approach to providing guidance to public companies and recognising that the circumstances of listed companies vary widely. We support the general principles in the paper regarding the monitoring and reviewing of the disclosure of material price-sensitive information during analyst or other private briefings. We believe non-public price-sensitive information should not be disclosed during analyst or private briefings and all parties have an obligation to treat price-sensitive information appropriately.

The Institute, the Investment and Financial Services Association and the Australian Institute of Company Directors have established an industry working group to examine ways of establishing "best practice" for companies in complying with their disclosure obligations and assisting analysts in examining their practices regarding price-sensitive information. **J**