



Investment & Financial Services Association Ltd

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19 March 2009

Mr John Kluver
Executive Director
Corporations and Markets Advisory Committee
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SYDNEY NSW 2001

Email: john.kluver@camac.gov.au

Dear Mr Kluver

Re: IFSA submission - CAMAC issues paper on market integrity

Thank you for the invitation to provide input on the Corporations and Markets Advisory Committee's (CAMAC) issues paper entitled 'Aspects of market integrity'. We welcome the Government's current review of industry practices and compliance with regulations in this area and we greatly appreciate the extension of time during this busy period to lodge the submission with CAMAC.

IFSA is a national not-for-profit organisation which represents the retail and wholesale funds management, superannuation and life insurance industries. IFSA has over 145 members who are responsible for investing over \$1 trillion on behalf of more than ten million Australians.

IFSA strongly believes that it is important that any legislative framework and requirements remain principles based. The requirement for all IFSA members to conform to rigorous industry standards and guidance will support the use of principle based legislation by Government, and will promote market confidence and adherence to the principles of the legislation.

As major shareholders, IFSA members are in a position to promote improved company performance that provides positive benefits to all shareholders and the economy as a whole. While shareholders are not involved in the day to day management of companies, the *Corporations Act*, ASX Listing Rules and industry best practice provide many opportunities for shareholders to monitor and influence company decision making which drives ultimate company performance.

Originally published in 1995 and further revised on five occasions, IFSA's Guidance Note No. 2 'Corporate Governance: A Guide for Fund Managers and Corporations' (hereafter 'Blue Book') assists IFSA members to promote improved company performance by ensuring Australian companies have sound corporate governance structures.

These Guidelines were first developed by fund managers to address some of the corporate excesses during the 1980s and early 1990s. While IFSA's Guidance Notes are not

mandatory for members, the Blue Book has become widely accepted by the investment and corporate community as providing best practice guidance for Corporate Governance.

A copy of IFSA's current Blue Book is available at:

<http://www.ifsa.com.au/documents/IFSA%20Guidance%20Note%20No%202.pdf>

I note that the current edit of the Blue Book is currently under review and an updated 2009 version will be released shortly.

In reference to the CAMAC issues paper, the submission below comments specifically on the proposals and issues that are particularly relevant to our members.

1. Margin lending to directors

Margin lending is a long established practice available to directors and investors. Where used as part of an investment strategy margin loans can provide various advantages and consequent benefits to directors. However, utilising a margin loan facility is, like any investment, not without its risks.

Public confidence in a company can be eroded if there is insufficient disclosure and monitoring of trading and exposures relative to company shares by parties who may be viewed as "insiders". Companies must develop, enforce and monitor policies on director and executive trading in accordance with the *Corporations Act 2001* and which reflect their own circumstances. The policies should include appropriate restrictions and disclosure regarding margin-lending arrangements over the company's stock.

Companies, directors and senior management must comply with the *Corporations Act 2001* regarding use of insider information while trading in company shares. Disclosure of director trading must also be in accordance with the law and the ASX Listing Rules.

We note that there is ongoing concern regarding the disclosure of executive and director share trading, including margin lending. Companies must develop, monitor and enforce their policies on director and executive trading. The policies should be available to shareholders on request and should be disclosed on the company website. Companies must ensure that there is a high level of transparency regarding director and executive trading to ensure that inappropriate behaviour is not taking place or perceived to be taking place. Inappropriate trading behaviour, or the perception of such behaviour, has the ability to undermine shareholder confidence and impact on company performance.

The Company share trading policy should also specifically provide guidance regarding restrictions and disclosure about all directors and executives entering margin lending or other lending arrangements over the company's stock, particularly where the holdings and/or exposures are material and when these arrangements should be publicly disclosed. This should also include guidance regarding suitable margin lenders (i.e. not related parties) and managing trigger points for margin calls or forced sales.

These requirements are all stipulated in IFSA's forthcoming 2009 Blue Book.

IFSA recommendation

Given the current requirements included in the *Corporations Act 2001*, IFSA Blue Book, ASX listing rules and governance principles we believe that the current principles based regulatory approach to margin lending by directors is adequate.

2. 'Blackout' trading by company directors

IFSA is opposed to the practice of director and executive trading during a designated 'blackout' period. Consistent with our comments above, companies must develop, monitor and enforce their policies on director and executive trading. This should specifically include activity within any trading windows and "blackout" trading periods.

The implementation and enforcement of a trading policy acts as an instrument to minimise the potential for any perception that directors or executives are dealing in the entity's securities while in possession of inside information.

Along with CAMAC, we recognise that any underlying impropriety in blackout trading is dealt with by the insider trading and other market misconduct provisions. Companies should have the flexibility to develop a trading policy which suits their own circumstances and include what period the blackout period will operate, whom the policy applies to and whether any exemptions from blackout trading can be granted.

This policy should be publicly disclosed.

IFSA recommendation

The market supervisor and companies (via the Board of Directors) should actively continue to monitor, enforce and report on trading within any trading windows and "blackout" trading periods.

3. Spreading false or misleading information

As noted in the issues paper, the making of or misleading statements is an area which is adequately covered in varying degrees by provisions in the *Corporations Act 2001* and ASX's Operating Rules.

IFSA recommendation

While the current regulatory framework is adequate, we would be happy to work with government and industry representatives on further investigating the extent of 'rumourtrage' and whether the existing regime should be enhanced.

4. Corporate briefings to analysts

We strongly believe that companies should manage communications so that no investor or potential investor obtains material or price sensitive insider information that has not been disclosed to the market in accordance with the *Corporations Act* and the ASX Listing Rules. We fully support the market regulator and supervisor in ensuring these laws and rules are followed at all times.

As noted above, fund managers have an important role in monitoring and influencing company decision making which ultimately drives company performance. While recognising the important role of corporate briefings to analysts, it should not be acceptable to engage in information arbitrage by holding private briefings at which market sensitive information is made available, which gives rise to information asymmetries.

IFSA recommendation

IFSA considers that the current regulatory regime is flexible and sufficient to cover disclosure and governance practices of corporate briefings to analysts.

Australia continues to be well regarded in the region for the strength of its regulatory regime and market integrity. Sound corporate governance practices increase investor confidence in the integrity and efficiency of the Australian capital market, and in turn enhance the competitiveness of Australia as a leading financial centre and support the Australian economy more generally.

Consistent with the ASX Corporate Governance Council we believe that before any change to the law or further guidance is provided, the proposals proposed should be carefully considered against the following factors:

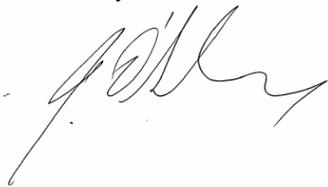
- Is there clear evidence of a continuing market failure; and
- If so, what measures are appropriate to address the market failure without unintended consequences or market distortions.

Australia has a diversified and sophisticated capital market. Companies should have the flexibility to develop governance and operating policies (supported by principles stipulated in various statutes, ASX rules and IFSA Guidance) that are consistent with their particular circumstances.

The industry and investors will benefit from a market that has an internationally competitive governance framework and principles based regulatory framework.

We would be pleased to further discuss our recommendations and current industry arrangements prior to CAMAC finalising its recommendations to government. Should you require any further information, please do not hesitate to contact myself or Joseph Sorby on 02 9299 3022.

Yours sincerely



John O'Shaughnessy
Deputy Chief Executive Officer

Cc: Senator the Hon. Nick Sherry
Minister for Superannuation and Corporate Law