AUSTRALIAN INSTITUTE OF COMPANY DIRECTORS
ABN 11 008 484 197

NATIONAL OFFICE
Level 2, 255 George Street
Sydney NSW 2000 Australia
TELEPHONE 02 8248 6600
FACSIMILE 02 8248 6633
aicd@companydirectors.com.au
www.companydirectors.com.au

10 March 2009

Mr John Kluver
Executive Directors
Corporations and Market Advisory Committee

Email: john.kluver@camac.gov.au

Dear Mr Kluver

Issues paper - Aspects of Market Integrity

Thank you for the opportunity to make a submission to the Corporations and Market Advisory Committee (CAMAC) in relation to its issues paper 'Aspects of Market Integrity' released on 10 February 2009 (Issues Paper). We welcome Minister Sherry's reference to CAMAC and the opportunity to comment on these important matters in a considered forum that it provides.

The Australian Institute of Company Directors (AICD) is the peak organisation representing the interests of company directors in Australia. Our current membership consists of over 24,000 individuals drawn from large and small organisations, across all industries and from private, public and the not-for-profit sectors.

AICD considers that changes to the law should only be made if the current law is found to be inadequate. Any new laws should be proportionate to the matter being regulated and minimise unintended consequences.

Set out below are our views on issues that are of particular relevance to directors.

Directors' margin loans

AICD notes that there has been a discrete focus on directors' margin loans in the current market leading to this reference, rather than a focus on the broader issue of circumstances that might lead directors to sell down a sizeable parcel of company shares thereby putting downward pressure on the company's share price. Be that as it may, AICD considers that the current regulatory regime regarding the discrete issue of directors' margin loans does not require fundamental overhaul, as the existing continuous disclosure obligations imposed on listed companies provide appropriate regulatory oversight.

It is widely accepted that shareholders expect directors to hold shares in the listed companies of which they are a director, in order to align the directors' interests with those of the company and shareholders generally. Margin lending arrangements play an important role in enabling directors to purchase such shareholdings. The prohibition of or introduction of overly onerous regulation of director margin loans may create a significant disincentive for directors planning to purchase such shareholdings.

AICD believes that introducing blanket regulation of directors' margin loans is inappropriate. In many cases, the mere fact that a director has a margin loan arrangement in place over their shareholding is, in itself, information of limited value or interest to the market (for example, where the size of the director's shareholding in the company is insignificant). The unnecessary disclosure of a director's personal financial affairs should be avoided unless absolutely necessary. Accordingly, a blanket requirement forcing all directors to disclose details of any margin loan arrangements in all instances is not appropriate.

AICD considers that the existing continuous disclosure regime is sufficient in requiring a company to determine whether it is aware of information in relation to margin loan arrangements that is 'material' or 'price sensitive' and therefore requiring disclosure to the market.

Boards should be left to determine the appropriate level of 'internal regulation' of director margin loans by putting in place internal policies that are appropriate for the company's particular circumstances. These policies may, for example, prohibit directors from entering into margin loans, set conditions on which directors can enter into margin loan arrangements or require directors to disclose details of such arrangements to the company including when a margin call might be made and cannot be met by the director. In addition, ASX Guidance Note 8 could be updated to include guidelines specifically dealing with directors' margin loans.

'Blackout' trading by company directors

Directors who trade with the benefit of inside information, in breach of the prohibition on insider trading, should be appropriately and swiftly dealt with under the existing law. However, the mere fact that a director has traded during a 'blackout' period will not necessarily indicate that the director has breached the prohibition on insider trading. There can be legitimate reasons why a company director would need to trade shares during a 'blackout' period and should be able to do so provided that the director does not possess inside information. For example, a director may need to dispose of shares during a 'blackout' period where they are experiencing financial hardship, or if the director is required to exercise an option during a 'blackout' period because the option expiry date falls during that period.

AICD considers that the existing continuous disclosure regime and insider trading prohibitions adequately deal with the issue of directors trading during 'blackout' periods and that further regulation of this area is not required.

AICD supports the introduction of a mechanism similar to the US SEC Rule 10b5-1 which allows directors and officers to structure future trading plans for non-discretionary share purchases (for example, the exercise of an option or receiving shares pursuant to a share plan) without those purchases being caught by the continuous disclosure regime or insider trading prohibitions (provided, of course, that the director or officer was not aware of price-sensitive information at the time that the plan was implemented).

AICD also supports the adoption of a Model Code by the ASX (similar to that issued by the UK Financial Services Authority but with amendments to reflect current Australian practices).

In accordance with Recommendation 3.2 of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, many listed companies have established share trading policies that restrict trading by directors and other persons who are likely to be in possession of 'inside information' by specifying trading 'windows' or 'blackouts' or both. Such policies may provide the board with a discretion to allow trading during restricted periods where a director's particular circumstances justify doing so.

AICD suggests that when boards exercise their discretion to allow a director to trade during a restricted period, companies should announce to the market that the discretion has been exercised. ASX should also consider requiring disclosure of such information, for example, by including an additional question in the ASX Appendix 3X (Initial Director's Interest Notice), Appendix 3Y (Change of Director's Interest Notice) and Appendix 3Z (Final Director's Interest Notice) Forms:

- Were the shares in question traded during a period where trading would not normally be permitted under the company's trading policy? and
- If yes, did the board exercise its discretion to allow the trade to proceed during the restricted period?

This disclosure would provide the market with comfort that the trade had taken place in accordance with the company's trading policy (even if the trade occurred during a 'blackout' period or outside of a trading 'window') and that the board had recognised that legitimate reasons existed to warrant the exercise of its discretion under the trading policy.

Spreading of false or misleading information

AICD supports the lowering of the evidentiary thresholds that currently apply to the provisions under the Corporations Act relating to the generation and spreading of false or misleading information about securities. As suggested in the Issues Paper, this can be achieved by making sections 1041E, 1041F and 1041G civil penalty provisions in addition to attracting criminal liability.

Otherwise, AICD considers that the existing laws and the ASIC and ASX policies are appropriate and sufficient to deal with the spreading of false or misleading information and no further regulation is required. In particular, AICD does not support the introduction of any form of compulsory recording of telephone conversations and other electronic forms of communication, such as SMS as they are an inefficient evidentiary mechanism. We note that similar provisions in relation to the recording of calls during takeovers were repealed in 2007 on the basis that they had not increased the protection of security holders and imposed significant costs on the parties involved.

Corporate briefings to analysts

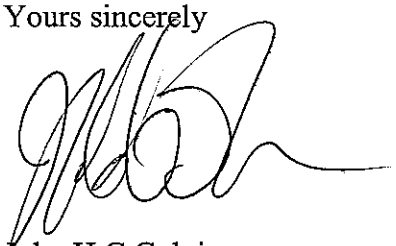
The current regulatory regime that applies to the corporate briefing of analysts is, in AICD's view, appropriate in requiring companies to keep the market fully informed and further regulation is not required. AICD has regularly cautioned directors in relation to the company's continuous disclosure obligations in its member communications.

Companies are already well aware of the sensitivities that are involved in giving briefings to analysts, both publically and privately. In the event of any inadvertent breach of their continuous disclosure obligations during such briefings, companies are, on the whole, quick to act in relation to the breach and, in most circumstances, such incidences do not cause any major detriment to the market.

Many listed companies already conduct corporate briefings publically (rather than privately) and are circumspect in respect of the information that they provide to analysts at those briefings. The continuous disclosure regime is therefore effective in regulating the conduct of companies and directors at such briefings. In particular, the AICD does not support the proposition that companies be required by law to record all public briefings and make such recordings available to the public.

Thank you for the opportunity to put our views before CAMAC. If you have any queries in relation to our submission, please contact me on (02) 8248 6600 or Gabrielle Upton on (02) 8248 6635.

Yours sincerely



John H C Colvin
Chief Executive Officer