



17 March 2009

Mr John Kluver
Executive Director
Corporations and Markets Advisory Committee
By email: john.kluver@camac.gov.au

Dear Mr Kluver

Re: Aspects of Market Integrity Issues Paper - February 2009

Thank you for granting Finsia an extension of time to provide a submission on the Issues Paper. Finsia (the Financial Services Institute of Australasia) is a professional association representing more than 17,000 individuals working across the spectrum of the financial services industry in Australia and New Zealand. Finsia's submissions on the areas under review are set out below.

Margin lending to directors

It is difficult under the current regulatory regime to know the exact extent of margin lending to directors in respect of shares in the companies of which they are directors. Without accurate information about the extent of margin lending, it is not possible to assess realistically the impact a prohibition would have on directors' share acquisition behaviour. While prohibition would remove one means for a director to finance the acquisition of the company's shares, it would not prevent other financing arrangements.

Finsia favours greater disclosure and clearer legislative obligations in this area. In particular, the current ambiguity about whether s191 and s205G impose disclosure obligations in relation to margin lending arrangements should be resolved. Finsia supports requiring all directors to disclose to the company (and listed companies to the market), within two to five business days, the entry into a margin loan and the number of securities subject to the loan. Subsequently, the fact that those securities have ceased to be subject to the margin loan should also be disclosed, whether due to (third party or personal) disposal of the securities, paying out the loan, or otherwise.

'Blackout' trading by directors

In Finsia's view, as long as there is no specific sanction (legislative, by ASX, or by the company) against a director for breaching a company's trading policy, lack of compliance with company trading policies can be expected to continue. Bringing about greater compliance with internal policies would require a more interventionist approach with some form of external sanction.

Finsia notes that breach of a company's trading policy does not necessarily involve insider trading or other misconduct, although any trading by persons internal to a company, during a routinely-occurring period when external persons are inevitably not privy to the same corporate information, is likely to raise that suspicion. Changes in this area could focus on enhancing the ability of regulators to identify and prove trading misconduct. Tightening the requirements around the existence of, content of and compliance with listed companies' internal trading policies may assist, if contraventions are followed up externally.

Spreading false or misleading information

In relation to the initiation of false rumours, Finsia supports amending the Corporations Act to provide for civil penalty provisions in addition to the existing criminal liability under s1041E, s1041F and s1041G. However, Finsia considers that the other measures discussed in the Issues Paper would not significantly assist in preventing or proving 'rumourage'.

Corporate briefings to analysts

Finsia considers that the current regulatory framework in Australia operates in an effective and fair way, and that significant change is not warranted.

However, to enhance supervision under the current framework, Finsia would support:

- requiring companies to keep (for a period of say, two years) a written record of their private briefings, setting out "who, when, where" and the topics discussed
- requiring listed companies to give advance notice to the market of the timing for release of their financial results.

If you would like to discuss this submission, please contact Sue Hansen, Senior Policy Officer, s.hansen@finsia.com or Russell Thomas, Director Policy and Regulatory Affairs, s.thomas@finsia.com.

Yours sincerely



Dr Martin Fahy F Fin
Chief Executive Officer

