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Mr J Kluver
Corporations and Markets Advisory Committee
GPO Box 3967
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Dear Mr Kluver

In June the Corporations and Markets Advisory Committee issued a discussion paper on members' Schemes of Arrangement inviting submissions on any aspect of the Members' Schemes of Arrangement that may be of concern.

Australian Foundation Investment Company is Australia's largest investment company. It has a total investment portfolio of approximately $5 billion invested in close on 100 companies. The company has over 85,000 public shareholders who are mostly domestic retail shareholders. The Company has been in operation since 1928 and as an investor itself has had significant involvement over the 80 years in all manner of takeovers, reconstructions and similar company events.

Under the current Corporations Law, Chapter 6 sets out the various mechanisms by which one company can takeover another. From an investor's point of view one of the key safeguards of the processes provided in Chapter 6 is that for an offeror to compulsorily acquire shares from dissenting shareholders they must hold more than 90% of the securities in the bid class and acceptances from at least 75% of the securities that the bidder offered to acquire under the bid. We regard this mechanism as a significant safeguard to investors who wish to recognise the long term worth of their investment without having them too easily expropriated.

We have noted in recent years a significant trend for offerors to use Schemes of Arrangement as an alternative way of achieving a full takeover of a target company. In many cases these Schemes only offer cash as consideration. The threshold for a Scheme to be approved is for only a simple majority of shareholders at the meeting voting in favour of the Scheme and 75% of the votes cast at the meeting being cast in favour of the Scheme. Then all shareholders are committed to the Scheme and dissenting shareholders have their interest in the company compulsorily acquired. This is a significantly easier route for acquirers to move to full ownership of a target company.

One argument made by proponents of Schemes of Arrangement is that the Target Board needs to approve the Scheme Meeting for it to go forward. In our view few Boards dare take a robust approach and reject Schemes because of the risk of litigation and the fear that in the absence of a Scheme the target share price may fall.

The result of all this is that the threshold for compulsory acquisition that was originally provided in the takeovers provisions of the Corporations Law has now been circumvented by the use of Schemes of Arrangements and a considerably lower threshold now applies. In our view this means that the outcome is substantially tilted in favour of offerers at the expense of long term shareholders. We do not believe that it was the intention of the framers of the Corporations Law that Schemes of Arrangement should be used to circumvent the takeovers regime, rather they were originally provided to give shareholders a vote on reconstructions and similar complex corporate changes.

We would strongly urge the Committee to consider recommending a change to the law so that Schemes of Arrangement are not used in lieu of the takeover schemes or alternatively that the threshold for schemes of arrangement and the threshold for compulsory acquisition should be made equivalent and sufficiently high to protect the interests of long term shareholders.

This is a matter of great concern to us as an investor. We would be very happy to expand on these comments if that would be of further assistance.

Yours sincerely

Ross Barker
Managing Director