

Aspects of Market Integrity

Submission by Jim Berry JH Berry Management Pty Ltd

1. The Reference to CAMAC by the Minister includes
 - “the lack of transparency and accountability surrounding some of these practices”...
 - “that Australia’s system of corporate law and regulations is sufficiently robust to provide investors with confidence that they are able to make fully informed decisions.”
2. Transparency is most important as investors should be able to view and have access to the information necessary to make effective decisions. A high level of transparency will aid in providing investors with confidence in the information which is provided to the market.
3. Set out in this submission are a set of simple provisions which will increase transparency and therefore would improve investor confidence

Submission on Section 1.8 -Margin lending to directors

4. Companies need to make arrangements with directors under ASX Listing Rule 3.19B to ensure the all directors discloses to the company all the information on the director’s trading required under ASX Listing Rule 3.19A. This was introduced in September 2001 and caused, over a period of several years, a dramatic improvement to the quality and timeliness of director’s trading information disclosed to the market.
5. A requirement that the Company makes arrangements with its directors that the Company must authorise a director entering into any margin loan or mortgage involving the company’s securities, would ensure that the company takes responsibility for the issue.
6. A provision that the notifiable interest of a director was the subject of a mortgage or margin loan could be added to the Appendix 3X, Y and Z of the Listing Rules. The forms could also provide details of when the Board approved the arrangements. These details would provide information to the market if a director’s notifiable interest were the subject of a lien. I have not given consideration as to whether ASX would agree to such a change.
7. It seems strange that the market is not currently informed when a lender exercises his lien and sells the securities. A lender exercising his lien may seek to sell in quite a different manner to a director selling securities. The control of the sale instructions is exercised by the lender and not the director. Surely this is information that investors require in order to understand market transactions. Accordingly, amending Appendix 3X, Y and Z to advise when a lender exercises his right to sell securities would be beneficial.
8. A carve out for the director against a charge of insider trading should be created where a lender exercises his right to sell the securities.
9. If a director receives notification that a lender has or intends to exercise his right to sell securities, a requirement is needed that the market be informed within 24 hours.

Submission on Section 2.6 -“Blackout “trading by company directors

10. It is quite evident that inside information varies greatly from company to company. Blackout periods often work on the incorrect assumption that the price sensitiveness commences upon the preparation of the financial statements. Instead, the regular preparation of management reports on revenue on a periodical basis (daily, weekly or monthly) is concrete information upon which the results of a company may be able to be calculated with some accuracy.
11. I believe recent events demonstrate that the blackout assumption is flawed. Revenue in many businesses appears to have rapidly slowed in September and October 2008 as the Global Financial Crisis rolled from one industry to another. Downgrading profits in February 2009 when revenue was under pressure 5 months earlier points out the frailty of a set blackout period. This example shows it is inappropriate to codify blackout periods as it provides false security to directors.

12. One of the key responsibilities of the Chairman should be to authorise or refuse securities transactions.. This will require him to make enquiries at certain times as to whether trading should be approved.
13. A requirement that the Company makes arrangements with its directors that the Company must authorise all trading by directors involving the company's securities, would ensure that the company takes responsibility for properly monitoring trading by directors.
14. Appendices 3X, Y and Z may be modified to record when and who approved the transaction.
15. All trading approvals should be ratified by the board at the next available meeting.

Submission applying to both Sections 1.8 and 2.6

16. In my experience some director's notices (Appendices 3X, Y and Z) are deficient or lack clarity in only a minor way, but the deficiency makes examination of the trading difficult. An example of this would be trading in small parcels at the end of trading on several days which is only disclosed on the director's notice as one purchase. These deficiencies erode investor confidence.
17. Some examples of this lack of clarity include
 - The dates on the Notice do not accord with turnover reported on that date.
 - Sales and purchases are combined into a net amount without separate disclosure.
 - Prices on Notices are not in accord with transactions reported for that date.
 - Amalgamation of several or many days trading onto one contract note which is not properly described on the Notice.
 - Contract notes are delayed because the order is incomplete.
 - Several brokers are used.
18. The problem is compounded as ASX does not publish Register of Sales (or Course of Sales) with broker IDs except to data providers after 3 days. As a result, an ordinary investor or the media cannot obtain trading data with broker ID from ASX in which to carry out enquiries.
19. Therefore, consideration should be given to require trading data including broker ID to be disclosed to investors or their advisors at a minimal cost.
20. A method to provide transparency to a director's trading would be to amend Appendices 3X, Y and Z to require that broker IDs are provided for each group of transactions. The notice should detail for each trading date, the volume, price, consideration and broker IDs.
21. If ASIC or ASX notes that any Notice is confusing, deficient or defective then ASIC or ASX might have power to require the company's auditors to provide corrected notices showing the corrected information. A request to complete new notices should be immediately disclosed to the market.

Submission on Section 3.5 Recipients of Rumours

22. The phrase "does not care" in s 1041E (1) (c) needs to be explained. If it means that if you pass on a rumour without establishing whether it is true or not, you are guilty of an offence, then that needs to be made very clear.
23. A requirement that ALL license holders were required to record all phone conversations would help in insider trading and manipulation investigations. In addition, it would clarify facts in any investigations into possible breaches of false or misleading statements.

JH Berry

0417225873

berry@schedulingberry.com

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