CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

15 November 2002

Mr John Kluver
Executive Director
CAMAC
Level 16
60 Margaret Street
SYDNEY NSW 2000

Dear John

Insider Trading Proposals Paper Sept 2002

Chartered Secretaries Australia (CSA) welcomes the opportunity to comment further on the matter of insider trading.

CSA is Australia's peak membership body for corporate governance and compliance, and firmly consider ourselves as fully qualified to respond to this matter. In Australia CSA has over 8,000 members representing the majority of public companies listed on the Australian Stock Exchange. Members of CSA regularly deal on a day-to-day basis with the ASX, ASIC and the ACCC and have a thorough working knowledge of the operations of the markets, the needs of investors and the law and regulation dealing with market practices and independence. In addition, representatives from the ASX, ASIC and the ACCC regularly address members at our seminars and conferences.

Whilst the Committee has endorsed many of the points made in our submission to the earlier paper, we remain concerned that the term "information" still does not provide an exemption where persons transacting are doing so on the basis of their own research, theory or deductions. CSA does not believe it should be left to the courts to adjudicate on cases where there is a degree of speculation or guesswork.

Set out below are our comments on the parts of the proposals paper covering the Sydney Futures Exchange, the OTC financial markets and the impact of the proposed new 'disclosable information element'.

Disclosable information element

Subject to our comment above, CSA supports the concept of 'disclosable information'.

As we understand it, the purpose of introducing the concept of 'disclosable information' is to restrict the ambit of the current definition of inside information in S.1042A by adding a third test to the definition, so that even if information is not generally available and is price sensitive it does not become inside information unless it is also of a type that a regular user of the market would reasonably expect to be disclosed at some stage.

CHARTERED SECRETARIES AUSTRALIA LIMITED ABN 49 008 615 950
LEVEL 9, 70 CASTLEREAGH STREET, SYDNEY NSW 2000, GPO BOX 1594, SYDNEY NSW 2001 **TEL** +61 2 9223 5744 **FAX** +61 2 9232 7174 **EMAIL** info@CSAust.com
www.CSAust.com

It is not clear from the report precisely how the Committee envisaged introducing the new disclosable information element but we assume that something like the following formulation of S.1042A was envisaged:

"inside information means information in relation to which the following paragraphs are satisfied:
(a) the information is not generally available;
(b) if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of particular Division 3 financial products; and
(c) the information relates to matters that a regular user would reasonably expect to be disclosed to other users of the market on an equal basis, whether at the time in question or in the future."

The disclosable information element would make the definition more useful in situations like the "excess stocks in the yard" example referred to in paragraph 2.9 of the Discussion Paper (where the outcome should be that the information is not "inside information").

On the other hand, a realistic example where the disclosable information element would cause information to be caught by the insider trading prohibition would be where a government agency or other body inadvertently releases information earlier than it usually does (perhaps to a small number of people) in circumstances where market users typically rely on the official release in order to decide the price at which to trade. In this scenario market users may not know how widely the leaked information had been disseminated, so would not know whether it had become "generally available", but the presence of the disclosable information element would enhance the likelihood of market users, and a court, deciding that the information was within the "inside information" definition.

We doubt whether the disclosable information element would have altered the decision in situations like the Kruse and Firns cases (paragraph 2.14 ff of the Discussion Paper) (where the outcome should be that the information is "inside information") because of the continued presence of the "not generally available" test, which will always allow a court to find that information (even when subject to a delayed formal disclosure requirement) is nevertheless generally available, or "readily observable" in the right circumstances.

We believe the "excess stocks in the yard" and inadvertent public release scenarios are the types more in need of clarification/remedy, since the trend towards increasingly stringent corporate governance and disclosure obligations means a Kruse and Firns type scenario is less likely to occur in future.

CSA supports the arguments in paragraphs 1.25-1.41 of the Proposals Paper.

Sydney Futures Exchange and OTC financial markets

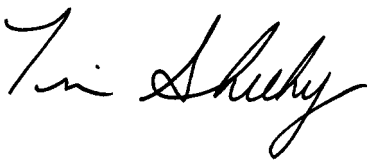
The disclosable information element would allow the insider trading prohibition to apply to those financial products where a reasonable expectation of reasonably imminent disclosure to the market exists.

The practical effect would be that in respect of those financial products (whether cash/secondary market or derivative market) where the price is likely to be influenced by various regular information dissemination processes that exist quite independently of any continuous disclosure obligation, trading in those derivatives will more clearly be subject to the insider trading prohibition. But in relation to other products where there is no reasonable disclosure expectation the prohibition will not apply. In relation to this latter category this is a sensible outcome, since if a product is such that there is no reasonable expectation of general disclosure of information, all information is secret so there is no need for the concept of inside information.

CSA supports the policy options in paragraphs 1.48-1.50 and 1.78, which will avoid an inappropriate division between exchange-traded and OTC products and subject financial products equally to the disclosable information element. This will allow the inside information prohibition to more closely match the needs of each market and is preferable to legislating formal carve-outs.

Naturally, we would be happy to discuss further with you any of the points raised above in our submission.

Yours faithfully



Tim Sheehy
Chief Executive