

25 October 2002

Mr John Kluver  
Executive Director  
Corporations and Markets Advisory Committee  
GPO Box 3967  
SYDNEY NSW 2001

Dear John

**“Insider Trading Proposals Paper” - September 2002**

The Australian Financial Markets Association (AFMA) Electricity and Energy Committee welcomes the opportunity to comment on this Paper. AFMA’s Electricity and Energy Committee, comprising a representative cross-section of market participants including retailers, generators, intermediaries and brokers, has considered the various proposals.

The Committee has come strongly to the view that the current insider trading laws should be repealed for all electricity products – trading on exchange or OTC.

Many of the reasons resulting in this view have been previously presented to CAMAC by representatives of AFMA and are well summarised in the Paper. In particular, the Committee noted the point made in s1.53 which accepted that “... a party to an OTC risk transfer contract may have information that could materially affect the value of that contract and which is unknown to the counterparty or to the market generally.” On that aspect alone, the current insider trading laws would be unworkable for OTC electricity and energy transactions.

In relation to exchange traded products, the Committee concluded that the insider trading laws for, what amount to, identical transactions on the SFE should be limited to products that were regulated under the pre-March 2002 legislation. The Paper is silent as to the electricity futures conducted by ASX and the Committee believes that they should also be exempted.

In both the OTC and on-exchange cases, the Committee determined that, should its preferred position not be adopted, the fallback position of incorporating the disclosable information element, should prevail. The Committee noted that this was a significantly less efficient and appropriate outcome but would be willing to assist in the development of appropriate disclosable information.

The Committee noted that the question of insider trading related to the efficient and fair functioning of financial markets; it is not, and should not be, directed at market power or manipulation which are properly outlawed through other, more appropriate, Acts (eg TPA), and other sections of the Corporations Law (eg, market manipulation).

Should you wish to discuss any of the above in more detail please feel free to contact either of the undersigned.

Yours sincerely  
Kenton G Farrow  
Chief Executive

Darryl Flukes  
Chairperson

**Australian Financial Markets Association**

**AFMA  
Electricity/Energy  
Committee**